

# BIOMETRICS FOR TRAVELER FUNCTIONS BY AIRLINES POLICY



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EX-27 As of 12/17/21

## I. BACKGROUND

Biometrics is the use of technology to identify an individual through analysis of that person’s physical and behavioral characteristics. Examples of physical characteristics include the unique features of an individual’s face or their fingerprint, while examples of behavioral characteristics include an individual’s voice, signature, or how they walk.

Many members of the public and various advocacy organizations have expressed concerns about the rapidly expanding use of facial recognition and other public-facing biometrics. These stakeholders have raised issues around privacy, equity, and civil liberties, as well as the potential for unregulated “mass surveillance.” To that end, the Port Commission passed Motion 2019-13 on December 10, 2019 which instituted guiding principles for the public-facing use of biometric technology at Port facilities.

Airlines are increasingly interested in public-facing biometric technology deployment – because of the potential for a faster and more efficient travel experience, a more accurate security process and the public health benefits of moving to a “touchless” system. The adoption of this technology is driven entirely by perceived business advantage, and not currently required by any local, state, or federal government regulation. The COVID-19 pandemic may spur additional airline attention toward potential applications of biometric technology so as to avoid direct interactions that could spread the virus.

While private, proprietary biometric technologies may be utilized by some airline tenants, other airlines may instead use U.S. Customs and Border Protection’s (CBP) existing Traveler Verification System (TVS), as part of their boarding, bag-check, and other operations. Examples of biometric (including facial recognition) applications for traveler functions include:

- Boarding of departing domestic flights;
- Ticketing and bag-check; and
- Access to airline tenant-controlled facilities such as passenger lounges.

The federal Airline Deregulation Act (ADA) prevents the Port from exercising broad control over airlines’ implementation of certain customer-facing systems and processes at airports, including the use of biometrics for traveler functions. However, the Port can take significant steps to pursue airline alignment with the Commission’s biometrics principles, and believes the following policies are consistent with any preemptive limitations on the Port’s authority posed by the ADA.

To that end, the Commission passed Order 2021-XX, which directs the Executive Director to implement an executive policy regulating the use of public-facing biometrics for traveler functions by airlines at Seattle-Tacoma International Airport (SEA).

## II. POLICY STATEMENT

The following policies will be implemented by the Port of Seattle as directed by the Port of Seattle Commission to align, to the greatest extent possible, the use of public-facing biometric technology for traveler functions by airlines at Port facilities with the Port's public-facing biometric principles:

### **Role of Airlines**

#### **Policy 1 – Airline Notification:**

- Airline tenants who wish to implement public-facing biometric technology for traveler functions at SEA must notify the Aviation Managing Director, not less than 30 days prior to implementation. As part of such notification, the airline will identify the location and intended use of biometrics. The Port will also request that the airline consider providing the following information:
  - A description of whether and, if so, how the biometric implementation will align with each of the Port Commission's Public-Facing Biometric Principles<sup>1</sup>, as set forth in the Commission's Motion 2019-13, adopted December 10, 2019;
  - If the airline intends to use the TVS system, the airline shall share its compliance with all CBP requirements, such as documentation that the proposed process has been approved by CBP, and is in compliance with CBP's Biometric Air Exit Requirements and TVS application programming interface (API) specifications.
  
- Airlines are not required to provide information that is confidential and/or proprietary.

### **Role of Port**

#### **Policy 2 – Creation, and Role of, a Technology Ethical Advisory Board:**

- By January 2022, the Port will form a Technology Ethical Advisory Board to advise on the ethical issues raised by implementation of biometric technology and other innovations.
  
- This Board will be composed of no more than five members – appointed by the Commission President. Members of the Board should be technology experts with specific expertise in the field of biometrics, academic researchers with expertise in biometric technology and/or technology ethics, and/or policy professionals who have experience with regulating technology to balance practical benefits with ethical and equity concerns. Members will serve three-year terms, and can be nominated for an unlimited number of consecutive terms.
  
- The Board will meet as requested by Port staff, to help advise on the issues listed below. The Board will not take votes or have direct decision-making authority, but rather provide their advice for consideration. While Board advice is non-binding, its recommendations must be shared with Commissioners and the Executive Director.
  
- Until the Technical Ethical Advisory Board is established, the Port will consider input already received by the Biometrics External Advisory Group in implementing this Policy.

#### **Policy 3 – Notification to Port Leadership:**

After receiving notification from an airline of their intent to implement public-facing biometrics for traveler functions, the Aviation Managing Director must provide a copy of the notification to the Port Executive Director and the Port Commission. The notification will also be included in the Port's annual Public-Facing Biometrics Accountability Report (see Policy 9) in order to provide public transparency.

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<sup>1</sup> Those principles are justified, voluntary, private, equitable, transparent, lawful, and ethical.

**Policy 4 – Port Definition of a Voluntary, “Opt-in” System:**

- In response to any airline implementation of biometrics for traveler functions, the Port shall emphasize its strong preference that all proprietary (non-TVS) public-facing biometrics systems be fully voluntary and “opt-in” – both opting-in to the overall system as well as actively choosing to participate in the system at the point of service. The Port will explicitly request that the airline indicate whether and how the system being deployed addresses these preferences as part of its description of alignment with the Biometric Principles. For the purposes of this policy, the following elements will be considered when determining whether the system addresses the Port’s preferences for “opt-in”:
  - Whether the system includes the biometric data of those individuals who have actively opted-in to the system for that explicit purpose, other than systems that use data submitted to and held by the federal government;
  - Whether the system includes biometric data purchased from a third-party or biometric data collected from publicly available galleries (such as social media sites); if included, whether the system includes explicit consent from those individuals for the use of such data;
  - Whether the system has safeguards in place to prevent unintended capture of those who are not purposefully and actively participating in that particular moment (i.e. – limited depth of field, angle of camera, etc.);
  - Whether and how comprehensive, clear, and accessible notice is provided at the time of enrollment (i.e. – “informed consent”) for individuals to know exactly what they are opting-in for, how their data will be handled and protected and their rights to remove their data from the system;
  - Whether there are clear standards for how to cancel a subscription or other voluntary commitment such that an individual’s biometric data is removed from the system, other than systems that use data submitted to and held by the federal government;
  - Whether standards are in place to handle biometric data accidentally collected by unintended capture, including immediate deletion; and
  - Whether the system operates by scanning large groups of people who have not opted-in in order to identify those individuals who have opted in.

**Policy 5 – Port Guidelines for Unintended Image Capture and Operator Training:**

- As part of the Port’s effort to help airlines advance the Port’s public-facing biometrics principles to the greatest extent possible, the Port will develop and provide to all airlines for their consideration:
  - Recommended non-binding guidelines related to avoiding unintended image capture if facial recognition (or a similar image-based biometrics system) is implemented by airlines – such as by positioning a camera in a direction that does not face the main passenger area, use of a screen behind the individual being photographed, or use of a camera with a minimal field view; and
  - Recommended non-binding guidelines for how to handle biometric data accidentally collected by unintended capture, including immediate deletion.
- As part of the Port’s effort to help airlines advance with the Port’s public-facing biometrics principle to the greatest extent possible, the Port will develop recommended biometric training guidelines for personnel who will be administering the facial recognition technology on travelers, including the capabilities and limitations of facial recognition, and how to deal with mismatching issues with sensitivity and discretion. These non-binding guidelines should also

include suggested ways to minimize mismatch likelihood, such as lighting, image capture angles and camera quality. The Port will provide these guidelines to all airlines for their consideration.

**Policy 6 – Port Guidelines for Data Privacy:**

- The Port will develop recommended non-binding biometric data security and privacy guidelines for biometrics for traveler functions by airlines at Port facilities. Those guidelines should address data privacy protections at the point of service as well as throughout a proprietary system, such as potential data breach and data sharing. The guidelines should include suggestions that any data collected should be used only for those purposes explicitly communicated to those individuals who participate in the biometric process, and that unauthorized third parties will not have access to or be sold any such data. These guidelines should be based – to the extent possible – on national and international standards already developed for evaluating the security of these technologies. The Port will provide these guidelines to all airlines for their consideration.

**Policy 7 – Port Definition of Accuracy:**

- As part of the Port’s effort to help airlines advance the Port’s public-facing biometrics principles to the greatest extent possible, the Port may from time to time make non-binding requests that airlines provide information about how their public-facing biometric systems demonstrate high levels of accuracy both overall and between various characteristics – particularly those relevant to biometric identification, such as race and gender. These demonstrations of accuracy should ideally result from testing in operational conditions. If the airline uses a federal government database, such as TVS, the Port will accept the findings of the most recent studies and data out of that federal agency and/or the National Institute of Standards and Technology (NIST) as to the accuracy of the system. Airlines are not required to provide information that is confidential and/or proprietary.
  - “High levels of accuracy” is defined not only relative to correctly matching the person with their image but also as an accuracy rate that is at least as good as human review. Port staff should include in their request for accuracy rates the specific device and system settings – such as similarity thresholds – that maximize accuracy and provide the proper balance of accuracy, equity, and security.

**Policy 8 – Port Guidelines for Disclosure of Biometric Data:**

- As part of the Port’s effort to help airlines advance the Port’s public-facing biometrics principles to the greatest extent possible, the Port will encourage airlines not to disclose personal data obtained from non-CBP TVS public-facing biometric technology for traveler functions at Port facilities to a federal or law enforcement agency, except when such disclosure is:
  - Pursuant to the consent of the consumer to whom the personal data relates;
  - Required by federal, state, or local law or in response to a court order, court-ordered warrant, or subpoena or summons issued by a judicial officer or grand jury;
  - Necessary to prevent or respond to a national security issue or an emergency involving danger of death or serious physical injury to any person, upon a good faith belief by the operator; or
  - To the National Center for Missing & Exploited Children, in connection with a report submitted thereto under Title 18 U.S.C., Section 2258A.

**Policy 9 – Port Communications and Transparency Efforts:**

- If an airline tenant implements biometrics for traveler functions at Port facilities, Port staff shall develop and implement a comprehensive communications plan that notifies the general public of the implementation and all related information, including information provided by the airline in its notification to the Port, traveler rights with regard to the program, how to remove themselves from the program if possible, and potential recourse in case of violations of those rights and/or data breaches – such as by the airline itself, the US Department of Homeland Security or the US Department of Transportation/Federal Aviation Administration. The communications plan should include specific communications on-site, including announcements, signage, flyers, and web content. The communications plan should include effort to reach local immigrant and refugee communities in multiple languages; languages should be determined based on the most common ones spoken by airport passengers. To the extent possible, the Port will partner with the airline on this effort.
  
- Port staff shall work with the Technology Ethical Advisory Board (once formed) to produce an annual accountability report that describes all uses of public-facing biometrics in use at Port facilities, and summarizes publicly available information on topics such as:
  - A description of the biometrics being used, including the name of the biometric vendor and version;
  - The system’s general capabilities and limitations;
  - How data is generated, collected, and processed;
  - A description of the purpose and proposed use of the biometrics, and its intended benefits, including any data or research demonstrating those benefits;
  - A description of the impact or consequence of misidentification of the system;
  - Any measures taken to minimize inadvertent collection of additional data beyond the amount necessary for the specific purpose or purposes for which the service will be used;
  - Data integrity and retention policies applicable to the data collected using the service, including how the operator will maintain and update records used in connection with the service, how long it will keep the data, and the processes by which data will be deleted;
  - The Port and the private sector operator’s privacy guidelines, as well as CBP’s privacy guidelines if relevant;
  - Information pertaining to traveler rights with regard to the biometric system;
  - The Port’s biometric training guidelines;
  - The operator’s testing procedures, including its processes for periodically undertaking operational tests of the service;
  - A description of any potential impacts of the service on civil rights and civil liberties, including potential impacts to privacy and potential disparate impacts on individuals of varying characteristics such as race and gender; in addition, specific steps the Port will take – to the extent within its legal authority – to mitigate the potential impacts and prevent unauthorized use of the service;
  - Procedures for receiving feedback, including the channels for receiving feedback from individuals affected by the use of the service and from the community at large, as well as the procedures for responding to feedback;
  - Any credible complaints received by the Port;
  - Any publicly available data about the accuracy and effectiveness of the system, including accuracy overall as well as accuracy for specific demographics; and, where possible, any specific device and system settings – such as similarity thresholds – that speak to how the operator is balancing accuracy, equity and security.
  - Benchmarking data against the operational results of the biometric system at other ports;

- An assessment of compliance with the Port’s Biometrics Principles, as well as CBP’s Biometric Air Exit Requirements, if relevant;
  - Feedback about the public’s experience, including whether travelers believe that they fully understand the information about the system;
  - Any available information on data sharing within the U.S. Department of Homeland Security, such as what data is requested and by whom, within the limitations of the Port to require this information from CBP, if relevant; and
  - Any known disclosure to a third party of an individuals’ biometric data without their consent, other than legitimately requested disclosure for a law enforcement activity or other disclosures described in Policy 8 above.
- This accountability report should be shared publicly through appropriate Port communications channels.

**Policy 10 – Port Advocacy Efforts:**

- The Port will advocate for state and federal laws and regulations that codify the goals of the Port’s biometric principles.

**Policy 11 – Port Outreach Efforts:**

- The Port will develop an engagement plan with local jurisdictions, nonprofit organizations, and others to educate local immigrant and refugee communities about any public-facing biometrics at Port facilities. Specifically, the Port should ensure that these communities are fully informed about the program, the technology and information pertaining to traveler rights – in multiple languages and in culturally appropriate ways.
- The Port will work with local jurisdictions, nonprofit organizations and others to inform local immigrant and refugee communities – in multiple languages and in culturally appropriate ways – about resources for sharing concerns about any incidents in which they do not feel they have been afforded their full legal rights and/or their treatment has not been fully respectful.

**III. PROCEDURES FOR NOTICE**

- The Port will inform employees about this policy by posting it online at: <http://compass.portseattle.org/corp/legal/Pages/PoliciesandProcedures.aspx#exec>
- The Port will train relevant Port employees and other associated corporate staff on this policy.
- The Port will communicate this policy directly to private sector tenants and federal agencies operating at Port facilities through existing communication channels.
- The Port will communicate this policy to all relevant external stakeholders, elected officials and impacted community organizations through existing communication channels.

The Executive Director will work with Port staff to develop any necessary rules and regulations as necessary to implement the policies set forth herein.

For further information contact [Eric Schinfeld](#).