Published on *University of Toronto Faculty Association* (https://www.utfa.org)

Letter to the Provost about Email Migration

November 23, 2013

Professor Cheryl Regehr
Provost and Vice-President
University of Toronto
Simcoe Hall, Room 225
27 King's College Circle
Toronto, ON. M5S 1A1

Re: Proposal to Migrate Faculty and Librarian Email to Microsoft's Office 365

Dear Cheryl,

I am writing with regard to the proposal to migrate faculty and librarian email to Microsoft's Office 365 currently being considered by the *Staff and Faculty E-Communications Outsourcing Project*.

As you know, the terms of reference for this project are:

- "To identify core expectations for enhanced faculty and staff e-communications services.
- To identify obligations and concerns in matters such as the protection of privacy and information security, and review the adequacy of proposed service arrangements.
- To recommend any variation in service provisioning required to satisfy the range of academic and administrative activities of faculty and staff
- To review the viability and adequacy of implementation plans.
- To recommend future directions for e-communications services that reflect changing academic and co-curricular needs, enhanced student experience, and administrative requirements."

However, as has been made clear (including in a December 2012 presentation to UTFA's Council, in the update for PDAD&C at the September meeting, and in the October 31 2013 *Draft Information Risk and Risk Assessment* report), the committee is specifically evaluating the merits of migrating staff (including faculty and librarian) email to Microsoft's Office 365.

Numerous colleagues have written to express concern about this proposal, and, as you likely also know, there was a teach-in at the Faculty of Information on Saturday, November 16 to discuss various concerns and to raise awareness.

In general terms, we consider any change to the administration of, access to, and control over faculty and librarian email to be a change in the conditions of academic work for those we represent and therefore a matter of concern to UTFA. This is all the more so given the potentially significant implications of this or any similar migration for issues of:

i. academic freedom;
ii. privacy and security of academic records and correspondence; and
iii. control, management and ownership of intellectual property.

As you know, UTFA has proposed new language in our revisions to the Memorandum of Agreement between the Governing Council and UTFA specifically to modernize language on privacy of academic records. In that context, I would like to express some of the concerns that have been raised and ask some questions whose answers we would like to convey to colleagues.

First, it does not appear as though the committee in charge of advising on the Outsourcing Project is giving serious consideration to any options other than the status quo and a migration to Microsoft Office's 365, nor does it appear that the committee's deliberations are based on a thorough assessment of the needs of academic staff. Can you confirm whether this is the case, and if so, explain why no other options (particularly domestic vendors) are being seriously considered and how the needs of academic staff are being factored into the analysis?

Second, and related to the first concern, there is an ongoing international controversy about the monitoring and surveillance of electronic communications in light of the revelations during the summer of 2013 about the extent of US (and other) government intelligence gathering and data mining. While the US government appears to be going further than other governments (as far as we know), there is also ample reason to believe that extensive government monitoring is taking place in Canada. That said, and whether the sort of surveillance being conducted is strictly speaking legal in any of these jurisdictions, it is important to recognize important differences in the legal context in which surveillance and monitoring takes place, including differences between Canada and the US. These differences, for instance, shape the available avenues of recourse for individuals and institutions wishing to contest the interception, observation, and use of their correspondence. I know that some of our colleagues with relevant expertise have corresponded with the committee and with your office about the differences in legal context and the character and degree of protections afforded under Canadian law versus other, including US, jurisdiction. Accordingly, ***how is the committee and your office taking note of the different options that U of T and individual faculty and librarians would have to document and to contest any government monitoring of faculty and librarian correspondence depending on the nation in which any potential third party vendor is based and the terms of that third party's relationship to specific national governments?***

Third, ***has the committee reviewed the draft terms of the contract with Microsoft, and will that draft contract be made available to UTFA and to the wider academic community?*** We insist on seeing it and on having the chance to comment on it prior to any deal being signed. We see this as consistent with the existing MoA prescribing UTFA's role in representing the interests of faculty and

librarians, but also with the terms of our proposed revisions of the MoA.

Fourth, ***has the committee and your office taken account of the possible implications of any arrangement with a third party vendor regarding administration and management of e-mail and other electronic communications given the customary and formal rights that faculty and librarians have to control access to the records they generate in an academic and professional setting, as well as their rights to retain intellectual property over such records***? While faculty and librarians are indeed employees of the University of Toronto, the employment relation of academic staff is quite distinct in that, in order for academic staff to enjoy the robust academic freedom on which the excellence of the U of T depends, we must retain control over our professional records and correspondence, electronic and otherwise. Moreover, in many instances, important matters of intellectual property may be involved in electronic correspondence. We need to know how any proposed contract between the University and a third party changes, implicitly or otherwise, the relationship that faculty and librarians have with the University as their employer in matters of both the ownership, control and administration of intellectual property, and in terms of maintaining the highest standards of academic freedom. As an Association, we are concerned about the possible implications for any planned migration. Certainly this is one of the reasons that the specific terms of the draft contract are important.

I am available to meet with you at your earliest convenience in order to discuss what I trust are shared concerns here. I also would like to request that this letter be shared with all members of the committee involved in the *Staff and Faculty E-Communications Outsourcing Project.*

I look forward to hearing from you.

Yours,

Scott Prudham

cc. Meric Gertler
Michael Luke
Robert Cook
Ellen Hodnett
UTFA Council

File attachments:
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