

Executive Office of Public Safety and Security

Facial Recognition Searches M.G.L. Ch. 6 § 220

On December 31, 2020, Governor Charlie Baker signed “*An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*” (the Act). The Act created G.L. c. 6, § 220, which became effective on July 1, 2021 and imposes limitations and requirements on law enforcement agencies requesting or performing facial recognition searches and establishes reporting requirements for law enforcement agencies and the Executive Office of Public Safety and Security (EOPSS).

A “facial recognition search” is defined in the statute as “a computer search using facial recognition to attempt to identify an unidentified person by comparing an image containing the face of the unidentified person to a set of images of identified persons; provided, however, that a set of images shall not include moving images or video data.” G.L. c. 6, § 220(a). As of July 1, 2021, law enforcement agencies requesting or performing a facial recognition search may only do so via written request and only based on two newly established statutory justifications: court order or emergency. G.L. c. 6, § 220(b). This new requirement of a written request for limited purposes does not apply “to the department of state police when performing investigatory functions related to the issuance of identification documents by the registrar of motor vehicles.” G.L. c. 6, § 220(b). Beginning July 1, 2021, law enforcement agencies were required to document certain information about facial recognition searches requested by law enforcement agencies, and report that information to EOPSS on a quarterly basis. G.L. c. 6, § 220(c).

The law requires EOPSS to publish on its website annually and not later than September 1: (a) the documentation provided to EOPSS on a quarterly basis by law enforcement agencies about facial recognition searches performed, pursuant to G.L. c. 6, § 220(c); and (b) five categories of additional information regarding facial recognition searches requested and performed by law enforcement agencies during the previous calendar year, pursuant to G.L. c. 6, § 220(d).

Quarterly Documentation Provided by Law Enforcement Agencies About Facial Recognition Searches Performed, Pursuant to G.L. c. 6, § 220(c).

Because G.L. c. 6, § 220 became effective on July 1, 2021, and because G.L. c. 6, § 220(c) requires law enforcement agencies to provide documentation quarterly, EOPSS has not yet received any quarterly reports from law enforcement agencies. Notwithstanding that no quarterly reports have been received, since July 1, 2021, the department of state police has received one written request to utilize facial recognition technology based upon a court order. However, that request did not meet the statutory definition of a facial recognition search because the request sought to compare an image containing the face of an identified individual against the database of the registry of motor vehicles.

Additional Information Regarding Facial Recognition Searches Requested and Performed by Law Enforcement Agencies During 2020, Pursuant to G.L. c. 6, § 220(d).

Section 220(d) also requires EOPSS to publish the following five categories of data for calendar year 2020:

- (i) the total number of facial recognition search requests made by other law enforcement agencies to the department of state police, disaggregated by law enforcement agency;
- (ii) the total number of facial recognition searches performed by the department of state police, disaggregated by law enforcement agency on whose behalf the search was performed;

- (iii) the total number of facial recognition searches requested and performed by the state police;
- (iv) the total number of facial recognition search requests made by the department of state police to the Federal Bureau of Investigation, disaggregated by law enforcement agency on whose behalf the requests were made; and
- (v) the total number of facial recognition searches performed by the Federal Bureau of Investigation on behalf of Massachusetts law enforcement agencies, disaggregated by law enforcement agency on whose behalf the search was performed.

For the 2020 facial recognition search information in these categories, § 220(d) also requires reporting the underlying purpose of the facial recognition search, according to the two newly established statutory purposes in § 220(b) (court order and emergency), as well as the reason for the search (the documentation of which reason is also a newly created requirement of § 220(b)).

With respect to category (iv), the department of state police did not make any facial recognition requests of any type to the Federal Bureau of Investigation in 2020. As noted above, EOPPS has not yet received any quarterly reports from law enforcement agencies so is unable to provide a response to category (v). As for the remaining categories, the department of state police utilized facial recognition technology in 2020 but did not collect data in a manner that would permit it to determine whether those uses met the new statutory definition in G.L. c. 6, § 220(a) of a “facial recognition search,” one that was an “attempt to identify an unidentified person by comparing an image containing the face of the unidentified person to a set of images of identified persons.”

The use of facial recognition technology by the department of state police is not limited to identifying unknown individuals. The department uses facial recognition technology to identify

fraudulent registry of motor vehicle documentation used in cases of identity fraud and theft. The department also uses the technology to prevent individuals from obtaining fraudulent registry of motor vehicle identification documents; that is documents with the image of one individual and the personal identifiers of another individual.

Prior to July 1, 2021 the department of state police did not distinguish facial recognition searches as defined in the statute and searches related to registry of motor vehicle documentation. To address the requirements of the statute the MSP has updated their ACISS (Augmented Criminal Investigation Support System) case management system to capture much of the required data and to allow for automated reporting. For data that cannot be captured within ACISS the department is putting in place policies and procedures to ensure that data is also collected. As a result of the ACISS update and the new policies and procedures, as well as the receipt of a year's worth of quarterly reports from other law enforcement agencies, EOPSS expects the annual report published in September of 2022 to contain more meaningful data about the use of facial recognition searches in calendar year 2021.