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August 18, 2014

Amber Markham
Policy Advisor
Iowa Dept. of Public Safety
215 East 7th St.
Des Moines, Iowa 50319

Delivered by email to: markham@dps.state.ia.us

Re: Questionnaire on Needed Changes to the Law Regarding Unmanned Aerial Vehicles (UAVs)

Dear Ms. Markham:

Below are the ACLU of Iowa's responses to the questionnaire you sent regarding additional regulation of UAVs in Iowa.

UAV Report Questionnaire

- 1. Does your organization/industry currently use UAV technology? If yes, please explain in detail the technology that is being used and the manner in which it is being used.**

No.

- 2. If your organization/industry currently does not use UAV technology, are there future plans to utilize this technology?**

No.

- 3. Does your organization believe that the current criminal code is sufficient to address UAV misuse? If not, what changes would you like to see to the criminal code to address UAV usage?**

Regarding use of UAVs by private persons and entities:

The ACLU of Iowa cautions that when regulating private use of UAVs, the legislature must proceed carefully so as not to infringe on protected free speech and expression.

The current criminal code, and often more appropriately existing civil remedies, are likely sufficient to address UAV misuse by private/nongovernmental entities and persons.

Regarding use of UAVs by law enforcement or government entities:

The ACLU believes that the current law, while a significant step in the right direction, needs important further development in the coming legislative session.

First, the statute needs to be rewritten to clarify when law enforcement must obtain a warrant to use a drone/UAV, and when the warrant requirement may be dispensed with. The current law provides that information obtained as a result of the use of a drone/UAV may not be admissible in court unless either a search warrant was obtained or the information was obtained “in a manner that is consistent with state and federal law.” Because the meaning of “state and federal law” on drone/UAV use is in flux and generally unsettled, this exception has the potential to swallow the rule requiring law enforcement to obtain a search warrant. Likewise, the vague language fails to provide law enforcement with the legal basis to use an existing exception to the warrant requirement, such as in the event of a true emergency—a particular circumstance for which law enforcement has reasonable suspicion that swift action is needed to prevent imminent danger to life.

Second, the use of a drone/UAV for monitoring and recording the activities of persons in public also must be carefully regulated. While requiring a warrant prior to using a drone to conduct a search is important, it does not adequately address concerns about the use of UAVs by law enforcement or government to monitor citizens’ protected activities in public spaces. The FAA had made clear that its mandate is to protect airspace, not privacy. Therefore, it is incumbent on Iowa legislators to protect Iowans’ privacy and ensure that we can enjoy the benefits of this technology without becoming a “surveillance society,” in which everyone’s moves in public are monitored, tracked, recorded, and scrutinized by authorities. It is a core value in our society that we do not watch innocent people just in case they do something wrong. The use of UAVs to monitor, track, and record activities in public have the potential to chill the use of public spaces for First Amendment protected activities and significantly harm trust and community policing efforts. The ACLU suggests that prior to the use of UAVs for monitoring in public areas, an officer obtain a court order on a showing of specific and articulable facts demonstrating reasonable suspicion of criminal activity, that the operation of the public unmanned aircraft system will uncover such activity, and that alternative methods of data collection are either cost-prohibitive or present a

significant risk to any person's bodily safety. Such an order should not be issued for a period greater than a renewable 48-hour time limit.

An important component of effective legislation to balance the core freedoms of Americans and legitimate and beneficial applications of drone technology is to require that when information is obtained about people, their homes, businesses, or other areas that are not the targets of a search warrant, that information must be deleted as soon as possible, and in any event no longer than a reasonable period of time—24 to 48 hours—after collection. In no circumstances should information gathered about non-targets be stored, filed, indexed, used, copied, disclosed, shared, or sold. Additionally, if UAVs are equipped with facial recognition or biometric matching technologies, those technologies should not be used on persons who are not the target of a search warrant or court order.

Additionally, future legislation should require local governing bodies' approval before law enforcement agencies acquire drone technology. That approval will ensure both that communities have the opportunity to choose to take advantage of positive capabilities of UAVs—for example, finding missing persons or assisting firefighters in responding to an emergency fire—and that when law enforcement do use drones, they do so with their community's buy-in and support.

The statute may specifically exempt public universities from the warrant and data deletion requirements when they use UAVs for non-law enforcement related academic research purposes and in accord with governing academic and research ethics and existing state and federal laws protecting privacy.

Finally, the existing law should be amended to clearly ban the use of weaponized UAVs.

- 4. If model guidelines were put into place to regulate UAV usage, what are the main issues that you believe the guidelines should address?**

Answered above to question #3.

- 5. Does your organization currently have internal guidelines for UAV usage? If yes, please attach a copy.**

Suggested legislative language is attached.

6. What are your primary concerns with the adoption of new laws or guidelines regulating UAV technology?

The ACLU of Iowa's primary concern with the adoption of new laws or guidelines regulating UAV technology is, broadly, the protection of core freedoms and constitutional rights. This means the effective limitation of government and police action so that citizens remain free: free from unreasonable searches and mass surveillance, and free to engage in protected First Amendment activities.

At the same time, the legitimate and careful application of UAV technology by law enforcement affords meaningful positive opportunities, such as the assistance of search and rescue operations. Those legitimate uses should be allowed in accordance with the obligation of law enforcement to promote and protect the rights of the people they serve.

7. Please provide any other information that you feel would be relevant to this report.

If the department has any questions or would like to discuss the ACLU of Iowa's recommendations further, please do not hesitate to contact me either by email at rita.bettis@aclu-ia.org or phone at 515-243-3988 x15.

Thank you,



Rita Bettis
Legal Director

Enclosure: suggested legislation to regulate the use of UAVs in Iowa

Suggested Legislation to Regulate the use of UAVs in Iowa

An act to regulate the use of unmanned aerial vehicles.

Section 1. Definitions. In this chapter:

- (a) "Agent of the state or any political subdivision thereof" means any state or local agency, including, but not limited to a peace officer, a law enforcement officer or entity or any other investigative officer or entity, agency, department, division, bureau, board, or commission, or any individual acting or purporting to act for or on behalf of a state, county, or local agency.
- (b) The term "unmanned aerial vehicle" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

Section 2. Use of Unmanned Aerial Vehicles.

- (a) Any use of unmanned aerial vehicles must fully comply with all Federal Aviation Administration requirements and guidelines, and acquisition of unmanned aerial vehicles at the county or municipal level must be approved by the county board of supervisors, city council, or other supervisory legislative body that overseeing the agent of the state or any political subdivision thereof seeking such acquisition.
- (b) Except as provided in subsection (c), it is unlawful for an agent of the state or any political subdivision thereof to operate an unmanned aerial vehicle or to disclose or receive information acquired through the operation of an unmanned aerial vehicle.
- (c) Exceptions .
 - (1) Consent. It shall not be unlawful under this chapter to disclose or receive information about any person acquired through the operation of an unmanned aerial vehicle if such person has given written consent to such disclosure.
 - (2) Exception for Emergency Situations. It shall not be unlawful under this chapter for an agent of the state or any political subdivision thereof to operate an unmanned aerial vehicle and for information from such operation to be disclosed or received if the unmanned aerial vehicle is used in circumstances in which it is reasonable to believe that there is an imminent threat to the life or safety

of a person, to assist the person subject to the following limitations:

- (A) the request shall document the factual basis for the emergency and
- (B) not later than 48 hours after the agent of the state or any political subdivision thereof begins operation of an unmanned aerial vehicle, a supervisory official shall file a sworn statement with a magistrate setting forth the grounds for the emergency access.

(3) Warrant or Order.

- (A) Warrant. An unmanned aerial vehicle may be operated and information from such operation disclosed in order to collect information from a non-public area only pursuant to a search warrant issued under Section 808.3.
- (B) Order. An unmanned aerial vehicle may be operated and information from such operation disclosed in order to collect information from a public area pursuant to a warrant authorized under subsection (3)(A) or pursuant to an order issued by any court that is a court of competent jurisdiction if the agent of the state or any political subdivision thereof offers specific and articulable facts demonstrating reasonable suspicion of criminal activity, that the operation of the public unmanned aircraft system will uncover such activity, and that alternative methods of data collection are either cost-prohibitive or present a significant risk to any person's bodily safety. Such an order shall not be issued for a period greater than 48 hours. Extensions of an order may be granted but shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days.

- (4) Exception for non-law enforcement operations, including academic research by public universities
- It shall not be unlawful under this chapter for an agent of the state or any political subdivision thereof to operate an unmanned aerial vehicle and

for information from such operation to be disclosed if no part of any information and no evidence derived from such operation may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, or for any intelligence purpose.

- (d) When unmanned aerial vehicles are used pursuant to subsection (c), they shall be operated in a manner to collect data only on the target of the warrant and to avoid data collection on individuals, homes, or areas other than the target. Neither facial recognition nor other biometric matching technology may be used on non-target data collected by an unmanned aerial vehicle.
- (e) Unmanned aerial vehicles shall not be used for traffic law enforcement.
- (f) Unmanned aerial vehicles shall not be equipped with weapons.

Section 3. Data Retention

- (a) No data collected on an individual, home, or area other than the target that justified deployment may be stored, used, copied, disclosed, shared, or sold for any purpose. Such data must be deleted as soon as possible, and in no event later than 24 hours after collection.
- (b) Whenever an agent of the state or any political subdivision thereof uses an unmanned aerial vehicle, no part of information acquired and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

Section 4. Suppression/Inadmissibility.

- (a) Except as proof of a violation of this section, no evidence obtained in violation of this Act shall be admissible as evidence in any criminal, civil, administrative, or other proceeding.

Section 5. Willful Violation.

- (a) Willful violations of this Section as to the procurement and execution of a court warrant or order to deploy an unmanned aerial vehicle are subject to 808.10.

Section 6. Reporting

- (a) In June of each year, any agent of the state or political subdivision thereof that uses unmanned aerial vehicles shall report to the legislature and make public on its website:
 - (1) The number of times an unmanned aerial vehicle was used, organized by the types of incidents and the types of justification for deployment;
 - (2) The number of crime investigations aided by the use of unmanned aerial vehicles. A description of how the unmanned aerial vehicle was helpful to each investigation should be included;
 - (3) The number of uses of unmanned aerial vehicles for reasons other than criminal investigations. A description of how the unmanned aerial vehicle was helpful in each instance should be included;
 - (4) The frequency and type of data collected on individuals or areas other than targets; and
 - (5) The total cost of their unmanned aerial vehicle program.