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 RAND PAUL KENTUCKY

United States Senate

WASHINGTON, DC 20510

June 20, 2013

Robert S. Mueller
Director
Federal Bureau of Investigation
U.S. Department of Justice
935 Pennsylvania Avenue, NW
Washington, DC 2055-0001

Dear Director Mueller,

During your appearance before the Senate Judiciary Committee on June 19, 2013, you confirmed that the Federal Bureau of Investigation (FBI) uses drones for the surveillance of American citizens. You also confirmed that the FBI is currently utilizing these surveillance tactics in the absence of any operational guidelines. I am disturbed by the revelation that the FBI has unilaterally decided to begin using drone surveillance technology without a governance policy, and thus without the requisite assurances that the constitutional rights of Americans are being protected.

As such, I am requesting your prompt answers to the below questions.

- 1) How long has the FBI been using drones without stated privacy protections or operational guidelines?
- 2) Why is the FBI only now beginning to develop guidelines for the use of drone surveillance?
- 3) Is the FBI working in consultation with Congress in developing operational guidelines for drone surveillance?
- 4) What measures do you intend to adopt to protect Fourth Amendment and privacy rights?
- 5) Will the FBI make publicly available all rules, procedures and operational guidelines for drone use?
- 6) Given that they have already been used, what has the FBI done with information already collected by drones? What are the rules governing storage of information collected via drone?
- 7) In what circumstances would the FBI elect to use drone surveillance? Does this surveillance require a warrant?
- 8) How many drones does the FBI possess? Is the FBI seeking to expand its inventory of drones?
- 9) Are these drones armed? Do they have the capacity to be armed? If so, what guidelines will be put in place regarding the arming of drones and the use of armed drones?
- 10) Is there ever a scenario you can envision where the FBI would seek to arm its drones?
- 11) Does the FBI currently prohibit federal grant funds under its jurisdiction from being used by recipionts to purchase drones?

In the future, I hope that your agency intends to be more forthcoming with information on its use of drone surveillance. I look forward to your comprehensive reply by July 1, 2013.

Sincerely,

Rand Paul, M.D.

United States Senator

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From:	
Sent:	_Wednesday, June 19, 2013 4:31 PM_
To:	
Subject:	FW: FBI use of UAV's
:	
Fyi – We sent this out to t	the media as a result of the many calls/emails we received.
From Sent: Wednesday June 1 To: Subject: FBI use of UAV'	
circumstances to sup Unmanned aerial vehi otherwise would be o	or stated, we have used surveillance aircraft in very limited operations where there was a specific operational need. Icles (UAV) allow us to learn critical information that difficult to obtain without introducing serious risk to law el. As an example, the FBI utilized a UAV at the crisis site
subjects. In each	utilized to conduct surveillance operations on stationary instance, the FBI must first obtain the approval of the FAA to a very confined geographic area.
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Unit Chief	
FBI National Press Office	
FBIHQ- Washington D.C.	
Office of Public Affairs	
desk	
cell	

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RAND PAUL

United States Senate

WASHINGTON, DC 20510
July 9, 2013

Robert S. Mueller
Director
Federal Bureau of Investigation
U.S. Department of Justice
935 Pennsylvania Avenue, NW
Washington, DC 2055-0001

Dear Director Mueller,

During testimony before Congress on June 19, 2013, you confirmed that the FBI does operate drone aircraft within the United States. Details on the purpose of these drones and the rules governing their use were not fully available at the time, though you seemed to indicate through your testimony that some details might be forthcoming.

Given that drone surveillance over American skies represents a potentially vast expansion of government surveillance powers without the constitutionally-guaranteed protection of a warrant, it is vital that the use of these drones by the FBI be fully examined in an open and transparent manner. The American people have a right to know the limits that the federal government operates under when using these drones, and whether further action by Congress is needed to protect the rights of innocent Americans.

On June 20, 2013, one day after your admission before Congress, I sent you a letter requesting specific details on the FBI's use of drones. I have included a copy of this letter for your reference. In the letter, I indicated that I would like a response to my questions by July 1, 2013, which was a very reasonable timeframe to produce a response to a limited number of questions. Unfortunately, I have not received any answers to my questions, and I have not been informed as to when I should expect a reply.

Legitimate questions on important government functions should not be ignored. These questions are easily answerable and primarily questions of fact, so I respectfully request again that you provide answers to these questions. As you know, the President has submitted the nomination of your successor to the Senate, the Senate Judiciary Committee has begun consideration of his nomination, and that nomination could be considered by the full Senate this month. Without adequate answers to my questions, I will object to the consideration of that nomination and ask my colleagues to do the same.

Thank you for your prompt attention to this matter, and I look forward to a reply very soon.

Sincerely,

Rand Paul, M.D. United States Senator

Attachment

Cc: The Honorable Barack Obama, President of the United States

Ce: The Honorable Eric Holder, Attorney General

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DATE 11-19-2013 BY NSICG F54M93K42

RAND PAUL

United States Senate

WASHINGTON, DC 20510 July 25, 2013

Robert S. Mueller Director Federal Bureau of Investigation U.S. Department of Justice 935 Pennsylvania Avenue, NW Washington, DC 20535-0001

Dear Director Mueller,

I appreciate the response I received to my questions (from my letter dated July 9, 2013) relating to the agency's use of drones, and also for your continued cooperation in communicating the rules and procedures that govern their use. Based on your reply, though, I did want to convey a follow-up question which I believe is important to the application of individual protections from warrantless government surveillance.

The FBI's unclassified response letter maintained that the Bureau would acquire a warrant before using a drone to acquire information when an individual has a reasonable expectation of privacy. While I agree that warrants should be used to approve information collection—including information collected through drone surveillance—this protection could be undercut by the Bureau's interpretation of what constitutes a "reasonable expectation of privacy."

Of note, the Bureau's response also mentions that "there has been no need" to seek a warrant or court order to use a drone in past examples. Instead of seeking court orders, the Bureau defers to an internal approval process it uses to protect privacy. Given that, first, the FBI will only seek a warrant if a reasonable expectation of privacy is assumed and, second, that the FBI has not felt it necessary to seek a warrant during past drone operations, it is important that you clarify your interpretation of when an individual is assumed to have a reasonable expectation of privacy. I am concerned that an overbroad interpretation of this protection would enable more substantial information collection on an individual in a circumstance they might not have believed was subject to surveillance.

For that reason, I ask that you provide me the Bureau's definition of when an individual has a reasonable expectation of privacy. I further ask that you provide me with copies of any guidance documents—including, but not limited to, educational and training material, field manuals, legal memorandum, etc.—used by the Bureau to define when a reasonable expectation of privacy would or would not be assumed in a given situation. Further, do those rules or interpretations differ by information collection platform? If so, please provide an explanation of the additional considerations when using drones.

Thank you for your prompt attention to my past questions, and I look forward to your reply.

Sincerely,

Rand Paul, M.D. United States Senator

Congress of the United States Washington, DC 20515

July 1, 2013

The Honorable Robert Mueller Director Federal Bureau of Investigation 935 Pennsylvania Ave., NW Washington, DC 20535

Dear Director Mueller:

On Jun. 19th, you testified before the Senate Judiciary Committee that the Federal Bureau of Investigation (FBI) used unmanned aerial systems (UAS – "drones") to conduct surveillance in the United States. You explained that the FBI has few UAS and that their use was limited, though you also stated that the FBI was still developing guidelines regarding the appropriate use of the UAS for domestic surveillance.

As the authors of the Preserving American Privacy Act (H.R. 637), we believe it is imperative to establish rules for the government's domestic use of UAS to ensure transparency, privacy protection, and restrictions on arming UAS. As you know, unmanned systems are a promising technology that can advance innovation, economic growth, and scientific research. However, existing laws and jurisprudence — outpaced by technology — provide very few meaningful limits on UAS surveillance of individuals out of the home. UAS can enable the government to conduct physical surveillance at a degree of intrusiveness that we believe to be inconsistent with Fourth Amendment principles. We further believe that widespread apprehension of improper government use of UAS domestically is hindering the UAS industry in its efforts to gain broad public and commercial acceptance.

Until your testimony, we were not aware that the FBI was already conducting domestic surveillance with UAS as part of the FBI's law enforcement practices, and that the FBI was doing so in the absence of clear protective guidelines. With regard to those guidelines, we urge the FBI to explicitly

- o Require that its officers obtain a warrant prior to using UAS to conduct domestic surveillance targeted at a particular individual suspected of criminal activity, absent an emergency:
- Require that its officers obtain a court order and provide public notice prior to using UAS to conduct domestic surveillance in the absence of particularized suspicion; and

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o Forbid the domestic use of UAS armed with lethal weapons.

In addition, we respectfully request that you provide us with written answers to the following questions as soon as possible. To the extent that the information we seek is classified, please provide us with a general summary — otherwise, please be as specific as possible.

- o Does the FBI envision incorporating UAS into its future law enforcement practices in the interior rather than the border of the United States?
- At what stage of development are the FBI domestic UAS guidelines? With which agencies and departments is the FBI collaborating in the development of its domestic UAS guidelines? Does the FBI intend to make its domestic UAS guidelines publicly available?
- o Is the FBI considering UAS surveillance over a wide area for general crime prevention and security, in absence of particularized suspicion? Does the FBI support a requirement that it obtains a court order and provide public notice in such circumstances?
- o Does the FBI support a warrant requirement to use UAS to target specific individuals outside of the home in non-emergency circumstances?
- o Is the FBI considering the domestic use of UAS armed with lethal or non-lethal weapons? Does the FBI support a blanket prohibition on arming non-military UAS with lethal weapons?
- o In what specific instances has the FBI used UAS for domestic surveillance? What general class of information was gathered in those instances? Did the information contribute to an indictment or conviction? Was information related to individuals not suspected of criminal activity also collected? How long was this information retained?

Thank you for your attention to this matter.

Sincerely,

Zoe Lofgren

Member of Congress

Ted Poe

Member of Congress



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 29, 2013

Honorable Rand Paul, M.D. United States Senate Washington, D.C. 20510

Dear Senator Paul:

This responds to your follow-up letter to the Federal Bureau of Investigation (FBI) dated July 25, 2013, requesting additional information regarding the FBI's definition of a reasonable expectation of privacy, particularly as it relates to Unmanned Aerial Vehicles (UAVs). This letter supplements our July 19, 2013 response to your earlier inquiry about the FBI's use of UAVs.

As noted in our July 19th response, the FBI uses UAVs in very limited circumstances to conduct surveillance when there is a specific, operational need. Since 2006, the FBI has only used UAVs in cases for surveillance to support missions

Further, the FBI does not, and has no plans to use UAVs to conduct general surveillance not related to a specific investigation or assessment. In addition, all proposals for the use of UAVs are (1) reviewed by legal counsel to ensure their use does not infringe on a person's reasonable expectation of privacy under the Fourth Amendment; (2) authorized by the Federal Aviation Administration (FAA) under its rules; and (3) operated consistent with the FBI's policies and procedures.

All FBI agents are trained on the Supreme Court's interpretations of a reasonable expectation of privacy under the Fourth Amendment, and on the circumstances where the FBI would be required to seek a warrant during an investigation. These principles apply to all of our investigations and any collection of information, regardless of the technical platform. Moreover, these principles are set forth in several sections of the FBI's Domestic Intelligence and Operations Guide ("DIOG"), which are used for training and apply to all FBI agents. *See, e.g.,* DIOG §§ 18.5.8., 18.6.12, 18.7.1. Any investigation using UAVs must comply with the Fourth Amendment and the DIOG, which includes the definition of a reasonable expectation of privacy provided by the Supreme Court.

While there are no reported cases specifically involving UAVs, the Supreme Court has analyzed the Fourth Amendment implications of manned aerial surveillance in three cases: California v. Ciraolo, 476 U.S. 207 (1986), Dow Chemical Co. v. United States, 476 U.S. 227 (1986), and Florida v. Riley, 488 U.S. 445 (1989). In these three cases, the Court held that

aerial surveillance was not a search under the Fourth Amendment requiring a warrant because the areas observed were open to public view and, as a matter of law, there was no reasonable expectation of privacy. The Fourth Amendment principles applicable to manned aerial surveillance discussed in these cases apply equally to UAVs. Also, in *United States v. Jones*, 132 S. Ct. 945 (2012), the Supreme Court added an additional factor to consider when determining whether a search implicates the Fourth Amendment: whether the Government will obtain information by physically intruding on a protected property interest. With respect to UAVs, there is no physical trespass involved in their use, and a warrant would not be required under this standard. The concurring opinions in *Jones* suggests that long-term warrantless surveillance of a person, while the person is in public, may constitute a search under the Fourth Amendment, even without a trespass. We do not use UAVs to undertake such surveillance. However, the FBI remains cognizant of potential post-*Jones* concerns about using UAVs to conduct long-term surveillance, and all uses of UAVs by the FBI are reviewed to be consistent with the Supreme Court's *Jones* decision.

We hope this additional information is helpful. If you have any additional questions concerning this or other matters, please contact the Office of Congressional Affairs at (202) 324-5051.

Sincerely,

Stephen D. Kelly Assistant Director

Office of Congressional Affairs



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535 July 19, 2013

Honorable Zoc Lofgren Committee on the Judiciary U.S. House of Representatives Washington, DC 20515

Honorable Ted Poe Committee on the Judiciary U.S House of Representatives Washington, DC 20515

Dear Representatives Lofgren and Poe:

This is in response to your letter to the FBI dated July 1, 2013, seeking information concerning the FBI's use of unmanned aerial vehicles (UAVs) for surveillance purposes.

The FBI uses UAVs in very limited circumstances to conduct surveillance when
there is a specific, operational need. UAVs have been used for surveillance to support
missions
Since late 2006, the FBI has conducted surveillance using UAVs
in criminal cases
The FBI does not use UAVs to
conduct "bulk" surveillance or to conduct general surveillance not related to an investigation or assessment.

The FBI only conducts UAV surveillance consistent with our rules and regulation for conducting aerial surveillance in our investigations, as well as specific rules and regulations applicable to the use of UAVs for surveillance. Specifically, the FBI's use of UAVs for surveillance is governed by laws and policies including the Fourth Amendment of the United States Constitution, the Privacy Act, Federal Aviation Administration (FAA) rules and regulations, the Attorney General Guidelines for Domestic FBI Operations, the FBI's Domestic Investigations and Operations Guide (DIOG), and the FBI's 2011 Bureau Aviation Regulations Manual, which has specific policies for the use

The FBI authorized UAVs for surveillance in		other criminal cases, but the	ney were not actually used
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Honorable Joe Lofgren and Honorable Ted Poe

of UAVs for aerial surveillance. For example, the FBI must obtain a Certificate of Authorization from the FAA prior to using UAVs for surveillance, and comply with the FAA's guidelines on the use of UAVs in the national airspace (this includes significant limits on the area and altitude where UAVs can be operated). See FAA Interim Operational Approval Guidance, UAS Policy 05-01, "Unmanned Aircraft Systems: Operations in the U.S. National Airspace System" (2008).

In addition, every request to use UAVs for surveillance is reviewed by FBI legal counsel to ensure there are not potential Fourth Amendment or privacy concerns implicated by the proposed use of UAVs. Every request to use UAVs for surveillance must be approved by senior FBI management at FBI Headquarters and in the relevant FBI Field Office. Without a warrant, the FBI will not use UAVs to acquire information in which individuals have a reasonable expectation of privacy under the Fourth Amendment. To date, there has been no need for the FBI to seek a search warrant or judicial order in any of the few cases where UAVs have been used.

While we share your interest in transparency concerning the use of law enforcement and national security tools, we are not in a position to disclose publicly more detailed information concerning the Bureau's specific use of UAVs. Such additional information is "Law Enforcement Sensitive" or, in some cases, classified, based on the need to protect the effectiveness of this capability in law enforcement and national security matters. We have enclosed a classified addendum that provides more detailed information in response to your inquiry. We request that you not disseminate the information in the addendum without prior consultation with the FBI.

We appreciate your interest in this issue and trust this information is responsive to your inquiry. If you have additional questions concerning this or other matters, please contact the Office of Congressional Affairs at (202) 324-5051.

Sincerely,

Stephen D. Kelly Assistant Director

Office of Congressional Affairs

Enclosure



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535 July 19, 2013

Honorable Rand Paul, M.D. United States Senate Washington, DC 20510

Dear Senator Paul:

This is in response to your letters to the Federal Bureau of Investigation dated June 20 and July 9, 2013, seeking information concerning the FBI's use of unmanned aerial vehicles (UAVs) for surveillance purposes.

The FBI uses UAVs in very limited circumstances to conduct surveillance when there specific, operational need. UAVs have been used for surveillance to support missions	
Sin	ce
late 2006, the FBI has conducted surveillance using UAVs in criminal cases	

The FBI does not use UAVs to conduct "bulk" surveillance or to conduct general surveillance not related to an investigation or assessment.

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The FBI authorized UAVs for surveillance in other ca	criminal cases, but they were not actually used.
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Honorable Rand Paul, M.D.

FBI management at FBI Headquarters and in the relevant FBI Field Office. Without a warrant, the FBI will not use UAVs to acquire information in which individuals have a reasonable expectation of privacy under the Fourth Amendment. To date, there has been no need for the FBI to seek a search warrant or judicial order in any of the few cases where UAVs have been used.

While we share your interest in transparency concerning the use of law enforcement and national security tools, we are not in a position to disclose publicly more detailed information concerning the Bureau's specific use of UAVs. Such additional information is "Law Enforcement Sensitive" or, in some cases, classified, based on the need to protect the effectiveness of this capability in law enforcement and national security matters. We have enclosed a classified addendum that provides more detailed information in response to your inquiry. We request that you not disseminate the information in the addendum without prior consultation with the FBI.

We appreciate your interest in this issue and trust this information is responsive to your inquiry. If you have additional questions concerning this or other matters, please contact the Office of Congressional Affairs at (202) 324-5051.

Sincerely

Stephen D. Kelfy Assistant Director

Office of Congressional Affairs

Enclosure

From: Sent: To: Cc: Subject:	Bean, W L Scott Thursday, July 11, 2013 4:16 PM Kelly, Stephen Re: FAA info
I was looking at the same publication.	information last night. I am good with referring to the exact language in the FAA
Scott W.L. Scott Bean, III Chief, Technical Surveillar Operational Technology D Desk Cell -	
From: Kelly, Stephen To: Bean, W L Scott Cc: Sent: Thu Jul 11 16:12:1 Subject: FW: FAA info	3 2013
Scott -	
These appear to be public to refer to them, to give f said, it is clear in these do	ou are familiar with the guidance from FAA that found at the link below? and it may be helpful (though I suspect we operate under certain exceptions) tolks comfort that we're operating under clear, public guidelines. That being occuments that there are significant limits on the use of UAVs as a result of the and this guidance indicates that generally means a limiting distance of 1
Please let me know your	thoughts, and thanks for finding this.
- Stephen	
Stephen D. Kelly Assistant Director Office of Congressional A Federal Bureau of Investi (202) 324-5051	
From: Sent: Thursday, July 11, To: Kelly, Stephen Subject: FAA info	2013 4:04 PM

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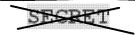
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REASON: 1.4 (c)

DECLASSIFY ON: 11-19-2038

		DATE: 11-19-2013
	(RMD)(FBI)	L L
Sent: Subject:	Tuesday, July 09, 2013 9:44 AM FW: FBI Unmanned Aerial Vehicle (UAV) Progr	
Classification	n: SERRET//NOFORN	
Classified By Derived From: Declassify On	Multiple Sources	
FYI		======
From: HESS, AMY S (Sent: Friday, July 05, To: FBI_ADs and EAD Subject: FBI Unmani	• • •	RN
Classification	n: SECRET//NOFORN	
Classified By Derived From Declassify On	Multiple Sources	
TRANSITORY RE	e=====================================	
shown increased i small fleet of UAVs as a developmen	e past several months, both the media and C interest in the FBI's utilization of Unmanned A s currently managed and maintained by the t effort within the Technical Surveillance Sect deployed UAVs on a handful of	erial Vehicles (UAVs). The FBI has a Operational Technology Division (OTD)
the sensitivity of sp	recent interest in UAVs, OTD and CIRG are poecific information regarding the FBI UAV proconsidered UNCLASSIFIED//FOR OFFICIAL US	gram. Generally, utilization of UAVs in
from your law enfo	Please keep these classification designations orcement partners, other liaison contacts, ar	in mind when responding to inquiries
		l b

(U//FOUO/LES)

(S)

OTD and CIRG are currently coordinating responses to inquiries from

Capitol Hill about the FBI's UAV program. If you receive direct communication from your local Senator or Representative, please coordinate through the Office of Congressional Affairs on any proposed response.



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(U//FOUO/LES)				

(U//FOUO) Any public inquiries on the FBI's use of UAVs should be directed to the National Press Office of OPA at 202-324-3691. The National Press Office has previously provided the following public response which may be used by authorized personnel for general response to an inquiry only:

"We have used surveillance aircraft in very limited circumstances to support operations where there was a specific operational need. Unmanned aerial vehicles (UAVs) allow us to learn critical information that otherwise would be difficult to obtain without introducing serious risk to law enforcement personnel. As an example, the FBI utilized a UAV at the crisis site during the Jimmy Lee Dykes hostage barricade situation in Alabama earlier this year.

"FBI's UAVs are only utilized to conduct surveillance operations on stationary subjects. In each instance, the FBI must first obtain the approval of the FAA to use the aircraft in a very confined geographic area."

(U//FOUO/LES) In the coming months, program management of the operational UAV fleet will transition from OTD to CIRG. Once the transition has been completed, divisions should consider UAVs as a resource to support their surveillance needs, integrated as part of CIRG's Surveillance and Aviation Section assets. All requests for UAV operations will come through the Aviation Coordinator to their Program Manager at FFOU. A separate notification will be sent when the program management transition to CIRG has been finalized. When the transition is finalized, the Aviation Policy Guide will reflect any new policies governing the use of UAVs.

(U//FOUO/LES) If you have specific questions or if you would like to receive additional information about the FBI UAV program, please contact Section Chief Scott Bean, Technical Surveillance Section, OTD, at (desk) or (cell).
V/R
Amy Hess (OTD) CIRG)
Classification: SECRET//NOFORN
Classification: SECRET//NOFORN
<u> </u>
Records Management Division
Record/Information Dissemination Section
Legal Administrative Specialist
FBI-HQ, <u>Winc</u> hester

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