

Daniel Therrien, Privacy Commissioner
Office of the Privacy Commissioner of Canada
30, Victoria Street
Gatineau, Quebec
K1A 1H3

March 8, 2017

Dear Mr. Therrien,

I am writing on behalf of the Confederation of Alberta Faculty Associations (CAFA). CAFA is the federation of the academic staff associations at Alberta's four research intensive universities. The four associations are: The Association of Academic Staff University of Alberta, Athabasca University Faculty Association, The Faculty Association of the University of Calgary and The University of Lethbridge Faculty Association. The objectives of the Confederation are to promote the quality of education in the province and to promote the well-being of Alberta universities and their academic staff.

I am writing on CAFA's behalf to urge your office to investigate the implications for Canadians' privacy rights of three newly emerging US and Canadian border security and digital privacy policies, namely:

- the US president's 25 Jan. 2017 "Enhancing Public Safety" executive order, which has suspended US Privacy Act protections for non-US citizens¹;
- the increasingly reported US border agent practice of demanding access to Canadian travellers' digital devices²; and
- the Canadian government's proposed "pre-clearance" Bill C-23, which would empower US border agents in Canada not only to turn away Canadians seeking entry to the US but also to detain them, while still on Canadian soil.³

These policies and practices are of particular concern to Canadian academics and researchers. As evinced in the linked reports cited below, the effects of these new policies and practices are already having significant effect on Canada-US travel, including academics' research travel and conference plans.

Academics apprehend the stakes here with particular acuity, given university policies that oblige us to protect student privacy and information (policies we stand to violate if required by border agents to compromise device security), and given the importance of academic freedom to both our profession and the public interest. Academic freedom includes the right, regardless of prescribed doctrine, to freedom in what and how one teaches and discusses, in conducting and disseminating research and creative works, in

serving and expressing one's position on the institution, the community, and the system in which one works, and in participating in professional and representative academic bodies—as well as freedom from institutional censorship. One of our concerns, then, is that the aforementioned policies may exert a chilling effect on academic freedom. While academic freedom is a privilege exercised by academics, it is a public good—its exercise is vital to Canada's public interest and the health of our democracy.

We urge your office to investigate these three policy developments, in order to assess the extent to which they may violate Canadian citizens' privacy rights, and to determine appropriate safeguards for protecting Canadians' privacy in digital spaces.

Sincerely,



Mark A. McCutcheon

1. See Geist, Michael. "Trump's executive order eliminates Privacy Act protections for foreigners." MichaelGeist.ca, 26 Jan. 2017 <http://www.michaelgeist.ca/2017/01/trumps-executive-order-eliminates-privacy-act-protections-for-foreigners/>
2. See Flaccus, Gillian. "Are U.S. border agents allowed to search phones and other devices?" Toronto Star, 18 Feb. 2017 <https://www.thestar.com/news/canada/2017/02/18/are-us-border-agents-allowed-to-search-phones-and-other-devices.html>
3. See Dyer, Evan. "Pre-clearance bill would give U.S. border agents in Canada new powers." CBC News, 12 Feb. 2017 <http://www.cbc.ca/news/politics/pre-clearance-border-canada-us-1.3976123>