



Photo Credit: Orem, Utah Police Department

Government Drone Operations & Privacy Fears

HOW GOVERNMENT DRONE OPERATORS CAN BUILD GOOD COMMUNITY RELATIONS

By Patti Arthur, Esq.

©Anderson & Hughes, P.C.
Denver, CO 80202

1-719-539-7003

www.anderson-hugheslaw.com



Government Drone Operations and Privacy Fears -Building Good Community Relations-

Patti Arthur, Esq.

©Anderson & Hughes, P.C. – Denver, Colorado

Many governments, municipalities, law enforcement agencies and first responders are either currently utilizing small unmanned aerial systems (drones or sUAS) or are seriously considering “buying in” to this new aerial technology. Unfortunately, many of these entities haven’t considered community perceptions on spying.

“Open, honest and transparent discussions with the public should be on the top-shelf of discussions when developing any governmental operational plans.”

The usefulness of unmanned aerial technology in policing, search and rescue, disaster and accident analysis and public safety is without question. Operating and data storage costs are coming down and greater flexibility for even the most budget-constrained users is being introduced into

the marketplace. So, it all makes sense for governmental entities to take full advantage of unmanned technology and the related economics.

But what about the local citizenry? Public perceptions about governmental sUAS use should be considered by key decision-makers in any current or proposed operational plans. Open, honest and transparent discussions with the public should be on the top-shelf of planning when developing any governmental drone operation projects.

Advanced planning will help avoid potential problems with the public.

Here’s why... and what you can do:

While the public is familiar with and can be comforted by police vehicles driving down local streets, it’s certainly not used to seeing police drones with cameras flying overhead. While the public may also find it to be standard and acceptable to see business or law enforcement surveillance cameras just about everywhere, persons might be shocked and even frightened to see a government-operated, government-marked drone flying over them in the supermarket parking lot or in their own neighborhood. They may be left wondering “What was that all about? Did I do something wrong?”. Those thoughts can naturally then develop into “Who is watching me? Is that data being stored somewhere? Who has access to that data? Can that data be stolen?”. These perceptions are not manifestations of paranoia, but are a normal response to the desire for privacy in everyday life.

As drone technology develops and public safety operations become more commonplace, the public may perceive an erosion of privacy in the same way as when government security cameras became more numerous. Another consideration – public perceptions and acceptance (or non-acceptance) of governmental drone use may vary widely depending on location, be it rural, metropolitan or somewhere in between.¹

Governmental entities contemplating a drone program would be well-advised to consider and address sensitivity to privacy concerns far in advance of actual operations. This may be even more important in rural and small communities where the citizens may not be as welcoming of the new unmanned photo, video and surveillance technologies.

For any governmental entity, a prudent plan of action would be to engage the public at the outset (or actually at any time) to openly discuss concerns, collect ideas and work together to formulate a roadmap that will encourage an ongoing dialogue. In other words, don't just show up in your city with a drone program and go flying around the neighborhoods, legal as it may be.

Rather, inform the public of your plans first. Or, if you are already using this technology, develop a rapport with the public now and be completely transparent about the operations to the extent you can without compromising necessary operational safety and security.

After discussions with numerous stakeholders, we've identified 7 areas where governmental agencies can interface with the public on drone programs:

- 1.) Consider Public Perceptions and Anticipate Potential Privacy Problems.
- 2.) Find Local Business Partners Already Using the Technology.
- 3.) Work with the Local Media.
- 4.) Respond to Every Question from the Public. Don't Ignore Even One Email.
- 5.) Consider Annual (or more frequent) Work Sessions with the Public.
- 6.) Include Public Relations in Your Agency's Annual Budget.
- 7.) Announce Non-Standard Operations (Special Events, Large Crowds).

“As drone technology develops and public safety operations become more commonplace, the public may perceive an erosion of privacy in the same way as when government security cameras became more numerous.”

¹ In early 2017 the Stop LAPD Spying Coalition made public statements regarding drone use by law enforcement suggesting warrantless surveillance, lack of notice and even violations of human rights. There were protests against the Los Angeles Sheriff's Department by the Drone Free LASD/No Drones LA! Campaign.

Each step is discussed below in detail with suggestions.

Steps to Developing a Public Plan.

1.) Consider Public Perceptions and Anticipate Potential Privacy Problems.

Realize the public will naturally have concerns about privacy. Public agency drone operations, while not yet necessarily commonplace, still present government agencies ample opportunities to develop good relationships with the public before a program gets underway. Simply beginning a drone program and heading out into the community without any notice to anyone probably won't go a long way towards developing trust with the public about privacy.

“Publicly announce plans to adopt and develop a drone program before spending any funds on training or technology and request input from the community regarding concerns.”

Publicly announce plans to adopt and develop a drone program before spending any funds on training or technology and request input from the community regarding concerns. Input can come in the form of comments at a special or regular meeting of the governmental body, a survey, or a request for written comments.

There are very specific laws regarding personal privacy. Just because a drone has certain capabilities that can expand the ability to view activities, legal or illegal, doesn't necessarily mean capturing those activities on video or still photography is permissible, even for public safety operators. As in non-drone cases, evidence if not properly collected, will not be admissible in court. The law in this area will surely see great development as the technologies improve and become more commonplace.

Ensure the attorney advising your governmental entity has a firm understanding not only of drone law, but of any other laws that might even have the slightest impact on your operations. Consider hiring outside counsel for specific operational considerations, or to assist with local training session for in-house counsel and other stakeholders.

2.) Find Local Business Partners Already Using the Technology.

If there are members of your local business community currently legally operating drones, reach out to them. Chances are, they've already encountered questions from members of the public. Develop a rapport with these operators and ask for their assistance at your public meetings. When you have initial meetings with the public, invite an operator to participate and answer questions the public might have about how the operator avoids privacy violations, noise issues and safety matters. Also ask the operator if they would be willing to demonstrate use of their device.

3.) Work with the Local Media.

Local media outlets are your best friends if you are contemplating governmental drone operations. Shutting out the media will only increase public distrust. For example, in 2010 a major metropolitan police department in the United States purchased a drone for policing operations.² After the drone was purchased, the department set up a private showing of the device and its capabilities. However, the media was barred from the event. Things got heated when the naturally curious media wanted to film and report on the event, but the police department got tough and appeared to have lied about a “no fly zone” being in place hoping to prevent news helicopters at the demo site. The media fought back, numerous press conferences were held, the citizens demanded more information and eventually, things got so bad the Mayor ended up scrapping the entire drone program because of poor public relations.

“Local media outlets are your best friends if you are contemplating governmental drone operations. Shutting out the media will only increase public distrust.”

If you are considering a drone program, work with your local media outlets when announcing the potential program. Of course, the outlets will want to interview the spokesperson for the governmental entity, so make sure this individual is knowledgeable about the proposed operations and is equipped to answer technical questions about privacy laws.

Finally, if your proposed operations get up and running, don’t forget about the media, keep them in the loop with new developments, successes and changes to operations as the program continues and evolves.

The media can have a great impact on how the public views governmental functions. Work with them and they will work with you.

4.) Respond to Every Question from the Public. Don’t Ignore Even One Email.

You might wonder how to even bring the idea of a new law enforcement or public safety drone program to the public. If your department first addresses the subject to elected officials in a public meeting, the public will be aware of it from the outset and may have immediate questions you aren’t quite ready to answer. On the other hand, if your department or agency goes to the media first, then you will be on the hot seat with the elected leadership for not informing them before the press was notified. Which comes first, the chicken or the egg?

One suggestion would be to announce at a public meeting that your agency or department is contemplating a drone program and wants to ensure the public has ample opportunity to ask questions, see demonstrations of the devices, and be made aware of

² As early as 2010, the Houston Texas Police Department began investigating drone technology for general operations. By 2011 the program was scrapped.

the scope of operations before any drone purchases are made or official operations commenced. That way, the tenor of public perception can be gauged and addressed with good public relations.

Remember, in making the decision to operate drones for public safety or law enforcement purposes, ultimate approval rests with the elected governmental body. A good relationship with the public from the outset may go a long way in getting that approval.

Some may see this approach as capitulating to the public's opinion. Thus decision makers may not even consider starting up if the public, from the outset, has a negative view of drone operations. That is not the case at all. What this approach aims to do is simply inform the public that drone usage is on the horizon and that the agency or department wants input from the public to ensure the public understands the scope of the operations, can ask questions and can have those questions answered in a professional and informed manner.

“Work with the community and they will work with you.”

Work with the community and they will work with you.

5.) Consider Annual (or More Frequent) Work Sessions with the Public.

As your drone program progresses, you might consider establishing a regular schedule of meetings with the public. An annual meeting to advise the public on how the program is progressing, what if any growth plans are under consideration and discussions about other developments will help focus public relations in a favorable light. There is also an opportunity at these regularly scheduled meetings to show the public there has been no “mission creep” on the actual drone operations. In other words, to ensure the public that original agency or departmental policies and intent have not expanded into uncomfortable surveillance activities. If operations have been expanded, the public can be advised on those activities.

6.) Include Public Relations in Your Agency's Annual Budget.

When considering a drone program, it's easy to just establish the budgetary cost as simply the costs of the device and training for the individual handlers. The costs of public advocacy and relations should also be considered and will show returns in public support of your new program.

7.) Develop a Plan for and Announce Operations that are Not “Normal” (Special Events, Large Crowds).

If your agency or department's program is approved by the elected governmental body, and you have established a good rapport with the public on regular operations, keep that good communication at the same or a better level by announcing an operation that was

not included in the original program description. For example, if a special event or large crowd assembly comes to town and you wish to use your drone for public safety, develop a detailed plan for device use, tell the public up front and get approval from the elected body. This way everyone can be aware of any potential drone operations that are outside of the original operational plan. ³

Final Notes.

As the law develops, as operations become more commonplace, and as interaction with the public becomes more complex, adaptations will be necessary.

In this fluid tech environment, governmental entities should engage the public in all their drone plans. This isn't bowing to the fears of a skeptical public, it's bringing the public into the discussion about the uses of this emerging technology and asking their assistance to enhance operations, save costs and increase efficiencies.

Work with the public and they will work with you.

Work with the public and they will work with you.



³ This assumes, if necessary, FAA approval to operate over human beings.