

United States Senate

WASHINGTON, DC 20510

July 25, 2013

Robert S. Mueller
Director
Federal Bureau of Investigation
U.S. Department of Justice
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Dear Director Mueller,

I appreciate the response I received to my questions (from my letter dated July 9, 2013) relating to the agency's use of drones, and also for your continued cooperation in communicating the rules and procedures that govern their use. Based on your reply, though, I did want to convey a follow-up question which I believe is important to the application of individual protections from warrantless government surveillance.

The FBI's unclassified response letter maintained that the Bureau would acquire a warrant before using a drone to acquire information when an individual has a reasonable expectation of privacy. While I agree that warrants should be used to approve information collection—including information collected through drone surveillance—this protection could be undercut by the Bureau's interpretation of what constitutes a "reasonable expectation of privacy."

Of note, the Bureau's response also mentions that "there has been no need" to seek a warrant or court order to use a drone in past examples. Instead of seeking court orders, the Bureau defers to an internal approval process it uses to protect privacy. Given that, first, the FBI will only seek a warrant if a reasonable expectation of privacy is assumed and, second, that the FBI has not felt it necessary to seek a warrant during past drone operations, it is important that you clarify your interpretation of when an individual is assumed to have a reasonable expectation of privacy. I am concerned that an overbroad interpretation of this protection would enable more substantial information collection on an individual in a circumstance they might not have believed was subject to surveillance.

For that reason, I ask that you provide me the Bureau's definition of when an individual has a reasonable expectation of privacy. I further ask that you provide me with copies of any guidance documents—including, but not limited to, educational and training material, field manuals, legal memorandum, etc.—used by the Bureau to define when a reasonable expectation of privacy would or would not be assumed in a given situation. Further, do those rules or interpretations differ by information collection platform? If so, please provide an explanation of the additional considerations when using drones.

Thank you for your prompt attention to my past questions, and I look forward to your reply.

Sincerely,



Rand Paul, M.D.
United States Senator