



June 20, 2012

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VIA CERTIFIED MAIL

U.S. Customs and Border Protection  
 FOIA Division  
 799 9<sup>th</sup> Street NW, Mint Annex  
 Washington, DC 20229-1181

RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Customs and Border Protection Bureau ("CBP").

EPIC seeks documents concerning the CBP's use of drones within the United States. EPIC is a public interest research center that focuses on emerging privacy and civil liberties issues, including government's use of surveillance technologies.<sup>1</sup>

Background: Customs and Border Protection Bureau

The CBP bought its first drone aircraft in 2005.<sup>2</sup> As of May 2012, the CBP operates ten drones, costing approximately \$18 million each, and has expended an additional \$55.3 million for maintenance and operations.<sup>3</sup> The CBP's unmanned aircraft systems operate under several FAA-approved COAs that enable CBP to deploy drones in the national airspace.<sup>4</sup> Reports indicate that by 2016, the CBP plans to control up to twenty-four drones, with the ability to deploy a drone anywhere in the continental U.S. within three hours.<sup>5</sup>

<sup>1</sup> See, e.g., *Video Surveillance*, ELEC. PRIVACY. INFO. CTR. (last visited 24, 2011), <http://epic.org/privacy/surveillance/>; *USA PATRIOT ACT*, ELEC. PRIVACY INFO. CTR. (last visited Jan. 24, 2011), <http://epic.org/privacy/terrorism/usapatriot/>.

<sup>2</sup> *UAS Overview*, U.S. CUSTOMS AND BORDER PROTECTION (last visited Jan. 13, 2012), [http://cbp.gov/xp/cgov/border\\_security/air\\_marine/uas\\_program/uasoverview.xml](http://cbp.gov/xp/cgov/border_security/air_marine/uas_program/uasoverview.xml).

<sup>3</sup> OFFICE OF THE INSPECTOR GEN., DEP'T HOMELAND SECURITY, OIG-12-85, *CBPs Use of Unmanned Aircraft Systems in the Nation's Border Security* (May 2012), available at [http://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-85\\_May12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-85_May12.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> William Booth, *More Predator Drones Fly U.S.-Mexico Border*, WASH. POST (Dec. 21, 2011), available at [http://www.washingtonpost.com/world/more-predator-drones-fly-us-mexico-border/2011/12/01/gIQANSZz80\\_story.html](http://www.washingtonpost.com/world/more-predator-drones-fly-us-mexico-border/2011/12/01/gIQANSZz80_story.html). According to the Office of Inspector General, the CBP "needs to improve planning of its unmanned aircraft systems program to address its level of operation, program funding, and resource requirements, along with stakeholder needs." *Supra* note 3 at 1.

Drones greatly increase the capacity for domestic surveillance.<sup>6</sup> Gigapixel cameras used to outfit drones are among the highest definition cameras available, and can “provide real-time video streams at a rate of 10 frames a second.”<sup>7</sup> On some drones, operators can track up to 65 different targets across a distance of 65 square miles.<sup>8</sup> Drones may also carry infrared cameras, heat sensors, GPS, sensors that detect movement, and automated license plate readers.<sup>9</sup> In the near future these cameras may include facial recognition technology that would make it possible to remotely identify individuals in parks, schools, and at political gatherings.<sup>10</sup>

Drones present a unique threat to privacy. They are designed to undertake constant, persistent surveillance to a degree that former methods of aerial surveillance were unable to achieve.<sup>11</sup> Also, “by virtue of their design, their size, and how they can fly, [drones] can operate undetected in urban and rural environments.”<sup>12</sup>

The “Predator” drone purchased by CBP is equipped with reconnaissance equipment and weapons to provide persistent intelligence gathering, surveillance, and reconnaissance capability.<sup>13</sup> It is designed to perform over-the-horizon, long-endurance, medium-altitude surveillance, reconnaissance, and weapons delivery on mission endurance of up to 40 hours.<sup>14</sup>

The Officer of Inspector General has reported that the CBP has flown drones for other federal agencies including, the Department of Defence, Federal Bureau of Investigation, and the Department of Homeland Security agencies, including Officer of Border Patrol and the Federal Emergency Management Agency.<sup>15</sup>

Many details about the CBP’s operation of drones and the capabilities of drones themselves remain secret. Accordingly, EPIC requests copies of the following six (6) categories of records:

1. All technical specifications, contracts and statements of work for drones purchased by CBP including but not limited to contracts with General Atomics, Honeywell, Raytheon and Aerovironment; and

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<sup>6</sup> See Jay Stanley and Catherine Crump, *Protecting Privacy From Aerial Surveillance: Recommendations for Government Use of Drone Aircraft 4-6, 10-13* (American Civil Liberties Union 2011), available at [http://www.aclu.org/files/assets/protectingprivacyfrom\\_aerialsurveillance.pdf](http://www.aclu.org/files/assets/protectingprivacyfrom_aerialsurveillance.pdf).

<sup>7</sup> *US Army Unveils 1.8 Gigapixel Camera Helicopter Drone*, BBC News Technology (Dec. 29, 2011, 1:11 PM), <http://www.bbc.co.uk/news/technology-16358851>.

<sup>8</sup> *Id.*

<sup>9</sup> Customs and Border Protection Today, *Unmanned Aerial Vehicles Support Border Security* (July/Aug. 2004), available at [http://www.cbp.gov/xp/Customs Today/2004/Aug/other/aerial\\_vehicles.xml](http://www.cbp.gov/xp/Customs Today/2004/Aug/other/aerial_vehicles.xml).

<sup>10</sup> Clay Dillow, *Army Developing Drones that Can Recognize Your Face From a Distance*, PopSci (Sept. 28, 2011, 4:01 PM), <http://www.popsci.com/technology/article/2011-09/army-wants-drone-can-recognize-your-face-and-read-your-mind>.

<sup>11</sup> See Noel McKeegan, *Raven UAV Demonstrates 30-hour Persistent Surveillance*, GizMag (Apr. 2, 2009, 6:35 AM), <http://www.gizmag.com/raven-uav-demonstrates-30-hour-persistent-surveillance/11385/>.

<sup>12</sup> Jennifer Lynch, *Are Drones Watching You*, Electronic Frontier Foundation (Jan. 10, 2012), available at <https://www.eff.org/deeplinks/2012/01/drones-are-watching-you>.

<sup>13</sup> *RQ-1A/MQ-1 Predator UAV*, DEFENSE UPDATE, (last visited June 21, 2012), available at <http://defense-update.com/products/p/predator.htm#users>.

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 3 at 6.

2. All instructions, policies, and procedures concerning the use of drones to collect, obscure, degrade, store, transmit, reproduce, retain, or delete images and sounds; and
3. All documents detailing the technical specifications of surveillance hardware on drones, including any limitations on image capture, storage, or copying; and
4. All images obtained by over flights of private property by drones; and
5. All contracts and statements of work entered into by CBP for [drone] hardware, software, or training that concerns the ability for drones to collect, obscure, degrade, store, transmit, reproduce, retain, or delete images or sounds; and
6. All contracts, partnership agreements, and communications between CBP and government agencies regarding the use of CBP drones.

#### Request for “News Media” Fee Status

EPIC is a “representative of the news media” for FOIA purposes.<sup>16</sup> Based on our status as a “news media” requester, we are entitled to receive the requested records with only duplication fees assessed.<sup>17</sup> Further, consistent with federal regulations, any duplication fees should be waived because disclosure of the records requested herein “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government,” and “disclosure of the information ‘is not primarily in the commercial interest of [EPIC]’”.<sup>18</sup>

This FOIA request involves information surveillance program operated by CBP. Responsive documents will hold a great informative value regarding activities of the Bureau that will have a significant public impact.

EPIC routinely and systematically disseminates information to the public. EPIC maintains several heavily visited websites that highlight breaking news concerning privacy and civil liberties. Two of EPIC’s websites, EPIC.org and PRIVACY.org, consistently appear at the top of search engine rankings for searches on “privacy.” EPIC also publishes a bi-weekly electronic newsletter, the EPIC Alert, which is distributed to around 20,000 readers, many who report on technology and privacy issues for major news outlets.<sup>19</sup>

In addition, EPIC’s FOIA documents have routinely been the subject of national news coverage. On a related matter, EPIC submitted a FOIA request to DHS for documents

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<sup>16</sup> *EPIC v. Department of Defense*, 241 F.Supp.2d 5 (D.D.C. 2003).

<sup>17</sup> 6 C.F.R. § 5.11(c)(1)(i) (2011).

<sup>18</sup> *Id.* at (k)(1).

<sup>19</sup> See EPIC: EPIC Alert, <http://epic.org/alert/> (last visited Mar. 14, 2012).

concerning the Department's development of mobile body scanner and crowd surveillance technology.<sup>20</sup> The documents detailed the Department's use of equipment to scan crowds and pedestrians on the street.<sup>21</sup> EPIC was able to disseminate those documents to the public at large, which resulted in numerous news stories.<sup>22</sup>

EPIC is a non-profit, public interest research center that was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.<sup>23</sup> EPIC's work is distributed freely through our website and through the bi-weekly EPIC Alert newsletter. EPIC has no clients, no customers, and no shareholders. Therefore, EPIC has no commercial interest that would be furthered by disclosing the requested records.

### Requested for Expedited Processing

This request warrants expedited processing because it is made by "a person primarily engaged in disseminating information..." and it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal government activity."<sup>24</sup>

EPIC is "primarily engaged in disseminating information."<sup>25</sup>

There is a particular urgency for the public to obtain information about the CBP's projected use drones. Approximately, 7,500 people have already been detained as a direct result of drone surveillance.<sup>26</sup>

In addition recent reports have demonstrated that CBP drones are no longer being restrained to border surveillance, and are also being used to assist in investigations performed by local law enforcement within the U.S.<sup>27</sup>

Thank you for your consideration of this request. As provided in 6 C.F.R § 5.5(d)(4), I will anticipate your determination on our request for expedited processing with ten calendar (10) days.

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<sup>20</sup> See EPIC: EPIC Demands Documents from DHS about Mobile Body Scanners, Use of Devices at Trains Stations and Stadiums, <http://epic.org/2010/11/epic-demands-documents-from-dh.html> (last visited Mar. 23, 2012).

<sup>21</sup> EPIC: FOIA documents disclosed by DHS in response to EPIC v. DHS, No. 11-0945 (D.D.C. filed May 20, 2011), available at [http://epic.org/privacy/body\\_scanners/Mobile\\_Body\\_Scanner\\_FOIA\\_Aug\\_2011.pdf](http://epic.org/privacy/body_scanners/Mobile_Body_Scanner_FOIA_Aug_2011.pdf).

<sup>22</sup> See, e.g., Thomas Frank, *Homeland Security Looked into Covert Body Scans*, USA Today (Mar. 4, 2012, 2:22 AM), [http://www.usatoday.com/news/washington/2011-03-04-bodyscans04\\_ST\\_N.htm](http://www.usatoday.com/news/washington/2011-03-04-bodyscans04_ST_N.htm); Jaikumar Vijayan, *DHS Seeks System for Covert Body Scans, Documents Show*, ComputerWorld (Mar. 2, 2011, 3:44 PM), [http://www.computerworld.com/s/article/9212681/DHS\\_seeks\\_systems\\_for\\_covert\\_body\\_scans\\_documents\\_show](http://www.computerworld.com/s/article/9212681/DHS_seeks_systems_for_covert_body_scans_documents_show); Samantha Murphy, *TSA Aimed to Put Body Scanners in Public Places*, the Christian Science Monitor (Mar. 4, 2011), <http://www.csmonitor.com/Business/2011/0304/TSA-aimed-to-put-body-scanners-in-public-places>.

<sup>23</sup> EPIC: About EPIC, <http://epic.org/epic/about.html> (last visited Mar. 20, 2012).

<sup>24</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

<sup>25</sup> *American Civil Liberties Union v. Department*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

<sup>26</sup> See U.S. CUSTOMS & BORDER PROT., *Unmanned Aircraft System MQ-9 Predator B Fact Sheet* (Jan. 24, 2011), available at [http://www.cbp.gov/linkhandler/cgov/newsroom/fact\\_sheets/marine/uas.ctt/uas.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/marine/uas.ctt/uas.pdf).

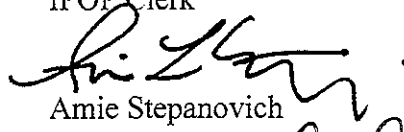
<sup>27</sup> Brian Bennett, *Police Employ Predator Drone Spy Planes on Home Front*, LOS ANGELES TIMES (Dec. 10, 2011, 6:12 PM), <http://www.latimes.com/news/nationworld/nation/la-na-drone-arrest-20111211.0.324348.story>.

Sincerely,



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IPOP Clerk



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