

FBI'S WARRANTLESS DRONE SURVEILLANCE

The FBI has responded to Rand Paul's request for information on how it uses drones.

It provides several paragraphs detailing the use: They've used drones in kidnapping, drug interdiction, fugitive, and search and rescue cases, for a total of 8 criminal and 2 national security cases. Use of drones is governed by the Fourth Amendment, the Privacy Act, FAA rules, DIOG, and a bunch of other rules.

But here's the core of the letter:

Every request to use UAVs for surveillance must be approved by FBI management at FBI Headquarters and in the relevant FBI Field Office. Without a warrant, the FBI will not use UAVs to acquire information in which individuals have a reasonable expectation of privacy under the Fourth Amendment. To date, there has been no need for the FBI to seek a search warrant or judicial order in any of the few cases where UAVs have been used.

Ultimately, this means the FBI has, on 10 occasions, claimed that drones – with what could be far superior sensor equipment and more persistent (and less apparent) surveillance than planes or helicopters – equate to naked eye surveillance. And based on that claim, it has chosen not to have a court review its determination that US persons don't have a reasonable expectation to be free of this heightened surveillance.

Perhaps the FBI is correct in judging (itself, in secret) that drones, unlike infrared surveillance but like overhead plane surveillance, don't go beyond people's reasonable expectation of privacy.

But it is notable that they chose to make such determinations without asking either Congress in general or specific courts to review their determination.

That's not in the least surprising. It is consistent with what they have done, for example, with GPS tracking. But it does show that even with something as contentious as drones the FBI – and the government generally – continues to pursue a surveil first ask permission later approach.