

INTRADEPARTMENTAL CORRESPONDENCE

December 8, 2022

BPC#22-282

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TO: The Honorable Board of Police Commissioners

FROM: Inspector General, Police Commission

SUBJECT: REVIEW OF THE DEPARTMENT'S USE OF PHOTO COMPARISON
TECHNOLOGY

RECOMMENDED ACTION

REVIEW and APPROVE the Office of the Inspector General's (OIG) Review of the Department's Use of Photo Comparison Technology (PCT).

DISCUSSION

At the request of the Board of Police Commissioners (Commission), the OIG conducted a review of the Department's use of PCT within the Los Angeles County Digital Mugshot System (DMS). PCT, also referred to as facial recognition technology, is most commonly used to identify a suspect for a specific crime or to create a photographic lineup.

The OIG's PCT review had the following four objectives: (1) Test for compliance with policy per Special Order No. 2-2021; (2) Review the Department's second and fourth quarter 2021 inspections; (3) Analyze DMS search results reported; and (4) Ascertain the extent to which employees were using the DMS and other facial recognition systems prior to the approval of Special Order No. 2-2021 in January 2021.

In its review of PCT, the OIG noted some areas for possible improvement as presented in the attached report. I am available to provide any further information the Commission may require.



MARK P. SMITH
Inspector General
Police Commission

Attachment

LOS ANGELES POLICE COMMISSION

Review of the Department's Use of Photo Comparison Technology



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

MARK P. SMITH
Inspector General

December 13, 2022

TABLE OF CONTENTS

I.	INTRODUCTION AND EXECUTIVE SUMMARY	1
II.	BACKGROUND ON DEPARTMENT-APPROVED PCT SYSTEM.....	2
A.	Historical Background	2
B.	The Los Angeles County Regional Identification System – Digital Mugshot System.....	3
C.	LAPD Policy	5
D.	Department Inspection Process.....	6
III.	OIG REVIEW	7
A.	Testing for Compliance with Special Order No. 2-2021	7
B.	Reviewing Detective Bureau’s Second-Quarter 2021 PCT Inspection	12
C.	Analyzing the DMS Search Results for 2021	13
D.	Use of Facial Recognition Systems Prior to the Approval of Special Order No. 2-2021 in January 2021	15
IV.	RECOMMENDATIONS	16
	APPENDIX A – DEPARTMENT PCT POLICY	18
	APPENDIX B – DETECTIVE ACTIVITY SUMMARY.....	22

REVIEW OF THE DEPARTMENT'S USE OF PHOTO COMPARISON TECHNOLOGY

I. INTRODUCTION AND EXECUTIVE SUMMARY

At the request of the Board of Police Commissioners (BOPC), the Office of the Inspector General (OIG) conducted a review of the Los Angeles Police Department's (LAPD's or Department's) use of photo comparison technology within the Los Angeles County Digital Mugshot System (DMS).¹ This request was made in accordance with the BOPC's approval on January 12, 2021 of Special Order No. 2-2021, titled, "*The Use of Photo Comparison Technology Within Los Angeles County's Digital Mugshot System Established.*" This Special Order is now included in Department Manual section 3/568.56 (see Appendix A).

Photo comparison technology (PCT), also referred to as facial recognition technology, is defined by the Los Angeles County Regional Information System (LACRIS), which is responsible for the identification of criminals arrested in the County, as "a computer matching system involving the automated searching of a facial image in a biometric database, typically resulting in a group of facial images ranked by a computer-evaluated similarity." This technology is most commonly used to identify a suspect for a specific crime or to create a photographic lineup.

In response to this request, the OIG conducted a review of the Department's PCT system, with the following four objectives:

- Test for compliance with Special Order No. 2-2021;²
- Review the Department's second quarter 2021 PCT inspection, as well as a follow-up sample of fourth quarter 2021 cases;
- Analyze DMS search results reported; and,
- Ascertain the extent to which employees were using the DMS and other facial recognition systems prior to the approval of Special Order No. 2-2021 in January 2021.

The overall results associated with these four objectives were:

- The documentation reviewed by the OIG, including the OIG's independent audit and its review of the Department's second quarter 2021 PCT inspection, indicated that Department personnel were complying with Special Order No. 2-2021.

¹ Per the September 23, 2021, minutes on the LACRIS website, "The Digital Mugshot System (DMS) name has been changed to the Regional Photo System (RPS). The name change was made to align the naming scheme with the Federal Bureau of Investigations." This change has not yet been made in the LAPD's materials.

² One key requirement of this Special Order is that each DMS search shall be very briefly documented on a Detective Activity Summary (DAS) form, which includes: (1) DMS user name & serial number, (2) search reason, (3) search person type [suspect, victim, or witness], (4) search results, and (5) search date.

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- According to the Department's records, 55 percent of its DMS searches identified a matching mugshot, yielding what is deemed a positive result, while 45 percent of the searches did not identify a match, yielding what is deemed a negative result.
- Prior to approval of Special Order No. 2-2021, LAPD employees had used the DMS extensively since it was established in 2009. The OIG also learned from the Department about a small number of instances when LAPD employees had used another facial recognition system.

In its review of PCT, the OIG noted some areas for possible improvement. First, California state law (in effect through December 31, 2022) and LAPD policy prohibit the submission to the DMS of officer-generated photographic images from body-worn video cameras, digital in-car video cameras, and cellular phone cameras. However, the Department has no documentation or other evidence for individual DMS searches to support that these prohibited photographic images and drawings were not submitted. Thus, the OIG was unable to test for compliance with this policy and with state law; the OIG made two recommendations related to this issue.

Second, in its request, the BOPC expressed an interest in knowing the results and effectiveness of the Department's DMS usage. The OIG reported above the overall recorded results for searches as being 55 percent positive (with a matching mugshot identified or creation of a photographic line-up), and 45 percent negative (with no matching mugshot identified), and further details about this are provided in the body of the report. However, there is no documentation or other evidence for individual DMS searches to support these recorded results. Thus, the OIG could not confirm these results as they were recorded; the OIG made a recommendation related to this issue.

II. BACKGROUND ON DEPARTMENT-APPROVED PCT SYSTEM

A. Historical Background

As noted above, the current policy on the use of PCT by LAPD personnel was implemented by the Commission on January 12, 2021.³ Prior to the Special Order, there was no specific LAPD policy on the use of PCT or other facial recognition technology. The OIG notes, however, that LAPD investigators have been using the Los Angeles County Digital Mugshot System since its establishment in 2009 and were obligated to follow the policy established by Los Angeles County for all DMS law enforcement agency users. Some of the pertinent and long-standing Los Angeles County DMS-user policy requirements are as follows:

1. Each individual user must be approved by its agency to attend the mandatory one-day DMS training, and each individual user must attend and pass this training.

³ See Special Order No. 2-2021, titled, "The Use of Photo Comparison Technology Within Los Angeles County's Digital Mugshot System Established." Photo comparison technology can also be referred to as facial recognition technology.

2. Each DMS search must have a criminal investigative purpose, and the person making the search must have a “need to know and right to know.”
3. Each DMS search must be followed up and/or collaborated with other investigative evidence before any substantive law enforcement action, such as an arrest, is taken.

In October 2019, a new California state law was passed that prohibited the use of officer-generated photographic images in PCT-related searches through December 31, 2022. Both LACRIS and LAPD policies address this recent change. LAPD Special Order No. 2-2021 establishes policy specific to LAPD users of the DMS and establishes additional requirements for the use of the system that are designed to provide additional transparency and accountability. The various policies that set forth guidelines and limitations for the use of the DMS are described in the following sections.

B. The Los Angeles County Regional Identification System – Digital Mugshot System

The Department currently uses a facial recognition system administered by the Los Angeles County Sheriff's Department (LASD) called the Los Angeles County Regional Identification System (LACRIS) Digital Mugshot System (DMS).^{4,5} The LACRIS DMS contains a repository of approximately nine million mugshot booking photos of all arrestees entering Los Angeles County jails who were “booked” and fingerprinted by LASD staff.⁶

The purpose and intended use of the DMS is that authorized users, trained and certified by a LASD LACRIS trainer, submit certain types of facial photographic images to the DMS to perform an automated search; these searches compare the submitted photographic images to the millions of booking photographs stored in the DMS, primarily to help identify criminal suspects or create photographic line-ups.⁷ Per Department and LACRIS policies, these photographic images could pertain to a suspect, person of interest, victim, or witness. Also, a DMS search could pertain to a criminal investigation, the creation of a photo lineup, or a search for a

⁴ The LACRIS training guide defines facial recognition as “the automated searching of a facial image in a biometric database, typically resulting in a group of facial images ranked by a computer-evaluated similarity.”

⁵ As noted previously, in September 2021 the name of the DMS was changed to the Regional Photo System. However, this name change has not yet been made in the LAPD's materials.

⁶ The LACRIS Facial Recognition Policy, Digital Mugshot System states: “Established October 1, 2009, the Digital Mugshot System (the DMS) is the County's repository of all criminal mugshots. It only contains criminal mugshots which are supported by a fingerprint comparison conducted by the California Department of Justice (DOJ). Section 13150 of the California Penal Code requires at time of booking, a subject's fingerprints, photos, and arrest data to be collected, stored, and reported to the DOJ. This information is maintained in the DMS and used for investigative purposes by law enforcement personnel.”

⁷ The LACRIS Facial Recognition Policy, Purpose Statement states: “Facial recognition technology involves the ability to examine and compare significant characteristics of the human face. This technology can be a valuable tool to create investigative leads, reduce an imminent threat to health or safety, and help in the identification of deceased persons or persons unable to identify themselves. This [facial recognition] application supports the investigative efforts of law enforcement and public safety agencies within Los Angeles County [and] resides in the County's DMS.”

mentally-incapacitated person. (Note: Per Department and LACRIS policies, a DMS search cannot pertain to an internal administrative investigation.) The DMS automated search uses algorithms developed by the current LACRIS DMS vendor, DataWorks Plus, LLC (DataWorks) to provide possible matches with mugshot booking photos. However, per both Department and LACRIS policies, a match may not be used as the sole basis for a detention or an arrest, and it will require substantial follow up by the law enforcement investigator or his/her assistant who conducted the DMS search.⁸

The OIG noted that the LAPD (and other Los Angeles County law enforcement users of the LACRIS DMS) can also access digital mugshot systems of other California counties that are customers of Data Works, including Riverside and San Bernardino counties.

1. Technological Limitations and Other Challenges

Some basic limitations of the facial recognition technology deployed by the DMS are as follows:

DataWorks Algorithms:

- Only consider details and features of the subject's face – including ears, eyes, nose, mouth, cheeks, hair, neck, eyebrows, forehead, and chin;
- Do not consider any other non-facial parts of the subject's upper or lower body;
- Do not consider the color of the subject's skin, hair, or eyes; and,
- May not always consider all facial markings – including moles, wrinkles, blemishes, freckles, scars, tattoos, and birthmarks.

When comparing a current facial photograph to an earlier DMS facial booking photograph:

- The subject in the current photograph may be wearing a mask, hat, or sunglasses;
- The subject in the current photograph may have aged, had cosmetic facial surgery, or grown facial hair;
- The current photograph may have been taken under different lighting conditions or from a different distance/position (e.g., a "selfie") than the booking photograph; and,

⁸ The LACRIS training attended by the OIG on September 8, 2021 repeatedly emphasized that a DMS match may not be used as the sole basis for a detention or an arrest, and that a match requires substantial follow up by the law enforcement investigator or his/her assistant who conducted the DMS search. The primary concern leading to this emphasis in the training was the critically important risk of a "false positive" – an instance when a DMS search that yields a match ultimately results in the identification and arrest of the wrong person due to the fact that insufficient corroborating evidence was obtained prior to law enforcement action being taken.

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- The current photograph may have been taken with a different camera type or lens angle-of-view (e.g., wide-angle or telephoto – causing distortion) than the booking photograph.

2. Officer-Generated Photographic Images Prohibited

California law, LACRIS, and Department policy prohibit officer-generated photographic images from being submitted for DMS searches. More specifically, images from officers' body-worn video (BWV) cameras, digital in-car video (DICV) cameras, and cellular phone cameras are prohibited. The applicable law and policy, in relevant part, are as follows:

- **California Assembly Bill (AB) 1215:** This bill prohibits a law enforcement agency or officer from installing, activating, or using any biometric surveillance system in connection with an officer camera or data collected by an officer camera. The bill repeals these provisions on January 1, 2023. California Penal Code Section 832.19 was created as a part of this bill, with subsection (b) stating, "A law enforcement agency or law enforcement officer shall not install, activate, or use any biometric surveillance system in connection with an officer camera or data collected by an officer camera."
- **LACRIS Website:** Per its website, "LACRIS is governed by California State Law—LACRIS adheres to laws and policies in place by Los Angeles County and the State of California when Criminal Offender Record Information (CORI) is used.... AB 1215 temporarily bans the use of facial recognition on any Body Worn Camera or any Body Worn Camera footage from January 1, 2020 through December 31, 2022."
- **LAPD Special Order No. 2-2021:**⁹ The following are prohibited sources, and images or photographs obtained from such devices shall not be used in connection with the DMS:
 - Body Worn Video (BWV);
 - Digital In-Car Video (DICV);
 - Any camera or recording device that is attached to the employee's body or clothing or that is carried by an employee, including cell phones; or,
 - Sketch artist drawings.

C. LAPD Policy

As noted, Department policy includes additional requirements for its personnel. After completing a DMS search, the LAPD employee-user is required to enter the following data onto

⁹ See also, Department Manual 3/568.56, "The Use of Photo Comparison Technology Within Los Angeles County's Digital Mugshot System - Prohibited Sources of Submissions to DMS to Assist in Investigative Leads."

either a digital Detective Activity Summary (DAS) form in the computerized Detective Case Tracking System (DCTS) or a paper DAS form (*see Appendix B*):¹⁰

1. The name and serial number of the Department investigator accessing the DMS;
2. Whether the purpose of the DMS search was a photographic lineup, or other criminal investigative lead;
3. The submitted photograph was believed to be a: (a) victim, (b) witness, or (c) suspect/person of interest;
4. The results: (a) the photographic lineup could be completed, (b) the system was unable to help in a photographic lineup, (c) no fruitful comparison was generated, (d) assisted in witness identification, (e) assisted in victim identification, (f) assisted in subject identification, and/or (g) the results of any comparisons led to additional investigation;
5. The related Division of Record (DR) number (e.g., investigative report, arrest report, etc.) or case number; and,
6. The date of the search.

D. Department Inspection Process

Special Order No. 2-2021 stipulates the Department's audit/inspection requirements as follows:

- Responsibility of Detective Bureau CO: The Detective Bureau CO shall conduct a semi-annual inspection of DMS use to ensure compliance with the standards articulated in this policy including the recording of and DMS usage and results.
- Responsibilities of the Audit Division CO: The Audit Division CO shall review this directive and determine whether an audit, inspection, or review shall be conducted in accordance with Department Manual Section 0/080.30.

The Department has been conducting quarterly inspections to meet these requirements. As of April 1, 2022, Detective Bureau had performed four quarterly inspections of the PCT system, covering the four quarters of calendar year 2021. Their primary inspection objective was to determine whether each DMS search was supported by a properly and fully completed DAS form with a referenced Division of Record (DR) or case number that could be located in the

¹⁰ Per Chief of Detectives Notice 1.18, titled, The Use of Photo Comparison Technology with the Los Angeles County Digital Mugshot System – Reminder and dated 4/20/21: “Investigators shall record every usage of the DMS System within the Detective Case Tracking System (DCTS)... If DCTS is unavailable, or multiple searches are conducted utilizing one DR number, investigators shall document their usage on a Detective Activity Summary (DAS) Form.

Detective Case Tracking System (DCTS). If no corresponding DR or case number is located, the inspector follows up with the DMS user to determine the source of the inconsistency.

Note: In addition to Department inspections of DMS usage, LACRIS personnel also conduct periodic random audits of the system's users and report the findings directly to the users' respective agencies. Per LACRIS policy, "LACRIS audits user's search and activity compliance to include search reason, number of searches, subject status, watch list entries, etc. Audit report data will be compiled and stored at LACRIS for a minimum of three years." The OIG also notes that, per training materials obtained from LACRIS, all users of the DMS system must provide the following information on a "Face Recognition Search Request Form" in order to conduct a facial recognition search: the requester's name, agency, phone number, email, and signature; the date of the request; the reason for the search; a case/file number; and the number of images submitted. LACRIS review each request for compliance with its own policies prior to processing them.¹¹

Each Department inspection also provided a quarterly total for each of the following aspects of the searches: (1) purpose [photo lineup or criminal investigative lead], (2) person [victim, witness, or suspect], and (3) result [various options]. Notably, all DMS searches were inspected by the Department, as opposed to only a selected sample of them.

III. OIG REVIEW

The OIG's PCT system review objectives included the following:

- A – Testing for compliance with Special Order No. 2-2021;
- B – Reviewing Detective Bureau's second-quarter 2021 PCT inspection, as well as a follow-up sample of fourth-quarter 2021 cases to assess changes to the process;
- C – Analyzing the DMS search results reported; and,
- D – Ascertaining the extent to which employees were using LACRIS DMS and other facial recognition systems prior to the approval of Special Order No. 2-2021 in January 2021.

The results of these reviews are as follows:

A. Testing for Compliance with Special Order No. 2-2021

From a schedule received from Records and Identification Division (R&I), the OIG identified 380 unique DMS searches that had been conducted during the second quarter of 2021. From this population of 380 searches, the OIG selected a random sample of 77 searches – applying a 95 percent one-tail confidence level, plus-precision of 4 percent, and an expected error rate of

¹¹ LACRIS Facial Recognition Policy.

6 percent.¹² The OIG also selected as a supplemental sample all six searches of digital mugshot systems of other California counties using the same LACRIS vendor, DataWorks. This total consolidated sample of 83 DMS searches (the 77 randomly-selected searches plus the 6 judgmentally selected searches) involved 39 different LAPD DMS employee-users, for which the OIG conducted nine tests. In eight of these nine tests, the compliance rate was 100% (*see* table below). In one test (No. 3), the compliance rate was 93% (77/83), with the following six exceptions:

- One DMS employee-user involved in five DMS searches in our sample, occurring from May 4 to June 8 of 2021, was on injured-on-duty leave (IOD leave) during the course of our review; this employee had not completed the five DAS forms related to his searches prior to going on IOD leave. The Department later advised the OIG in June 2022 that, subsequent to our review, the employee returned back to work and completed & submitted the five DAS forms.
- For one DMS employee-user involved in one DMS search in our sample, no associated DAS form was provided to the OIG.

Note: In April 2022, prior to finalizing this report, the OIG selected and reviewed a randomly-selected sample of 25 fourth-quarter 2021 DMS searches by 19 employee-users from the total population of 415 searches. This supplemental review was done to determine whether PCT-related processes, procedures, and compliance had changed since the second quarter 2021.¹³ The high compliance rates (100%) for these 25 fourth-quarter 2021 DMS searches, as well as the compliance rates for the aforementioned 83 second-quarter 2021 DMS searches, are presented in the following table.

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¹² These are the standard sample-size-calculation parameters routinely used by both the Department's Audit Division and the OIG since inception of the federal Consent Decree in July 2001.

¹³ Changes reflected on the revised DAS form and in DCTS are additional questions: (1) indicating whether the submitted photographic image was enhanced in any way, and (2) recording the serial numbers of both the case investigating officer and the employee conducting the DMS search (which could be a different employee).

Compliance Rate Table

<u>Test</u>	<u>Test Objective – To determine whether:</u>	<u>2nd Qtr 2021 Compliance</u>	<u>4th Qtr 2021 Compliance</u>
1	The DMS user attended the mandatory one-day LACRIS training.	100% (39/39)	not tested
2	The DMS user was in an assignment or working on a case involving criminal investigations.	100% (39/39)	100% (19/19)
3	A DAS form was completed for each DMS search.	93% (77/83)	100% (25/25)
4	The DAS form included the DMS user's serial number.	100% (77/77)	100% (25/25)
5	The DAS form included the purpose of the DMS search (a photographic lineup or other criminal investigative lead).	100% (77/77)	100% (25/25)
6	The DAS form included the subject type of the submitted photograph (victim, witness, or suspect/person-of-interest).	100% (77/77)	100% (25/25)
7	The DAS form included the search results (the photographic lineup could be completed, the system was unable to help in a photographic lineup, no fruitful comparison was generated, assisted in witness identification, assisted in victim identification, assisted in suspect/person-of-interest identification, and/or the results of any comparisons led to additional investigation).	100% (77/77)	100% (25/25)
8	The DAS form included the related LAPD DR, incident, or case number (to show that the search was not for outside agency or internal/administrative investigation).	100% (77/77)	100% (25/25)
9	The DAS form included the date of the search.	100% (77/77)	100% (25/25)

With regard to Test 3 – the determination of whether a DAS form was completed for each DMS search – despite the Department's high compliance rates in the second and fourth quarters of 2021 of 93% and 100%, respectively, the OIG's review led it to make the following recommendation:

Recommendation 1: All authorized DMS employee-users should enter the required DAS form data in DCTS, in lieu of manually completing a paper DAS form, whenever possible. Entering the required DAS form data in DCTS leaves an audit trail, allowing authorized users and reviewers/auditors of DCTS to see whether any DMS searches were performed in relation to a particular DR number. In contrast, a paper DAS form generally resides with the investigator at the investigator's division, and the form would have to be requested in order to conduct an audit or inspection.

Additionally, during its review of second-quarter DMS searches, the OIG noted that, at that time DCTS only allowed one DAS form per DR number. Therefore, if a DR number had multiple DMS searches associated with it, DCTS could only save the DAS form completed for the last DMS search. As discussed in a following section, this issue has since been resolved.

Despite the nine tests conducted on the searches in the OIG's sample, the OIG was unable to meaningfully test the following two aspects of the LAPD's PCT policy – primarily because the DAS form, as designed, only captures limited/minimal data, and there are generally no supplemental Case Notes or documents included in, or linked to, DCTS:¹⁴

1. The OIG could not determine whether the source of the facial image submitted was prohibited by policy (e.g., an officer's BWV, DICV, or cellular phone camera photographs, or a facial sketch artist drawing).

Recommendation 2: The required DAS form data should be expanded to include additional detail regarding the source of the image. Specifically, it should include: *The source, location, date, and time of the image.* Additionally, future Department inspections of compliance with PCT policy should seek to verify the veracity of these added details.

Recommendation 3: The required DAS form data should be expanded to include a description of the submitted facial image. Descriptive data could include the subject's perceived:

- Gender;
- Race/Ethnicity;
- Age range;
- Distinguishable facial features (hair, eyes, eyebrows, nose, ears, mouth, chin, cheeks, forehead, etc.); and,

¹⁴ Only 4 of the 25 4th Qtr. 2021 DMS searches reviewed referenced the DMS search in DCTS Case Notes.

- Other distinguishable facial markings/irregularities (moles, wrinkles, blemishes, freckles, scars, tattoos, birthmarks, etc.).
2. The OIG had no way to verify or analyze the search results listed on the DAS form. The DAS form, as currently designed, does not require the employee-user to describe/explain the search results in any greater detail than whether or not it was fruitful, essentially.¹⁵ For example, it was not clear to the OIG what occurred in instances where the DAS indicated only that “Results of comparison led to additional investigation,” or how the PCT match was used in this type of situation.

The lack of search-result detail on the DAS form is especially concerning in instances when a suspect is identified subsequent to a DMS match. As previously indicated in this report, the risk of a “false positive” – an instance when a DMS search that yields a match ultimately results in the identification and arrest of the wrong person due to the fact that insufficient corroborating evidence was obtained prior to law enforcement action being taken – is always of paramount concern.¹⁶

Recommendation 4: The required DAS form data shall be expanded to include a Notes/Comments section after the search result(s); and the investigator shall be required to complete this section to explain/describe the search result(s) as well as any related corroborating evidence obtained after a positive DMS match identifying a suspect. Links in DCTS to other reports associated with the search shall also be included. Specific questions to be answered for each DMS search that “led to additional investigation” shall include: (a) In the case of a positive DMS match identifying a suspect, what specific evidence was obtained to corroborate the match? (b) Was the DMS search referenced in an Investigative Report; if so, how? (c) Was the DMS search referenced in an Arrest Warrant and/or Arrest Report; if so, how and what were the arrestee’s charges? (d) Was the DMS search referenced in a court hearing or trial; if so, how? Finally, these additional details regarding search results shall be periodically audited by the Department in order to help it determine, in the aggregate, how useful PCT has been, particularly with regard to investigating serious crimes.

¹⁵ The seven possible search results per the DAS form are: (1) The photographic lineup could be completed, (2) The system was unable to help in a photographic lineup, (3) No fruitful comparison was generated, (4) Assisted in witness identification, (5) Assisted in victim identification, (6) Assisted in suspect/person-of-interest identification, and (7) The results of any comparisons led to additional investigation.

¹⁶ California Assembly Bill 1215, Section 1(d) states: “Facial recognition and other biometric surveillance technology has been repeatedly demonstrated to misidentify women, young people, and people of color and to create an elevated risk of harmful “false positive” identifications.”

B. Reviewing Detective Bureau's Second-Quarter 2021 PCT Inspection

1. Inspection's Scope and Methodology

The OIG also reviewed the Department's inspection process to determine whether it was sufficient to ensure that the Department's PCT policies were being followed. This was accomplished by examining the Department's inspection from the second quarter of 2021. The inspection was completed by the Gang Support Section (GSS) of Gang and Narcotics Division (GND), and it primarily tested for compliance with Special Order No. 2-2021.

The inspection covered 100% of all DMS searches conducted during the quarter (as opposed to selecting a sample). From the R&I listing of 854 DMS line entries, the inspection identified a total of 347 unique DR numbers or case numbers that generated 380 searches (requiring 380 DAS forms to be completed). The inspection's primary objectives were to determine whether:

- Each DMS search was supported by a valid DR or case number that could be located in the Detective Case Tracking System (DCTS);
- A DAS form was completed for each DMS search; and,
- Each completed DAS form contained all the required data.

2. Inspection's Key Results and Findings

The key results and findings, as stated in the inspection report were:

1. *"All the submitted DAS forms and DCTS notes had the DR No., case No. or booking No. documented, which resulted in 100% compliance."*
2. *"In 30 instances, a DAS or DCTS equivalent entry was not completed, which resulted in 92% compliance rate."¹⁷*
3. *"Out of 347 DR Nos, the DMS/PCT was utilized 331 times for a criminal investigation and 16 times for a photographic lineup."*
4. *"A victim's photograph was submitted 1 time, a witness's photograph was submitted 10 times, and a suspect's photograph was submitted 342 times."*

For each of the 83 DMS searches in the sample selected for this report, the OIG examined whether the results of the Department's inspection matched the OIG's findings. The OIG also verified that information contained in the inspection report was consistent with the OIG's supporting spreadsheets as well as schedules provided by R&I Division. Overall, the OIG

¹⁷ The Department advised the OIG that two employees had their DMS access temporarily suspended as a result of this inspection.

determined that the results and findings for its sample of 83 DMS searches were the same as the inspection's and that the inspection-reported information accurately reflected relevant supporting documentation, with the following few minor exceptions:

- The inspection's internal report and spreadsheet indicated that DAS forms were not completed for three DMS searches in the OIG's sample. However, the OIG was in fact provided the DAS forms for these three DMS searches.
- The inspection's internal report and spreadsheet included one search result for each of two DAS forms in the OIG's sample. However, the DAS forms provided to the OIG showed two search results for each of these two DAS forms.

The inspection report also noted the issue with multiple DAS forms, stating: "During this inspection the DMS option within the DCTS only allowed for a single DAS form to be saved per DR number. If an investigator completed a second DAS form related to a previously documented DR number, that second DAS overwrote the previous DAS form. The DAS form that was overwritten was not recoverable." The inspection report also requested Information Technology Division (ITD) to "add a feature to create multiple DAS forms for multiple searches per DR number."

Note: The Department advised the OIG in June 2022 that ITD had fixed this "over-write" issue, so that DCTS now allows multiple digital DAS forms for multiple searches for a single DR number. Furthermore, the OIG confirmed via its review of a sample of fourth quarter 2021 DMS searches that DCTS was retaining the required DAS form data for multiple DMS searches associated with the same DR number.

C. Analyzing the DMS Search Results for 2021

The following table shows the search results recorded on the completed DAS forms for all four quarters of calendar year 2021. (Note that for one DR or case number, a DAS form can record more than one search result. For calendar year 2021, there were 1,356 DR or case numbers and 1,949 DAS search results recorded.)

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Calendar Year 2021	No fruitful comparison was generated	Results of comparison led to additional investigation	Assisted in suspect identification	System was unable to help in photo lineup	The photo lineup could be completed	Assisted in witness identification	Assisted in victim identification	Total search result entries recorded on DAS Forms	Quantity of DR or case numbers
Qtr 1	134	83	86	59	28	4	1	395	252
Qtr 2	113	115	95	72	81	1	2	479	343
Qtr 3	181	134	115	80	45	2	4	561	417
Qtr 4	186	136	95	45	47	2	3	514	344
Totals	614	468	391	256	201	9	10	1,949	1,356
% of Cases (1,356)	45%	35%	29%	19%	15%	<1%	<1%		

Per the above table, 55 percent (1,079 of 1,949) of the DMS search results recorded on DAS forms were positive, indicating that a mugshot matching the submitted facial image was identified or a photographic lineup was completed, as follows:

- Results of the comparison led to additional investigation for 468 (35 percent) of the 1,356 DRs;
- Assisted in suspect identification for 391 (29 percent) of the 1,356 DRs;
- The photo lineup could be completed for 201 (15 percent) of the 1,356 DRs;
- Assisted in witness identification for 9 (<1 percent) of the 1,356 DRs; and,
- Assisted in victim identification for 10 (<1 percent) of the 1,356 DRs.

Per the above table, 45 percent (870 of 1,949) of the DMS search results recorded on DAS forms were negative, indicating that a mugshot matching or similar to the submitted facial image was not identified, as follows:

- No fruitful comparison was generated for 614 (45 percent) of the 1,356 DRs; and,
- The system was unable to help in a photo lineup for 256 (19 percent) of the 1,356 DRs.

As previously stated, the OIG could not verify the search results recorded on the completed DAS forms because that form, as designed, does not require the employee-user to describe/explain the search results in further detail in a Notes/Comments section. Furthermore, the OIG did not identify any Department procedures presently in place to track instances when law enforcement action that affects a member of the public is initiated based, at least in part, on a “false positive” DMS search result. In other words, every DMS search that yields a match of a mugshot to a submitted facial image, which is relied on by the Department (among other factors, ostensibly) in

initiating a consensual encounter and/or effecting the detention or arrest of the person identified by that match, when it is later determined that the person depicted in the mugshot and the person depicted in the submitted image were actually two different people, should be accounted for. It is crucial to track all such law enforcement actions that are based on “false positives” due to the potentially drastic impact they can have on innocent people and on various communities, as well as in order to comprehensively assess the utility of the Department's reliance on PCT in general.

Recommendation 5: The Department should establish a system to track all of its consensual encounters, detentions, and/or arrests that were initiated and/or based, at least in part, on a “false positive” PCT search result – wherein a mugshot and a submitted image were determined to be a match by the DMS, but it was later discovered that the person depicted in the mugshot and the person depicted in the submitted image were two different people.

D. Use of Facial Recognition Systems Prior to the Approval of Special Order No. 2-2021 in January 2021

During the completion of this report, the OIG met with Department management and support staff to discuss the PCT program and the OIG's review, as well as the Department's prior usage of PCT. Per the information provided to the OIG, the LAPD has been using the LACRIS DMS since 2009 and has been required to comply with LACRIS policies and procedures during that time. The Department's own policy governing the use of facial recognition technology was finalized in January 2021 via Special Order No. 2-2021, which generally mimics that of LACRIS while being slightly more restrictive.

Additionally, according to the LAPD's Detective Bureau, in November 2020 the Department was made aware that some of its employees were using Clearview AI – an alternative facial recognition system. These employees had apparently received a free trial subscription of Clearview AI as a result of attending criminal investigative training. Within days of becoming aware of this, the Department initiated a project to identify any employees who were users of Clearview AI and determined that 15 LAPD employees had received access to the software. Of these 15 employees, 8 had utilized Clearview AI a total of 18 times for Department-related searches. The remaining 7 employees were not aware that a Clearview AI account had been created in their name and had never accessed the system.

On the same day the Department became aware of the use of Clearview AI by some of its employees, it issued a Department Operations Center (DOC) notice admonishing all employees that the use of third-party facial recognition software was prohibited and that LACRIS provides access to the only facial recognition system authorized for use by the LAPD. The Department also blocked access to the Clearview AI website on all Department computers in order to prevent any employees from logging into the system. In addition to the Department's actions to ensure that its employees do not use any unauthorized facial recognition technology, the OIG makes the following recommendation:

Recommendation 6: The Department should require all employees (sworn and civilian) who are assigned to conduct investigative work to sign a statement explicitly indicating that they have read and understood Department Manual Volume 3, Section 568.56 (which incorporates Special Order No. 2-2021 into the manual) and that they acknowledge that the LACRIS DMS is the only facial recognition system authorized for use by the LAPD. These statements should be maintained indefinitely by the Department. Additionally, the Department should block access on all of its computers to the websites of all unauthorized third-party facial recognition systems that are known to it (in addition to Clearview AI), and the Department should annually verify that such website blocks remain in place.

IV. RECOMMENDATIONS

Based on its review, the OIG recommends that the Department implement the following recommendations, as previously referenced in this report:

1. All authorized DMS employee-users should enter the required DAS form data in DCTS, in lieu of manually completing a paper DAS form, whenever possible. Entering the required DAS form data in DCTS leaves an audit trail, allowing authorized users and reviewers/auditors of DCTS to see whether any DMS searches were performed in relation to a particular DR number. In contrast, a paper DAS form generally resides with the investigator at the investigator's division, and the form would have to be requested in order to conduct an audit or inspection.

2. The required DAS form data should be expanded to include additional detail regarding the source of the image. Specifically, it should include: *The source, location, date, and time of the image*. Additionally, future Department inspections of compliance with PCT policy should seek to verify the veracity of these added details.

3. The required DAS form data should be expanded to include a description of the submitted facial image. Descriptive data could include the subject's perceived:

- Gender;
- Race/Ethnicity;
- Age range;
- Distinguishable facial features (hair, eyes, eyebrows, nose, ears, mouth, chin, cheeks, forehead, etc.); and,
- Other distinguishable facial markings/irregularities (moles, wrinkles, blemishes, freckles, scars, tattoos, birthmarks, etc.).

4. The required DAS form data shall be expanded to include a Notes/Comments section after the search result(s); and the investigator shall be required to complete this section to explain/describe the search result(s) as well as any related corroborating evidence obtained after a positive DMS match identifying a suspect. Links in DCTS to other reports associated with the search shall also

be included. Specific questions to be answered for each DMS search that “led to additional investigation” shall include: (a) In the case of a positive DMS match identifying a suspect, what specific evidence was obtained to corroborate the match? (b) Was the DMS search referenced in an Investigative Report; if so, how? (c) Was the DMS search referenced in an Arrest Warrant and/or Arrest Report; if so, how and what were the arrestee’s charges? (d) Was the DMS search referenced in a court hearing or trial; if so, how? Finally, these additional details regarding search results shall be periodically audited by the Department in order to help it determine, in the aggregate, how useful PCT has been, particularly with regard to investigating serious crimes.

5. The Department should establish a system to track all of its consensual encounters, detentions, and/or arrests that were initiated and/or based, at least in part, on a “false positive” PCT search result – wherein a mugshot and a submitted image were determined to be a match by the DMS, but it was later discovered that the person depicted in the mugshot and the person depicted in the submitted image were two different people.

6. The Department should require all employees (sworn and civilian) who are assigned to conduct investigative work to sign a statement explicitly indicating that they have read and understood Department Manual Volume 3, Section 568.56 (which incorporates Special Order No. 2-2021 into the manual) and that they acknowledge that the LACRIS DMS is the only facial recognition system authorized for use by the LAPD. These statements should be maintained indefinitely by the Department. Additionally, the Department should block access on all of its computers to the websites of all unauthorized third-party facial recognition systems that are known to it (in addition to Clearview AI), and the Department should annually verify that such website blocks remain in place.

APPENDIX A – DEPARTMENT PCT POLICY

Department PTC Policy - per Department Manual, 4th Quarter 2021 (updated to include aforementioned Special Order No. 2-2021)

3/568.56 THE USE OF PHOTO COMPARISON TECHNOLOGY WITHIN LOS ANGELES COUNTY'S DIGITAL MUGSHOT SYSTEM.

The Department strives to ensure that individual privacy protections are balanced with other important rights, such as the right to security and to protect property. The Department recognizes that when technology is properly and lawfully employed, time spent in solving crimes may be reduced, thereby increasing public safety. Technology may also reduce suggestibility in police lineups by enhancing the similarity between photographs and decreasing the likelihood of misidentification of suspects. For these reasons the Department is establishing the following policy, including significant oversight and limitations, to balance those competing needs. This policy outlines the legitimate use of Photo Comparison Technology (PCT) by trained Department investigators for the good of the community while prohibiting or limiting its use in accordance with California Law, privacy concerns, and community trust.

Authorized Uses of Photo Comparison Technology are limited to:

- A criminal investigation;
- Mitigate an imminent threat to life; and,
- Assisting in the identification of a person who is incapable or is otherwise unable to identify one's self, as such where the person is incapacitated, deceased, or at-risk.

Note: The use of PCT is NOT allowed for any non-criminal or purely administrative investigations.

Photo Comparison Technology shall be used only in the above-referenced scenarios and shall be used for investigative leads only. All PCT searches require Department investigators to compare the search results and shall not accept a computer-generated list of comparisons without further human and investigative analyses. Further investigations may include, but is not limited to, witness interviews, witness line-ups, fingerprints, and victim identification. **Any comparison search result, by itself, is not considered positive identification and does not establish probable cause without further investigation.**

Authorized System for Photo Comparison Technology Use:

The Department policy allows for analysis of permitted images in accordance with the Facial Recognition Technology Module of the Digital Mugshot System (DMS) of the Los Angeles County Regional Identification System (LACRIS) only. The DMS is a database of digital

mugshots from Los Angeles County that are supported by a fingerprint comparison conducted by the California Department of Justice.

One module within the DMS compares a submitted photograph to the booking photographs within the DMS through facial recognition technology. This allows for a comparison between the submitted photograph from permitted sources (see below) and booking photographs from Los Angeles County. The DMS does not store submitted photographs in the searchable database.

Note: An inquiry submitted to DMS produces a series of photographs that Departmental investigators shall compare to the submitted photograph. The system does not produce one "match" but rather provides possible options from which an investigator may pursue leads.

All photos and images in DMS are part of the LACRIS, are the property of the contributing agency, and contain Criminal Offender Record Information (CORI). Section 11075 of the California Penal Code defines CORI as: "records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release."

All Department investigators are reminded to comply with all applicable laws and policies regarding confidential information, including Department Manual Section 3/405, Confidential Nature of Department Records, Reports, and Information.

Moreover, Department investigators conducting comparison searches shall incorporate proper justification for each search including Division of Records (DR), Records Management System (RMS) Event "E", incident or booking numbers.

Prohibited Systems for Photo Comparison Technology Use:

The DMS is the only authorized system to be used by Department employees to conduct investigations based on photographic comparison. **The use of any other systems or third-party commercial facial recognition systems, services, technology or algorithms is prohibited.**

Finally, all Departmental investigators are prohibited from conducting searches for outside agencies and shall instead refer those agencies or members of those agencies to LACRIS.

Training Requirements Prior to Using the DMS of LACRIS:

Department investigators shall be trained and receive a certificate of completion from LACRIS prior to having access to use the system. This training includes a special section on the use of the DMS for PCT.

Request for Access to DMS Training:

All Department investigators requesting to attend DMS training or any other LACRIS training shall submit their request to their Training Coordinator, who shall maintain a list of those

requesting training. All training for DMS and LACRIS access shall be limited to Department employees who are assigned to investigative assignments. The employee's Commanding Officer (CO) shall submit an Intradepartmental Correspondence, Form 15.02.00, to the CO, Records and Identification Division (R&I), when requesting DMS training and access for employees within their command. The 15.02.00 shall include the employee's name, serial number, rank, assignment, and the rationale for the employee to receive training and access to DMS. The CO and R&I shall ensure that only Department employees who are specifically listed on a 15.02.00 by their respective CO and approved by the CO, R&I are scheduled for and receive access to DMS and LACRIS programs.

Permitted Sources of Submissions to DMS to Assist in Investigative Leads:

Trained Department investigators may use photographs or videos obtained from a third-party, or other lawfully gathered images in conjunction with the DMS. Department investigators may submit enhanced images to improve analysis in accordance with DMS training. Any enhancements made to the original image shall be copied and saved as a separate image. Moreover, the investigator shall document any enhancements made and shall disclose such enhancements in any proceeding or in any request for judicial process (such as a search or arrest warrant).

Note: Enhancing an image means changing the contrast to make the existing image clearer. Adding or replacing a feature, such as adding an eye that is otherwise obscured in a submitted photograph or replacing an opened mouth with a closed one, is prohibited.

Prohibited Sources of Submissions to DMS to Assist in Investigative Leads:

The following are prohibited sources and images, or photographs obtained from such devices shall not be used in connection with DMS:

- Body Worn Video (BWV);
- Digital In-Car Video (DICV);
- Any camera or recording device that is attached to the employee's body or clothing or that is carried by an employee, including cell phones; or
- Sketch artist drawings.

Oversight and Departmental Responsibilities:

Duty to Record Use and Results of DMS Searches: All Department personnel authorized to use DMS shall record their use of DMS for criminal investigations as an Investigator's case note (e.g., in the Detective Case Tracking System or an Investigator's Action Log entry in Niche RMS). An alternative system may be designated by Information Technology Bureau for this purpose.

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The system shall record:

1. The name and serial number of the Department investigator accessing DMS;
 2. The purpose of DMS was a photographic lineup, or other criminal investigative lead;
 3. The submitted photograph was believed to be: (a) a victim; (b) a witness; or (c) a suspect/person of interest.
 4. The results: (a) the photographic line up could be completed; (b) the system was unable to help in a photographic line up; (c) no fruitful comparison was generated; (d) assisted in witness identification;
- (e) assisted in victim identification; (f) assisted in subject identification; or/and (g) the results of any comparisons led to additional investigation.

In the absence of DCTS or an Investigator's Action Log entry, Department investigators are to use a paper form in the Detective Activity Summary that shall be distributed through regular channels to address the above questions. All paper copies of Detective Activity Summaries shall be forwarded to Detective Bureau on a quarterly basis.

Any investigator's failure to record DMS usage may result in their DMS access being denied.

Responsibility of the CO of Records and Identification: At the end of each month the CO, R&I shall generate a report indicating the names of all users as well as the number of DMS uses that each individual employed during that month.

Additionally, the CO, R&I shall ensure that there is a quarterly review of authorized Department investigators with access to the DMS of LACRIS to ensure only those with approved access are using the system in compliance with CORI requirements. Any non-compliance with CORI requirements shall result in the CO, R&I, informing both the user and the user's CO of the non-compliance and corrective action, including DMS access being denied, shall be taken.

Responsibilities of Bureau COs: Commanding Officers shall be responsible for compliance with all other aspects of this policy including ensuring that only those assigned to investigative assignments receive training and access to DMS programs.

Responsibility of Detective Bureau CO: The CO, Detective Bureau shall conduct a semi-annual inspection of DMS use to ensure compliance with the standards articulated in this policy including the recording of and DMS usage and results.

Responsibilities of the CO Audit Division: The CO, Audit Division, shall review this directive and determine whether an audit, inspection, or review shall be conducted in accordance with Department Manual Section 0/080.30.

APPENDIX B – DETECTIVE ACTIVITY SUMMARY

(To be used in lieu of using the Detective Case Tracking System [DCTS] for Digital Mugshot System [DMS] of Los Angeles County Regional Identification System [LACRIS]). When completed, e-mail to: photocomparisontechnology@lapd.online

1. The DR No., Booking No., or Incident No. of the Case _____
2. Serial No. of person accessing DMS _____
3. Serial No. of Investigating Officer _____
4. Date of Search _____
5. Purpose of DMS access (check at least one):
 - A photographic line up
 - A criminal investigation
 - Mitigate an imminent threat to life
 - Assist in the identification of a person who is incapable or otherwise unable to identify him/herself, as such where the person is incapacitated, deceased, or at risk.
6. Was the submitted photograph enhanced in any way?
 - Yes? If so, how? _____
 - No
7. The submitted photograph was believed to be (check as many as apply):
 - A victim
 - A witness
 - A suspect/person of interest
8. The results of the DMS usage were (check all that apply):
 - The photographic line up could be completed
 - The system was unable to help in a photographic line up
 - No fruitful comparison was generated
 - Assisted in witness identification
 - Assisted in victim identification
 - Assisted in subject identification
 - The results of any comparisons led to additional investigation
9. Comments _____