



FACE TIME: PRIVACY POLICIES FOR FACIAL RECOGNITION IN MONTANA

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Facial recognition is the process of identifying or confirming an individual's identity through technology from photos, video, or real-time surveillance of their face. Facial recognition systems either scan databases to identify unknown individuals (facial identification) or match photographs to confirm identities (facial verification).

At the Economic Affairs Interim Committee's November 2021 meeting, the committee heard from state agencies and learned that no agency in Montana uses technology for facial identification or facial verification. However, the Department of Justice (DOJ), through the Montana Fusion Center, assists law enforcement agencies who may use facial recognition technology, and the Department of Labor and Industry (DLI) uses a third-party vendor, ID.me, for identity verification for unemployment insurance claims.

MONTANA FUSION CENTER: MATIC

Fusion Centers are located across the country and serve as focal points in states and major urban areas as collaborative efforts of law enforcement agencies to share resources, expertise and information.¹

The Montana Analysis and Technical Information Center (MATIC) is Montana's Fusion Center. The MATIC is a multi-agency entity that involves the Division of Criminal Investigation (DCI), Department of Corrections, Department of Military Affairs, and the Helena Police Department. The MATIC's mission is "to collect, store, analyze and disseminate information on crimes that have occurred or are suspected to law enforcement, community and government officials."²

The MATIC is housed within DCI at the Montana DOJ and is governed by the Criminal Intelligence Information Advisory Council (Advisory Council)³. Under the authority of 44-5-511, MCA, the Advisory Council sets general policies for the operation of the MATIC, including authorizing participating agencies and entities, such as local law enforcement agencies, county sheriffs, and the highway patrol.

The MATIC for assists with ongoing criminal investigations and only disseminates information specifically requested by a participating agency or entity once the request is fully vetted according to policy. The MATIC does not keep information but fills information requests using the Criminal Justice Information Network (CJIN) within the DOJ.

MATIC'S POLICIES & AUDIT PROCEDURE

The Advisory Council revised the MATIC's privacy policy in 2019 and established a policy on facial recognition technology in 2020. Both policies are based on model policy provided by the Department of Homeland Security. According to the facial recognition policy, "[t]he MATIC does not have direct access to a facial recognition system. Personnel may request a facial recognition search via systems maintained by other law enforcement entities for valid law enforcement purposes and criminal case support."⁴

¹ <https://www.dhs.gov/fusion-centers>

² <https://dojmt.gov/enforcement/investigations-bureau/>

³ 44-5-501, MCA. See Appendix B for a membership list.

⁴ Montana Analysis and Technical Information Center Policies and Procedures Policy Number K-13, Section I, Part D., Page 1.

The policies contain provisions regarding oversight, information security and safeguards, quality assurance, information retention and destruction, information sharing and disclosure, complaints and corrections, and systems accountability.

The Advisory Council can request an audit of the MATIC and its personnel to verify compliance of either policy. Audits are conducted by independent organizations and include review for compliance on policies and procedures pertaining to the safeguard of individual privacy rights, the dissemination of criminal intelligence information, security of media storage, training of employees, the vetting process for data requests, and purge requirements. The last two audits for the MATIC found no concerns.

CRIMINAL JUSTICE INFORMATION NETWORK & NLETS⁵

The Criminal Justice Information Network (CJIN) falls under the Crime Information Bureau within the DOJ. CJIN is the main data hub for the DOJ and provides Montana's law enforcement community with rapid, secure access to state and national criminal justice information. It also facilitates confidential communication among participating agencies. CJIN is authorized by the Attorney General and is governed in statute under Montana Code Annotated Title 44, Chapter 2, Parts 301 through 315.

Through CJIN, participating agencies can quickly communicate with each other and access a variety of Montana databases:

- Vehicle and Commercial Vehicle Registration
- Drivers' License, History, & Photos
- Criminal History Records
- Sex & Violent Offender Registry
- Correctional Data & Photos
- FWP Hunting & Fishing Licenses
- Concealed Weapon Permits
- Montana Wanted Persons

CJIN is connected through secure, cloud-based technology, and, in order to expand access to information nationwide, is linked to the National Crime Information Center (NCIC) and Nlets, the International Justice & Public Safety Network. NCIC is the FBI's database and is managed by the FBI's Criminal Justice Information Services Division and operated under a shared management concept with the states. Nlets provides for the exchange of criminal justice information between states and nations, connecting to each state, as well as Canadian and Mexican systems.

A wide variety of data is available through Nlets, including:

- Vehicle, Commercial Vehicle, Boat & Snowmobile Registration
- License Plate Reader Data & Border Crossings
- Drivers' License, History, & Photos
- Criminal History Records
- State Warrant Files
- Sex Offender Registry

⁵ CJIN Users Guide: Administrative Policies, December 2021

- Probation, Parole and Correctional Data & Photos
- ICE Law Enforcement Support Services
- Interpol
- FWP Hunting & Fishing Licenses
- Concealed Weapon Permits
- National Insurance Crime Bureau
- Canadian Police Information Center

FACIAL RECOGNITION TECHNOLOGY AT DOJ

The MATIC and CJIN do not use facial recognition technology. Certain databases, such as the drivers' license database, contain photographs, which may be specifically requested; however, the DOJ does not run facial recognition searches on behalf of participating agencies. According to Anne Dormady, Chief of the Crime Information Bureau, between 2017 - 2021 there were a total of 13 facial recognition requests sent to the MATIC. All of the requests were in support of active criminal investigations and were fully vetted; therefore, photographs were released to the participating agencies. Out of the 13 requests, only one was sent to another law enforcement agency who has the capability to run facial recognition technology for the investigating agency.

ID.ME

In an effort to reduce fraudulent claims, The Montana DLI recently contracted with ID.me to assist with identity verification for its Unemployment Insurance (UI) program. Since mid-2020, 27 states, including Montana, have partnered with the site for its UI identity verification services.

ID.me verifies claimants requesting unemployment benefits using a multi-factor authentication process that includes uploading a government-issued photograph, such as a drivers' license or passport, and a selfie (photo of your face) with either your smartphone or a webcam. ID.me verifies that the uploaded photo and selfie are the same individual, using one-to-one facial verification technology, then sends DLI a verification confirmation so the unemployment benefit claim process can continue.

ID.me offers an alternative option for individuals who have issues with their documentation, such as no credit history or name changes, or those who do not have access to internet. A "Trusted Referee," who is an employee of ID.me, can verify one's identity through a video call, though this option still requires the claimant to upload documentation. ID.me is also piloting an add-on service for states to offer an in-person solution where claimants can verify their identities at retail locations; however, the program is too early in development to determine if it is viable nationwide.

ID.ME PRIVACY POLICIES & DATA SHARING

ID.me maintains a Privacy Bill of Rights and a Biometric Data Privacy Policy that details data sharing, retention, and destruction policies. Customer use of the website's services is implied consent of the policies, and customers are expected to stay apprised of any changes to the policy, unless the customer is a resident of a state like California that requires affirmative agreement to material changes in privacy policies.⁶ Montana law does not require private organizations to obtain affirmative agreement from customers regarding privacy

⁶ <https://www.id.me/biometric> Section 11.

policies. ID.me uses the National Archives and Records Administration's records schedule⁷ as the standard of 7.5 years for record retention; however, the policy states it will comply with individual state laws that provide for a shorter retention period.⁸

The Biometric Data Privacy Policy states that the company may share or disclose biometric data with law enforcement, third party service providers, and entities like bank merchants and government agencies, like DLI, who contract with ID.me to use the verification process.⁹

According to representatives from ID.me, the company has a formalized process for cooperation with law enforcement and only provides information if presented with a warrant, subpoena, or other court document. Regarding the policy on data sharing to third party service providers, ID.me stated this generally would refer to service providers like credit bureaus; however, the company is not currently engaging in this practice. Finally, regarding the policy on data sharing with other government agencies like DLI, ID.me stated this policy is included as a permissive provision only and ID.me does not share such information with bank merchants and government agencies.

CONCLUSION

No Montana state agencies use, or have direct access to, facial recognition technology.

The DOJ has the ability to assist outside law enforcement agencies with ongoing criminal investigations by sharing specifically requested, relevant information contained in certain databases. The Montana DOJ maintains authority over both the MATIC and CJIN, including security and privacy policies under Title 44, Chapter 5, MCA.

In order to apply for and receive unemployment benefits in Montana, identity verification through ID.me is required, and there is no option to bypass the verification process. Customers using ID.me must agree to the privacy policies and personally identifiable data uploaded to the site is stored up to seven and a half years, unless the customer requests the company destroy the data or there is a state law that requires a shorter data retention period.

⁷ <https://www.archives.gov/files/about/records-schedule/nara-records-schedule-list.pdf> Chapter 12, Audits and Investigations Audits, Page 182.

⁸ <https://www.id.me/biometric> Section 8.

⁹ <https://www.id.me/biometric> Section 6.

APPENDIX A: ACRONYM GUIDE

CJIN: Criminal Justice Information Network

DCI: Division of Criminal Investigation

DLI: Department of Labor and Industry

DOJ: Department of Justice

MATIC: Montana Analysis and Technical Information Center

NCIC: National Crime Information Center

Nlets: International Justice & Public Safety Network

SLTT: State, Local, Tribal and Territorial

UI: Unemployment Insurance

APPENDIX B: CRIMINAL INTELLIGENCE INFORMATION SECTION ADVISORY COUNCIL MEMBERSHIP

MCA 44-5-501. Creation of criminal intelligence information section – advisory council. (1) The department of justice may create a criminal intelligence information section.

(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The department shall provide staff and support services for the advisory council.

MEMBERSHIP:

- Montana Chiefs of Police Association Representative
 - Chief Doug Overman, Kalispell Police Department
- Montana Sheriffs and Peace Officers Association
 - Sheriff Josh McQuillan, Carbon County
- Montana County Attorney's Association
 - Patrick Dringman, Sweet Grass County Attorney
- Department of Justice
 - Assistant Attorney General Stephanie Robles
- Legislative Member of the Judiciary Committee
 - Representative Barry Usher
- Citizen at Large
 - Mr. Constantine Vorobetz