



Homeland Security

JUL 06 2017

Nuala O'Connor
President and CEO
Center for Democracy & Technology
1401 K Street NW, Suite 200
Washington, DC 20005

Dear Ms. O'Connor:

Thank you for your March 10, 2017, letter expressing your concerns regarding inspection processes. Secretary Kelly asked that I respond on his behalf.

At the February 7, 2017, hearing before the House Committee on Homeland Security, Secretary Kelly discussed the need to have reliable information on those seeking entry into the United States in order to ensure compliance with customs, immigration, and other laws that DHS is authorized to enforce. U.S. Customs and Border Protection (CBP) officers must determine the identity and citizenship of all persons seeking entry into the United States, determine the admissibility of foreign nationals, and deter the entry of possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

CBP is committed to ensuring the rights of all people, while taking the lawful actions necessary to secure our borders. All items entering the country are subject to inspection, and CBP may seek the traveler's assistance in presenting his or her effects – including electronic devices – in a condition that allows inspection of the item and its contents. This inspection may include searching computers, disks, drives, tapes, mobile phones, and other communication devices, cameras, music and other media players, and any other electronic or digital devices. In instances where an electronic device, or portions of the content on the device, are locked or password-protected or otherwise not readily available for inspection, CBP may take lawful measures, as appropriate, to inspect the device and its contents consistent with longstanding authority to perform border searches. These practices are consistent with various laws authorizing searches and detention, including, for example, 8 U.S.C. § 1357 and 19 U.S.C. §§ 1499, 1581, 1582. In fiscal year 2016, CBP examined the electronic devices of less than one-hundredth of one percent of travelers arriving in the United States.

CBP Directive No. 3340-049, *Border Search of Electronic Devices Containing Information*, provides guidance, procedural safeguards, and standard operating procedures for searching, reviewing, retaining, and sharing information contained in computers, mobile phones, cameras, and other electronic devices that CBP encounters at the border.

Among other things, the CBP directive requires the following:

- Supervisory approvals for detention of devices and/or data after the individual's departure from the port or location of search;
- Supervisory approvals for retention of data following border search;
- Procedures for the handling of privileged or other sensitive materials;
- Notice to the traveler where circumstances allow; and
- Audit requirements.

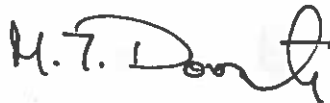
This directive, in effect since 2009, has been reviewed by the Department of Homeland Security Privacy Office and the DHS Office for Civil Rights and Civil Liberties. It is available online at: https://www.dhs.gov/xlibrary/assets/cbp_directive_3340-049.pdf. CBP conducts annual self-inspection audits and monthly reviews to insure policy adherence.

Also, DHS published a Privacy Impact Assessment (PIA), which thoroughly analyzes the privacy risks and mitigations regarding how CBP and U.S. Immigration and Customs Enforcement (ICE) handle the examination, detention, retention, and seizure of electronic devices and information. This PIA is available at: https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cbp_laptop.pdf.

As we work to develop policies and programs that achieve the Department's mission to protect the homeland, we will continue to work to minimize the impact of DHS programs on an individual's privacy, particularly an individual's personal information. In addition, we will continue to promote and integrate civil rights and civil liberties into all Departmental activities.

Thank you again for your letter and your interest in this important matter. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,



Michael Dougherty
Assistant Secretary
for Border, Immigration, and Trade
Office of Policy