

April 5, 2017

BY FACSIMILE (819-994-5424)

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

ATTENTION: Daniel Therrien, Commissioner

Dear Commissioner Therrien:

Re: Privacy and executive order of U.S. President

On behalf of the HIV & AIDS Legal Clinic Ontario (HALCO) and the Canadian HIV/AIDS Legal Network (Legal Network),¹ please accept this letter expressing our grave concern regarding the January 25, 2017 executive order signed by U.S. President Donald Trump.

This order, titled “Enhancing Public Safety in the Interior of the United States,”² includes the following provision:

¹ The **HIV & AIDS Legal Clinic (Ontario)** (www.halco.org) is the only community-based legal clinic in Canada serving low-income people living with HIV. HALCO staff practice a broad range of law, including privacy, immigration, health, human rights, tenancy, and income maintenance, and engage in public legal education, law reform, and community development initiatives. Since its inception, the clinic has handled over 50,000 requests for legal services, delivered hundreds of workshops, presented numerous briefs to various government committees, and intervened in matters at courts including the Supreme Court of Canada and Court of Appeal for Ontario.

The **Canadian HIV/AIDS Legal Network** (www.aidslaw.ca) is a charitable, not-for-profit organization that promotes the human rights of people living with and vulnerable to HIV, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. It is the only national organization working exclusively on HIV-related legal issues in Canada, and one of the world’s leading organizations in the field, with an extensive body of human rights-based research and analysis on a range of legal and policy issues related to HIV. Since its inception, it has delivered hundreds of workshops for various audiences, presented numerous briefs to various legislative committees, and intervened in proceedings before the Supreme Court of Canada, several provincial Courts of Appeal, the European Court of Human Rights and numerous UN human rights treaty bodies. The Legal Network is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

² The White House, Office of the Press Secretary, “Executive Order: Enhancing Public Safety in the Interior of the United States,” January 25, 2017. Online at <<https://www.whitehouse.gov/the-press->

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

While the U.S. *Privacy Act*³ does not extend protection to foreign nationals, the Department of Homeland Security's (DHS) Privacy Policy Memorandum 2007-01⁴ established that:

[a]s a matter of DHS policy, any personally identifiable information (PII) that is collected, used, maintained, and/or disseminated in connection with a mixed system by DHS shall be treated as a System of Records subject to the Privacy Act regardless of whether the information pertains to a U.S. citizen, Legal Permanent Resident, visitor, or alien.⁵

The executive order signed by the US President appears to explicitly direct DHS and other U.S. agencies to disregard any previous policy positions and exclude foreign nationals' personally identifiable information from any protection under the *Privacy Act*.

Privacy of health and other information is of vital importance to persons with HIV. Given the close integration and co-operation between many Canadian and U.S. agencies, as well as the high amount of Canadian telecommunications traffic which enters the U.S., we are deeply concerned about the negative impact this executive order could potentially have on the privacy interests of persons with HIV and all Canadian residents.

For the sake of protecting the privacy interests of Canadian residents, we urge you to review the implications that this executive order may have for foreign nationals whose personally identifiable information may be collected, stored, or disseminated by U.S. agencies.

Sincerely,



Richard Elliott
Executive Director
Canadian HIV/AIDS Legal Network
1240 Bay Street, Suite 600
Toronto, ON M5R 2A7
Tel: 416-595-1666 ext. 229
Email: relliott@aidslaw.ca



Ryan Peck
Executive Director
HIV & AIDS Legal Clinic (Ontario)
55 University Street, Suite 1400
Toronto, ON M5J 2H7
Tel: 416-340-7790 ext. 4047
Email: peckr@lao.on.ca

office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united> (accessed April 5, 2017).

³ Pub.L. 93-579, 88 Stat. 1896, enacted December 31, 1974, 5 U.S.C. § 552a.

⁴ United States Department of Homeland Security, "Privacy Policy Guidance Memorandum 2007-01, Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons," online at <<https://www.dhs.gov/sites/default/files/publications/privacy-policy-guidance-memorandum-2007-01.pdf>> (accessed April 5, 2017).

⁵ *Ibid* at p.2.