
You've Got Mail And Now We Have It Too

by Adam Young for the Foundation for Economic Education

On March 2 it was revealed that for years the government of Canada has been randomly opening the incoming mail of Canadian citizens and copying the contents into a central database—all in the name of fighting illegal immigration. At Canada Post facilities all across the country, federal agents routinely open letters and parcels originating from abroad that weigh more than 30 grams (1.06 ounces) in the battle against people-smuggling and “international criminals.”

Customs officials regularly pass along the information they find to other government departments. In some cases customs will confiscate documents and send them to other departments; in others, documents are merely copied and sent along, while the original mail continues on to the addressee. Officers are not required to obtain any warrant before opening and photocopying the material.

Citizenship and Immigration Canada (CIC) has created a centralized database that catalogs the documents and information passed along by customs; the database can be accessed by immigration officials all across the country.

Canadian customs officials have admitted that they open packages randomly as they come into the country, and CIC officials have also admitted that they routinely receive documents from customs inspectors, but continue to claim that the measures are needed to police migration into Canada.

Canada’s federal privacy commissioner, George Radwanski, criticized Canada Customs and has now launched an investigation into the way the mail is being “inspected.” “Opening people’s mail, particularly on a large scale without benefit of a warrant, is not a good or attractive thing.” said Radwanski.¹

To most people, his response should be striking because of what it is missing: namely, a flat-out statement that this sort of activity by government agents is illegal. Sadly, in Canada, it is not. In 1992 the government gave itself the legal approval to open mail at all border and customs checkpoints. It may not be a good thing, or an attractive thing, but in Canada it is a perfectly legal thing.

The immigration department was given the authority to begin collecting such information in a barely publicized amendment to the Customs Act, which was passed by Parliament in 1992 in a favorite tool of politicians—an omnibus bill. Before 1992 Customs could only seize goods if it suspected their transportation was a violation of the Customs Act. With the new amendment Customs Canada inspectors are authorized to open mail that weighs more than 30 grams without a warrant and are permitted to seize goods, including parcels and packages, if a customs officer suspects a violation of “any Act of Parliament.”

This little-known—at least until now—legislative change authorizes Canada Customs officers to act as agents for the intelligence branch of CIC in its business of identifying, intercepting, seizing, and/or copying “suspect” mail and courier packages.

A training manual for immigration intelligence officers who record the details of “inspections” explains that the objective is “the creation of a national database relative to documentation being sent in the mails or by courier services internationally.” This training manual, which was released with several sections censored, was obtained by Richard Kurland, an immigration lawyer, using the Access to Information Act. The 24-page manual instructs agents to record names, birth dates, family information, destinations, and travel histories, and to describe any other documents seized. If a package contains travel documents, it recommends recording airline tickets, baggage tags, and seat numbers. The manual also says that the database is scheduled to be upgraded with digital scanning capabilities, allowing officials to enter photographs and text images.

Clearly Marked?

Canada Post claims that any letters and packages that have been opened are clearly marked so the recipients know their contents have been inspected. But some immigration lawyers say that they’ve suspected for a long time that their mail was being opened without notice. Several immigration lawyers from across Canada say they have discovered their mail—especially correspondence with clients—had been opened, and some say that they believe they are being targeted by Immigration Canada. They insist they were never told that their mail was being opened, whether information was kept or copied, or why.

Kurland believes his mail has been opened regularly for years. He says his mail has been opened so frequently that his colleagues would usually gather around him to see how his latest packages had been stamped or repackaged. “We don’t let the government tap our phones without permission from a court. Why should it be any different with the mail?” Kurland asked.² He said that there is nothing to stop CIC from expanding their interception of letters to any group of Canadians. “This is not about immigrants; they can open the mail of all sorts of people. How do they choose whose mail to open? Who knows?”³

Another immigration lawyer from Montreal said that once when she inquired about a late courier package she was told by customs that they made random checks of mail and photocopied any documents involving immigration or tax issues and then sent them on to the appropriate federal department. A Vancouver immigration lawyer, Elizabeth Bryson, said that mail from the same client was held up twice when it was opened by customs officials. On the second occasion the package of letters, applications, photographs, and copies of documents was expressly marked as privileged and confidential communication between a client and a lawyer. She said she was told by a customs official that they opened mail based “on a roster to view documents” and did not target her or her client specifically.

“From what they say, it seems they are on fishing expeditions in the hope of finding something,” Bryson remarked. “How can I promise my clients confidentiality if there is a government agency, without any reasonable basis, that is opening my correspondence?”⁴

“I’m not 100 percent sure what this has to do with [people] smuggling at all, because the documents are being sent to people in Canada,” said Joyce Yedid, a Montreal lawyer whose own clients’ documents have gone missing or arrived unsealed. “They’re not being sent for any other purpose, so I don’t see the connection. This is a non sequitur.” Yedid also said that mail addressed to her at her law office has also been opened.

Yedid mentioned years of frustration trying to determine who intercepted her clients’ mail and where it went. She also questioned the legality of the whole procedure. “My clients have told me that some of these envelopes were clearly marked as being covered by solicitor-client privilege,” she said. “To the best of my knowledge, they have no right to open these things.”⁵

The Immigration Act allows officials to seize documents at ports of entry such as airports or harbor ports. But with the release even of the censored version, the intelligence manual acknowledges what immigration lawyers have long suspected—that the federal government has been seizing personal mail and keeping it on file.

A CIC spokeswoman, Danielle Sarazin, admitted the department regularly receives documents seized by customs officials, but defended the whole practice with the claim that it was a necessary measure against the increasing frequency of document fraud and false refugee claims. “The whole purpose of seizing mail is to preserve program integrity,” she said. “What we want to do is take fraudulent documents out of circulation. We also want to seize documents that can be used to effect the removal of people who should not be in Canada.”⁶

Questionable Packages

Sarazin went further and reassured Canadians that “Immigration knows what kinds of packages are questionable, so we’ll share that information with Customs.”⁷ She also claimed that only immigration staff members with special clearance are allowed access to the central database and that CIC provides customs officers with the profiles of suspect pieces of mail. She could not, however, identify the precise criteria that Customs uses to seize immigration-related mail. She also said she didn’t know if correspondence between clients and lawyers, or others, was kept by CIC, but insisted that there is no attempt to interfere with or subvert the legal process.

The spokeswoman for the Canada Customs and Revenue Agency, Colette Gentes-Hawn, said she couldn’t comment specifically on the allegations made by the lawyers, but acknowledged that Customs regularly opens mail at random. “Most packages that are opened at the border are those that seem suspicious for one reason or another, but “we do enough of a plain random [search] so we know what’s going on,” she said. “No warrant is

necessary and a report is filled out only if something illegal is found. Otherwise, the contents are repackaged and stamped opened by customs.”⁸

She said letter-sized envelopes under 30 grams usually go untouched, but that some larger ones are opened with an attempt to screen out contraband. “If the package is from Colombia, obviously that says something. If it’s from France or Holland, there could be ecstasy in there.”⁹

According to the Canadian Broadcasting Corporation, the cabinet minister responsible for Customs, National Revenue Minister Martin Cauchon, couldn’t explain to reporters “why some mail was being copied and sent to other government departments. He walked away in the middle of an interview returning about five minutes later with an explanation. Cauchon said his agents refer the contents of packages to other government departments if they find any evidence of criminal activity.”¹⁰

This discovery of criminal activity follows the invasion of property required to make the “discovery” in the first place. One crime legitimizes another. Supposedly, Customs officers can open mail only if they “feel” that it might contain something illegal, like drugs, but the Act requires that officials have only “reasonable grounds” to believe the contents of a parcel “might” be illegal. Why then even bother to specify that only parcels above 30 grams are fair game?

Private-Sector Collection

For comparison, consider how the government treats the information it controls with how the government requires the private sector to treat its consumer information. On January 1, the act of governmental hypocrisy called the Personal Information and Electronic Documents Act became law. It requires airlines, telephone companies, banks, and other federally regulated organizations to specifically ask customers for permission before taking down their personal information. They must also tell customers exactly why they need it and who will see it, and ensure the information is protected.

This legislation allegedly establishes the right in Canada to protection of personal information. Except when it comes to mail, apparently.

Originally created to instill consumer confidence in the security of electronic commercial transactions, the Act is so strict that an organization is forbidden to use personal information for anything other than the purpose originally specified. If the organization wants to use the data for something else, it has to ask permission again.

This Personal Information Act sets up a system of policing to protect consumers from the dire consequences of junk mail. First, a person must take a complaint to the organization in question. If that doesn’t work, the complainant can write to the federal privacy commissioner, who then has an entire year to file a response report with his recommendations to the organization about what it should do. To make this recommendation, the privacy commissioner has the power to subpoena witnesses or

obtain search warrants. From there, a person can decide to take the matter to federal court.

There is no dollar limit on the amount of the fines the court can impose on a business or institution.

Shouldn't all this apply to the state's vastly more pernicious collection and cataloging of data on its citizens?

One has to ask what is the greater threat to privacy: the latest AOL carpet bombing of North America or the state's confiscating your mail and copying the contents into a centralized state database.

Worst of all, perhaps, is that this invasion of privacy and confidentiality by the state was a one-day news story. Where is the outrage? This is proof yet again of Canadians' timid submission to political power.

End Notes

1. "Mail opened, copied and sent to bureaucrats," March 3, 2001, Canadian Broadcasting Corporation Web site, http://cbc.ca/cgi-bin/templates/view.cgi?category=Canada&story=/news/2001/03/02/privacy_mail010302.
2. Campbell Clark and Mark MacKinnon, "Customs draws fire for opening private mail," *Toronto Globe and Mail*, March 2, 2001.
3. Charlie Gillis, "Federal officials opening private mail," *National Post Online*, March 2, 2001, www.nationalpost.com/.
4. Clark and MacKinnon.
5. Gillis.
6. "Liberals raked on mail issue," *Globe and Mail*, March 2, 2001.
7. Ibid.
8. Ibid.
9. Ibid.
10. "Mail opened."

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Adam Young is studying computer science in Ontario, Canada. The Foundation for Economic Education (FEE), one of the oldest free-market organizations in the United States, was founded in 1946 by Leonard E. Read to study and advance the freedom philosophy. FEE's mission is to offer the most consistent case for the "first principles" of freedom: the sanctity of private property, individual liberty, the rule of law, the free market, and the moral superiority of individual choice and responsibility over coercion.