

MEMORANDUM OF UNDERSTANDING.
BETWEEN
THE FEDERAL BUREAU OF INVESTIGATION
AND
THE STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL
FOR THE
INTERSTATE PHOTO SYSTEM FACIAL RECOGNITION PILOT

GENERAL PROVISIONS

1. **PURPOSE:** This Memorandum of Understanding (MOU) between the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, and the State of Hawaii Department of the Attorney General (HDAG), hereinafter referred to as the "Parties," is for the limited purpose of testing and piloting the FBI's Interstate Photo System Facial Recognition Pilot (IPSFRP). This MOU memorializes the Parties' understandings regarding the transmittal, receipt, storage, use, and dissemination of information relating to this piloting initiative.

2. **BACKGROUND:** The FBI maintains millions of digital representations of fingerprint images, features from digital fingerprint images, and associated criminal history record information in the Integrated Automated Fingerprint Identification System (IAFIS). The IAFIS provides automated fingerprint search capabilities, latent print search capabilities, electronic image storage and electronic exchange of fingerprints, criminal history and associated photos to support law enforcement and authorized civil organizations. Collectively, this data comprises the biometric content, format, and units of measurement for the electronic exchange of information that may be used for positive fingerprint identifications. Given the advances in biometric identification technology, including hardware, software, and digital imaging, it is essential that existing search capabilities be enhanced to meet authorized customer needs. The CJIS Division's Next Generation Identification (NGI) System expects to reduce terrorist and other criminal activities by implementing multiple search capabilities that will improve, expand, or create new biometric identification tools and investigative services for the FBI's user community.

The IPSFRP satisfies a subset of the NGI Interstate Photo System (IPS) requirements, and a prototype system was delivered to assist in the development of the IPS facial recognition system. Upon full implementation, IPS enhancements will: 1) expand storage capacity, thereby allowing a more robust photo repository; 2) permit photo submissions independent of arrests; 3)

full implementation, IPS enhancements will: 1) expand storage capacity, thereby allowing a more robust photo repository; 2) permit photo submissions independent of arrests; 3) permit bulk submission of photos being maintained at state and federal repositories; 4) accommodate the submission and searching of non-facial photos (e.g., Scars, Marks and Tattoos [SMTs]); 5) permit IPS photo retrieval via the National Crime Information Center (NCIC); and 6) provide facial recognition search capabilities.

It is important to note that although facial recognition technology has been under development since the 1960's, universal algorithmic approaches for facial recognition do not exist. Approaches originally tailored to low resolution, two-dimensional images have been improved to account for greater levels of resolution and three-dimensional data. The U.S. Government has performed multiple evaluations of facial recognition technology and preliminary results demonstrate that accuracy has greatly improved. Accordingly, these enhancements support the FBI's decision to enhance its photo processing capabilities in the early stages of NCI system development, to include facial recognition technology.

To address and enhance photo processing capabilities, the FBI is initiating the IPSFRP as a collaborative effort to identify user needs, provide proof of concept, establish thresholds for lights out searches at the national level and develop a useful investigative tool for the law enforcement community.

Agencies participating in this pilot program have implemented a facial recognition system for investigative, identity authentication and/or tracking purposes. In support of this initiative, the HDAG will submit images to a state/regional photo repository and the repository will provide search results to the submitting law enforcement agency. The HDAG will also request that the photo submission be forwarded to the CJIS Division, via the CJIS Wide Area Network (WAN) or other FBI approved secure web services, for comparison against the FBI's national photo repository. This pilot is designed to provide participating law enforcement agencies an automated facial recognition search of a subset of the FBI's national photo repository until full implementation of the IPS facial recognition search capability in 2014. The IPSFRP will represent a subset of the IPS repository and will be expanded and updated periodically throughout the pilot. The subset repository will not represent a real time reflection of the IPS or Interstate Identification Index (III) photo repository.

Technical specifications for the IPSFRP are derived from the CJIS Electronic Biometric Transmission Specification (EBTS) and the American National Standards Institute (ANSI) American National Standard for Information Systems - Data Format for the Interchange of Fingerprint, Facial, & other Biometric Information.

During the IPSFRP piloting phase, relevant transactions will be analyzed by the Parties and their authorized contractors to assess system performance. In addition, the NCI IPS system design will be recording lessons learned and user input.

System availability will be limited during this initiative. Accordingly, the CJIS Division will provide advanced notice of sporadic system availability, backup recovery limitations, and failover shortfalls during the prototype phase. In addition, the CJIS Division may limit the number of transactions that will be accepted during the pilot phase.

3. **AUTHORITY:** The FBI enters into this MOU under the statutory authority provided by Title 28, United States Code, § 534.

4. **SCOPE:** This MOU applies to facial photo images provided by the HDAG and the FBI's responses.

A. The FBI will:

1. Accept one frontal facial photo submission per IPSFRP search request;
2. Search each frontal facial image against the IPSFRP national repository;
3. Provide a candidate list per each applicable IPSFRP search request. The candidate list will contain the agency's requested number (minimum of 2) of candidates, or a default number of 20 candidates if not specified by the agency, as well as a caveat message;
4. Provide a valid FBI identifier for each candidate;
5. Maintain a log of all transactions and disseminations;
6. Designate a point of contact (POC) for issues and concerns related to this initiative;
7. Conduct post processing on submitted transactions to determine system performance and miss analysis and provide results to the submitting agency; and

B. The HDAG will:

1. Submit no more than one frontal facial photo (EBTS - ANSI compliant) per IPSFRP search request via the CJIS WAN or other FBI approved secure web services;
2. Request a specified number (minimum of 2, default of 20, maximum of 50) of returned candidates;

3. Conduct a search of the III to ensure information derived from the IPSFRP candidate lists are up-to-date;

5. Disseminate FBI responses to authorized criminal justice recipients as an investigative lead;
 - A. Provide the CJIS Division with post processing results, such as:
 1. Agency identified a subject from the candidate list and what rank.
 2. Search resulted in an investigative lead.
 3. Search was of no value.

 - B. Designate a POC for issues and concerns related to this initiative.

6. **DISCLOSURE AND USE OF INFORMATION:** The IPSFRP pilot search will be limited to authorized criminal justice agencies for criminal justice purposes. The IPSFRP, and the photo search thereof, is considered to be a part of the IAFIS, therefore all CJIS rules regarding access to IAFIS and dissemination/use of FBI provided information will apply. The Parties acknowledge that information involved in this initiative may identify United States persons, whose information is protected by the Privacy Act of 1974, Executive Order 12333, any successor executive order, or other federal authority. Accordingly, all such information will be treated as "law enforcement sensitive" and protected from unauthorized disclosure. Each Party will immediately report to the other Party any instance in which data received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches).

Information derived from the FBI IPSFRP search requests and resulting responses are to be used only as investigative leads. Though there are expected to be similarities between submitted images and candidate lists, results shall not be considered to be positive identifications nor considered to have active warrants. Although the emerging technology of facial recognition has made great strides over the years, facial recognition initiatives are not deemed to provide positive identifications and the Parties are prohibited from relying solely on IPSFRP search responses as the sole impetus for law enforcement action. Other indicators and factors must be considered by the submitting agency prior to making an identification.

7. **FUNDING:** There are no reimbursable expenses associated with this level of support. Each Party will fund its own activities unless otherwise agreed to in writing. Expenditures will be subject to budgetary processes and availability of funds and resources pursuant to applicable laws, regulations and policies. The Parties expressly acknowledge that this MOU in no way implies that Congress or the State of Hawaii will appropriate funds for such expenditures.

8. **SETTLEMENT OF DISPUTES:** Disagreements between the Parties arising under or relating to this MOU will be resolved only by consultation between the Parties and will not be referred to any other person or entity for settlement.

9. **SECURITY:** It is the intent of the Parties that the transfer of information described under this MOU will be conducted at the unclassified level. Classified information will neither be provided nor generated under this MOU.

10. **AMENDMENT and TERMINATION:**

A. All activities under this MOU will be carried out in accordance to the above described provisions.

B. This MOU may be amended or terminated at any time by the mutual written consent of the Parties' authorized representatives.

C. Either Party may terminate this MOU upon thirty (30) days written notification to the other Party. Such notice will be the subject of immediate consultation by the Parties to decide upon the appropriate course of action. In the event of such termination, the following rules apply:

1. The Parties will continue participation, financial or otherwise, up to the effective date of termination.

2. Each Party will pay the costs it incurs as a result of termination.

3. All information, copies thereof, and rights therein received under the provisions of this MOU prior to the termination will be maintained in accordance with the receiving Party's practices.

11. **ENTRY INTO FORCE, AND DURATION:** This MOU, which consists of ten Sections, will enter into effect upon the signature of both Parties, will be reviewed annually, on or prior to the anniversary date, to determine whether amendments are needed, and will remain in effect until terminated or completion of the testing and piloting phase. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the Parties, their parent agencies, the United States, or the officers, employees, agents, or other associated personnel thereof.

The preceding ten (10) sections represent the understandings reached between the FBI and the Hawaii Criminal Justice Data Center.

FOR THE FEDERAL BUREAU OF INVESTIGATION

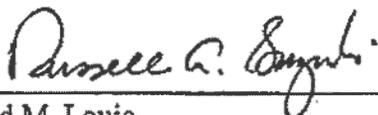


David Cuthbertson
Assistant Director
Criminal Justice Information Services Division
Federal Bureau of Investigation

11/4/11

Date

FOR THE STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL



David M. Louie
Attorney General
State of Hawaii
Department of the Attorney General

11-22-11

Date