



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 10 cases for surveillance to support missions related to kidnappings, search and rescue operations, drug interdictions, and fugitive investigations, including earlier this year in Alabama in the successful rescue of a 5-year-old child being held hostage in an underground bunker by Jimmy Lee Dykes. 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

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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