

Minister of Public Safety and  
Emergency Preparedness



Ministre de la Sécurité publique  
et de la Protection civile

Ottawa, Canada K1A 0P8

AVR 16 2018  
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The Honourable Bob Zimmer, M.P.  
Chair, Standing Committee on Access to Information, Privacy and Ethics  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Dear Mr. Zimmer,

On behalf of the Government of Canada, I am pleased to present the Response to the Tenth Report of the Standing Committee on Access to Information, Privacy and Ethics, entitled: *Protecting Canadians' Privacy at the U.S. Border*.

I would like to extend our sincere thanks to you and to the Committee for the Report and recommendations, which highlight the ongoing importance of respecting travellers and their privacy while balancing the operational requirements of protecting the border in this increasingly digitized world. The Government agrees with the general intent and principle of the Committee's recommendations and, while our actions at this time may not exactly mirror those recommended, the Government will continue to pursue a common objective – namely to ensure the security of Canadians while protecting their rights and freedoms. Concurrently, the Government recognizes the authority of the United States (U.S.) to establish its own requirements for entry into its territory and is confident the new *Preclearance Act, 2016* will help facilitate the safe, cross-border flow of goods and travellers.

### **Protecting Canadians' Privacy**

In accordance with the Committee's recommendation, it is important to acknowledge that Canada has a robust legal framework which guides the collection, use, retention, and sharing of information by federal organizations. We recognize that the collection and retention of personal information by governmental entities is an issue of public interest and an important focus of the Privacy Commissioner's work. Federal organizations observe the guidelines and requirements set out under the *Privacy Act* and the *Library and Archives of Canada Act*, and related regulations. Federal organizations undertake privacy impact assessments when a program requires the collection of personal information and work closely with the Office of the Privacy Commissioner where warranted by the privacy implications. Requirements are already dependent on the purpose for which the information (electronic or otherwise) is collected and the legislative authority under which it is collected. Information must also be retained for the purpose of any resulting administrative or law enforcement action taken, as well as the duration of any applicable appeal period.

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## **Examination of Electronic Devices**

The Government of Canada agrees that the examination of electronic devices at the border should be conducted in a cautious, progressive and methodical manner and that it would be beneficial to track the frequency of such examinations. Additionally, the Canada Border Services Agency's (CBSA) current policy guidance includes direction not to examine electronic devices at the border as a matter of routine; a progressive examination may only take place in the presence of a multiplicity of indicators or further to the discovery of a contravention. Under Canadian Law, digital devices and media, along with digital documents and software, are classified as "goods". Travellers are obligated to present their goods for inspection when they cross the border. As noted by CBSA officials during their appearance before the Committee, the purpose of examining electronic goods at the border is to discover customs-related contraventions or offences ranging from evidence of electronic receipts to determine if goods were undervalued or undeclared, to the interception of prohibited goods contained within the devices themselves (e.g. child pornography, obscenity and hate crimes, terrorist propaganda). Canadian law applies to travellers arriving in Canada; should Canada conduct preclearance in the U.S., the CBSA will operate according to its policies, which are in accordance with Canadian privacy laws and policies, and in a manner that does not violate U.S. law.

Imposing further examination preconditions in *Customs Act* 99(1)(a) could hinder the CBSA's ability to respond to emerging threats and contraventions to Canadian border legislation. Canadian courts to date have been supportive of screening goods at the border, including electronic devices, for valid legislated border purposes. While the Government of Canada agrees in principle with the Committee's assertion that the examination of electronic devices at the border should not be conducted simply as a matter of routine, it does not consider the absence of further precision in *Customs Act* 99(1)(a) to be unreasonable in the border context. Due diligence in the exercise of officer authorities is supported through other internal mechanisms to ensure Canadians' privacy is protected, including through internal policy, training and oversight. Using these mechanisms, the Agency will continue to respect privacy interests while also ensuring effective border security, on an ongoing basis.

The Government agrees that it would be beneficial to track the frequency at which travellers have their electronic devices examined at the border. As requested by the Committee, the CBSA began tracking such traveller examinations at ports of entry in November 2017, and is working on a long-term, electronic solution with a tentative implementation date of Summer 2018. Going forward, the CBSA will report on the data collected to the Privacy Commissioner every six months. More generally, the Agency will also continue to leverage policy, training, outreach and other internal mechanisms to ensure that CBSA officers continue to be aware of and respect the privacy of travellers.

### **Privacy Oversight at the CBSA**

The Government remains committed to the principles of transparency and oversight on privacy and civil liberties issues. Based on its 2016 national security consultations, the Government revised Canada's National Security Framework in order to keep Canada safe in a manner consistent with societal values and the *Canadian Charter of Rights and Freedoms*. It established a National Security and Intelligence Committee of Parliamentarians to ensure Canada's national security agencies continue to keep Canadians safe in a way that also safeguards our values, rights, and freedoms. The consultations also provided an opportunity to examine how well existing review bodies for our security, intelligence and law enforcement agencies are serving Canadians. Subsequently, the Government received a report on review for the CBSA (within the Public Safety Portfolio) from former Clerk of the Privy Council, Mel Cappe, and is currently reviewing options for the establishment of an appropriate mechanism for external review of the CBSA. In addition, federal organizations, including the CBSA, have senior executives responsible for monitoring privacy protection. The CBSA's Chief Privacy Officer was appointed in 2014, and the Agency also established an internal privacy oversight committee to identify, mitigate and reduce privacy-related risks and enhance privacy protection for Canadians.

### **Information Held by U.S. Officials**

The Government of Canada remains committed to protecting the privacy of Canadians when working with international partners. We have responded to the concerns related to rights and freedoms of Canadians in the context of preclearance operations during the debate over the recently passed *Preclearance Act, 2016*. The *Agreement on Land, Rail, Marine and Air Transport Preclearance* provides that U.S. preclearance officers will be given the authority to search goods in preclearance areas, and ensures that all information collected during preclearance operations is treated in accordance with applicable U.S. privacy laws and policies, including those that provide for the protection of personal data against inappropriate access, use, or disclosure. The *Preclearance Act, 2016* states that a U.S. preclearance officer must exercise their powers and perform their duties and functions under the Act in accordance with Canadian law, including the *Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights* and the *Canadian Human Rights Act*. Furthermore, the CBSA undertakes the training of U.S. preclearance officers on relevant provisions of Canadian law.

As outlined in the letter to the Privacy Commissioner in October 2017, which was shared with this Committee in November 2017, measures are already in place to protect Canadians in the context of information sharing with the U.S. government and redress rights of Canadians with respect to personal information have not changed.

Data collected and shared with the U.S. are subject to terms of existing bilateral and multilateral arrangements that outline the purpose for the collection, all uses consistent with that purpose, how the information can be shared, as well as the ability to cease sharing in cases of unauthorized disclosure. U.S. counterparts have assured the Government of their ongoing commitment to protecting information shared by Canada.

Based on those assurances and regular exchanges, the Government is not seeking accession to the *Judicial Redress Act* (JRA) at this time. However, we take note of the Committee's recommendation and remain open to the possibility of seeking accession in the future. The Government will continue to follow closely any changes in U.S. policy, and reinforce to U.S. counterparts the importance of protecting the privacy of Canadians while ensuring public safety. Officials will continue to work closely with the Office of the Privacy Commissioner to protect Canadians' personal information by ensuring that adequate protections and safeguards are included in information-sharing arrangements.

Once again, I thank the Committee members for their work on keeping the important issue of privacy protection in the public debate. I would like to assure the Committee that the Government of Canada takes the privacy rights of Canadians very seriously and will continue to balance the need to uphold public safety while protecting Canadian values, rights and freedoms.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Goodale', written in a cursive style.

The Honourable Ralph Goodale, P.C., M.P.  
Minister of Public Safety and Emergency Preparedness