

VIA EMAIL

June 26, 2020

Texas Department of Public Safety
Office of General Counsel - Open Records
P.O. Box 4087
Austin, TX 78773-0140
Email: OGC.Webmaster@dps.texas.gov

Dear Open Records Coordinator:

This letter constitutes an urgent request under the Texas Public Information Act, Tex. Gov't Code §552.001, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Texas Department of Public Safety ("DPS").

EPIC seeks records pertaining to the use of two DPS Pilatus planes with the tail numbers N219TX and N243TX.

Documents Requested

- (1) The flight logs for the N219TX and N243TX aircraft from January 1, 2018 to present;
- (2) The policies and procedures in place related to the collection, use, retention, and dissemination of aerial video recordings;
- (3) The technical specifications for the on-board camera system;
- (4) All videos recorded from the two aircraft from May 25, 2020 to present.

Background

The Texas Department of Public Safety has acquired two Pilatus PC-12 aircraft since 2012.¹ The planes are used primarily for monitoring the border, but records show that the planes have frequently flown hundreds of miles inland.² One investigation found, for example, that the

¹*Texas Buys High-Tech \$7.4 Million Aircraft*, Gov't Tech.(Oct. 18, 2012), <https://www.govtech.com/Texas-Buys-High-Tech-74-Million-Aircraft.html>; Press Release, Tx Dep't of Public Safety, New DPS Airplane Named in Honor of Fallen Trooper (June 27, 2017), https://www.dps.texas.gov/director_staff/media_and_communications/pr/2017/0627a.

² G.W. Schulz and Melissa del Bosque, *The Eyes Above Texas*, The Texas Observer (May 23, 2018), <https://www.texasobserver.org/planes/>.

two aircraft spent a collective 52 days in the first 10 months of 2017 surveilling San Antonio.³ The aircraft also spent a significant number of days surveilling Austin and Houston.⁴

DPS has also worked with municipalities and local law enforcement to coordinate flights.⁵ As of 2018, the DPS planes had flown over Austin nearly 40 times and over Houston 20 times in connection to a law enforcement investigation.⁶

While the planes are intended for border security, they frequently fly hundreds of miles from the border. In response, DPS spokesperson Tom Vinger told the *San Antonio Express-News* that the planes fly to far from the border in connection to trafficking and other border-related crime.⁷ “Border crime does not stop at the border,” he said.⁸ Vinger also said the planes only record “significant events” and are frequently not turned on, protecting the privacy of city residents.⁹

However, some contest these claims. In 2015, for example, a DPS officer flew a plane with two Drug Enforcement Agency (“DEA”) pilots to conduct surveillance on a suspected marijuana-growing operation.¹⁰ The flight was not connected to a border-related investigation. Instead, the suspected growing investigation was conducted near Dallas, TX, hundreds of miles from the border. Following the flight, there was a raid conducted on the farm that did not result in any arrests.¹¹

Request for Fee Waiver Under Tex. Gov’t Code §552.001: Information in the “Public Interest”

Under Tex. Gov’t Code § 552.267, “[a] governmental body shall provide a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public.”

The disclosure of these documents is in the public interest. First, a significant sum of taxpayer funds is used to pay for the program. The planes themselves cost the state more than \$15 million to purchase and, according to DPS documents, cost \$474 per hour to operate.¹² Given how many taxpayer dollars are spent on the surveillance program, it is in the public

³ Allie Morris, *State’s border security planes fly over San Antonio neighborhoods*, San Antonio Express-News (Nov. 4, 2017), <https://www.expressnews.com/news/local/article/State-s-border-security-planes-fly-over-San-12332433.php>.

⁴ *Id.*

⁵ *Id.*

⁶ Schulz & del Bosque, *supra* note 2.

⁷ Morris, *supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Morris, *supra* note 3.

interest to see how effective the program is and how much time is spent on operations unrelated to border security.

The collection of wide-area video also implicates important privacy concerns. It is in the public interest to know under what circumstances DPS collects, retains, and distributes video that it records. The public interest is also served by seeing the fidelity of the video collected. These records would serve the public interest because it would provide clarification on how much identifying information the planes can record when they are in operation. The public would also be able to inspect if the program is used for its intended purpose.

Conclusion

Thank you for your consideration of this request. EPIC anticipates your determination on its request within ten business days. Tex. Gov't Code § 552.221. For questions regarding this request contact Enid Zhou at 202-483-1140 x 104 or FOIA@epic.org.

Respectfully submitted,

/s/ Eli Pales

Eli Pales
EPIC IPIOP Clerk

/s/ Enid Zhou

Enid Zhou
Open Government Counsel