



Information and Privacy
Commissioner of Ontario
Commissaire à l'information
et à la protection de la vie privée de l'Ontario

April 20, 2017

VIA ELECTRONIC MAIL

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Dear Mr. Elliott and Mr. Peck:

Re: Privacy and executive order of US President Trump

I am writing in response to your letter dated April 5, 2017, expressing concern about the privacy implications of US President Trump's January 25, 2017 executive order "Enhancing Public Safety in the Interior of the United States." In particular, you reference section 14 of the executive order, which requires US executive agencies (agencies) to ensure that their privacy policies exclude persons who are not US citizens or permanent residents from the *Privacy Act* protections, to the extent consistent with applicable law. You note that this section could have a negative impact on the privacy interests of persons with HIV, and all Ontario residents.

As you may be aware, the Office of the Information and Privacy Commissioner (IPC) is a tribunal with jurisdiction over health information custodians under the *Personal Health Information Protection Act (PHIPA)* and institutions under the *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.

The IPC has been monitoring the implementation of the executive order in an effort to determine the extent to which it affects Ontarians' privacy interests, and whether there are any implications for health information custodians and/or institutions subject to Ontario privacy legislation.

As you correctly note, the *Privacy Act* does not extend privacy protection to individuals who are not US citizens/residents; rather, the level of privacy protection given to those individuals is determined by the policies of each of the agencies. While some agencies, such as the Department of Homeland Security, implemented policies that applied *Privacy Act* protections to the personal information of both US citizens/permanent residents and non-citizens/permanent residents, it is not clear whether *all* agencies extended such protection to non-citizens/residents prior to the executive order. Further, it is not yet clear how those agencies that provided *Privacy Act* protections to non-citizens/residents have modified their policies in light of the executive order.



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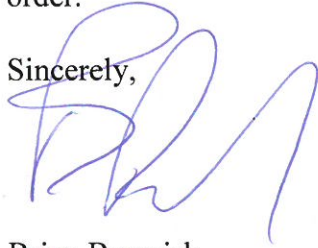
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Therefore, it is difficult to determine the extent to which the executive order affects Ontarians' privacy interests. However, the executive order should not impact health information custodians' compliance with *PHIPA*, or institutions' compliance with *FIPPA* or *MFIPPA*. Any disclosure to these agencies by a health information custodian or an institution must comply with the disclosure provisions in the applicable statute – the executive order does not change this.

On March 9, 2017, the federal Privacy Commissioner sent a letter to the federal Ministers of Public Safety, National Defence and Justice regarding the executive order. Noting that Canadians are not protected under the US *Privacy Act*, the Privacy Commissioner called on the federal government to ask that Canada be added to the list of designated countries under the *Judicial Redress Act of 2015*. Coverage under the *Judicial Redress Act of 2015* would extend certain *Privacy Act* remedies to Canadians, such as the right to commence a civil action against agencies designated by the US Attorney General, including the Department of Justice and Department of Homeland Security. I fully support Commissioner Therrien's position on this issue.

We will be monitoring the federal government's response to the Privacy Commissioner's recommendation, and are following developments relating to the implementation of the executive order.

Sincerely,



Brian Beamish
Commissioner