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In October 2007 your office directed the British Columbia Archives to begin enforcing the Access to Personal Information for Research or Statistical Purposes agreement ('Agreement') by inspecting researchers' homes and offices. On 26 November 2007 I became the first person 'audited' by the staff from the BC Archives. Based on my experience with the audit, I would like to bring to your attention some potential ramifications of this new policy and offer some tentative recommendations.

The audit was conducted in a professional and collegial manner. Mac Culham (Manager, Corporate Information, Privacy and Records) and his technical expert, Brant Brady, deserve credit for their work on this matter. The staff visited my office at the University of Victoria on 26 November 2007. Culham proceeded to explain the process and the reasons for the audit, and then he directed me to explain how I and stored data. Afterwards, Brady asked me to demonstrate, using my computer, how I stored digital files. The entire process took approximately 45 minutes. The audit would have included an inspection of my apartment, but I have moved the research materials covered under the Agreement to my office.

As you know, freedom of information legislation attempts to strike a difficult balance. The state, of course, has a legitimate interest and, in fact, an obligation to protect certain documents and information. However, every freedom of information statute in Canada is built upon the assumption that citizens have a right to access public documents. The legislation in British Columbia was created under the principle of "giving the public a right of access to records" and the federal Access to Information Act "provides a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public." In each case, exemptions to the right of access are mandated to be both specific and limited. In British Columbia, this balance has been created by requiring all researchers to enter into a contractual Agreement with the archives. The policy of auditing researchers' homes raises an important privacy issue: Does the process of auditing citizens' homes and offices ensure researchers' obligations under the Agreement?

My experience with this process suggests that it does not. What have the archives staff accomplished? They have confirmed that I own a desk with a locked cabinet and that I own a memory stick. The archives staff can not ensure my compliance with the

Agreement. Moreover, they must rely on the researcher to respond truthfully about their records and how they are stored. Ultimately, irrespective of the auditing process, the archives will continue to depend on the researchers' to comply with the Agreement.

Perhaps the audit serves, not to police researchers, but to ensure that they simply have the capability of following the regulations under the Agreement? Fundamentally, then, the issue at stake is whether this objective outweighs the potential dangers of empowering government employees to force individuals to allow them to enter their offices and homes. Consider, for a moment, just a few of the potential ramifications of this practice. Graduate students, who are responsible for producing a significant amount of knowledge that benefits British Columbians, are rarely given offices. Virtually every graduate student will be forced to allow the archives' staff to enter their homes or will have to abandon their research. Undoubtedly many private researchers who work from home suffer from a similar disadvantage. Since the archives' staff only have the resources to commit to conducting audits in Vancouver and Victoria, researchers' who live outside these two cities, particularly those outside the province, enjoy an unjust immunity from the audit. The auditing process is thus not only invasive, but it creates two classes of researchers; people who fear home audits will have more avenues of research available to them if they live outside the major cities. And will the archives' staff be entering the offices of the Vancouver Sun or the Victoria Times-Colonist to ensure reporters' compliance with the Act? What if a member of the archives' staff enters someone's home and observes a crime (illegal software, copyright violations, stolen property)? Will the staff be directed to report their observations to the police? What if the archives' staff accidentally damage private property? I have enormous respect for the staff at the BC Archives, but they have not received any special training for this new initiative. The Agreement also allows the archives' staff to inspect any computer that comes into contact with the memory stick. At the University of Victoria, students and staff routinely use campus computers to edit, review and print notes and documents; this provision of the Agreement would open virtually the entire campus to audits. Finally, the Agreement stipulates how researchers will record data in their personal notes and the audit could include a review of notes. Unfortunately, this means that scholars may have to self-censor their work if they wish to keep their notes private

The auditing process threatens to send a chill throughout the research community across British Columbia. It is rare to find a similar requirement anywhere else in Canada, and no other jurisdiction allows for audits on such a broad scope of materials (in my case, the restricted documents I was examining included public speeches by the Minister of Labour). In spite of the staff's professionalism, the auditing process is a daunting and intimidating process. Many, if not most, researchers will be intimidated by the technical requirements of securing a 124-bit encrypted jump-drive or securing open-source spyware software. To my knowledge, the archives does not have a clear appeal process for 'failed' audits or regulating how the staff determine who to audit. In his letter summarizing the results of the audit (7 December 2007), Provincial Archivist Gary Mitchell indicated that, if I had been covered under the Electronic Data Security Schedule (a new requirement for all future researchers), I would have been in violation of the Agreement. According to Mr. Brady, I failed to briefly disconnect my internet connection

for the ten minutes I was using my jump-drive. What are the repercussions of this violation? Would my access to the archives be suspended? Would I have to endure another audit for no other reason than to remove a cable from my laptop?

Instead of facilitating researchers' compliance with the Agreement, the auditing process may have the adverse effect of encouraging researchers to deceive the archives' staff to avoid allowing strangers into their homes. If the OIPC is genuinely concerned about researcher's compliance with the Agreement, there are better strategies available to the archives. For instance, the archives could establish a digital database for researchers' to store all electronic data. Instead of keeping their digital documents at home (and, with the proliferation of digital cameras, these documents are slowly replacing physical documents), researchers could keep them in a digitally-secured 'vault' which they can access through the internet with a secure password. The archives could also require researchers' under the Agreement to meet with the archives' staff at the archives to discuss storage security practices to ensure their compliance with the Agreement (and bring along their computer). These and other methods could create a far better balance between the government's privacy concerns and the rights of the citizens in this province.

I appreciate and respect the concerns of the OIPC. Obviously, it is critical for your office to ensure that researchers' comply with the Agreement. But I believe that the auditing process does not successfully accomplish this objective and that there are better, and less intrusive, techniques available to the government. The Provincial Archivist and others have argued that, ultimately, it is a question of choice: users can choose not to conduct research if they find the Agreement invasive. But is it a real choice? A journalist or graduate student or academic forced to abandon their work will place their career in jeopardy. Moreover, this policy, because it is very broad, threatens to deny the production of genuine knowledge about British Columbia. Defending restrictions as matter of choice on behalf of the researcher, I submit, conflicts with the principles of the legislation with *presumes* a right of public access to state documents.

The process thus far has been respectful and collegial, and I hope the OIPC, the BC Archives and the research community can continue to work together to develop a fair and efficient policy. Perhaps your office will take these concerns into consideration and begin a dialogue with the community on this issue.

Yours Truly,

Dominique Clément.

Cc.

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