
Special Order 2020-0005

1105.1 BMC CHAPTER 2.99--BAN ON FACIAL RECOGNITION TECHNOLOGY

The purpose of this Special Order is to (1) ensure all members are aware of the Berkeley Municipal Code's prohibition on the use of Facial Recognition Technology, including but not limited to use of the Clearview application, or any software service or application providing facial recognition search capabilities, and; (2) to provide a procedure to report the inadvertent or unintentional receipt of information obtained through Facial Recognition Technology to the Chief of Police.

On March 27, 2018, the Berkeley City Council enacted Berkeley Municipal Code (BMC) Chapter 2.99, Acquisition and Use of Surveillance Technologies. This ordinance governs the use and acquisition of certain described surveillance technologies by the Berkeley Police. The ordinance included "facial recognition software" among those surveillance technologies governed by the ordinance.

On October 15, 2019, the Berkeley City Council amended BMC Chapter 2.99, in order to formally ban the Department's use of any "Facial Recognition Technology", defined as "an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face."

It is a violation of BMC 2.99 and this policy for any employee to "obtain, retain, request, access, or use any facial recognition technology."

There are two exceptions to the ban, as provided BMC 2.99.030(5):

1. Facial recognition technology may be used to unlock personal communication devices, such as an cellular phone, iPad, or similar device, which is used in the regular course of conducting City business, whether city-owned or personally owned; and
2. The inadvertent or unintentional receipt, access to, or use of information obtained from Face Recognition Technology, provided that the BPD employee did not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.
 - (a) However, in the case of inadvertent receipt of information received relating to the investigation of a specific crime that may have been generated from Face Recognition Technology, but which was not intentionally solicited, shall *not* be a violation of this ordinance, and may be used in connection with a specific criminal investigation.

Should any employee inadvertently or unintentionally receive information obtained from Face Recognition Technology, that employee shall report the receipt of the information through their chain of command to the Chief of Police, who shall ensure such receipt is reported in the Annual Surveillance Technology Report, as required by the ordinance (2.99.030(5)).

Berkeley Police Department

Law Enforcement Services Manual

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Use of Clearview or any other facial recognition application or software service providing facial recognition search capabilities is not allowed under the ordinance and this policy.

This order is meant to highlight legal requirements pertaining to use of Surveillance Technology by Berkeley Police personnel in light of the recent changes to Berkeley Municipal Code. 2.99, and will be in effect until it is rescinded or issued in the form of a self-standing policy.

Andrew R. Greenwood

Chief of Police

Issued: July 21, 2020