



BY EMAIL

Email: 7-AWA-ARC-FOIA@faa.gov

July 20, 2016

Duke Taylor
FOIA Coordinator
National Freedom of Information Act Office, AFN-140
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Dear Dr. Taylor:

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 Federal Aviation Administration (“FAA”).

EPIC seeks agency documentation related to the FAA’s completion of the unmanned aerial systems (“UAS”) privacy study as mandated by Congress in the 2014 Consolidated Appropriations Act.

Documents Requested

- (1) The study on the implications of UAS integration into the national airspace on individual privacy, as mandated by the House and Senate Committees on Appropriations (the “Study”);
- (2) All records pertaining to the FAA’s efforts to complete the Study including, but not limited to emails, memoranda, and progress reports;

Background

In the Explanatory Statement appended to the Consolidated Appropriations Act of 2014 (H.R. 3547), Congress recognized that “expanded use of UAS and their integration into the national airspace raise a host of concerns with respect to the privacy of individuals.” Mindful that the FAA plays a “unique role” in civil aviation, Congress

called for the agency to conduct a study on the implications of UAS integration into the national airspace on individual privacy.”¹

An Explanatory Statement is published to indicate Congressional intent for the appropriated funds in the bill, and is agreed to by both the House and Senate.² The statement on the Consolidated Appropriations Act was inserted by Rep. Rogers, Chairman of the House Committee on Appropriations. The bill passed both Houses, and the President signed it into law on January 17, 2014.³

The provision required that the FAA’s Study should

address the application of existing privacy law to UAS integration; identify gaps in existing law, especially with regard to the use and retention of personally identifiable information and imagery; and recommend next steps for how the FAA can address the impact of widespread use of UAS on individual privacy as it prepares to facilitate the integration of UAS into the national airspace.⁴

Congress ordered the FAA to submit the Study to the House and Senate Committees on Appropriations “no later than eighteen months after enactment [of the Consolidated Appropriations Act],” and “well in advance of the FAA’s schedule for developing final regulations on the integration of UAS into the national airspace.”⁵ This means that the agency was to have submitted the Study by July 15, 2015.

This congressional directive for a privacy Study was referenced in a 2014 Audit Report by the Department of Transportation Office of Inspector General, wherein the agency was reported as blaming its rulemaking delays principally on “privacy concerns.”⁶

¹ Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 3547, Consolidated Appropriations Act, 2014, 160 CONG. REC. H475, H1186–87 (daily ed. Jan. 14, 2014), 160 Cong Rec H 475, at *H1186–87 (LEXIS), *available at* <https://www.congress.gov/congressional-record/2014/01/15/house-section/article/H475-2>.

² See Christopher M. Davis, Cong. Research Serv., *Conference Reports and Joint Explanatory Statements*, (June 11, 2015), *available at* http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%26*2%3C4P%3C%3B9%0A.

³ Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, 128 Stat. 5 (Jan. 17, 2014).

⁴ Explanatory Statement at H1186.

⁵ *Id.*

⁶ Office of Inspector General, Department of Transportation, *Audit Report* (June 26, 2014), *available at* <https://www.oig.dot.gov/sites/default/files/FAA%20Oversight%20of%20Unmanned%20Aircraft%20Systems%5E6-26-14.pdf> (“In the fiscal year 2014 Omnibus Appropriations Act, Congress directed FAA to conduct a study of the impact of UAS integration on individual privacy and submit a report on its findings.”).

EPIC requests the Study, any and all documentation related to the FAA’s efforts to complete the Study.

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.⁷ Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed.⁸

Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication fees should be waived.⁹ According to the agency’s regulations, a fee waiver should be granted because (i) the subject of the request concerns “the operations or activities of the Federal government”; (ii) disclosure is “likely to contribute” to an understanding of Federal government operations or activities; (iii) the disclosure “will contribute to the understanding of the public at large,” as EPIC has the “intent and ability to disseminate the requested information to a reasonably broad audience of persons interested in the subject”; (iv) the “contribution to public understanding of Federal Government operations or activities will be significant”; and (v) EPIC does not have a “commercial interest” that would be furthered by the requested disclosure, nor is the magnitude of any “identified commercial interest” sufficiently large compared to EPIC’s interest in disclosure “to render the disclosure one that is primarily in the commercial interest” of EPIC.¹⁰

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I will anticipate your determination on our request within ten business days. For questions regarding this request I can be contacted at 202-483-1140 x104 or FOIA@epic.org.

Respectfully Submitted,

Ari Lipsitz
EPIC Internet Public Opportunities Clerk

John Tran
EPIC FOIA Counsel
Coordinator, Open Government Project

⁷ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁹ § 552(a)(4)(A)(iii).

¹⁰ *See* 49 C.F.R. § 7.43(c).