



Pentagon has a 'unique' policy for legal use of drones in U.S.

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The use of military drones over U.S. soil appears to be perfectly legal, but some question why the program has been largely shrouded in mystery and say local governments should assume more control over the practice.

The Pentagon has used spy drones over the United States over the past decade, but did not publicize that fact until it responded to a Freedom of Information Act request, known as a FOIA. Benjamin Friedman, a research fellow at the libertarian Cato Institute think tank, wondered why it took so long to provide information on a program that's been operating since 2006.

"If everything is so legal, then it shouldn't take a FOIA request to find out about it," Friedman said.

The Pentagon has publicly posted at least a partial list of the drone missions that have flown in non-military airspace over the United States and explains the use of the aircraft, many to aid in local disasters. But that list is not well known.

Friedman did not question the overall legality of the program. He said using military personnel and equipment on U.S. soil is a common practice, including training at military bases and providing assistance to local law enforcement agencies during emergencies. He gave the example of National Guard troops helping to locate victims after natural disasters.

Drones, he said, are simply an extension of that practice.

That mirrors the findings of a legal analysis conducted by the Pentagon's inspector general, which found the Pentagon's infrequent use of the military drones over U.S. soil — fewer than 20 times from 2006 to 2015 — to be lawful. According to a Pentagon report, then secretary of Defense Donald Rumsfeld signed an interim policy on Sept. 28, 2006, designed to govern the use of military drones over the U.S.

That remained in force until superseded early last year by a policy with a more standardized approval process.

The inspector general analysis found that while the Pentagon can legally assist civil authorities when requested, the use of drones was new ground. There was no federal statute that addressed what to do if a governor or a state emergency official requested the use of a military drone for some form of surveillance, such as in floods, fires or other disasters.

So the Pentagon drafted an interim policy that mirrored how the military provides other forms of assistance to civil authorities when requested. But the policy was made highly restrictive, according to the inspector general analysis, requiring that each request receive explicit approval by the secretary of Defense or someone designated by the secretary.

"Great care is taken by DoD (Department of Defense) personnel to protect the American public's civil liberties and privacy rights while simultaneously preparing to employ UAS (unmanned aircraft systems) capabilities," the inspector general concluded.

Friedman said he would be more comfortable if local governments and law enforcement agencies stopped borrowing the military drones and instead purchased their own. By doing so, he said, there would be more oversight of the programs and more input from the very U.S. citizens who could find a drone flying over their backyard.

"It's an accountability concern," Friedman said. "You'd like to know if you're a voter in California or Ohio if your authorities feel they need to be flying Predator drones. You'd like to be able to have some kind of democratic debate about that."