

Biggs, Jackie CITZ:EX

From: Sexsmith, Melissa M CITZ:EX
Sent: October 18, 2018 11:20 AM
To: Curtis, David CITZ:EX; Laidlaw, Susan CITZ:EX; Reed, Matt CITZ:EX
Cc: Biggs, Jackie CITZ:EX; Harbord, Chris GCPE:EX; Ingram, Ben GCPE:EX; Whittier, Joanne GCPE:EX
Subject: RE: US-Mexico-Canada Agreement - Data Localization and draft statement

See red below.

s.13

Susan is here with me – no other comments from her. Matt?

From: Curtis, David CITZ:EX
Sent: October 18, 2018 11:17 AM
To: Sexsmith, Melissa M CITZ:EX; Laidlaw, Susan CITZ:EX
Cc: Biggs, Jackie CITZ:EX; Harbord, Chris GCPE:EX; Ingram, Ben GCPE:EX; Whittier, Joanne GCPE:EX
Subject: FW: US-Mexico-Canada Agreement - Data Localization and draft statement

Appreciate any edits/comments from Melissa and Susan who are just breaking free from an LSB call now.

Thanks.

From: Whittier, Joanne GCPE:EX
Sent: Thursday, October 18, 2018 10:33 AM
To: Curtis, David CITZ:EX ; Sexsmith, Melissa M CITZ:EX ; Laidlaw, Susan CITZ:EX
Cc: Biggs, Jackie CITZ:EX ; Harbord, Chris GCPE:EX ; Ingram, Ben GCPE:EX
Subject: US-Mexico-Canada Agreement - Data Localization and draft statement

Hi David – we’ve updated the draft key message document (new info highlighted), as well as prepared a statement that can be shared with FIPA and any media that might reach out to us. Please let me know if this is ok with CIRMO? I’ll need to run by JTT and the MO too. Thx much - Jo

DRAFT

Statement from the Ministry of Citizens’ Services – October 18, 2018

“We are pleased that that Canada, Mexico and the United States have concluded negotiations on a new trade agreement. It is encouraging to see the agreement aligns with British Columbia’s robust privacy legislation. We’ve completed a legal analysis and determined that the Province’s legislative protections for data localization within Canada under the Freedom of Information and Protection of Privacy Act are not impacteds.13,s.16,s.17

s.13,s.16,s.17

B.C. worked closely with Ottawa during negotiations to ensure these data residency protections were maintained in the new agreement.”

Additional information on background if needed:

s.14,s.16,s.17

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Withheld pursuant to/removed as

s.14;s.16;s.17

Biggs, Jackie CITZ:EX

From: Biggs, Jackie CITZ:EX
Sent: October 18, 2018 10:47 AM
To: Reed, Matt CITZ:EX
Cc: Sexsmith, Melissa M CITZ:EX; Laidlaw, Susan CITZ:EX; Curtis, David CITZ:EX
Subject: FW: US-Mexico-Canada Agreement - Data Localization and draft statement
Attachments: KM new trade agreement_DRAFT3.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi Matt,

I think this should have also been sent to you for review.

J

From: Whittier, Joanne GCPE:EX
Sent: October 18, 2018 10:33 AM
To: Curtis, David CITZ:EX ; Sexsmith, Melissa M CITZ:EX ; Laidlaw, Susan CITZ:EX
Cc: Biggs, Jackie CITZ:EX ; Harbord, Chris GCPE:EX ; Ingram, Ben GCPE:EX
Subject: US-Mexico-Canada Agreement - Data Localization and draft statement

Hi David – we’ve updated the draft key message document (new info highlighted), as well as prepared a statement that can be shared with FIPA and any media that might reach out to us. Please let me know if this is ok with CIRMO? I’ll need to run by JTT and the MO too. Thx much - Jo

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“We are pleased that that Canada, Mexico and the United States have concluded negotiations on a new trade agreement. It is encouraging to see the agreement aligns with British Columbia’s robust privacy legislation. We’ve completed a legal analysis and determined that government’s s.13, s.16, s.17
s.13, s.16, s.17 B.C. worked closely with Ottawa during negotiations to ensure data residency protections were maintained in the new agreement.”

Additional information on background if needed:

s.14, s.16, s.17

Key Messages – USMCA trade agreement

Oct. 18, 2018

Canada, the United States and Mexico have completed work on a trade deal to replace the North American Free Trade Agreement (NAFTA). The parties released a joint statement on Sept. 30, 2018 announcing the new United States-Mexico-Canada Agreement (USMCA). Over the coming months, each party will review details of the agreement from a legal perspective and move towards ratification. Following, the agreement will take effect; the date to be determined at a later stage.

s.13,s.16,s.17

Key Messages

- I am pleased to hear that Canada, Mexico and the United States have concluded negotiations on a new trade agreement.
- This new trade deal will help ensure the stability of our businesses and economy.

s.13,s.16,s.17

s.13,s.16,s.17

s.13,s.14

If asked (procurement):

- The USMCA contains no new obligations for B.C. in the area of procurement and government purchasing.
- There are copyright provisions that will have impacts on our Intellectual Property Program.
- Specifically, the agreement extends the length of copyright protections by 20 years.

s.16,s.17

Biggs, Jackie CITZ:EX

From: Bill Trott – Chief Privacy Officer <cpo@uvic.ca>
Sent: October 17, 2018 2:48 PM
To: Reed, Matt CITZ:EX
Subject: RE: USMCA and data localization

Hi Matt:

Thank you for this Q and A – and thank you for permitting me to share this with the group (I will make sure they know to keep it within their organizations).

This should at least stop long speculative discussions.

Bill

Bill Trott
Chief Privacy Officer
Office of the General Counsel
University of Victoria
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www.uvic.ca/vpfo/departments/privacy

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From: Reed, Matt CITZ:EX
Sent: October 17, 2018 2:36 PM
To: Bill Trott – Chief Privacy Officer
Subject: RE: USMCA and data localization

Hi Bill,

The government-wide comms on this issue have not yet come out, but I just yesterday secured this Q&A (or portion of a Q&A) that I am able to share with public sector stakeholders in the interim. You are absolutely able to share the information in this with them, and if you think they are all going to ask me for it anyways, then you can also share this Q&A with them, but I would ask that you request that it not be shared outside of their organizations. Any other parties can be directed to me (or a request sent to me).

Let me know if this does the trick – otherwise if I can fit it in my calendar, I am happy to dial in and speak to it, but I suspect that might be overkill (especially when you see how short the note above is).

Thanks,
-m

From: Bill Trott – Chief Privacy Officer [<mailto:cpo@uvic.ca>]
Sent: Wednesday, October 17, 2018 1:56 PM

To: Reed, Matt CITZ:EX
Subject: USMCA and data localization

Hi Matt:

I thought I would follow up our conversation about Articles 19.11 and 19.12 of USMCA and section 30.1 of FIPPA. You mentioned there was a note that clarified the province's position that FIPPA s. 30.1 was not impacted by USMCA articles 19.11 and 19.12. I am attending a meeting on Friday, October 19, 2018 of university and college privacy officers where this issue is on the agenda. It would help clarify the issue if you could send me a copy of the note. There seems to be a great interest in this issue in the post secondary sector.

You might have seen M. Geist's blog <http://www.michaelgeist.ca/2018/10/how-canada-surrendered-policy-flexibility-for-data-localization-rules-in-the-usmca/>

He seems to be drawing a distinction between the use of the 19.12 which does not have the legitimate public policy objective provision and Article 19.11 which has such an exception. He does mention that the USMCA chapter Article 32.1(2) incorporates GATS, Article XIV, paras. a, b, and c into Article 19.12.. Those paragraphs create an exception based upon compliance with legislation for the protection of privacy.

Your usual clarity would be helpful.

Best wishes

Bill

Bill Trott
Chief Privacy Officer
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Biggs, Jackie CITZ:EX

From: Curtis, David CITZ:EX
Sent: October 16, 2018 10:32 AM
To: Harris, Colleen FIN:EX
Cc: Reed, Matt CITZ:EX
Subject: FW: US-Mexico-Canada Agreement - Data Localization: Q and A
Attachments: Data Localization Q and A.docx

Hi Colleen,

I was hoping that you would be able to share the following and attached material with ADMCST.

The material has also been shared with the MCIOs.

Thanks again for your help.

David

Please find attached, a Q&A related to the USMCA s.14,s.16,s.17
s.14,s.16,s.17

Thanks to the JTT team for their assistance with this issue and development of the material.

Regards,

David

Question: Is BC no longer able to require data localization for public bodies under the US-Mexico-Canada Agreement (USMCA)?

Answer:

- It has been incorrectly reported that governments will not be allowed to require data localization for public bodies in their territories under the US-Mexico-Canada Agreement (USMCA).

s.14,s.16,s.17

Biggs, Jackie CITZ:EX

From: Luciani, Chelsie JTT:EX
Sent: October 12, 2018 4:07 PM
To: Reed, Matt CITZ:EX
Subject: Re: update

three words in the question that should be taken out - accidentally left in when i reworded the question:

Question: Is BC no longer able to require data localization for public bodies ~~in their territories~~ under the US-Mexico-Canada Agreement (USMCA)?

From: Luciani, Chelsie JTT:EX
Sent: Thursday, October 11, 2018 3:47 PM
To: Reed, Matt CITZ:EX
Subject: update

I've drafted a Q and A and am just moving it up through approvals here – will send to you as soon as it is approved.

Biggs, Jackie CITZ:EX

From: Luciani, Chelsie JTT:EX
Sent: October 12, 2018 2:30 PM
To: Reed, Matt CITZ:EX
Cc: Perzoff, Lara GCPE:EX; Giles, Alison GCPE:EX
Subject: Re: update
Attachments: Data Localization Q and A.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi Matt,

Please find attached a Q and A on data localization and the USMCA - let me know if it makes sense.

Regards,
Chelsie

Question: Is BC no longer able to require data localization for public bodies in their territories under the US-Mexico-Canada Agreement (USMCA)?

Answer:

- It has been incorrectly reported that governments will not be allowed to require data localization for public bodies in their territories under the US-Mexico-Canada Agreement (USMCA).

s.14,s.16,s.17

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s.14;s.16

Biggs, Jackie CITZ:EX

From: Perkins, Gary CITZ:EX
Sent: October 5, 2018 8:17 AM
To: Reed, Matt CITZ:EX
Subject: USMCA

Follow Up Flag: Follow up
Flag Status: Completed

Good morning,

I have identified an opportunity! An opportunity to get ahead of things before the rumour mill continues. I heard you deal with this very briefly on the call and have seen some tidbits in email. Can you give me a 1 or 2 liner to combat the slow but increasing number of messages I'm getting like this one this morning:

Article 19.11 of the new USMCA agreement (formerly NAFTA) essentially nullifies the data residency requirement under section 30.1 of FOIPA. Specifically, 19.11 states the following:

"1. No Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business of a covered person."

Below is a link to the full text of Chapter 19:

<https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/19%20Digital%20Trade.pdf>

All I need... is ... your team to pen a statement like:

It is not the case that Article 19.11 of the new USMCA agreement (formerly NAFTA nullifies or impacts the privacy legislation in BC in whole or in part. This is because....

I want to get ahead of this rather than leave to fester like GDPR where folks develop their own opinions and then share them as facts.

Regards,

Gary Perkins

Executive Director, Chief Information Security Officer (CISO)

Information Security Branch

Office of the Chief Information Officer

Gary.Perkins@gov.bc.ca

250-387-7590



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Biggs, Jackie CITZ:EX

From: Biggs, Jackie CITZ:EX
Sent: October 3, 2018 5:37 PM
To: Reed, Matt CITZ:EX
Subject: FW: IN - USMCA and BC Privacy Laws
Attachments: MIN IN - USMCA and BC Privacy Laws v 1.0.docx; Draft - Internal Communication Re USMCA - Multi-Audience.docx

FYI

From: Biggs, Jackie CITZ:EX
Sent: October 3, 2018 5:17 PM
To: Kot, Jill CITZ:EX
Cc: Cook, Jeannette CITZ:EX ; Olsen, Melody CITZ:EX
Subject: IN - USMCA and BC Privacy Laws

Hi Jill,

As per David's request, please find attached an information note regarding the "United States-Mexico-Canada Agreement and BC Privacy Laws" along with a draft communication that you may wish to share further.

Note that these items can be found under eApproval 8068 and Cliff 110676.

Thanks
Jackie

2018 Information Note Advice to Minister

Date: October 3, 2018

Ref: 110676

Issue: United States-Mexico-Canada Agreement and BC Privacy Laws

Conclusion / Next Steps (if any):

s.16,s.17

s.14,s.16,s.17

s.16,s.17

- Procurement and Supply Division has prepared a separate briefing note on matters related to intellectual property and procurement.

Background / Facts:

- On September 30, 2018, a new framework was announced to replace the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico.
- This framework, which is to be known as the United States-Mexico-Canada Agreement (USMCA) comes after more than a year of in-depth negotiations following US President Donald Trump's campaign commitment to renegotiate NAFTA.
- The USMCA must still be ratified by the three respective member nations; however it is expected that the agreement will be signed before the end of November 2018.
- Many observers expressed concern that the new trade agreement would conflict with the data residency provisions within BC's FOIPPA, which stipulate that a public body must ensure that personal information in its custody or under its control is stored and accessed only in Canada, unless circumstances outlined in the Act apply.
- At the time that the Comprehensive and Progressive Agreement for Trans-Pacific Partnership was negotiated, the Ministry of International Trade confirmed with the federal government that the term "government procurement" included municipalities, school boards, public education, health and social services (i.e. "public bodies" covered under FOIPPA).

Analysis:

s.16,s.17

s.14,s.16,s.17

s.16,s.17

Contact: *David Curtis, Assistant Deputy Minister and Chief Records Officer, (778) 698-5845*

DRAFT – Internal Communications Re: USMCA – Multi-Audience

Canada, the United States and Mexico have completed work on a trade deal to replace the North American Free Trade Agreement (NAFTA). The parties released a joint statement on September 30, 2018 announcing the new United States-Mexico-Canada Agreement (USMCA).

Staff in several ministries are analyzing how this new trade agreement may impact British Columbia, led by our colleagues in the Ministry of Jobs, Trade and Technology.

s.16,s.17

The *Freedom of Information and Protection of Privacy Act* requires public bodies to ensure personal information is stored in and accessed from Canada, except in specific circumstances.

s.16,s.17

If you have any questions about this or any other matter related to FOIPPA or the protection of privacy, I encourage you to contact the Privacy Helpline at Privacy.Helpline@gov.bc.ca or 250 356-1851.

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s.14

Biggs, Jackie CITZ:EX

From: Sexsmith, Melissa M CITZ:EX
Sent: October 3, 2018 9:09 AM
To: Curtis, David CITZ:EX
Cc: Reed, Matt CITZ:EX
Subject: USMCA and PIPA

Here is wording prepared respecting the identical provisions in TPP:

- The e-commerce provisions of the TPP would likely restrict BC's ability to add data residency requirements to the *Personal Information Protection Act* (PIPA). There is not, and has not been, any indication that government intends to add these restrictions to the private sector privacy legislation.

Melissa M. Sexsmith, Senior Director | Strategic Policy and Legislation Branch | Corporate Information and Records Management Office | 2nd Floor – 546 Yates Street, Victoria BC | 250 514 2173

Biggs, Jackie CITZ:EX

From: Reed, Matt CITZ:EX
Sent: December 5, 2018 9:54 AM
To: Biggs, Jackie CITZ:EX
Subject: FW: statement

from the Ministry of Citizens' Services – October 18, 2018

“We are pleased that that Canada, Mexico and the United States have concluded negotiations on a new trade agreement. We’ve completed a legal analysis and determined that the Province’s legislative protections for data localization within Canada for public bodies under the Freedom of Information and Protection of Privacy Act are not impacted. B.C. worked closely with Ottawa during negotiations to ensure these data localization protections were maintained in the new agreement.”