

Consultation response: Draft policy guidance on facial recognition for police agencies

Footnotes

¹ See, for example, a report published by the International Network of Civil Liberties Organisations, “In Focus: Facial recognition tech stories and rights harms from around the world,” Available <https://ccla.org/get-informed/incllo-reports/in-focus-facial-recognition-tech-stories-and-rights-harms-from-around-the-world/>

² See, for example, PI, Submission to the Scottish Parliament’s Justice Sub-Committee on Policing’s inquiry into facial recognition policing (November 2019), https://privacyinternational.org/sites/default/files/2020-04/19.11.01_JusticeSC_FRT_Evidence_PI_FINAL_2%20%282%29.pdf.

³ Privacy International (25 May 2021) Privacy International and others file legal complaints across Europe against controversial facial recognition company Clearview AI. Available at <https://privacyinternational.org/press-release/4520/privacy-international-and-others-file-legal-complaints-across-europe-against>.

⁴ Joint Investigation of Clearview AI, Inc. by the Office of the Privacy Commissioner of Canada, the Commission d’accès à l’information du Québec, the Information and Privacy Commissioner for British Columbia, and the Information Privacy Commissioner of Alberta. PIPEDA Findings #2021-001. Available: <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2021/pipeda-2021-001/>

⁵ The literature in this area is extensive. A seminal piece is Buolamwini, J. & Gebru, T. Proceedings of Machine Learning Research 81, 77-91 (2018); data from the NIST Face Recognition Vendor Test on Demographic Effects is often cited and authoritative, Grother, P., Ngan, M. & Hanaoka, K. *Face Recognition Vendor Test Part 3: Demographic Effects* (NIST, 2019).

⁶ A report entitled Rethinking Community Safety – A Step Forward for Toronto, in which CCLA participated with a range of partners under the leadership of the Toronto Neighborhood Centres, examines these issues in depth.

Available: <https://ccla.org/criminal-justice/ccla-partners-on-report-urging-toronto-to-detask-police/>

⁷ In this CCLA and PI are aligned with the 179 signatories to the “open letter calling for a global ban on biometric recognition technologies that enable mass and discriminatory surveillance.” Available: <https://www.accessnow.org/ban-biometric-surveillance/>

⁸ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS (COM/2021/206 final). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>.

⁹ For the European Parliament’s resolution, see European Parliament (6 October 2021) European Parliament resolution of 6 October 2021 on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters (2020/2016(INI)). Available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0405_EN.html. For the report adopted by the European Parliament’s resolution, see Committee on Civil Liberties, Justice and Home Affairs (13 July 2021) Report on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters (2020/2016(INI)). Available at https://www.europarl.europa.eu/doceo/document/A-9-2021-0232_EN.pdf.

¹⁰ While this was a private sector use of facial analytics, not a public sector use of FRT, the principle that permissive or simply incorrect interpretations of law may lead to privacy invasions is relevant in this context. See: Joint Investigation of the Cadillac Fairview Corporation Limited by the Privacy Commissioner of Canada, the Information and Privacy Commissioner of Alberta, and the Information and Privacy Commissioner for British Columbia. PIPEDA Findings #2020-004, October 28, 2020. Available: <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2020/pipeda-2020-004/>

¹¹ Lisa Austin and Andrea Slane (October 2021). Submission to consultation on privacy guidance on facial recognition for police agencies.

¹² Police use of Facial Recognition Technology in Canada and the way forward: Special report to Parliament on the OPC's investigation into the RCMP's use of Clearview AI and draft joint guidance for law enforcement agencies considering the use of facial recognition technology. June 10, 2021, Office of the Privacy Commissioner of Canada. Available: https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202021/sr_rcmp/.

¹³ PI, Unmasking Policing, Inc., <https://privacyinternational.org/campaigns/unmasking-policing-inc>.

¹⁴ As, for example, the *Identification of Criminals Act* R.S.C., 1985, c. I-1.

¹⁵ See, for example, Scot Wortley and Maria Jung, "Racial Disparity in Arrests and Charges: An analysis of arrest and charge data from the Toronto Police Service. Submitted to the Ontario Human Rights Commission, July 2020.

Available:

<http://www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20T%20PS.pdf>.

¹⁶ See BuzzFeed's release of Clearview AI company data, Ryan Mac, Caroline Haskins and Antonio Pequeño, "Police in at least 24 countries have used Clearview AI. Find out which ones here," August 25, 2021, available: <https://www.buzzfeednews.com/article/ryanmac/clearview-ai-international-search-table>.

¹⁷ York Regional Police allocated 1.68 Million dollars for a "Facial Recognition and Automated Palm and Fingerprint Identification System", Regional Municipality of York Police Services Board, Revised Agenda Public Session, November 7, 2018, http://www.yrpsb.ca/usercontent/meetings/2018/nov/Merged_Agenda_Package_-_Public_Board_Meeting_Nov07_2018.pdf; Alberta's IPC is on record encouraging Edmonton Police to seek a privacy review for their intended FRT program, see Jordan Omstead, "Caution urged as Edmonton police explore facial recognition technology," CBC News, February 5, 2020,

<https://www.cbc.ca/news/canada/edmonton/caution-urged-as-edmonton-police-explore-facial-recognition-technology-1.5451823>; and the Sûreté du Québec finalized a contract with IDEMIA Identify and Security Canada for \$4.4 million in August 2020, see Kevin Dougherty, "Quebec lawmakers raise the alarm over police use of facial recognition," iPolitics, September 22, 2020, <https://ipolitics.ca/2020/09/22/quebec-lawmakers-raise-the-alarm-over-police-use-of-facial-recognition/>

¹⁸ Privacy International, Get out of our face, Clearview!,

<https://privacyinternational.org/campaigns/get-out-our-face-clearview>.

¹⁹ *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058. Available at <https://www.judiciary.uk/wp-content/uploads/2020/08/R-Bridges-v-CC-South-Wales-ors-Judgment-1.pdf>.

²⁰ Ibid, para 91.

²¹ See Metropolitan Police, Live Facial Recognition. Available at

<https://www.met.police.uk/advice/advice-and-information/facial-recognition/live-facial-recognition/>.

²² See for example the Illinois Biometric Privacy Act, 740 ILCS 14; New York Senate Bill S79; and Vermont S.124 (Act 166) An act relating to governmental structures protecting the public health, safety and welfare.

²³ DNA Identification Act (SC 1998, c. 37).

²⁴ Surveillance Camera Commissioner's Office, "What we talk about when we talk about biometrics...*", 12 October 2021. Available: <https://videosurveillance.blog.gov.uk/2021/10/12/what-we-talk-about-when-we-talk-about-biometrics/>.

²⁵ Austin and Slane (October 2021). P. 4

²⁶ Government of Canada. "Respect, Accountability, Adaptability: A discussion paper on the modernization of the Privacy Act. Available: <https://www.justice.gc.ca/eng/csj-sjc/pa-lprp/dp-dd/raa-rar.html#s1>

²⁷ Fraser Sampson. *Response to the Government's Statutory Consultation on the Surveillance Camera Code under s. 29(5)(e)*. Available:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1017674/Fraser_Sampson_s_response_to_SC_Code_Revision_FINAL_08.09.2021.pdf

²⁸ Privacy International (15 October 2020) *Facewatch: the Reality Behind the Marketing Discourse*.

Available at: <https://privacyinternational.org/long-read/4216/facewatch-reality-behind-marketing-discourse>.

²⁹ See Vermont S.124 (Act 166) An act relating to governmental structure protecting the public health, safety and welfare, s. . October 7, 2020. Available:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1017674/Fraser_Sampson_s_response_to_SC_Code_Revision_FINAL_08.09.2021.pdf

³⁰ Felix Stalder, (2002). "Opinion. Privacy is not the antidote to surveillance." *Surveillance & Society*.

Available: <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/3397/3360>

³¹ Woodrow Hartzog (August 2, 2018). "Facial Recognition is the Perfect Tool for Oppression." *Medium*.

Available: <https://medium.com/s/story/facial-recognition-is-the-perfect-tool-for-oppression-bc2a08f0fe66>

³² *Supra*, note 7.

³³ See Kate Allen and Wendy Gillis, (May 28, 2019) *Toronto police have been using facial recognition technology for more than a year*. Available: <https://www.thestar.com/news/gta/2019/05/28/toronto-police-chief-releases-report-on-use-of-facial-recognition-technology.html>