

April 28, 2021

Metropolitan Washington Council of Governments
Board of Directors
777 North Capitol Street NE, Suite 300
Washington, DC 20002

Dear Chair Robert White, Vice Chair Christian Dorsey, Vice Chair Kate Stewart, and Members of the Board of Directors:

The undersigned organizations dedicated to privacy, transparency, accountability, and good government write to urge you to end the funding for the National Capital Region Facial Recognition Investigative Leads System (“NCR-FRILS”) pilot project, halt the use of the system, and make public the documents related to the project. Using a facial recognition system to identify individuals, particularly protesters, is a new development in law enforcement in the D.C. Metropolitan Area.¹ The public should be informed and provided a meaningful opportunity to weigh in on the use of new surveillance technologies and some technologies, like facial recognition, are antithetical to democracy and should not be used. The lack of transparency around the NCR-FRILS pilot project has only been exacerbated by the lack of response by law enforcement agencies for information on the project.²

The NCR-FRILS system was only disclosed on November 2, 2020 after court documents revealed that the Maryland National Capitol Park Police used the system to identify a protester accused of assaulting a police officer at a Black Lives Matter rally on June 1.³ But the pilot project has been in use since 2017.⁴ It was approved by two MWCOG committees composed of “police chiefs and county and city managers” in meetings hidden from the public.⁵ According to the Washington Post the system has been used more than 12,000 times since 2019. Fourteen local and federal agencies have access to the system.⁶

¹ Metropolitan Police Department’s use of facial recognition dates to 2016, just before the NCR-FRILS system was adopted. Peter Newsham, Letter to Charles Allen Re: Fiscal Year 2019 Performance Oversight Hearing of the Metropolitan Police Department at 99-100 (Mar. 2, 2020), <https://dccouncil.us/wp-content/uploads/2020/03/JPS-Performance-Oversight-Responses-2020-MPD.pdf>.

² In November 2020, the Electronic Privacy Information Center filed open record requests to the Metropolitan Police Department, the Montgomery Police Department, and the Maryland National Capitol Park Police. As of the writing of this letter, no determination has been made regarding the requests and in the case of the Maryland National Capitol Park Police, the request has not even been acknowledged despite repeated calls to the Park Police to determine the status of the request. The requests can be found at the following links:
<https://epic.org/foia/frt/ncr-frils/EPIC-2020-11-06-MetroPD-FOIA-20201106-Request.pdf>,
<https://epic.org/foia/frt/ncr-frils/EPIC-2020-11-06-MoCoPD-FOIA-20201106-Request.pdf>,
<https://epic.org/foia/frt/ncr-frils/EPIC-2020-11-06-MNCPD-FOIA-20201106-Request.pdf>.

³ Justin Jouvenal and Spencer S. Hsu, Facial recognition used to identify Lafayette Square protester accused of assault, Washington Post (Nov. 2, 2020), https://www.washingtonpost.com/local/legal-issues/facial-recognition-protests-lafayette-square/2020/11/02/64b03286-ec86-11ea-b4bc-3a2098fc73d4_story.html.

⁴ *Id.*

⁵ *Id.*

⁶ The Washington Post article identifies Fairfax County Police, Maryland National Capitol Park Police, Montgomery County Police, Metropolitan Police, unspecified other D.C. area police departments, ATF, and the Department of Justice as agencies with access to the system.

Across the country city governments have begun to ban the use of facial recognition. In June, Boston City Council voted to ban facial recognition for city agencies.⁷ City governments in San Francisco and Oakland, CA, and Portland, Oregon, have adopted similar laws.⁸ Even more striking, voters in Portland, Maine just approved a ballot measure banning the use of facial recognition by police and city agencies.⁹ In response to public pressure this summer Amazon, Microsoft, and IBM all stopped selling facial recognition services to law enforcement.¹⁰ The trend is clear, the public does not want police departments to use facial recognition technology.

That trend follows growing research that shows facial recognition technology to be racially biased. Recent studies from MIT analyzing commercially available facial recognition systems found that they mis-identified women and people of color far more frequently than white men.¹¹ Indeed, facial recognition algorithms may mis-identify black women in up to 35% of cases.¹² A landmark 2019 study from the National Institute of Science and Technology confirmed these findings.¹³ The most prominent commercial facial recognition system, Clearview AI, has not even been tested for racial bias.

The dangers of facial recognition do not begin and end with racial bias. The technology itself enables comprehensive surveillance which poses a threat to privacy and civil liberties. Face surveillance can be used for real-time tracking and for after-the-fact identification of individuals in crowds.¹⁴ These abilities are nearly unique to facial recognition. Comprehensive surveillance will substantially chill freedom of speech and protest as individuals rightfully fear identification and retaliation for engaging in protests such as Black Lives Matter. Last summer a protester in New York City was identified through facial recognition, leading to a high-profile siege of his

⁷ Ally Jarmanning, Boston Lawmakers Vote To Ban Use Of Facial Recognition Technology By The City, NPR (Jun. 24, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/24/883107627/boston-lawmakers-vote-to-ban-use-of-facial-recognition-technology-by-the-city>.

⁸ See San Francisco Facial Recognition Ordinance, <https://sfgov.legistar.com/View.ashx?M=F&ID=7206781&GUID=38D37061-4D87-4A94-9AB3-CB113656159A>; Oakland Facial Recognition Ordinance, <https://oakland.legistar.com/LegislationDetail.aspx?ID=3976661&GUID=CB1D4794-7549-485A-A345-B7B38B38E191&Options=&Search=>; City of Portland Facial Recognition Ordinance, <https://static1.squarespace.com/static/5967c18bff7c50a0244ff42c/t/5f3ab2af992f72493f0842c5/1597682351767/Ordinance+to+ban+Facial+Recognition+Ordinance+City+use+-+final.pdf>.

⁹ Russell Brandom, Portland, Maine has voted to ban facial recognition, The Verge (Nov. 4, 2020), <https://www.theverge.com/2020/11/4/21536892/portland-maine-facial-recognition-ban-passed-surveillance>.

¹⁰ Rebecca Heilweil, Big tech companies back away from selling facial recognition to police. That's progress., Vox (Jun. 11, 2020), <https://www.vox.com/recode/2020/6/10/21287194/amazon-microsoft-ibm-facial-recognition-moratorium-police>.

¹¹ Joy Buolamwini and Timnit Gebru, Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, 81 Proceedings of Machine Learning Res. 77-91 (2018), <http://proceedings.mlr.press/v81/buolamwini18a.html>, and Inioluwa Deborah Raji and Joy Buolamwini, Actionable Auditing: Investigating the Impact of Publicly Naming Biased Performance Results of Commercial AI Products, AIES '19 (January, 2019), <https://dl.acm.org/doi/abs/10.1145/3306618.3314244>.

¹² *Id.*

¹³ Patrick Grother, Mei Ngan, and Kayee Hanaoka, Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects, NIST (December 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

¹⁴ Clare Garvie and Laura M. Moy, America Under Watch: Face Surveillance in the United States, Georgetown Law Center on Privacy & Technology (May 16, 2019), <https://www.americaunderwatch.com>.

apartment.¹⁵ Facial recognition technology simply puts too much power in the hands of the police.

We ask that you publish documents on the creation, funding, and performance of the NCR-FRILS pilot project including: the initial project proposal, any discussions or deliberations about the proposed project, any analysis of the privacy implications of this facial recognition system, the funding of the NCR-FRILS system, any interim or final reports on the pilot, and any analyses of the pilot project performed or received by MWCOG staff.

Given the threats posed by facial recognition and the fact that its impacts fall most heavily on minority communities, the Council should not be in the business of facial recognition. We urge the Council to immediately halt the NCR-FRILS program and end any further funding of the project, but at minimum the Council should suspend the use of NCR-FRILS until the public has a say in whether to continue funding the program and open all future meetings on the NCR-FRILS system to the public.

Thank you for your consideration of our request. We look forward to your response. If you have any questions, please contact Jake Wiener from the Electronic Privacy Information Center at wiener@epic.org.

Sincerely,

Access Now
Advocacy for Principled Action in Government
Constitutional Alliance
Consumer Action
Consumer Federation of America
Defending Rights and Dissent
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
Fight for the Future
Just Futures Law
LatinoJustice PRLDEF
Montgomery County Civil Rights Coalition
Montgomery County Democratic Socialists of America
NACDL
National Immigration Law Center
National Workrights Institute
New America's Open Technology Institute
Open The Government
Patient Privacy Rights
Project on Government Oversight
Restore the Fourth

¹⁵ George Joseph and Jake Offenhartz, NYPD Used Facial Recognition Technology In Siege Of Black Lives Matter Activist's Apartment, Gothamist (Aug. 14, 2020), <https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment>.

S.T.O.P. - The Surveillance Technology Oversight Project
Students for Sensible Drug Policy
Takoma Park Mobilization
X-Lab

cc: Mayor Timothy Adams
Mayor Muriel Bowser
Mayor Colin Byrd
Mayor David Meyer
Mayor Craig Moe
Mayor Bridget Newton
Mayor Michael O'Connor
Mayor Justin Wilson