



BY FAX
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November 6, 2015

Kathy Ray
Office of the Secretary
Departmental FOIA Office
U.S. Department of Transportation
1200 New Jersey, SE, W94-122
Washington, D.C. 20590

Dear Ms. Ray:

This letter constitutes a request under the Freedom of Information Act (FOIA), 5 U.S.C. §552, 49 C.F.R. § 7, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Department of Transportation (“DOT”).

EPIC seeks documents pertaining to DOT’s Unmanned Aircraft System (“UAS”) Registration Task Force (the “Task Force”) meetings on November 3, 2015 through November 5, 2015.

Document Requested

1. All documents related to the November 3–5, 2015 Task Force meeting, including, but not limited to, meeting minutes, paper or electronic handouts, and presentations.

Background

On October 19, 2015, DOT Secretary Anthony Foxx and FAA Administrator Michael Huerta announced the “creation of a task force to develop recommendations for a registration process” for UAS.¹ The Task Force will “advise the Department on which aircraft should be exempt from registration due to a low safety risk” and “explore options for a streamlined system that would make registration less burdensome for commercial UAS operators.”² According to Secretary Foxx, the proposed registration requirement will facilitate safer UAS operations by increasing operator accountability.

¹ DOT Drone Registration Announcement.

² *Id.*

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On October 29, 2015, Administrator Huerta released a full list of stakeholders invited to participate in the Task Force,” which purportedly represent “a range of stakeholder viewpoints, interests, and knowledge of the objectives and scope” of the project.³ Along with DOT and FAA, a number of federal agencies will be providing “expert support” to the Task Force, including the Department of Commerce, Department of Defense, Department of Homeland Security, Department of the Interior, Office of Management and Budget, National Aeronautics and Space Administration, and the Department of State.⁴

According to a press release,⁵ the Task Force met formally from Nov. 3–5 before developing the recommendations and minimum requirements on which unmanned aircraft should be registered. Secretary Foxx directed the Task Force to deliver its report by November 20, 2015,⁶ further stating, “Given the urgency of this issue, the DOT and FAA will move expeditiously to consider the Task Force’s recommendations.”⁷

Expedited Processing

This request warrants expedited processing because (1) it is made by “a person primarily engaged in disseminating information” and (2) it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.”⁸

EPIC is “primarily engaged in disseminating information.”⁹

There is an “urgency to inform the public” about the substance of the Task Force’s Nov. 3-5 meetings first, because of the ongoing privacy concerns attached to ubiquitous drone use, and second, because the Task Force has, to date, only two weeks to develop its position on the registration requirement before the November 20, 2015 deadline.

Given this short deadline, the public has even less time to understand and comment on the entities responsible for drafting registration recommendations that will be applied nationally. It is urgent, therefore, that the public is afforded a reasonable opportunity to participate in the discourse surrounding, and ultimately informing the Task Force’s final report and recommendations.

³ FAA Press Release, *Huerta Announces UAS Registration Task Force Members* (Oct. 29, 2015), <https://www.faa.gov/news/updates/?newsId=84125>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See DOT Drone Registration Announcement, *supra* note 1.

⁸ 5 U.S.C. § 552(a)(6)(E)(v)(II); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001); 49 C.F.R. § 7.31(c)(1)(ii)

⁹ *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (“[T]he Court concludes that EPIC is indeed ‘primarily engaged in disseminating information’ for the purposes of expediting the request.”).

Additionally, there are ongoing concerns about how drones affect the privacy rights of the average citizen and how a reasonable expectation of privacy can be hindered by the presence of drones. Congress, the President, and an increasing number of states have all recognized the need for substantial privacy protections to accompany increased drone usage.¹⁰ Drones have been implicated in several privacy scares in the past two years,¹¹ and citizens are increasingly discussing how they can protect themselves from unwanted drone surveillance.¹²

Given the very real concerns on the part of the American public about drones and the threats they potentially pose to privacy rights, as well as the extremely condensed timetable to voice an informed opinion, EPIC seeks expedited processing to ensure that the American public can be informed about the discussion and has an opportunity to participate in the formation of new, nation-wide UAS registration requirements.

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.¹³ Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed.¹⁴

Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication

¹⁰ See, e.g., *The Future of Drones in America: Law Enforcement and Privacy Considerations: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (2013); *Eyes in the Sky: The Domestic Use of Unmanned Aerial Systems: Hearing Before the Subcomm. on Crime, Terrorism, Homeland Sec., and Investigations of the H. Comm. on the Judiciary*, 113th Cong. (2013); Drone Aircraft Privacy and Transparency Act of 2013, S. 1639, 113th Cong. (2013), H.R. 2868, 113th Cong. (2013); Preserving Freedom from Unwarranted Surveillance Act of 2013, H.R. 972, 113th Cong. (2013), S. 3287, 112th Cong. (2012); Preserving American Privacy Act of 2013, H.R. 637, 113th Cong. (2013); Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (Feb. 15, 2015); Nat. Conf. of State Legislators, *Current Unmanned Aircraft State Law Landscape* (Sept. 23, 2015), <http://www.ncsl.org/research/transportation/current-unmanned-aircraft-state-law-landscape.aspx#1>.

¹¹ See Christina Sterbenz, *Should We Freak Out About Drones Looking In Our Windows?*, Business Insider (Sept. 24, 2014), <http://www.businessinsider.com/privacy-issues-with-commercial-drones-2014-9>; Ryan Cummings, *Hillview man arrested for shooting down drone; cites right to privacy*, WDRB (Jul. 28, 2015), <http://www.wdrb.com/story/29650818/hillview-man-arrested-for-shooting-down-drone-cites-right-to-privacy>.

¹² See Stephen Carter, *Commentary: A battlefield of drones and privacy in your backyard*, Chicago Tribune (Aug. 3, 2015), <http://www.chicagotribune.com/news/opinion/commentary/ct-drones-privacy-laws-20150803-story.html>; K.K., *Drones and privacy: A looming threat*, The Economist (Mar. 19, 2015), <http://www.economist.com/blogs/democracyinamerica/2015/03/drones-and-privacy>.

¹³ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

¹⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 49 C.F.R. § 7.42(h)(i).

fees should be waived.¹⁵ According to the agency’s governing regulations, a fee waiver should be granted because (1) “the subject matter of the requested records concerns the operations or activities of the Federal Government”; (2) the disclosure is very “likely to contribute to an understanding of Federal Government operations or activities”; (3) the disclosure of the requested records “will contribute to the understanding of the public at large,” and EPIC frequently publishes news updates and FOIA results for the education of the general public; (4) the contribution to the public’s comprehension of “Federal Government operations or activities will be significant” if the requested records are released; and (5) EPIC has no “commercial interest that would be furthered by the requested disclosure.”¹⁶

Certification

Pursuant to 49 C.F.R. § 7.31(c)(3), I certify to the best of my knowledge and belief that the above information is true and correct.

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 49 C.F.R. § 7.31(c)(4), I will anticipate your determination on our request within ten calendar days. For questions regarding this request I can be contacted at 202-483-1140 x123 or FOIA@epic.org.

Respectfully Submitted,

John Tran
EPIC FOIA Counsel
Coordinator, EPIC Open Government Project

¹⁵ § 552(a)(4)(A)(iii); *see* 49 C.F.R. § 7.43(c).

¹⁶ 49 C.F.R. § 7.43(c)(1)–(5).