



United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-259174

November 15, 1994

The Honorable Jack Brooks
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This letter responds to your request concerning various matters relating to the use of electronic surveillance equipment on general aviation aircraft to assist in the interdiction of individuals suspected of smuggling drugs. Specifically, you asked us to (1) determine whether certain federal law enforcement agencies were surreptitiously installing such devices to investigate individuals suspected of using aircraft to smuggle drugs, (2) substantiate allegations you had received that the law enforcement agencies used technicians that were not approved by the Federal Aviation Administration (FAA) to install and remove the devices, and (3) determine the disposition of the aircraft on which the equipment was installed.

In summary, we found that between January 1991 and December 1993, the Department of Justice, including the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA), and the U.S. Customs Service were involved in 62 cases involving electronic surveillance devices on 85 general aviation aircraft. On the basis of information we obtained from Justice and Customs, 41 devices were installed under a court order, 17 with the consent of the aircraft's owners, and 27 on government-controlled aircraft.¹ We could not substantiate the allegations that the technicians who installed the devices were not approved by FAA. In fact, Customs provided us

¹Government-controlled aircraft are owned or in the custody of law enforcement agencies at the time the device was installed. The law enforcement agencies may have obtained the aircraft through a forfeiture, purchase, or lease.

with the names of seven individuals, and according to FAA's data, all seven hold at least two different types of repairman certificates. Finally, the law enforcement agencies used various methods to dispose of aircraft on which the devices were installed. Generally, the law enforcement agencies seized and later sold, transferred, used, or returned the aircraft to the owners. This letter summarizes the information we obtained.

FREQUENCY OF USE

According to Department of Justice and Customs Service officials, the use of electronic surveillance equipment to track private general aviation aircraft has significantly decreased since the 1980s as other technology became available to perform this function. The FBI had only one case in calendar years 1991 through 1993 (involving 23 government-controlled aircraft) in which it used electronic surveillance devices on private general aviation aircraft, and DEA installed such devices on 1 aircraft in 1991, 3 aircraft in 1992, and none in 1993. According to available information, Customs installed devices on at least 57 aircraft in that time period, but some of its records were lost during Hurricane Andrew.

The installation and use of electronic surveillance devices may be conducted only within constitutional requirements and Justice's and Customs' policies. Law enforcement agencies can install such devices on general aviation aircraft under a court order, with the owner's consent, and on government-controlled aircraft. To obtain a court order, for example, law enforcement agencies must demonstrate probable cause before a federal district court. If the court grants an order to install, it does so under the standard search and seizure procedures. Since the court order may contain sensitive investigative information or the identities of individuals whose safety could be jeopardized, the court may seal the order to ensure the confidentiality of the investigation. In these cases, the court order is not maintained with other records related to the aircraft.

In addition, individuals sometimes discover that their aircraft are being used for illegal purposes and contact law enforcement authorities, or law enforcement officers contact the individuals to advise them of such a situation. In either case, the individual can give his/her consent for the installation of the devices. Furthermore, some devices

are installed on government-controlled aircraft to protect undercover officers and provide a record of their movement. Since the devices are installed on their own aircraft, the agencies do not obtain a court order for the installation or removal. Table 1 shows the methods used by the various law enforcement agencies.

Table 1: Methods Used by Justice and Customs to Install and Remove Electronic Surveillance Devices, 1991-93

Agency	Number of court orders	Number of consents by owners	Number of cases with government-controlled aircraft	Total used
FBI	0	0	1	1 ^a
DEA	4	0	0	4
Customs	37	17	3	57
Total	41	17	4	62

^aInvolves 23 aircraft.

APPROVAL OF FACILITY/MECHANIC BY FAA

Both Justice and Customs stated that the individuals and/or facilities responsible for installing and removing the devices are certified by FAA. According to DEA, it uses a mobile facility, and the personnel and facility operate undercover. As a result, DEA did not provide us with information that would allow us to verify with FAA that the devices were installed and removed at a licensed facility by trained and certified personnel. In addition, according to Justice, the FBI used a confidential source to install and test the devices. The source, according to Justice, owns and operates an FAA-certified repair facility. Since the FBI promised confidentiality, Justice did not provide the source's identity.

According to the information provided to us, the people who install and remove the devices for Customs are FAA-certified mechanics and must attend specialized training. The training includes the following: FAA's rules and regulations, aviation systems and electrical safety, antennas and their locations, and aircraft/airframe weight and balance as well as practical installation exercises and

several supervised installations. Once the candidate passes the training, Customs files an application with FAA to certify the candidate as a repairman. Of the 57 instances in which Customs installed electronic surveillance equipment on general aviation aircraft, the agency provided us with information on 6 cases involving seven mechanics. Since the remaining 51 cases are either sealed by the courts or contain confidential information, Customs declined to provide us with the information. According to FAA's information, the seven installers hold at least two different types of repairman/technician certificates.

DISPOSITION OF AIRCRAFT

If the facts of the case warrant it, the law enforcement agencies can seize and later sell, transfer, use, or return to the owner the aircraft. Of the 85 aircraft on which the law enforcement agencies installed electronic surveillance equipment from 1991 through 1993, Justice and Customs provided us with details on 18 (4 for DEA, 8 for FBI, and 6 for Customs). For the remaining aircraft, the law enforcement agencies declined to provide us information on the disposition of the aircraft either because the court had sealed the cases, the information was confidential, or no further information was available.

The disposition of the 18 aircraft varied. For example, of the four DEA cases, the agency seized three aircraft, but the fourth remains in the possession of its owner and has not been seen recently in the southeastern United States.² DEA subsequently sold two aircraft and turned one over to another law enforcement agency as part of the equitable sharing under the Asset Forfeiture Program.

In addition, Customs seized five of the six aircraft for which we were provided information (on the basis of the data provided, we could not determine the activities involved with the sixth). Of the five aircraft, one was subsequently sold, one was transferred to another law enforcement agency, two were returned to their owners, and

²According to Justice, the aircraft was last observed in another country. Although the status of the electronic surveillance device is unknown, Justice noted that the equipment is beyond its useful life if it has not been removed.

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one was forfeited to Customs. Concerning the aircraft that was subsequently sold, the purchaser told us that he still has the aircraft. The owner explained that after purchasing the aircraft, he followed FAA's procedures and had it inspected. The inspection did not find any surveillance equipment but noted that the radios did not work and that some wires were broken. The owner said that he did not know the cause of the damaged radios and wire but speculated that these problems occurred because the aircraft was stored in a hot and humid environment for over 1 year. Such climatic conditions, he noted, would affect the aircraft's electronics.

Furthermore, the FBI had information on the disposition of 8 of the 23 aircraft involved in its case. The FBI's information on the eight aircraft is as follows: Drug traffickers registered two under Colombian ownership; the Mexican authorities recovered three, but the FBI does not know their status; the FBI recovered one and resold it to a suspected drug trafficker to track the individual's activities; and the FBI received information that two were destroyed while involved in smuggling activities in South America. Justice said that it has no information showing that the remaining 15 aircraft have returned to the United States.

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We have discussed our work with your staff. As agreed, we do not plan to conduct further work on this issue.

We are sending copies of this correspondence to the Attorney General; the Chief, U.S. Customs Service; and the Administrator, FAA. Please contact me at (202) 512-2834 if you or your staff have any questions.

Sincerely yours,



Kenneth M. Mead
Director, Transportation Issues

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