October 23, 2012

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Office of Policy
U.S. Department of Homeland Security
Washington, DC 20528
FOIA Officer/Public Liaison: Traci Ballard
Re: Freedom of Information Act Request / Unmanned Aerial Vehicles

To Whom It May Concern:

I. Background

UAS, commonly referred to as drones, comprise both unmanned aerial vehicles (UAVs), flown either remotely or autonomously, and the corresponding control equipment required to operate the UAVs.¹ UAS are often used in combination with cameras, thermal imaging devices, and audio recording devices to capture and store information.² They can also use wireless radios to transmit information back to a base station, where it can be stored. Increasingly, UAS have been used on domestic law enforcement missions to capture images of United States residents.³

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¹ This document uses the term Unmanned Aerial Systems (UAS). This term is meant to encompass Unmanned Aerial Vehicles (UAVs), Unmanned Aircraft (UA), Remotely Operated Aircraft (ROA), and Remotely Piloted Vehicles (RPV).
While UAS have legitimate uses, such as wildfire support, search and rescue operations, and surveillance after a warrant has been obtained, they can pose a serious threat to Americans’ privacy when they are misused. Federal agencies are already using drones on law enforcement missions. They have also provided funds for local agencies to procure UAS, and have shared their UAVs with local agencies for law enforcement missions. As a result of the recently-enacted FAA Modernization and Reform Act of 2012, which will lead to a greater integration of UAS into the National Airspace System, federal agencies are likely to acquire and deploy drones in increasing numbers. As UAS begin to hover over more American towns and cities, they raise the prospect of pervasive and prolonged surveillance of Americans’ movements, a problem exacerbated when law enforcement agencies keep data about people not suspected of wrongdoing.

As federal agencies continue to fly drones for surveillance purposes, the ACLU is committed to advocating for a privacy framework that ensures drones are being utilized effectively without compromising privacy rights. This records request is aimed at determining the current use of UAS by this agency, and determining whether procedural protections are in place to ensure that UAS are used in accordance with the law.

115796764.html (discussing FAA approval for Mesa County, CO police department’s use of drones “anywhere in the country”).


5 See Brian Bennett, Drones tested as tools for police and firefighters, LOS ANGELES TIMES (Aug. 5, 2012), http://articles.latimes.com/2012/aug/05/nation/la-na-drones-testing-20120805 (“DHS has awarded hundreds of thousands of dollars in grants to at least 13 police departments to buy small surveillance drones.”).


7 FAA Act, supra note 3.

II. **Records Requested**

The ACLU seeks disclosure of the following records created from January 1, 2006 to the present from the Department of Homeland Security and all component agencies:

1. All records regarding your policies, practices and procedures for procuring and using UAS;\(^9\) for storing, accessing and sharing data obtained through UAS surveillance; and for funding the acquisition and use of UAS by other federal, state and local governmental agencies.

2. All records regarding the procurement of UAS by any government entities, including:
   a. sources of funds used to pay for UAS technology;
   b. requests for proposal issued for the purpose of procuring UAS;
   c. invoices for the purchase of UAS technology; and
   d. interactions with vendors, suppliers and potential suppliers of UAS technology, including materials and fact sheets supplied by vendors describing their products.

3. All records regarding any UAS accidents or other incidents, including:
   a. logbooks containing any records of UAS accidents or other incidents; and
   b. maintenance records related to repairs following accidents or other incidents.

4. All records regarding the use of UAS, including:
   a. flight records of all flights taken by any UAS in the United States that are owned or operated by this agency;
   b. what types of data are obtained;
   c. the surveillance devices used in conjunction with UAS; and
   d. the technical capabilities of the UAV units, including their data capture systems and any other payloads.

5. All records regarding the storage of data obtained using UAS, including:
   a. what types of data are stored for any period longer than an hour;
   b. how long data are stored;
   c. when data must be discarded;

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\(^9\) This records request uses the term Unmanned Aerial Systems (UAS). This term is meant to encompass Unmanned Aerial Vehicles (UAV), Unmanned Aircraft (UA), Remotely Operated Aircraft (ROA), and Remotely Piloted Vehicles (RPV).
d. how many images your agency currently stores;
e. the image resolution of all the images your agency currently
stores, including thermal imaging data;
f. how many hours of video footage your agency currently stores;
g. how many hours of sound recordings your agency currently
stores; and
h. what type of data, if any, your agency stores besides images, video, and sound recordings.

6. All records regarding access to UAS data, including:
   a. the legal justification required before an individual can access
      stored UAS data;
   b. purposes for which the data may be accessed;
   c. purposes for which the data may not be accessed;
   d. who may access the data, what procedures they must go
      through to obtain access, and who must authorize access; and
   e. the existence or non-existence of a system that records who
      accesses the data and when the data is accessed.

7. All records regarding the development or implementation of any
   federal UAS sharing system, by which other agencies can use your
   agency’s UAS, including any forms related to requests for UAS or
   access to UAS imagery or data.

8. All training materials used to instruct members of your agency in UAS
   deployment, operation, surveillance, or data management.

9. All records regarding your funding of the acquisition and use of UAS
   technology or data by other federal, state and local governmental
   entities, including:
   a. funding or grants to state or local agencies to purchase UAS or
      other unmanned aerial surveillance equipment or systems;
   b. funding figures broken down by recipient; and
   c. conditions recipients must fulfill in order to receive funding for
      UAS technology from your agency.

III. Limitation of Processing Fees

The ACLU requests a limitation of processing fees pursuant to 5
U.S.C. § 552(a)(4)(A)(ii)(II) ("Fees shall be limited to reasonable standard
charges for document duplication when records are not sought for commercial
use and the request is made by . . . a representative of the news media . . . .");
see also 6 C.F.R. § 5.11(d)(1). As a representative of the news media, the
ACLU fits within this statutory and regulatory mandate. Fees associated with
the processing of this request should, therefore, be limited accordingly.
The ACLU meets the definition of a representative of the news media because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” Nat’l Sec. Archive v. U.S. Dep’t of Def., 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee through its communications department and website. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The website specifically includes features on information obtained through the FOIA. For example, the ACLU’s “Accountability for Torture FOIA” webpage, http://www.aclu.org/torturefoia, contains commentary about the ACLU’s FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA. See Judicial Watch, Inc. v. U.S. Dep’t of Justice, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch to be a news-media requester because it posted documents obtained through FOIA on its website).

The ACLU publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. Cf. Elec. Privacy Info. Ctr. v. Dep’t of Def., 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements”).
The ACLU also regularly publishes books,10 "know your rights" publications,11 fact sheets,12 and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public. See Elec. Privacy Info. Ctr., 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties).

Depending on the results of this request, the ACLU plans to "disseminate the information" it receives "among the public" through these kinds of publications in these kinds of channels. The ACLU is therefore a news media entity.

Disclosure is not in the ACLU's commercial interest. The ACLU is a "non-profit, non-partisan, public interest organization." See Judicial Watch Inc. v. Rossotti, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation and internal quotations omitted)). Any information disclosed by the ACLU as a result of this FOIA will be available to the public at no cost.

IV. Waiver of All Costs

The ACLU additionally requests a waiver of all costs pursuant to 5
U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."); see also 6 C.F.R. § 5.11(k)(1)(i)-(iii).

The requested information will "contribute significantly to public understanding." Id. Disclosure of the requested information will help the American public better understand the tradeoffs between law enforcement needs and citizens' privacy. The public needs more information about the use of UAS so that it can play a meaningful role in determining how the balance should be struck. The public has already demonstrated a strong interest in learning more about UAS, as is apparent by the escalating amount of press coverage devoted to this issue. See, e.g., Some Fear Police Use of Drones, Poll Finds: Drones Equipped With Infrared Cameras and Information-Gathering Technology Could Raise Privacy Issues, Associated Press, Oct. 1, 2012; Joan Lowy, Privacy Worries on Domestic Drone Use, Associated Press, Sept. 29, 2012; Kevin Johnson, Police Chiefs Urge Limits On User of Drones, USA Today, Sept. 7, 2012; Ben Wolfgang, FAA Gets Pressed on Drone Test Sites, Wash. Post, Sept. 25, 2012.

As a nonprofit 501(c)(3) organization and "representative of the news media" as discussed in Section III, the ACLU is well-situated to disseminate information it gains from this request to the general public and to groups that protect constitutional rights. Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.13

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If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

13 For example, in June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006.
Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Catherine Crump  
American Civil Liberties Union Foundation  
125 Broad Street, 17th Floor  
New York, NY 10004

Sincerely,

/s/ Catherine Crump  
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