

The Identity Project

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Comments of the Identity Project to the Port of Seattle Commission for the Commission meeting of April 12, 2022, re: signage for travelers about the collection of facial images at the International Arrivals Facility at Sea-Tac Airport

Members of the Port of Seattle Commission:

The Identity Project (PapersPlease.org) is a nonprofit civil liberties and human rights organization with expertise in identity-based surveillance and control of travelers.

We are submitting these comments to call to your attention the failure of both the Port of Seattle and US Customs and Border Protection (CBP) to provide notice to travelers of CBP's collection of facial images ("biometrics") at the new International Arrivals Facility (IAF) at Sea-Tac International Airport, as required both by Federal law and by the policies on use of biometrics adopted by the Port Commission.

This Saturday, April 9th, the Port conducted a "simulation" of international arrivals at the IAF. According to the Port's press release about the simulation, "Hundreds of volunteers will act as passengers to test the facility before it opens to the public. Participants will evaluate the parts of their passenger journey like ... signage."¹

The simulation was thus *explicitly* intended to test and evaluate signage. CBP and the Port failed that test: Multiple volunteers who participated in the simulation reported, and shared photos confirming, that there was no signage at the IAF providing any notice of the use of facial imaging, much less the specific notices required by Federal law.²

The Port's website compounds this failure by providing false and misleading information about the legal basis for CBP's and the Port's actions. According to the Port's website, "CBP is mandated by the U.S. Congress to use biometrics (the use of physical or

1. Port of Seattle, "Phased Opening of International Arrivals Facility Begins April 19", March 31, 2022, <<https://www.portseattle.org/news/phased-opening-international-arrivals-facility-begins-april-19>>.

2. See the analysis of ongoing violations of the Paperwork Reduction Act in our February 25, 2020, comments to the Port Commission and the BEAG, <<https://papersplease.org/wp/wp-content/uploads/2020/02/IDP-SEA-Port-Comm-25FEB2020.pdf>>.

behavioral characteristics to identify individuals through technology) for all arriving and departing international travelers.” This claim is false and entirely unsupported.

We request that the Port Commission immediately direct Port staff to promptly and prominently retract this false and misleading statement, and provide explicit notice to travelers, both on the Port’s website and at Sea-Tac, that neither CBP nor the Port is required to use, or has the authority to demand, biometrics of US citizens.

No law requires CBP to use facial recognition or biometrics to track US citizens. All of the laws cited by CBP in its submissions to the Port regarding its purported authority for use of biometrics are applicable solely to non-US persons.

On the other hand, the Federal law that CBP is most obviously violating, the Paperwork Reduction Act (PRA), does protect the rights of both US and non-US persons.

In fact, rather than being “required” to collect facial images or other biometric information from all travelers, CBP – like any other Federal agency – is prohibited by the PRA from collecting information unless it has provided notices in the Federal Register and opportunities for public comment, applied for and received approval from the Office of Management and Budget (OMB), and provides notice, at the points where information is collected, informing individuals of their right not to respond to any information collection not accompanied by a PRA notice including a valid OMB control number.

CBP has not taken any of the steps required by the PRA to provide notice and comment or obtain OMB approval for its collection of biometrics from US citizens.

Since CBP has chosen to flout the PRA, and since neither CBP nor Port staff have posted any notices regarding the PRA at Sea-Tac, we urge the Port Commission to immediately direct Port staff to post notices informing travelers of their rights.

We suggest that the following notices be included in signage posted by the Port:

“Cameras in this area are being used by U.S. Customs and Border Protection (CBP) to collect facial images. The Port of Seattle does not own or control these cameras or the use of these photos. U.S. citizens may opt out of facial imaging and automated facial recognition.

“Pursuant to U.S. Federal law (44 U.S.C. § 3512), no person, regardless of citizenship, shall be subject to any penalty for failing to comply with a collection of information by a U.S. Federal agency if the collection of information does not display a valid control number assigned by the Office of Management and Budget (OMB), or if the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.”

We believe that the Port has the right to post truthful signage on Port property informing members of the public of their rights. If CBP wants to claim the authority to prevent the Port from posting such notices, the Port can and should require CBP to formally, publicly, and explicitly assert this legal claim, and defend it in court. If CBP wants to gag the Port, you can and should make them get a court order to do so.

The Port should not censor itself, especially when it comes to informing members of the public of their rights, on the basis of a mere possibility or threat that CBP *might* claim the authority to preempt the Port's right to post truthful signage on Port property, and that a court *might* uphold such a demand by CBP for a gag order against the Port.

We are unaware of any airport at which CBP has posted any PRA notices at departure gates, or where CBP has posted notices complying with the PRA in arrival areas. As of last Saturday's "simulation", no such notices had been posted in the IAF at Sea-Tac. It seems clear that CBP won't notify travelers at Sea-Tac of their rights pursuant to the PRA, and that if the Port doesn't notify travelers of their rights, no one will do so.

We urge the Port Commission to take immediate action to direct the posting of appropriate signage informing travelers at Sea-Tac of their rights.

We would be happy to work with members of the Commission and Port staff to assist you in developing appropriate signage to inform travelers of their rights.

Sincerely,

Edward Hasbrouck
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The Identity Project