

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE FEDERAL BUREAU OF INVESTIGATION  
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION**

**AND**

**THE DELAWARE DIVISION OF MOTOR VEHICLES**

**CONCERNING THE SEARCH OF FBI PHOTOS AGAINST THE  
DELAWARE DIVISION OF MOTOR VEHICLES PHOTO REPOSITORY**

**I. PURPOSE**

The purpose of this Memorandum of Understanding (MOU) is to document the agreed responsibilities and functions of the Parties with respect to conducting searches of the Delaware Division of Motor Vehicles (DE DMV) Photo Repository, which contains driver's license (DL) photos. These searches will be performed for the purpose of comparing Federal Bureau of Investigation (FBI) investigative photos against photos housed in the DE DMV Photo Repository to obtain information that will advance active FBI investigations, apprehend wanted fugitives or known or suspected terrorists, and locate missing persons nationwide.

**II. PARTIES**

- A.** The FBI, Criminal Justice Information Services (CJIS) Division, Biometric Services Section (BSS), FACE Services Unit provides investigative support to FBI field offices and headquarters divisions. The CJIS Division's Assistant Director is the FBI's point of contact (POC) for this MOU. For day-to-day operations of the activities described within this MOU, the FBI POC is the FACE Services Unit's management and its Management and Program Analysts.
- B.** The DE DMV is responsible for a variety of services to the general public. The division is spread across the state in four separate facilities with a facility residing in both Kent and Sussex Counties and two facilities in New Castle County.

The DE DMV monitors and processes over 850,000 registered vehicles and over 630,000 licensed drivers.

For the purposes of this MOU, the DE DMV POC is the Chief of the Compliance and Investigations Unit or the DE DMV Director's designee.

### **III. AUTHORITIES**

- A. The FBI enters into this MOU pursuant to Title 28, United States Code (U.S.C.), Sections 533 and 534; Title 28, Code of Federal Regulations, § 0.85, and 18 U.S.C. § 2721.
- B. The State of Delaware is authorized to share driver's licenses information with the FBI pursuant to Title 18, U.S.C. Section 2721 (b) (1).
- C. The DE DMV enters into this MOU pursuant to Delaware Law Title 21 Section 305 (b) (1).

### **IV. BACKGROUND INFORMATION**

The FACE Services Unit provides a face recognition service in which authorized FBI personnel submit a photo (probe) of a subject of interest in an active FBI investigation. These probe photos are searched against databases authorized for use by the FBI, which results in a photo gallery of potential matches (candidates). The FACE Services Unit performs comparisons of candidate photos against the probe photo to determine a candidate's value as an investigative lead. If a most-likely candidate is found, it is provided to the requesting FBI personnel. This service does not provide positive identification, but rather, an investigative lead and analysis to support that lead.

Under the terms of this MOU, the DE DMV will search the FBI-submitted probe to the DE Photo Repository and candidates produced as a result of the search will be sent by the DE DMV to the FACE Services Unit. The number of candidates provided to the FACE Services Unit is dependent upon the searching threshold set by the DE DMV.

### **V. SPECIFIC RESPONSIBILITIES**

#### **A. The FBI will:**

1. Submit probe photos via Law Enforcement Online (LEO)-to-LEO e-mail to the DE DMV for the purpose of comparing the probe photos with photos in the DE Photo Repository. The LEO is accredited and approved by the FBI for Sensitive-but-Unclassified law enforcement information.
2. Manually analyze, compare, and evaluate the returned candidate photo gallery against the probe photo to determine the existence of a most-likely candidate.
3. Request additional biographical information associated with each photo determined to be a most-likely candidate via a secure email communication according to the requirements of DE DMV.

4. Submit the photo(s) of any most-likely candidate(s) to be searched against the FBI's Next Generation Identification Interstate Photo System in order to locate any additional photos and associated arrest information relating to the most-likely candidate(s) and/or identify additional potential candidates.
5. The results of this search will be compared and analyzed against the original probe photo(s). Once the analysis is complete, the most-likely candidate photo(s), along with any associated information, will be provided to the requesting FBI personnel as an investigative lead.
6. Store photo images and information associated with any most-likely candidate(s) in the FBI case management system for record keeping purposes.
7. Immediately destroy all other photos and information not associated with a most-likely candidate.

**B. The DE DMV will:**

1. Apply for a LEO e-mail account through the Online Services and Operations Unit.
2. Search FACE Services Unit submitted probe photos against the DE Photo Repository. The DE DMV will process no more than 20 requests per day, that may be submitted in groups of no more than 5 per email. Any additional requests will be addressed on a case by case basis. The number of face recognition requests per week will be reviewed periodically and adjusted as necessary to meet the needs of both parties.
3. Return electronic photos and DL/ID card number of all candidates to the FACE Services Unit via LEO e-mail within 24 hours of request.
4. Upon request, return additional biographical information associated with each photo determined by the FACE Services Unit to be a most-likely candidate.
5. Ensure that only authorized DE DMV personnel will handle requests submitted by the FBI. Authorized DE DMV personnel refers to personnel who are currently trained to perform FR queries against the DE Photo Repository for law enforcement purposes. Names of these predetermined personnel will be submitted to the FACE Services Unit for the purpose of establishing and maintaining communications with those DE DMV personnel.

## **VI. PROTECTION OF FBI INFORMATION**

The probe photos submitted by the FACE Services Unit constitute federal information on loan from the FBI that must be returned to the FBI upon request and which may only be utilized with the FBI's express, written consent. Federal law governing access to federal information supersedes conflicting state laws. These probe photos are exempt from disclosure under the Freedom of Information Act. To further the protection of FBI information:

- A.** The probe photo images and data received from the FACE Services Unit shall not be further disseminated or used, including electronic transmission by any internal or external DE DMV system, except as necessary to effectuate this agreement.
- B.** No logs of FBI requests shall be kept or notations made on an individual's record or elsewhere regarding information provided to the FBI.
- C.** The sharing and/or dissemination of any information associated with the FACE Services Unit's requests beyond authorized personnel is prohibited.
- D.** All probe photo images and data submitted by the FACE Services Unit shall be destroyed once the search has been completed and the response has been sent to the FACE Services Unit via LEO.
- E.** Upon receipt of a request for FBI information provided under this MOU, DE DMV will immediately notify the FACE Services Unit.

## **VII. PRIVACY AND SECURITY**

- A.** The information exchanged under this MOU may identify U.S. persons whose information is protected by the Privacy Act of 1974. The FBI will ensure that all such information is handled lawfully pursuant to the provisions thereof. The DE DMV will comply with its own state privacy laws.
- B.** For purposes of this MOU, Personally Identifiable Information (PII) is defined as information which can be used to distinguish or trace an individual's identity, including any personal information which is linked or linkable to a specific individual. Examples of PII are name, social security number, date of birth, place of birth, citizenship, mother's maiden name, face images, fingerprints, and other biometrics.
- C.** Each party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.
- D.** Each party will immediately report to the other party each instance in which information received from the other party is used, disclosed, or accessed in an unauthorized manner (including any information losses or breaches).

- E. All transmissions of probe photos submitted by the FACE Services Unit to the DE DMV and responses returned to the FACE Services Unit will be made through a LEO-to-LEO e-mail connection.
- F. The DE DMV will ensure user accounts and authorities granted to its personnel are maintained in a current and secure "need-to-know" status.
- G. The FACE Services Unit will use the information provided by DE DMV only for lawful and authorized purposes.
- H. Each party shall be responsible for the safeguarding of any equipment used by it to access records under this MOU, and shall limit access to authorized users and to members within each chain of command who have been properly instructed as to their duties and responsibilities under this MOU, on a need to know the information basis.
- I. Each party shall implement procedures to ensure that such equipment is located in a secure area and to prevent information, including any printed copies of records, from being viewed by individuals not authorized to use the equipment and/or not authorized to have access to this information.

#### **VIII. EFFECT OF THIS AGREEMENT**

- A. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable by law or otherwise against any of the parties, their parent agencies, the United States, or the officers, employees, agents, or other associated personnel thereof. The parties will seek to resolve any disputes regarding this MOU by mutual consultation.
- B. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties of the matters described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.
- C. This MOU does not constitute an agreement for any party to assume or waive any liability or claim under any applicable law.
- D. This MOU does not change or limit any legal discovery obligations that otherwise apply in any particular case.

- E. Each party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing party, and that information is only made available to the receiving party as may be permitted by law, regulation, policy, or procedure applicable to the disclosing party.
- F. Each party will provide appropriate training regarding the responsibilities under this MOU to individuals whose responsibilities are covered by the provisions of this MOU.

**IX. EFFECTIVE DATE, MODIFICATION, AND TERMINATION**

- A. This agreement shall be effective when executed by all of the parties and will continue in effect until terminated. This agreement may be modified at any time by written consent of all parties.
- B. This MOU may be terminated, with respect to any party, at any time upon written notice of withdrawal to all other parties. Any party desiring to withdraw from this MOU will endeavor to provide such written notification to all parties at least thirty (30) days prior to withdrawal. This MOU will be reviewed annually to ensure that the terms remain current, complete, and relevant.
- C. This MOU, in nine distinct sections, is the exclusive statement of the parties with respect to its subject matter and supersedes any and all prior agreement, negotiations, representations, and/or proposals, written or verbal, relating to its subject matter.

FOR THE FEDERAL BUREAU OF INVESTIGATION



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Douglas E. Lindquist  
Assistant Director  
Criminal Justice Information  
Services Division

Date 3/27/18

FOR THE DELAWARE DIVISION OF MOTOR VEHICLES



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Scott Vien  
Director  
Delaware Division of Motor Vehicles

Date 4-5-17