

Facial Recognition Technology Use

610.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the use of facial recognition technology (FRT) by the Division to assist in the development of investigative leads. This policy also provides guidance for FRT data access, use, and retention.

This policy does not apply to the use of FRT in user identification applications for personal electronic devices, access control systems, or automated video redaction software.

610.1.1 DEFINITIONS

Definitions related to this policy include:

Biometric surveillance information - Information obtained through the digital monitoring of an area that is analyzed using FRT to determine an individual's identity or location based on their physical attributes or manner. (Utah Code § 77-23d-102).

Facial recognition technology (FRT) - A software application, electronic system, or a third-party service that uses biometric algorithms to compare facial features of a probe image with the features of images contained within an image database.

Government image database – A database maintained by the Division or another government entity of images captured during interactions with the Division or government entity. This does not include publicly available information (Utah Code 77-23e-102).

Probe image - A search image submitted to FRT for comparison with images contained within an image database.

610.2 POLICY

It is the policy of the Utah Motor Vehicle Enforcement Division to limit FRT use to developing investigative leads for legitimate law enforcement purposes while recognizing and protecting established constitutional and privacy rights.

610.3 DIRECTOR RESPONSIBILITIES

The Director or the authorized designee shall approve any FRT system or service prior to its implementation and use by the Division.

610.4 FRT COORDINATOR

The Director or the authorized designee shall appoint an FRT coordinator. The responsibilities of the FRT coordinator include:

- (a) Establishing procedures for division FRT use that conform to applicable laws, regulations, and best practices. Procedures should include:
 1. A process for submitting and assessing investigator requests to use FRT.

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2. Requirements related to processing and reviewing results generated from the use of FRT.
 3. Requirements for complying with Utah Code 77-23e-105 prior to implementing new FRT systems (i.e., posting proper notice, accepting and reviewing public comments, posting final decisions).
- (b) Establishing procedures for collecting, processing, and storing FRT data.
1. Procedures should include the management of biometric surveillance information (Utah Code 77-23d-106).
- (c) Establishing procedures for access and security controls for division FRT systems, services, and data.
1. Access levels should be no higher than necessary to accomplish organizational tasks, missions, or functions.
- (d) Establishing procedures for submitting images to division image databases. The procedures should include:
1. When and under what circumstances members are required to submit images.
 2. Restrictions related to the use of images voluntarily provided to the Division by members of the public.
- (e) Administering data quality assurance measures (e.g., probe image suitability, quality, integrity).
- (f) Conducting periodic audits of division FRT use.
1. The audit should include a review of FRT use, documentation of those uses, and confirmation of data purging, where appropriate.
 2. The audit should include a review of the use of biometric surveillance information (Utah Code 77-23d-106).
- (g) Confirming that authorized users have completed division-approved FRT and forensic image comparison training prior to using FRT.
- (h) Coordinating with the Lieutenant to develop, identify, and update FRT training for investigators who utilize the FRT system.
- (i) Establishing and implementing a schedule for routine maintenance, upgrades, enhancements, testing, and refreshes of FRT for proper performance purposes.
- (j) Establishing procedures for reporting errors, malfunctions, or deficiencies of FRT systems, services, or data.
- (k) Coordinating with the information systems technology supervisor, division counsel, and appropriate administrators to develop information-sharing procedures with outside agencies in accordance with state and federal law.
- (l) Evaluating systems to verify that, in accordance with industry standards, FRT used on a government image database managed by the Division is secure, produced by a company that is currently in business, and makes comparisons using an algorithm that compares only facial biometric data (Utah Code 77-23e-103).

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- (m) Ensuring this policy is posted and publicly available on the division website or the Utah Public Notice Website, as applicable (Utah Code 77-23d-106).

610.5 AUTHORIZED USES OF FRT

FRT may be used as a tool to develop investigative leads for legitimate law enforcement purposes to assist in the identification of the following:

- (a) Unknown suspects where attempts at identification through other means have been exhausted or ineffective
- (b) Potential victims, as appropriate (e.g., human trafficking, child sexual abuse material)
- (c) Deceased individuals
- (d) Individuals who are incapacitated or do not know their identities
- (e) Individuals who are lawfully detained and whose identities are in question (e.g., no identification or false identification provided)
- (f) Suspects in unsolved crimes
- (g) Missing or endangered persons
- (h) Unknown individuals pursuant to any other legitimate law enforcement purpose

610.5.1 AUTHORIZED USES OF FRT ON GOVERNMENT IMAGE DATABASE

FRT shall only be used on a government image database for the following purposes (Utah Code 77-23e-103):

- (a) Investigating a felony, a violent crime, or a threat to human life
- (b) Identifying an individual who is:
 - 1. Deceased.
 - 2. Incapacitated.
 - 3. At risk and otherwise unable to provide their identity.

610.6 REQUEST FOR AUTHORIZATION

An investigator seeking authorization to conduct or request an FRT search shall submit a request to the appropriate supervisor consistent with division procedures.

The request should, at a minimum, include the following:

- (a) The nature of the investigation
- (b) The reason an investigator believes that FRT use is necessary
- (c) An explanation of how FRT may assist with the development of investigative leads
- (d) A case identification number

610.7 FRT SEARCHES

Following supervisor approval, the investigator should proceed as follows:

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- (a) An investigator seeking to have a probe image compared to images contained in a government image database shall submit the probe image and a written FRT request to a member of this division who is trained and authorized to conduct FRT searches or to the government entity that maintains the database, as appropriate (Utah Code 77-23e-103).
- (b) An investigator seeking to have a probe image compared to images contained in a database maintained by the Department of Public Safety shall submit the probe image and FRT request through the Utah Criminal Justice Information System (Utah Code 77-23e-104).
- (c) For all other FRT use, an investigator should submit a probe image for comparison consistent with division procedures.
- (d) Investigators shall only submit lawfully obtained probe images.

Only members authorized by the Division may conduct FRT searches. Before proceeding with official law enforcement action based on FRT results, the results should be thoroughly reviewed by a member trained in FRT.

610.7.1 FRT SEARCH OF GOVERNMENT DATABASE

An FRT search on a government image database maintained by the Division shall only be conducted upon receipt of a written request from an investigator of this division or from another law enforcement agency. The request shall include (Utah Code 77-23e-103):

- (a) The authorized purpose for which the request is made.
- (b) The case identification number.
- (c) If applicable, a statement of the specific crime being investigated and a factual narrative to support that there is a fair probability that the individual who is the subject of the request is connected to the crime.

Before providing results to the requesting investigator or entity, the results should be verified and reviewed according to Utah Code 77-23e-103. No search results other than a probable match agreed upon by at least two authorized members shall be provided in response to a request for FRT (Utah Code 77-23e-103).

610.7.2 USES AND LIMITATIONS OF FRT SEARCH RESULTS

Information resulting from an FRT search shall be considered an investigative lead only and not a positive identification of any person or utilized solely as the basis for engaging in any law enforcement action. Image comparisons generated from FRT use do not represent definitive confirmation of an identity match or non-match. Any positive identification and connection of a person to an investigation shall be determined through additional investigative means and resources.

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610.7.3 FRT SEARCH DOCUMENTATION

The investigating investigator shall document all FRT searches in the appropriate division report, including any arrest report where FRT was used as an investigative tool. Documentation shall include:

- (a) The requesting investigator's name and position.
- (b) Confirmation that the search was pre-approved pursuant to division procedures.
- (c) The purpose of the search.
- (d) The search parameters, if any.
- (e) The date and time of the search.
- (f) A list of any image databases searched.
- (g) The results of the search, including the number of investigative leads produced and, where applicable, the matching score of each.
 - 1. This includes information received indicating an FRT search produced no results (Utah Code 77-23e-103).
- (h) The additional means used to identify any person (e.g., visual comparison of images by a trained investigator, other subsequent investigation).
- (i) A description of how the facial recognition comparison was used in the investigation (Utah Code 77-23e-103).

610.8 PRIVACY CONSIDERATIONS

The Division shall adhere to all applicable federal and state laws regarding privacy concerns related to FRT use. Investigators shall take reasonable precautions to avoid inadvertently recording or capturing images where there is a reasonable expectation of privacy.

610.8.1 NOTICE OF POTENTIAL FRT USE

When capturing an image of an individual during an interaction with the division, the individual shall be notified that their image may be used in conjunction with FRT (Utah Code 77-23e-105).

610.8.2 BIOMETRIC SURVEILLANCE INFORMATION

Biometric surveillance information shall only be obtained as follows (Utah Code 77-23d-106):

- (a) In accordance with a search warrant.
- (b) On authorized property, as defined by Utah Code 77-23d-102.
- (c) In accordance with a judicially recognized exception to warrant requirements.
- (d) When there is a documented reasonable articulable suspicion that a specific individual has threatened to commit a violent felony toward a person, group of people, or place, or to commit an offense of threat of violence under Utah Code 76-5-107.

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610.9 PROHIBITED USES

FRT shall not be used in a manner that targets individuals or groups solely based on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, or any other classification or status protected by law.

In addition, FRT shall not be used:

- (a) For the arrest of individuals based solely on FRT results.
- (b) For any purpose that violates the U.S. Constitution or laws of the United States, including the protections of the First, Fourth, and 14th Amendments.
- (c) For any non-law enforcement purpose.
- (d) As the sole basis for identification to establish probable cause in a criminal investigation.
- (e) To harass or intimidate any individual or group.
- (f) In any other manner that would violate applicable law, regulation, or policy.
- (g) On a government image database to investigate civil immigration violations (Utah Code 77-23e-103).

No investigator shall request that a third-party use FRT to obtain results that would not be permitted under this policy.

610.10 RELEASE OF FRT DATA

Data related to FRT use on a government image database is not subject to the Government Records Access and Management Act and shall not be disclosed except as required by law or court order (Utah Code 77-23e-106).

All other FRT data should only be released to the public in accordance with federal and state public record laws. Requests for the release of FRT data shall be processed in accordance with the Records Maintenance and Release Policy.

610.11 RETENTION OF FRT DATA

FRT data shall be retained in accordance with the established records retention schedule.

Unmatched probe images shall be purged in accordance with the established records retention schedule.

610.12 DOCUMENTATION

Members conducting FRT searches on a government image database maintained by the Division should document FRT data in a way that facilitates statistical reporting required by Utah Code 77-23e-106 (see the Records Division Policy).

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610.13 TRAINING

Investigators whose duties may require the use of FRT should receive initial training and periodic refresher training on this policy and related procedures and should demonstrate their knowledge and understanding. Training should include but is not limited to the following (Utah Code 77-23e-102):

- (a) Capabilities and limitations of FRT
- (b) FRT system functions and interpretation of results
- (c) Data security and privacy concerns
- (d) Documentation and reporting requirements (e.g., FRT results, general statistics, collection of FRT data, FRT requests)
- (e) Digital media handling and protections
- (f) Common terminology (e.g., human face recognition, automated face recognition, holistic face processing, unfamiliar face matching)
- (g) Principles of comparison
- (h) Cognitive bias, confirmation bias, implicit bias, and automation bias
- (i) Applicable policy, procedure, and federal and state law requirements

An investigator who uses mobile facial recognition shall receive additional training appropriate to that application of the technology.

The FRT coordinator shall maintain a record of each authorized investigator's training and acknowledgement of this policy.