

Scenario 1

If data is gathered by a government agency, it is a public record. However, AS 40.20.120 provides certain protections for private information. Use of inadvertently captured information in a criminal prosecution may depend on who captures the information and whether the person whose actions have been captured has a reasonable expectation of privacy.

Government data capture is more clearly defined in statute and its intended use for public purpose. Data captured by a government-operated UAS would be treated similarly to data captured by other technology such as cell phones, manned aircraft, satellite images, voice recorders, etc. Case law is substantial in determining if the person would be considered to have a reasonable expectation of privacy and when a warrant would be required to obtain and use any data collected.

CH 48 (HB65) SLA08 Personal Information Protection Act also addresses the collection, storage, and breach of privacy. This act would include any data captured by a UAS.

Scenario 2

The fear of being unknowingly watched and/or photographed is a legitimate public concern. “Reasonable expectation of privacy” is the term where you can self-analyze the public perception of your actions.

Can my neighbor fly his model aircraft over my fence and photograph my family?

You would certainly have a reasonable expectation of privacy if you were inside your home with curtains drawn. If someone climbed the fence surrounding your home, stood outside the window and recorded your image or voice while you were inside, it is likely that person would be considered to have breached your “reasonable expectation of privacy”.

What if the neighbor flies his model aircraft over my backyard during my child’s birthday party? You might be able to argue that your fence creates a boundary identifying your personal space but it does not govern the air above your property. We could expect that aircraft hovering 10 feet above your head is more invasive than a manned airplane passing overhead but in reality, it’s the level of technology that is in use that should be considered. We tend to accept satellite imagery as “part of life” even though it produces technologically advanced detailed imagery. The neighbor’s quadcopter might just be an irritant (like a barking dog) or it could be recording your every move with high definition video and sound ~ this is a decision to be made by the courts if it comes to that.

A significant piece to this equation is “what is that person doing with the data captured”? Remember that it’s not the aircraft at fault, but the operator who may be flying with suspicious intentions.

The tie between safety and privacy is tightest with respect to rules requiring the operator of a UAS to be able to see the aircraft at all times. Public UAS operated in association with the expedited authorizations in Section 334(c)(2)(C) of the FAA Modernization and Reform Act of 2012 (FMRA) have a “line of sight” requirement.

- **Public Navigable Airspace:** The question of what constitutes “public navigable airspace” for UAS operated by the government is central to privacy policy. The Task Force found that almost every law enforcement scenario discussed was already protected by existing law.
- **Role of Imaging Technology:** Rules and case law exist that protect citizens from inappropriate use of capturing data that is “more than the human eye could ever see.”
- **Extended Surveillance:** Law enforcement does not intend to use UAS for standard patrol activities at this time. Limiting flight hours was not seen as an acceptable control because long flights may be necessary in the event of search and rescue or natural disaster remediation operations.
- **Obtaining a Warrant:** After much discussion, it was decided that using UAS to gather data would require a warrant in similar situations as using any other data gathering device (such as voice recording, photography, and thermal imaging with manual technology). No additional laws are required to obtain a warrant for UAS data gathering.

The State of Alaska and its local governments cannot dictate the use of the NAS but can consider rules that better define the FAA guidelines, can consider legal repercussion for entities found in violation of adopted laws, and can provide for specific privacy laws regarding the use of UAS in Alaska.

The State of Alaska Constitution provides privacy protection, “although not unlimited, has been held to be broader than the protection afforded by the United States Constitution. Both the Alaska Constitution and the Fourth Amendment to the United States Constitution require a warrant by a governmental agency for the search of a place where a person has a reasonable expectation of privacy.”

Legal Services

Constitutional Protection of Privacy:

The Constitution of the State of Alaska explicitly protects the right of privacy against government intrusion. Art. I, sec. 22 provides: “The right of the people to privacy is recognized and shall not be infringed. The Legislature shall implement this section.”

Alaska Statutory Protections:

AS 11.41.270 Stalking, nonconsensual conduct prohibits monitoring by technical means

AS 11.61.116 Sending an explicit image of a minor

AS 11.61.120(a)(6) Harassment: publishing or distributing certain images

AS 11.61.123 Indecent viewing or photography

AS 11.76.113 Misconduct involving confidential information in the first degree

AS 11.76.115 Misconduct involving confidential information in the second degree