



Communications Security
Establishment Canada

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OCT 19 2011

CERRID# 781950

MEMORANDUM FOR THE MINISTER OF NATIONAL DEFENCE



(For Approval)

PROPOSED MINISTERIAL AUTHORIZATION

The Communications Security Establishment (CSE) requests a Ministerial Authorization pursuant to subsection 273.65(1) of the *National Defence Act*.

ACTIVITY OR CLASS OF ACTIVITIES TO BE AUTHORIZED

For the sole purpose of obtaining foreign intelligence and subject to the conditions listed below, subsection 273.65(1) of the *National Defence Act* allows you to authorize CSE, in writing, to intercept private communications in relation to an activity or class of activities specified in the Ministerial Authorization.

Under this authority, CSE hereby requests a Ministerial Authorization to intercept private communications in relation to [REDACTED] activities directed at foreign entities located abroad.

All CSE foreign intelligence collection activities are conducted under paragraph 273.64(1)(a) of the *National Defence Act*. These activities are in accordance with Government of Canada Intelligence Priorities. The Intelligence Priorities are issued to CSE annually through Ministerial Directive and are the foundation of CSE's National SIGINT Priorities List (NSPL). For 2011-2012, the NSPL sets-out the following categories: Cabinet Confidence [REDACTED]

Cabinet Confidence [REDACTED]

Cabinet Confidence [REDACTED]

The NSPL categories are necessarily flexible to accommodate unforeseen developments, but always remain consistent with the Government of Canada intelligence priorities.

Among the foreign intelligence collection activities authorized under paragraph 273.64(1)(a) of the *National Defence Act* are [REDACTED] activities. [REDACTED] is an information-gathering method focused on [REDACTED] of priority Government of Canada foreign intelligence targets. [REDACTED] activities involve the

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[REDACTED]

As CSE's [REDACTED] activities have evolved, so have our reasons for seeking a Ministerial Authorization. Over the past year, CSE has developed new capabilities which we believe may increase the risk of intercepting private communications [REDACTED]. Therefore a Ministerial Authorization is being sought.

CONDITIONS TO BE SATISFIED

Under subsection 273.65(2) of the *National Defence Act*, you must be satisfied that:

- 1) the interception will be directed at foreign entities located outside Canada;
- 2) the information to be obtained could not reasonably be obtained by other means;
- 3) the expected foreign intelligence value of the information that would be derived from the interception justifies it; and
- 4) satisfactory measures are in place to protect the privacy of Canadians and to ensure that private communications will only be used or retained if they are essential to international affairs, defence or security.

The standard used by CSE for each of the conditions listed in 273.65(2) is a reasonableness standard that takes into account the specific and particular context of signals intelligence activities. These requirements are met respectively as follows:

- 1) CSE follows a very strict set of procedures to reasonably assure itself that [REDACTED] operations are directed at foreign entities located outside Canada and that any private communications that may be intercepted as a result of [REDACTED] activities involve foreign entities located outside Canada. CSE maintains a list of selection criteria used to identify targets [REDACTED]. [REDACTED] These criteria are obtained from a number of sources, including but not limited to: open source information, analysis of previously acquired signals intelligence and information provided by various departments and agencies of the Government of Canada, as well as allied agencies.

In accordance with procedures in place, prior to any operations being conducted, CSE personnel must be satisfied, based on all the information that CSE has available to it at the time, that the proposed selection criteria are associated with a foreign entity located outside Canada and relate to a Government of Canada

intelligence priority (as most recently outlined in **Cabinet Confidence** and the associated Ministerial Directive).

- 2) The information CSE is seeking to obtain could not reasonably be obtained by means other than interception because:
- information derived from the communications acquired by CSE, including information from any private communications that are intercepted, would not be shared voluntarily by the targeted foreign entities; and
 - the data acquired by CSE, including those private communications that are intercepted, will in most cases be the only potential source for the information.
- 3) In its totality, the expected foreign intelligence value of the information to be derived from the interception justifies it. The foreign intelligence value of [REDACTED] collection can be accurately judged in the context of the foreign intelligence derived from the [REDACTED] program in its entirety.

Overall, CSE's [REDACTED] activities consistently provide valuable intelligence in accordance with Government of Canada intelligence priorities. Between the commencement of the current Ministerial Authorization on December 1, 2010 and May 31, 2011 this collection produced intelligence regarding: **Cabinet Confidence**

Cabinet Confidence

In addition, several of CSE's key allies including the US National Security Agency, the UK Government Communications Headquarters and the Australian Defence Signals Directorate produced [REDACTED] reports based on CSE's [REDACTED] collection, which were shared with Canada.

During this six month period under the current Ministerial Authorization, [REDACTED] activities accounted for the largest Canadian collection program in terms of the number of reports [REDACTED] produced by CSE.

For your information, between the commencement of the current Ministerial Authorization on December 1, 2010 and May 31, 2011, [REDACTED] of the [REDACTED] communications collected under the [REDACTED] program were recognized as private communications, [REDACTED] amongst them recognized as private solicitor-client communications.

After the expiration of the current Ministerial Authorization, CSE will report to you on the full period of that authorization in accordance with the reporting requirements listed therein.

- 4) Measures developed by CSE, in the form of operational policies and procedures, are in place and provide direction to CSE in protecting the privacy of Canadians and ensuring that private communications will only be used or retained if they are essential to international affairs, defence or security. Essentiality is defined as containing information that is clearly related to the intelligence priorities of the Government of Canada.

CSE policies relating to accountability, the privacy of Canadians and the operation of this program are currently found in the following CSE documents:

- the Ministerial Directives entitled “Accountability Framework” (2001), “Privacy of Canadians” (2001), and [REDACTED] (2002);
- the [REDACTED] and [REDACTED]
- the operational procedures entitled OPS-1: “Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSEC Activities” and OPS-3-1: “Procedures for [REDACTED] Activities”.

CSE employees will only conduct these activities according to the operational policies and procedures in effect. Should revisions to operational policies and procedures result in an increased risk to the privacy of Canadians, or a reduction of measures to protect the privacy of Canadians, CSE will advise you. For your ease of reference, we have attached to this package the foundational policy (OPS-1) that establishes baseline measures to protect the privacy of Canadians and to ensure the legal compliance of CSEC operational activities. All other operational policies and procedures must comply with this policy.


CSE employees involved in [REDACTED] activities, and the processing and analysis of information obtained as a result of such activities, are trained in these measures and are fully aware of their responsibilities in implementing them. The application of these measures is monitored by CSE management and reviewed by the CSE Commissioner.

In accordance with the *National Defence Act*, you must be satisfied that the conditions set forth in subsection 273.65(2) have been met prior to issuing the attached Ministerial Authorization.

Solicitor-Client Privilege

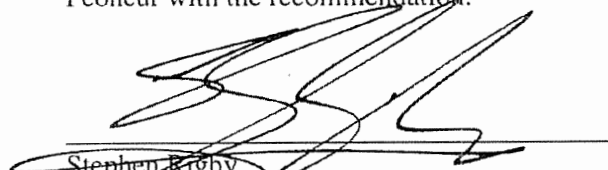
RECOMMENDATION

It is recommended that you approve the attached Ministerial Authorization [REDACTED]
[REDACTED] to be effective December 1, 2011 to November 30, 2012.


John Adams
Chief

Attachment

I concur with the recommendation:


Stephen Rigby
National Security Advisor to the Prime Minister
Privy Council Office

cc: Robert Fonberg, Deputy Minister, National Defence