

ALEXANDRIA HUMAN RIGHTS COMMISSION  
MINUTES OF THE MEETING OF TUESDAY, JANUARY 19, 2021  
7:00 p.m.  
VIRTUAL (Zoom)

Members Present

Danielle Beach  
Lisl Brunner, Vice Chair  
Kevin Edwards, Vice Chair  
Chris Harris  
Matt Harris, Chair  
Alex Howe  
Susan Kellom  
Katherine Lloyd  
Elizabeth "PJ" Palmer Johnson  
David Rigsby  
Scott Schwartz

Staff Present

Jean Kelleher, Director  
Miladis Martinez Gutierrez

Members Excused

Michelle Cho

Unexcused member

Janeka Cogdell  
Michael Kreps

Guest

Clare Garvie, Senior Associate, Center on Privacy  
& Technology Georgetown University Law Center  
Councilman Seifeldein

**1. Call to Order/Introductions by Chair, Matt Harris**

Chair Harris called the meeting to order at 7:04 p.m. Introductions were made. Chair Harris welcome special guest Clare Garvie and also welcomed Councilman Seifeldein.

**2. Clare Garvie, Senior Associate, Center on Privacy & Technology  
Georgetown University Law Center**

Vice Chair Brunner welcomed and thanked Ms. Clare Garvie for joining the Commission tonight and said that Ms. Garvie is a Senior Associate at Georgetown Law Center for Privacy and Technology and has been the primary author on three of the Center's reports on face recognition technology. Ms. Garvie also testified before Congress, she has written pieces in the Washington Post and other national media, and she serves as an expert resource to state law makers as well as members of Congress.

Vice Chair Brunner stated that the Commission is very enthusiastic to hear a background of the ways our Police Department may be using this technology; what the Human Rights Commission should be look out for; what kind of questions should the Commission be asking the police; and perhaps what recommendation they should be making to City Council regarding ways that this technology can be used in a way that benefits people without some of the consequences that causes discriminatory outcomes, bias, or arbitrary outcomes.

Ms. Garvie started the presentation by saying that she has been looking at the facial recognition by law enforcement for about 5 years. She stated that that what is interesting to her is that it has

been five years and that more research needs to be done on this topic, and also the changes that they have seen over these last five years.

She shared the name of people who have been directly affected by the technology. The first one is Amara Majee, she is a Brown University student who woke up shortly after Easter 2018 to death threats. She had been accused of being a member of the Easter Bombing in Sri Lanka. It turned out that the face recognition system in Sri Lanka misidentified her as one of the bombing suspects. She was not charged with anything, but the damage was sort of done and she had to spend weeks untangling the consequences of that misidentification. Michael Oliver is a high school student in Detroit, and he was arrested on his way to work last year accused of stealing and breaking a teacher's phone. The incident was recorded and one of the photos of that video recording was sent to the Police Department. The police did a face recognition search and came up with a match to Michael Oliver, it was not him. He lost his job, his car was impounded, he spent a couple days in jail, and it turns out it was a face recognition misidentification. Nijeer Parks, most recently, was revealed that he was misidentified using the face recognition in New Jersey, he was accused of stealing some food from a convenience store and then in driving a getaway car almost hitting a police officer, again, it was not him. Robert Williams, another Detroit resident, was also arrested in front of his two young daughters and his wife and held in prison for a face recognition misidentification. Commonality here, face recognition and people of color. There seems to be a high correlation between who is arrested and misidentification using facial recognition technology.

Ms. Garvie stated that, in a law enforcement context, we are talking about two different things; one and by far the most common in the United States is basically taking a static image from where our face photograph shows up, driver's license photo, cell phone video, a photo album at home of an unknown individual and comparing that to a data base of known individuals to determine whether there is a match, and you are going to identify that person in that photo, which is called the pro-photo. She stated that when these systems were first up and running as early as 2001, they have been live in this country for about 20 years. The system is running mugshots, but increasing law enforcement agencies have realized that DMV photo data bases are face recognition data bases, that is the case in 44 states across the country and 31 of them allow law enforcement access. She stated that taking all that into account, it means that over half of American adults are in a biometric face database accessible to law enforcement, and this happened without our knowledge or giving direct consent for our biometrics to be collected and use for policing; that is not something most people assume is going to happen when we submit our photograph to DMV.

Ms. Garvie also stated that a quarter of our law enforcement agencies across the country has access to a system, and it is very hard to get data of who uses it and how often. There 18,000 law enforcement agencies across the country, so it is impossible to ask all of them what they are doing with this technology. She said that she has asked 300 so far. The other reason is that the agencies do not keep good notes, they don't keep track of how they use this technology whether or not it leads to misidentification.

She highlighted three of the major problems of facial recognition. The first one is racial bias and dissimilatory effects of facial recognition. Concerns about who the technology is most likely to be used on; the San Diego Association of Governments that runs their system, said that face recognition is used two times and half more on communities of color. Second to the extent that a lot of the systems still focus on or run mugshot data bases; these are typically arrest data bases not conviction data bases, meaning that anyone who has actually been arrested and had their mugshot taken regardless of whether they were judged not guilty or had their charges dropped. She said that the disproportional rates are between 2-1 to 5-1 of particularly young black men arrested in this country. She stated that the conviction rates are still disproportionate, but the arrest rates are vastly disproportionate of the portion of the population so, who can be found by this recognition, mostly young black men. Also, she stated that there are more errors happening with women and people with darker skin, and that, from a discriminatory impact view, face recognition risks our privacy of our first amendment rights. She added that where face recognition changes the game is the fact that it can be used off of live video feeds, it can be used to identify people in a crowd; it can be used to identify someone in a public protest. She stated that they should not be allowed to run face recognition on first amendment protected activities, and yet there is evidence that suggests that they do exactly that; both in the Black Lives Matter protest and at the Freddie Gray protest in Baltimore in 2015, face recognition software was used to identify protestors. Police said that they were looking for rioters. The line between what is protected and what is not protected and who they are looking for is rather thin and again not transparent to the public.

Law enforcement agencies said that face recognition is used as a tool of surveillance. It is a form of government control over free speech and because of that, they recommend the rules around its use be very careful, but we have not seen those manifests. Secondly the right to privacy under the 4<sup>th</sup> amendment; in 2018 the Supreme Court in a case called Carpenter said, "A person does not surrender all Fourth Amendment protection by venturing into the public sphere," Lastly, looking at the technology itself in investigations, this is where it is going to impact people the most. She said that face recognition is a biometric, it is basically taking a face template, like you would a fingerprint; If characterized like that it is a biometric forensic tool.

Commissioner Schwartz asked if there are any jurisdictions that she is aware of that are in Virginia that use this technology. Ms. Garvie stated that the Virginia State Police has a face recognition system and said that she FOIAed them back in 2016, and said that their system runs on mugshots. Today, Virginia has not allowed Police access to run biometrics at the DMV, it is by DMV policy. Commissioner Schwartz stated that presumably the technology that captures these images and does the comparison will improve overtime; the technology is going to get more accurate as time goes by. Ms. Garvie stated that the technology has gotten incredibly good, but people using it have not, and it doesn't matter how good the system is, if law enforcement agencies are able to submit low quality images, if they are allowed to edit the photos before submitting, it is not going to get good results. The other problem is, it is a biometric forensic technique and there is not training required for the individuals running the system, and there is always a human check at the end, and you can have the best system in the world, but if the humans are not trained to actually take a look at the resulting candidates list that the system returns

and evaluate whether someone mugshot maybe from 1975 looks like the person they are looking for are the suspect from in the photograph, it does not really matter. Evidence shows that the best type of system is going to be very good algorithms plus highly, highly trained individuals.

Commissioner Schwartz asked if she was aware of any arrests made in Virginia that were based on facial recognition technology. Ms. Garvie stated that she has not heard of any cases and said the State Police has a data base of 1.2 million mugshots. The other system in Virginia is run out of Fairfax, it is the Fusion Center for Virginia, they run a face recognition system that runs on mugshots still and pulls from Maryland. She said that because it is a Fusion Center, they also have a Department of Homeland Security (DHS) component, so they are likely running searches on behalf of DHS.

Commissioner Schwartz asked if she aware of any jurisdictions either State, National or local that has any sort of protective legislation to protect against of misuse of the information, is there a draft legislation or best practices. Ms. Garvie state that the legislation they have seem so far has been in the State of Vermont at the city level and a number of cities around the country, particularly in California and Massachusetts to actually ban or put a moratorium on the use of the technology. Ms. Garvie will be sending a model legislation to the Commission.

Ms. Garvie stated that because of the room of error, she is arguing that facial recognition and the process must be submitted to the defense as part of direct refuter of all the information that speaks to our guilt or innocence and it is never turned over; so, thousands of people are being charge and taking plead deal or convicted of crimes that may have been identify of using face recognition and they never found out.

Chair Harris stated that you wonder how well-trained public defenders are in what their limited resources are, if they can't get the metadata, especially if it is susceptible to being photoshoped. Ms. Garvie said that she has trained about 25,000 public defenders so far and said that she is working with The National Association for Criminal Defense Lawyer and the Federal defenders to try to get them trained. She stated that they filed a few discovery requests on face recognition, and when the law enforcement agencies asked to turn over this information, almost without fail, cases get put thrown out or dropped.

Director Kelleher asked Ms. Garvie to talk more about the photoshop possibility. Ms. Garvie stated that there is a vendor, which is called DataWorks Plus, and what is troubling is that DataWorks Plus don't make their own algorithms, they would self-contract for the algorithms, but they make an interface that has a photoshop dropped down menu built in, so when officer goes to run research one of the tools at his disposal is photoshop, he is encouraged to what they call normalized the photo to make the photo look as similar to what a mugshot looks like through remodeling, taking a face and reconstructing the missing part using a computer.

Ms. Garvie concluded the presentation by stating that we need a moratorium until we have really good rules in particular because there have been hundreds of people who have been convicted of crimes that they did not commit, because of this system.

She stated that she is a member of the Leadership Conference Civil Rights Table and said they are very active; they have working group on police technology that focuses on face recognition and legislation. She also added that ACLU also very active on face recognition and they focus banning it.

Chair Harris thanked Ms. Clare Garvie for coming before the Commission.

Councilman Seifeldein stated that he appreciated the invite and said that he has been contemplating the idea of addressing this issue with Council, but will follow up with Ms. Garvie.

### **3. Approval of November Minutes**

Upon a motion by Vice Chair Edwards, seconded Commissioner Kellom, the Commission approved the minutes of the December meeting. All Commissioners present voted aye and one abstained.

### **4. Executive Committee / Upcoming Meetings**

Chair Harris stated that the Executive Committee did not meet with the Police on their quarterly meeting this month but said the Police Chief will be coming to the February meeting.

Commissioner Schwartz asked if the Police Chief is going to be talking about the progress, they have made on moving forward on body worn cameras. Director Kelleher stated that the Police Chief was told that there will be specific questions in advance of the meeting. Director Kelleher added that the body worn cameras issue is a City Council issue now.

Chair Harris said that Bryant Porter has been invited to the March Commission meeting.

### **5. Old and New Business**

#### **Vaccine Town Hall Co-Sponsored w/ AHD, NAACP, TWU**

Chair Harris stated that they were to schedule a virtual Town Hall meeting on the vaccine last Monday night, but it fell through for some reason. There was a conflict with other events going on. Director Kelleher stated that it will not be a live Town Hall, but it will be recorded on Saturday at 11:00 am. She added that there has been a press release that has gone out to the community; there will be questions obtained in advanced from community members who want to know about the vaccine roll out. She said that the recording will be available starting January 27, and will be run multiple times, and it will be presented in Spanish, Amharic and Arabic.

#### **Rainbow Crosswalk Idea for Intersection at King & Washington St.**

Chair Harris stated that Commissioner Schwartz had brought up the idea of rainbow-painted crosswalks at the intersection of King and Washington Streets. Chair Harris suggested having a Black Lives Matter recognition on the streets as well. Director Kelleher stated that it is appropriate for the Commission to contact the elected officials and if they are in support; they will ask the City Manager who then will designate the T&ES Director. Commissioner Palmer Johnson stated that Black Lives Matter and the rainbow-colored crosswalks are separate issues. After an extensive discussion on whether to combine the rainbow-colors with Black Live Matter and the location of the crosswalk. Upon a motion by Commissioner Schwartz, seconded by Commissioner Beach, Commissioner Schwartz will draft a letter to City Council requesting to have rainbow-painted crosswalks that includes the additional colors at the

intersection of King and Washington Streets. All Commissioners present voted aye, and Commissioner Palmer Johnson opposed.

#### **6. Liaison Reports**

Commissioner Lloyd stated that the ACPD is working on having their own video for the City of Alexandria to encourage citizens to be more inclusive and be more aware of people with disabilities. Director Kelleher stated that Jacqueline Tucker, the Equity Officer, is very interested in working with the ACPD.

Commissioner Howe stated that the Landlord and Tenant Board met and that they reviewed two different relocation plans for two different projects coming up in the City. He said that the big one to point out is the Heritage in Old Town, the City did a lot of work to try and work with the Developers on that side to try to maintain as much of the affordability and the current tenants living there as much as possible. He also sends a shout-out to the Office of Housing staff for their hard work on the rent relief program.

Commissioner Palmer Johnson stated that January is Human Trafficking Month as well as stalking awareness month. She said that on January 27<sup>th</sup>, they will have the legislative advocacy day and it is all virtual, and they are concern because in 2020 they had advocated for a housing protection for survivors and for the sexual and domestic violence prevention fund. However, the funds were never made because of Covid-19 and now they are going to go back to see if they get advocate to get those funds put back into the budget.

#### **7. Announcements /Adjournment**

There were no announcements.

**MOTION:** adjourn the meeting.

Kellom /Edwards **PASSED** unanimously

The meeting adjourned at 8:39p.m.