Port of Seattle

COMMISSION

AGENDA MEMORANDUM

BRIEFING ITEM

Item No.	9a
Date of Meeting	February 25, 2020

DATE: February 5, 2020

TO: Stephen P. Metruck, Executive Director

FROM: Eric Schinfeld, External Relations; Veronica Valdez, Commission Office

SUBJECT: Biometrics Working Group Progress Update

EXECUTIVE SUMMARY

On December 10, 2019, the Port of Seattle Commission passed motion 2019-13 related to the use of public-facing biometrics at Port facilities. That motion contained four key directions to staff:

- Outlined seven (7) principles for public-facing biometrics at Port facilities: 1) Justified, 2) Voluntary, 3) Private, 4) Equitable, 5) Transparent, 6) Lawful, and 7) Ethical;
- Directed staff (through an internal working group process) to translate those principles into tangible, enforceable policy recommendations governing the use of public-facing biometric technology at Port facilities by the end of Q1 2020, for Commission passage by Q2 2020;
- Put a hold on any new or expanded uses of biometrics at Port facilities until after Commission approves policy recommendations and adopts policies; and
- Directed the creation of an external advisory group to provide feedback on proposed working group policy recommendations

Since that time, both the working group and external advisory group were established. As of February 25, the working group have met four (4) times, and the external advisory group will have met two (2) times. The next meeting of the working group will be February 28, and the next meeting of the external advisory group will be on March 6. In addition, a Commission Biometrics Special Committee has been established and charter approved, and a Biometric External Advisory dedicated page has been added to the Port website[1].

During the February 25 Commission meeting, Commissioners will receive an update on the progress of the working group and external advisory group toward their March 31 deadline for policy recommendations.

BACKGROUND

Biometrics is the measurement and analysis of physical and behavioral characteristics that are used to identify individuals through technology. Examples of physical characteristics include the

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[1] https://www.portseattle.org/page/biometrics-external-advisory-group

unique features of an individual's face or their fingerprint, while examples of behavioral characteristics includes an individual's voice, signature, or how they walk.

Due to technological advances, perceived customer benefits and federal requirements, there is a significant increase in public-facing facial recognition technology deployment by public and private sector users, including in airport and seaport settings. In fact, U.S. Customs and Border Protection (CBP) is Congressionally mandated to implement a biometric exit and entry screening process for all international passengers.

Facial biometrics are already being used at dozens of U.S. airports and cruise terminals, by those who see the technology as a major benefit to travelers – both because of a faster and more efficient travel experience, as well as a more accurate security process. However, many members of the public and various advocacy organizations have expressed concerns about the rapidly expanding use of facial recognition. These stakeholders have raised issues around privacy, equity and civil liberties, as well as the potential for unregulated "mass surveillance."

Public-facing biometrics are already used in various forms at the Port of Seattle's aviation and maritime facilities, such as 1) CLEAR, a private company providing an option to those customers who want expedited screening at U.S. Transportation Security Administration (TSA) checkpoints to voluntarily supply their biometric data in order to verify their identities, 2) CBP's use of biometrics at Seattle-Tacoma International Airport (SEA) to validate departing international traveler identities, and 3) Norwegian Cruise Line use of biometrics on ship while docked at Pier 66 to validate the identities of disembarking passengers. CBP will also use facial recognition technology to screen almost all arriving international passengers once SEA's International Arrivals Facility (IAF) opens in the coming year.

In advance of any expanded biometric uses at Port of Seattle facilities, the Port of Seattle Commission desires to develop policy frameworks and clear guidelines to reduce potential misuse and abuse of biometrics, while improving public understanding of the benefits and risks of this technology in various applications. On December 10, 2019, after holding two study sessions, conducting stakeholder outreach and doing multiple site visits, the Port Commission adopted seven "biometrics guiding principles," and directed staff to translate those principles into tangible, enforceable policies. Specifically, the Port strives to balance operational needs, business priorities and regulatory mandates with protections for the interests and rights of passengers, employees and other visitors to our facilities.

Over the last three months, a working group of Port staff have collaborated with an external advisory group of key stakeholders to accomplish that task. One of the key findings from this process is that the various use cases of biometrics require separate analysis as to how the Port should (consistent with local, state and federal requirements) apply the biometrics guiding principles to develop policy. One unified set of policies is not practical because of key differences from one use case to another, such as who manages the data, requirements imposed by state or federal law, and the benefits and risks associated with each use.

BIOMETRIC AIR EXIT DRAFT RECOMMENDATIONS

The first set of recommendations created by the working group and initially vetted by the external advisory group is specific to "biometric air exit," which is the use of facial recognition by CBP, the Port and/or airlines as part of CBP's Traveler Verification Service (TVS) to validate the identities of departing international airline passengers as they board the aircraft. Additional recommendations for other use cases will be similarly provided.

Biometric Air Exit is primarily intended to realize CBP's goal of determining whether foreign nationals have overstayed their authorized periods of admission, as well as to confirm whether the departing individual is truly the same person who entered the United States. Currently, this process mainly uses passenger information provided by airline carriers, which is then matched to the entry data collected by CBP officers at the time that a foreign national was admitted to the United States.

Direction for CBP to move to biometric data collection originated as a recommendation of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission. In its final report, the 9/11 Commission concluded that "funding and completing a biometric entry-exit screening system for travelers to and from the United States is essential to our national security." Based on the 9/11 Commission's recommendations, Congress included biometric entry/exit provisions in the Intelligence Reform and Terrorism Prevention Act of 2004. The fiscal year 2013 Consolidated and Further Continuing Appropriations Act transferred entry/exit policy and operations to CBP. In addition, the fiscal year 2016 Consolidated Appropriations Act authorized funding for a biometric exit program of up to $1 billion to be collected through fee surcharges over a period of 10 years. More recently, President Trump included direction to expedite completion of this transition to biometric identification in section 7 of Executive Order 13769, which is known as the Muslim ban or travel ban: "The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States."

CBP has begun implementing its biometric exit program through its development of the Traveler Verification Service (TVS). TVS is essentially a system of related databases hosted by CBP, containing the biometric facial recognition "template" of individuals that are ticketed on international flights. These templates are based on images previously collected by CBP or other federal agencies, such as passport or visa application photos. TVS allows CBP or one of its authorized partners to deploy camera systems that capture an image of an individual and send the image to CBP, along with the person's flight information, for processing. CBP attempts to match the image to its "gallery" of biometric templates for that particular flight and, if it confirms a match, transmits a binary "match/no match" confirmation back to the partner.

It is important to note that airports and airlines are not currently mandated to participate in CBP's biometric air exit program. Of the two dozen airports and airlines that have partnered

with CBP to implement biometric air exit, all of them have joined the program voluntarily because they believe it improves customer facilitation and homeland security.

Authorized users of TVS are required by CBP to comply with a set of business requirements. For example, each camera must be connected to the TVS via a secure, encrypted connection, and each CBP's partner's IT system must allow CBP to audit compliance with these requirements.

If implemented at the airport by the Port and/or airlines, the biometric air exit program would only be in place at departure gates when international departing flights are boarding. It is worth noting that, if an airport or airline does not choose to partner with CBP to implement biometric air exit, CBP has jurisdiction to implement the program itself using CBP staff and equipment at any international air departure gate.

The 36 recommendations (22 unique recommendations with discrete subsets) that have resulted from the working group and external advisory group process are contained in the attached draft Biometric Air Exit Policy Recommendations document. It is worth noting that the final product will include a listing of concerns from some external advisors who do not support some of these recommendations. All sides of the discussion will be represented to provide Port Commissioners full information prior to adoption of any policies.

With regard to biometric air exit, the Port has broad authority to establish policies that govern the activities of Port staff and the use of Port resources, to the extent such policies are consistent with federal law. Private sector stakeholders operating at Port facilities (such as airlines) are also subject to the Port's policies, consistent with their own federal obligations and the terms of their agreements with the Port – such as lease agreements or operating agreements with the Port, which varies on a case-by-case basis. *The Port has very limited authority to influence, much less direct, the activities of federal agencies operating at Port facilities.*

Where the Port lacks authority to mandate compliance with particular policies, the recommendation is to work collaboratively with these stakeholders to achieve voluntary compliance where appropriate, and/or highlight how these stakeholders' own policies match Port principles. The Port should also advocate for the adoption of new laws and regulations that align with the Port's biometric principles.

FUTURE BIOMETRIC USE CASE RECOMMENDATIONS

As mentioned above, it is the finding of the Port staff that the various use cases of biometrics require separate policy recommendations because of key differences from one use case to another, such as who manages the data, requirements imposed by state or federal law, and the benefits and risks associated with each use. The first set of recommendations created by the working group and initially vetted by the external advisory group is specific to "biometric air exit," which is the use of facial recognition by CBP, the Port and/or airlines as part of CBP's

Traveler Verification Service (TVS) to validate the identities of departing international airline passengers as they board the aircraft.

As the Biometric Air Exit draft recommendations become finalized, staff plans to bring four additional use case policy recommendations through the process:

1. Biometric Air and Cruise Entry – use of biometrics by CBP in CBP controlled areas to process arriving international passengers at the airport and the Port's cruise terminals
2. Non-Federal Biometric Passenger Processing – use of biometrics by airlines, cruise lines and other private sector entities (i.e. – CLEAR) to expedite the processing of passengers through bag check, ticketing and/or TSA security screening checkpoints
3. Biometrics for Customer Activities – use of biometrics for customer convenience, such as airline lounge access, parking garage access, rental car access and/or retail purchasing
4. Biometrics for Law Enforcement and Security Activities – use of biometrics by Port Police or tenants to identify individuals for law enforcement or security purposes

ATTACHMENTS TO THIS BRIEFING

(1) PowerPoint presentation
(2) December 10 Commission Biometrics Principles Motion (Motion 2019-13)
(3) Draft Port Biometric Air Exit Policy Recommendations

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

January 7, 2020 – Passage of Commission Biometrics Special Committee Charter
December 10, 2019 – Passage of Commission Biometrics Principles Motion
October 29, 2019 – Second Commission Study Session on Biometrics
September 10, 2019 – First Commission Study Session on Biometrics