

The Lone Star Unmanned Aircraft Systems Center of Excellence & Innovation (LSUASC FAA UASTSO TX)

Privacy Policy

As required by UASTS OTA Memorandum of Agreement
between the Federal Aviation Administration and
Texas A&M University-Corpus Christi for the State of Texas

1. FAA UASTS OTA Article 3 (DTFACT-14-A-00004), pp. 9-10

Privacy Policies

The Site Operator must:

- (i) Have privacy policies governing all activities conducted under the OTA, including the operation and relevant activities of the UAS authorized by the Site Operator.
- (ii) Make its privacy policies publicly available;
- (iii) Have a mechanism to receive and consider comments from the public on its privacy policies;
- (iv) Conduct an annual review of test site operations to verify compliance with stated privacy policy and practices and share those outcomes annually in a public forum with an opportunity for public feedback;
- (v) Update its privacy policies as necessary to remain operationally current and effective; and
- (vi) Ensure the requirements of its privacy policies are applied to all operations conducted under this OTA.

The Site Operator's privacy policies should be informed by Fair Information Practice Principles.

a. Compliance With Applicable Privacy Laws

For purposes of this agreement, the term "Applicable Law" shall mean (i) a law, order, regulation, or rule of an administrative or legislative government body with jurisdiction over the matter in question, or (ii) a ruling, order, decision or judgment of a court with jurisdiction over the matter in question.

The Site Operator and its team members must operate in accordance with all Applicable Law regarding the protection of an individual's right to privacy (hereinafter referred to as "Privacy Laws").

If the U.S. Department of Justice or a state's law enforcement authority files criminal or civil charges over a potential violation of a Privacy Law, the FAA may take appropriate action including suspending or modifying the relevant operational authority (e.g., Certificate of Operation, or OTA) until the proceedings are completed. If the proceedings demonstrate the operation was in violation of the Privacy Law, the FAA may terminate the relevant operational authority.

b. Change in Law

If during the term of this Agreement an Applicable Law comes into effect which may have an impact on UAS, including impacts on the privacy interests of individuals or entities affected by any operation of any UAS

operating at the Test Site, such Applicable Law will be applicable to the OTA and the FAA may update or amend the OTA to reflect these changes.

c. Transmission of Data to the FAA

The Site Operator should not provide or transmit to the FAA or its designees any data other than the data requested by the FAA pursuant to Article 5 of this OTA.

d. Other Requirements

The Site Operator must:

- (i) Maintain a record of all UAS operating at the test sites; and
- (ii) Require each UAS operator in the Test Site to have a written plan for the operator's use and retention of data collected by the UAS

2. Applicable Privacy Laws

2.1. Texas Privacy Act

The Texas Privacy Act, Title 4, Chapter 14 of the Texas Government Code, provides criminal penalties for using “an unmanned aircraft to capture an image of an individual or privately owned real property ... with the intent to conduct surveillance ...” and for possessing, disclosing, displaying or distributing such an image. It is a defense against prosecution in either case to show that such images were promptly destroyed.

The act also provides for civil remedies, penalties and recovery of damages for such images maliciously captured by unmanned aircraft.

Exceptions to the Texas Privacy Act include the following non-applicable operations.

- Scholarly research by institutions of higher education and/or manufacturers under contract with institutions
- In airspace designated as a test site or range authorized by FAA
- By the U.S. military
- Satellite mapping
- By electric and natural-gas facilities for the operation, maintenance and mapping of plants and easements
- Over private property with owner's consent
- Law-enforcement and/or their contractors; for example,
 - pursuant to a valid search or arrest warrant
 - in hot pursuit of criminal activity
 - documenting crime scenes
 - documenting scenes involving human fatalities
 - fatal motor-vehicle accidents
 - missing persons
 - high-risk tactical operations
- At the site of a spill of hazardous materials
- Fire-suppression
- Rescue of persons in imminent danger
- Real-estate surveys by licensed brokers
- Over real property within 25 miles of the U.S. border
- Over public property

- Oil, gas, water or other pipeline survey operations
- Oil pipeline and drilling rig safety
- Port Surveillance and security

In addition, all operations also shall abide by rules and regulations established by the Federal Aviation Administration.

2.2. Texas case law

Texas recognizes a common-law right to privacy, and the Texas constitution protects homesteads from unreasonable intrusion. Elements of intrusion are that it be intentional and highly offensive. Courts also have held that the intrusion must be unjustified and unwarranted.

It is considered an invasion of privacy if a person's likeness is published without consent and is recognizable and benefits or profits a third party. Likewise, an invasion of privacy occurs if a party, without consent, appropriates another's commercial standing, reputation or other values for financial or some other benefit.

2.3. Texas statutory provisions

Among numerous statutory provisions wherein privacy is assured by statute, two provisions of Texas law may pertain to UAS test-site operations.

- 1) The Natural Resources Code, Sect. 52.190, provides that geological, geophysical, and geochemical data and all other data pertinent to mineral exploration contained in an application for an oil and gas lease submitted by the owner of the soil to the General Land Office are deemed private or confidential; presumably, this includes data retrieved from UAS surveillance of property for such purposes, except as provided by law.
- 2) The Texas Water Code, Sec. 5.175, provides that all information, documents and data received by the commission regarding the discharge of water pollutants, except as provided by this section, are deemed private or confidential; presumably, this includes data retrieved from UAS surveillance of such discharges, except as provided by law.

3. Policies and procedures regarding applicable law

3.1. Change in law

It is a standard operating procedure of LSUASC that this privacy policy, as it may be affected by provisions of law referenced in Sects. 1-2, be reviewed annually by the Office of General Counsel of the Texas A&M University-System, and that it be amended accordingly; and provided, that significant changes be brought to the attention of the executive director for action that may or may not include training and/or situational awareness for LSUASC personnel.

3.2. Transmission of data to FAA

It is a standard operating procedure of LSUASC that data transmitted to FAA not be other than that required by Article 5 of the OTA or any other agreement with the FAA; and, especially, that it not include any data in violation of Texas law as referenced in Sects. 1-2. Mission planning shall include steps to exclude any such data; and post-flight review shall remove any such data inadvertently captured.

3.3. Intellectual property

It is standard operating procedure of LSUASC that proprietary data owned by test-site users or derived from test-site operations shall not be disclosed by LSUASC unless required by law or FAA regulation.

3.4. Record of all UAS operating at LSUASC

It is a standard operating procedure of LSUASC that a record be kept of all UAS vehicles operating in LSUASC test ranges, and that this data be maintained throughout the term of the OTA. Data to be maintained shall include the following.

- 1) Vehicle make, model and serial number
- 2) Owner's full name and contact information
- 3) Inclusive dates of missions flown
- 4) Precise locations of missions flown
- 5) Weather conditions, including visibility, during missions flown
- 6) Mission commander of each mission flown

3.5. UAS operators' written data-collection and retention plan

It is a standard operating procedure of LSUASC that UAS operators on test-site ranges produce and abide by a plan for data collection and retention. LSUASC, as part of its customary intake procedures, will maintain and modify for operators' convenience a template for developing such a plan; which, when appropriately modified, will become an element of an operator's pre-flight documentation and operations manual. Such a plan must be reviewed prior to each subsequent test-range operation to assure its continuing alignment with all elements of the mission.

4. Fair Information Practice Principles

It is a standard operating procedure of LSUASC to give public notice of data-collection operations on all test site ranges. Public notice will be accomplished by publication on the Internet at <http://lsuasc.tamucc.edu/> of the following information, which shall be archived and maintained for the duration of the test-site program or a period not to exceed five (5) years, whichever comes first.

- 1) Identification of the entity collecting the data
- 2) Identification of the uses to which the data will be put
- 3) Identification of any potential recipients of the data
- 4) Nature of data collected and the means by which it is collected
- 5) Steps taken by the data collector to ensure data confidentiality, integrity and quality

5. Privacy policies governing activities conducted under the OTA

5.1. Research and development activities

It is the policy of LSUASC to conduct all research and development activities in accordance with applicable Texas law; to wit, (1) the Texas Privacy Act, (2) case law regarding privacy as developed by the Texas courts; and (3) relevant provisions of statutory law. This policy shall be in effect for all test-site operations with regard to the following provisions:

- 1) That scholarly research by institutions of higher education and/or manufacturers under contract with institutions are exempt from provisions of the Texas Privacy Act;
- 2) That airspace designated as a test site or range designated by the FAA is exempt by provisions of the Texas Privacy Act; HOWEVER,
 - (i) That any image otherwise in violation of the law and inadvertently captured by research and development activity on the LSUASC test site shall be promptly and totally destroyed; PROVIDED,
 - (ii) That demonstrable proof exists of such an image, and that it shall be the complainant's burden to show such proof upon notice via the LSUASC Internet site;
- 3) That LSUASC recognize a common-law right to privacy and that all test-site research and development activities are planned and executed to protect homesteads from unreasonable intrusion in a way that is highly offensive, unjustified and unwarranted;
- 4) That LSUASC test-site research and development activities shall take all necessary precautions to ensure that a person's likeness not be published without consent and in a way that benefits or profits a third party;
- 5) That geological, geophysical and geochemical data and all other data pertinent to mineral exploration collected by and retrieved from UAS test-site research and development activities and contained in an application for an oil and gas lease submitted by the owner of the soil to the General Land Office shall remain private or confidential, except as provided by law;
- 6) That all data collected by and retrieved from UAS test-site research and development activities and received by the Texas Natural Resources Commission regarding the discharge of water pollutants, except as provided by Water Code Sec. 5.175, or other applicable law, shall remain private or confidential;
- 7) That a statement of intent as to provisions (1) through (6) of this section be signed and dated by all test-site operators, and that such attestations become a permanent record in the test-site mission portfolio.

5.2. Flight operations activity

It is the policy of LSUASC to conduct all flight operations activities in accordance with FAA rules and regulations and with applicable Texas law; to wit, (1) the Texas Privacy Act, (2) case law regarding privacy as developed in the courts of Texas and (3) relevant provisions of statutory law. This policy shall be in effect for all test-site operations with regard to the following provisions:

- 1) That airspace designated as a test site or range designated by the FAA is exempt from provisions of the Texas Privacy Act; HOWEVER,

- (iii) That any image otherwise in violation of the law and inadvertently captured by flight-operations activity on the LSUASC test site shall be promptly and totally destroyed; PROVIDED,
 - (iv) That demonstrable proof exists of such an image, and that it shall be the complainant's burden to show such proof upon notice via the LSUASC Internet site;
- 2) That LSUASC recognize a common-law right to privacy and that all test-site flight-operations activities are planned and executed to protect homesteads from unreasonable intrusion in a way that is highly offensive, unjustified and unwarranted;
 - 3) That LSUASC test-site flight-operations activities shall take all necessary precautions to ensure that a person's likeness not be published without consent and in a way that benefits or profits a third party;
 - 4) That geological, geophysical and geochemical data and all other data pertinent to mineral exploration collected by and retrieved from UAS test-site flight-operations activities and contained in an application for an oil and gas lease submitted by the owner of the soil to the General Land Office shall remain private or confidential, except as required by law;
 - 5) That all data collected by and retrieved from UAS test-site flight-operations activities and received by the Texas Natural Resources Commission regarding the discharge of water pollutants, except as provided by Water Code Sec. 5.175 or other applicable law, shall remain private or confidential;
 - 6) That a statement of intent as to provisions (1) through (5) of this section be signed and dated by all test-site operators, and that such attestations become a permanent record in the test-site mission portfolio.

6. Publication

LSUASC shall publish its privacy policy on its Internet site, and it shall be incorporated into test-site standard operating procedures. Publication shall be continuous and monitored by LSUASC personnel to ensure public access.

7. Public comment

The LSUASC shall provide opportunity on its Internet site for public comment to its privacy policy, including but not limited to inquiries as to whether test-site activities comply with the policy. Public comment to LSUASC privacy policy shall be monitored regularly by test-site personnel to ensure prompt action in response to inquiries; especially, as such inquiries may assert non-compliance with the policy.

8. Annual review

The LSUASC privacy policy shall be reviewed annually. The annual review may include the following components.

- 1) Review of all reports of non-compliance incidents and their disposition.
- 2) Review of applicable law.
- 3) Review of changes in state and federal law that may apply to LSUASC operations.
- 4) Review of documentation regarding relevant reporting of data to FAA.

5) Review of documentation regarding written privacy plans for UAS operators.

9. Updates

The LSUASC privacy policy shall be updated according to the outcomes of the annual review, and the revised policy shall be published on the LSUASC Internet site.

10. Assurance

The executive director of LSUASC shall attest each year, pending outcomes of the annual review, that all test-site operations complied with the privacy policy; or, in such cases where non-compliance was asserted by public comment, the executive director shall attest to disposition of such asserted non-compliance. Such attestations shall be published on the LSUASC Internet site.