



BY FAX
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October 21, 2015

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

Dear Officer:

This letter constitutes a request under the Freedom of Information Act (FOIA), 5 U.S.C. §552 (2012), 49 C.F.R. § 7 (2015), and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Department of Transportation (“DOT”).

EPIC seeks records on the DOT’s recently proposed task force, “composed of 25 to 30 diverse representatives from the UAS and manned aviation industries, the federal government, and other stakeholders,”¹ that will develop recommendations on an Unmanned Aircraft System (“UAS”) registration process (the “Task Force”).

Document Requested

1. Final list of representatives invited to join the agency’s Task Force;
2. All final invitations sent to representatives inviting them to join the Task Force; and
3. All communications from invitees either accepting or declining an invitation to join the Task Force.

¹ *U.S. Transportation Secretary Anthony Foxx Announces Unmanned Aircraft Registration Requirement – New Task Force to Develop Recommendations by November 20*, DEPARTMENT OF TRANSPORTATION, <http://www.transportation.gov/briefing-room/us-transportation-secretary-anthony-foxx-announces-unmanned-aircraft-registration> (last modified Oct. 19, 2015) [hereinafter “DOT Drone Registration Announcement”].

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Background

The increasing number of UAS operations in the United States has increased the number UAS incidents that threaten safety and privacy.² 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.³ According to Secretary Foxx, the anticipated registration requirement will facilitate safer UAS operations by making operators accountable.

According to the DOT’s written announcement, the new “task force will be composed of 25 to 30 diverse representatives from the UAS and manned aviation industries, the federal government, and other stakeholders.”⁴ 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.”⁵ Secretary Foxx directed the Task Force to deliver its report by November 20, 2015.⁶

To date, the DOT has not released the full list of representatives that will participate in the Task Force. EPIC contacted the DOT Press Office on October 20, 2015, requesting a list of the organizations and individuals who will make up the Task Force. To date, EPIC has not received a response.

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.”⁷

EPIC is “primarily engaged in disseminating information.”⁸ Further, the “urgency to inform the public” related to this request comes from both the Task Force’s short timetable as well as the ongoing privacy concerns attached to ubiquitous drone use.

² See, e.g., Rene Marsh and Thom Patterson, *U.S. announces task force aimed at mandatory drone registration*, CNN, Oct. 19, 2015, <http://www.cnn.com/2015/10/19/politics/drone-registration-task-force-announced/index.html>; see also DOT Drone Registration Announcement.

³ DOT Drone Registration Announcement.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 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)

⁸ *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.”).

On October 19, Secretary Foxx and Federal Aviation Administrator Michael Huerta announced a deadline of November 20 for the registration criteria, leaving less than a month for the Task Force to complete its work.⁹ The attenuated timeline leaves even less time for the public to understand and comment on the entities responsible for drafting registration recommendations that will be applied nationally.

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 who is involved in the discussion and to learn whether any privacy advocacy organizations will be involved in the registration conversation.

⁹ DOT Drone Registration Announcement.

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>.

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 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,

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Coordinator, EPIC Open Government Project

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).

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

¹⁶ 49 C.F.R. § 7.43(c)(1)–(5).