



BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

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NAFTA Consultations
Global Affairs Canada
Trade Negotiations — North America (TNP)
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By e-mail: NAFTA-Consultations-ALENA@international.gc.ca

Dear Minister Freeland,

RE: NAFTA Consultation submission

I am writing today regarding significant issues involving the information and privacy rights of Canadians and the coming negotiation of the North American Free Trade Agreement.

Yesterday, the US Trade Representative made public the US government's list of objectives for the coming negotiations, and they are extremely concerning.

The first and most serious can be found at the top of page 9 of the [document](#), under the heading Digital Trade in Goods and Services and Cross-Border Data Flows.

It reads as follows:

Establish rules to ensure that NAFTA countries do not impose measures that restrict crossborder data flows and do not require the use or installation of local computing facilities.

As you may be aware, the Province of British Columbia has a domestic data storage requirement in its public sector privacy law, the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

BC is one of two provinces in Canada that have such a legal requirement (the other is Nova Scotia).

Both the BC and Nova Scotia laws have been targeted by the US Trade Representative's office. In the latest annual report from that office, the USTR claims these laws are "barriers to digital trade":

British Columbia and Nova Scotia each have laws that mandate that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies, such as primary and secondary schools, universities, hospitals, government-owned utilities, and public agencies, from using U.S. services when there is a possibility that personal information would be stored in or accessed from the United States.

The BC provisions have been in force since 2004 and were implemented by the first Liberal government of Gordon Campbell on the [recommendation of BC's Information and Privacy Commissioner](#).

Premier Campbell had announced a number of outsourcing initiatives, one of which involved the Health ministry contracting out the administration of BC's public health insurance program to Maximus, a US controlled private service provider.

Very large numbers of British Columbians were concerned about the application of the USA *Patriot Act* to their personal health information if services were contracted out.

BC's Information and Privacy Commissioner made a number of recommendations to try to deal with these concerns, including a requirement that data be stored in Canada. This was incorporated as s.30.1 of *FIPPA*, which is a quasi-constitutional statute that applies to most of the broader public sector in BC as well as to the provincial government itself.

The provision requires public bodies in the province to “ensure that personal information in its custody or under its control is stored only in Canada and accessed only in Canada”, subject to a few limited exceptions.

The Commissioner made a number of other recommendations, including one that related directly to trade negotiations. It is as valid today as it was when the report was first released.

Recommendation 15

The government of Canada should, in consultation with the provincial and territorial governments, negotiate with foreign trade partners (including members of the World Trade Organization) to ensure that trade agreements and other treaties do not impair the ability of Canadian provinces, territories and the federal government to maintain and enhance personal information protections in accordance with Canadian values.

We urge you to take this principle into the coming negotiations, and ensure that legislation currently on the books that protects our privacy by means of a domestic data storage requirement is not undermined by whatever is ultimately agreed to. Furthermore, we insist that all Canadian governments retain the full legislative sovereignty to bring in such legislation in future, uninhibited by NAFTA or other trade agreements.

Protection of the domestic data storage provision in *FIPPA* is a matter of political consensus in British Columbia. BC FIPA sent a [questionnaire](#) to party leaders during the recent provincial election. The major BC political parties stated unequivocally that they support *FIPPA*'s domestic data provisions, and would use whatever measures were available to protect them.

Canadians are concerned about their personal information being shared in any way shape or form with an increasingly erratic United States. Some American companies have already started offering a Canadian data storage option in response to market demand, and governments should continue to have the freedom to protect their citizens' information and privacy rights as they see fit, including by requiring domestic data storage.

It should be pointed out that the law protecting our privacy rights is a quasi-constitutional statute.

We look forward to hearing your government's firm commitment that our rights will not be made subject to the coming negotiations regarding trade in goods and services. If you require any additional information about any of these points we would be pleased to provide it.

Sincerely yours,

Vincent Gogolek

Executive Director