

GARY AIKEN
MASON DISTRICT SUPERVISOR

February 6, 2019

Fairfax County Government

Re: Unmanned Aircraft Systems (UAS)

To Whom It May Concern:

My name is Gary Aiken and I'm a candidate for Mason District Supervisor in Fairfax County. This letter surfaces feedback on the UAS Program Manual as requested by the Board of Supervisors.

I am generally in favor of the limited use of UAS. I attended the information session on Monday, February 4, 2019 at the Mason Government Center. I was impressed with the County's Police, Fire, and Public Safety personnel. Their knowledge and professionalism shone through brightly as they expounded on the ways that UAS can and will reduce costs, efficiently use time, and potentially save lives.

One of my major concerns was that this would increase staffing to deploy UAS, or create a new bureaucracy to manage, monitor, and analyze the use of UAS. The staff at the meeting were able to assuage some of those concerns. They stated, generally, that existing county employees would receive additional training and that the deployment of UAS would go through existing channels. Still, here are two minor criticisms of the Program Manual, whose inclusion, if so desired by the Board of Supervisors could help:

1. The Program Manual should establish exactly which agency retains ownership of the UAS. It will be harder to establish compliance with all the rules that are in the Program Manual, unless a single agency, or officer within a single agency, has responsibility.
2. The Steering Committee is a fine idea – to create buy-in amongst the various agencies that will be want to use the UAS in their operations. However, this amorphous structure could hide use in violation of the Program Manual that would betray the public's trust of the UAS system.
3. The Job descriptions in Section 3 and additional job descriptions in Section 6 show that these positions will be filled by current county government employees. I suggest that Section 3 and Section 6 be modified to explicitly say that these positions will be in addition to their normal duties. I assume that with these additional responsibilities there is additional compensation.

I find it difficult to believe that these new positions with new responsibilities do not add additional compensation cost or that expansion of the Program in the future will add additional cost to the program. Still, from a cost/benefit position, I agree generally that these programs will likely be economically positive for Fairfax County.

Another concern is data management. In Section 5, data is retained for three (3) years. I would suggest that this be changed to either five (5) or seven (7) years. Certain cases, including insurance or other incidental criminal justice uses may require a longer retention period.

Section 5 also does not mention audio or thermal imaging and monitoring, or other monitoring that might be a mode of recording in the future. The Program Manual should include the retention of these records also for longer periods.

Finally, there is the issue of privacy concerns.

1. Virginia Code §19.2-60.1 subsection C.(viii) makes an exception for a UAS to be deployed without a warrant if “a person with legal authority consents to the warrantless search”. I question who a person with legal authority in some case that we don’t know about might be or how this ambiguous clause might be used in the future to use evidence to obtain a warrant or take some action against individuals on their own personal privacy who otherwise would not be subject to that same level invasion of privacy.
2. Subsection D also excludes the warrant requirements when it comes to “purposes other than law enforcement.” It is possible to imagine a scenario where non-law enforcement government employees operate the UAS and then pass on information to law enforcement.
3. While subsection E excludes evidence obtained in violation of the code section, the code section again only applies to actions by law enforcement where a warrant was not obtained. The Subsection D example of a non-law enforcement person operating the UAS for other-than-law enforcement purposes to use evidence collected by the UAS.

Inasmuch as the purpose of the UAS program as contemplated by the Board of Supervisors at this time and in the spirit of the wording of the draft Program Manual (version 2 dated 2 Jan 2019) is for public safety purposes, I think it prudent for the protection of Fairfax County citizens’ privacy to make that spirit more explicit in the letter of Section 1 prior to the adoption of the program. A clear limitation to the scope of uses contained in the subsection “Mission Profiles”.

Once this program is up and running and successful, at that time the Steering Committee can make additional recommendations as to additional Mission Profiles that are suitable. As I’m sure the program will be successful, this seems like a modest compromise on the issue of privacy.

Thank you for the consideration of these points. I look forward to the Supervisors’ next draft and review of the final proposal.

Sincerely,



Gary Aiken
Candidate, Mason District Supervisor