



THE PERMANENT MISSION  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

September 14, 2017

Mr. David Kaye  
Special Rapporteur on the promotion  
and protection of the right to freedom  
of opinion and expression

Dear Mr. Kaye:

Thank you for your letter dated May 1, 2017, requesting information regarding social media screening of travelers at the United States border. Please find the U.S. response attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason R. Mack".

Jason R. Mack  
U.S. Deputy Permanent  
Representative to the UN Human  
Rights Council

**SUBJECT: U.S. Response to OHCHR inquiry regarding screening of electronics and social media accounts**

U.S. Customs and Border Protection (CBP), a component of the U.S. Department of Homeland Security (DHS), is responsible for ensuring the safety and admissibility of the goods and people entering the United States. Doing so in an increasingly digital world depends on CBP's ability to lawfully inspect all materials, electronic or otherwise, entering the United States. All items entering the country are subject to inspection, and CBP seeks 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.

CBP performs border searches and inspections consistent with all applicable federal laws, constitutional protections, and U.S. human rights and privacy obligations. Individual travelers who believe their civil rights and civil liberties have been violated are encouraged to use existing robust DHS and CBP complaint processes, including those available through the DHS Office for Civil Rights and Civil Liberties (<https://www.dhs.gov/file-civil-rights-complaint>), DHS Office of Inspector General (<https://hotline.oig.dhs.gov/hotline/hotline.php>), and CBP Info Center.

We recommend that you encourage individuals who have brought their particular complaints to your attention to file them formally with DHS, if they have not already done so.

In 2009, CBP put into place Directive No. 3340-049, Border Search of Electronic Devices Containing Information. This Directive provides guidance, procedural safeguards, and standard operating procedures for searching, reviewing, retaining, and sharing information contained in computers, phones, cameras, and other electronic devices that CBP encounters at the border to ensure compliance with laws that CBP is authorized to enforce. Among other things, the CBP Directive requires: supervisory approvals for detention of devices and/or data after the individual's departure from the port or location of search, and 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 is a disciplined, deliberate, policy that has been reviewed by the DHS Privacy Office and the DHS Office for Civil Rights and Civil Liberties. The policy is available online and demonstrates CBP's commitment to respecting the privacy, civil rights, and civil liberties of all individuals, while ensuring that CBP can take the lawful actions necessary to secure our borders. CBP conducts annual self-inspection audits and monthly reviews to ensure policy adherence.

With reference to the inspection of a traveler's effects, this 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 is, 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 CBP's longstanding authority to perform border searches, which derives from statutes passed by the First Congress of the United States and is well recognized by the Supreme Court of the United States. 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, and 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.

Further, CBP has no policy that requires or provides for the handcuffing of a traveler based solely on the traveler's unwillingness or refusal to unlock a device or provide a password to access material on an electronic device. Securing a traveler, to include handcuffing said traveler, is based on the totality of the circumstances present at the time of the inspection or encounter.

As noted above, CBP performs border searches and inspections in full compliance with all applicable federal laws and constitutional protections, consistent with U.S. human rights obligations. As CBP works to develop policies and programs that achieve DHS's mission to protect the homeland, CBP will continue to work to minimize the impact of DHS programs on an individual's privacy, particularly an individual's personal information. In addition, CBP will continue to promote and integrate privacy, civil rights, and civil liberties into all Departmental activities.