

Congress of the United States
Washington, DC 20515

August 5, 2020

The Honorable Steve Gordon, Director
Department of Motor Vehicles
State of California
2415 First Avenue, Mail Station F101
Sacramento, California 95818-2606

Dear Director Gordon,

When Californians visit the Department of Motor Vehicles (DMV) to apply for a driver's license, they're asked to have their photo taken and to provide personal information including their home address, Social Security number, date of birth, and phone number. They provide this sensitive information trusting that the government will not mishandle it, and it is imperative that the DMV lives up to this expectation by protecting the data.

The Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), and other federal agencies use facial recognition technology (FRT) that searches, among other things, databases of driver's license photos from many state DMVs. A full list of states has not been made public, and we do not know if the California DMV has provided drivers' photos to federal agencies.¹

House² and Senate³ committees, public interest groups,⁴ academics,⁵ and others have raised concerns about the privacy issues associated with unregulated FRT uses. One of the most salient concerns about FRT is that it is far less accurate in identifying people of color. A recent study by the National Institute of Standards and Technology (NIST) found that Asian and African Americans were misidentified between 10 and 100 times more often than white people.⁶ As our nation experiences a long-overdue reckoning on racial injustice, we must ensure that biased technology does not exacerbate existing inequities in our criminal justice system. We raise these issues with you because state DMVs often provide photos for use in FRT used by law enforcement agencies.

Additionally, we're troubled by press reports about the California DMV's disclosure of vast quantities of data which could enable invasive biometric policing and be a symptom of a deeper privacy malady. The California DMV receives more than \$50 million annually from selling the personal information of Californians, according to press reports.⁷ The individuals whose data are being sold are reportedly not informed of this practice or given the opportunity to opt-out. What information is being sold, to whom it is sold, and what guardrails are associated with the sale remain unclear.

California is not unique in selling drivers' data or transferring it to federal agencies. While there may be beneficial reasons to share DMV data, such as driving safety research and vehicle recalls, the bulk disclosure of large quantities of data with little oversight is troubling. The fact that more than one million undocumented immigrants in California have been issued driver's licenses since 2015, only heightens our concerns about the potential for abuse of California DMV data.⁸

While DMV matters are largely in the purview of state government, federal law also plays an important role in protecting drivers' privacy. In 1994 Congress passed the Driver's Privacy Protection Act (DPPA) which has prevented the most egregious abuses of drivers' personal information, but we recognize dated privacy laws may need revisions. We're requesting further information about how the California DMV handles personal information of drivers to inform our efforts to enhance privacy protections.

In order to better understand the California DMV's practice of selling drivers' data, we request that you provide answers to the following questions. If contractual or other legal limitations prohibit your sharing of this information, please indicate that as appropriate.

1. What types of organizations has the DMV disclosed drivers' data to in the past three years? In particular, has the DMV sold or otherwise disclosed data to debt collection agencies, private investigators, data brokers, or law enforcement agencies?
2. Has the DMV ever disclosed drivers' photos to federal, state, or local law enforcement agencies or given such agencies access to a database of drivers' photos?
3. What specific fields of personal information have been sold or disclosed to third parties by the DMV in the past three years?
 - a. Have Social Security numbers or driver's license photos ever been disclosed?
 - b. If yes, to which organizations?
4. Has the DMV ever disclosed driver's license data of undocumented immigrants to law enforcement agencies (including but not limited to FBI and ICE)?
5. If a Californian contacts the DMV to request that their data not be disclosed, would the DMV honor their request?
 - a. Has the DMV received any such requests?
 - b. If so, how many?
6. Do provisions of federal law, state law, or the DMV's contractual agreements limit what an entity that receives data from the DMV can do with the data, such as prohibiting further disclosure of data?
7. Please provide a copy of any written privacy policies, procedures, or processes that govern DMV activities.
8. A California DMV spokesman claimed that the agency audits data buyers to ensure that they comply with data protection requirements.⁹

- a. What proportion of buyers are audited each year?
- b. What do audits entail?
- c. Has the California DMV ever revoked access to data from a commercial entity because of information uncovered during an audit?

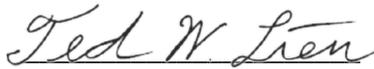
In today's ever-increasing digital world, our private information is too often stolen, abused, used for profit, or grossly mishandled. It's critical that the custodians of the personal information of Americans – from corporations to government agencies – be held to high standards of data protection in order to restore the right of privacy in our country.

We thank you in advance for your cooperation, and we look forward to receiving your timely responses to our questions.

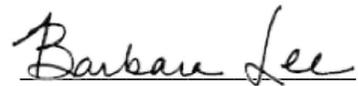
Sincerely,



Anna G. Eshoo
Member of Congress



Ted Lieu
Member of Congress



Barbara Lee
Member of Congress



Mike Thompson
Member of Congress



Grace F. Napolitano
Member of Congress



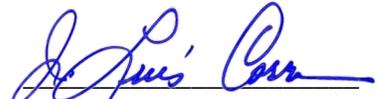
Tony Cárdenas
Member of Congress



Judy Chu
Member of Congress



Jerry McNerney
Member of Congress



J. Luis Correa
Member of Congress



Kevin Mullin
California Assemblymember



Mark Stone
California Assemblymember

cc: The Honorable Nancy Pelosi, Speaker of the House
The Honorable David S. Kim, Secretary of the California State Transportation Agency

¹ Rudolph, Harrison. “ICE Searches of State Driver’s License Databases.” Medium. *Georgetown Law Center on Privacy & Technology*, July 9, 2019. <https://medium.com/center-on-privacy-technology/ice-searches-of-state-drivers-license-databases-4891a97d3e19>.

² Hearing on “Facial Recognition Technology (Part II): Ensuring Transparency in Government Use” (Committee on Oversight and Reform of the U.S. House of Representatives, June 4, 2019). <https://oversight.house.gov/legislation/hearings/facial-recognition-technology-part-ii-ensuring-transparency-in-government-use>.

³ Hearing on “What Facial Recognition Technology Means for Privacy and Civil Liberties” (Subcommittee on Privacy, Technology and the Law of the Committee on the Judiciary of the U.S. Senate, July 18, 2012). <https://www.judiciary.senate.gov/meetings/what-facial-recognition-technology-means-for-privacy-and-civil-liberties>.

⁴ Collins, Terry. “Facial Recognition: Do You Really Control How Your Face Is Being Used?” *USA TODAY*, November 19, 2019. <https://www.usatoday.com/story/tech/2019/11/19/police-technology-and-surveillance-politics-of-facial-recognition/4203720002/> (“American Civil Liberties Union su[ed] the FBI, the Department of Justice and the Drug Enforcement Agency for those federal agencies’ records to see if there is any secret surveillance in use nationwide”).

⁵ Clare Garvie, Alvaro Bedoya, and Jonathan Frankle. “The Perpetual Line-Up.” Center on Privacy & Technology at Georgetown Law, October 18, 2016. <https://www.perpetuallineup.org/>.

⁶ “Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects” (National Institute of Standards and Technology, December 2019). <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

⁷ Cox, Joseph. “The California DMV Is Making \$50M a Year Selling Drivers’ Personal Information.” *Vice*, November 25, 2019. https://www.vice.com/en_us/article/evjekz/the-california-dmv-is-making-dollar50m-a-year-selling-drivers-personal-information.

⁸ Benjy Egel. “More than a Million Undocumented Immigrants Have Received California Driver’s Licenses | The Sacramento Bee.” *Sacramento Bee*, April 4, 2018. <https://www.sacbee.com/news/politics-government/capitol-alert/article207939584.html>.

⁹ Cox, Joseph. “The California DMV Is Making \$50M a Year Selling Drivers’ Personal Information.”