

Communications Security
Establishment Commissioner

The Honourable Robert Dickey, Q.C.



Commissaire du Centre de la
sécurité des télécommunications

L'honorable Robert Dickey, c.r.

SECRET//CEO
Our File # 2200-72

March 13, 2012

The Honourable Peter MacKay, PC, MP
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Mr. MacKay:

The purpose of this letter is to provide you with the results of my review of Communications Security Establishment Canada's (CSEC) disclosures of Canadian Identity Information (CII) to Government of Canada (GC) clients for calendar year 2011. This review was undertaken under my general authority as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act* (NDA).

Based on my assessment of the information reviewed and the interviews conducted, CSEC's disclosure of suppressed CII to GC clients was conducted in compliance with the law. Operational policies and procedures are in place and provide sufficient direction to CSEC employees respecting the protection of the privacy of Canadians. CSEC employees were knowledgeable about, and acted in accordance with, the policies and procedures.

CII may be included in CSEC's signals intelligence reports if it is required to understand or exploit the foreign intelligence. However, with some limited exceptions which are stated in CSEC policy, any information that identifies a Canadian must be suppressed in the reports — that is, replaced by a generic reference such as "a named Canadian". When receiving a subsequent request for disclosure of the details of the suppressed information, CSEC must verify that the requesting client has both the authority and operational justification for obtaining that CII. Only then may CSEC provide the CII.

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In November 2008 and February 2010, in detailed reviews of CSEC's disclosures of CH to GC clients, Commissioners found that CSEC complied with the law and protected the privacy of Canadians. However, should there be an instance of non-compliance while CSEC discloses CH to GC clients, the potential impact on the privacy of Canadians could be significant. Therefore, my predecessor directed in 2010 that an annual review of a sample of disclosures of CH to GC clients be conducted, to verify that CSEC continues to comply with the law and maintains measures to protect the privacy of Canadians. This is the second such annual review and follows my report of February 2011.

CSEC received and approved [REDACTED] requests from GC clients for disclosure of suppressed CH contained in foreign signals intelligence reports during the period of January to June 2011. CSEC denied a total of [REDACTED] requests during that time. This review encompassed a sample of [REDACTED] disclosures made to the [REDACTED] GC entities that were provided with CH. The sample represents approximately 20 per cent of the total number of requests during the period under review. My officials examined the disclosure request forms used to document the clients' authority and justification for obtaining the CH, associated CSEC foreign signals intelligence reports and the disclosures of CH.

My review does not result in any recommendations. However, my officials observed and communicated to CSEC that the usual meticulousness exhibited by the section responsible for processing disclosure requests was a little less so during the period under review. Approximately ten per cent of the request forms did not contain important details about the client's authority to obtain the CH. Nevertheless, CSEC was able to provide to my officials using other records clear evidence that all activities were authorized and conducted in accordance with policies and procedures. Therefore, I find that the gaps in CSEC's records did not lessen the protection of the privacy of Canadians in respect of those disclosures.

In addition, I examined CSEC's progress since last year to address the two recommendations in the February 2010 review report relating to providing tools to support tracking of disclosures of CH and to improving the consistency and accuracy of reporting to you about these activities. CSEC indicated that, commencing as early as March 2012, it plans to test with one GC client the automated system for disclosures. If the test proves effective, CSEC plans to expand the system to other GC and international partners. CSEC provided my officials with a demonstration of the system's capabilities and functions. I remain satisfied that CSEC's use of a detailed working aid as well as the complete implementation of the automated system will address these recommendations, enhance CSEC's ability to actively monitor compliance, and produce accurate and consistent metrics respecting these activities.

I intend to continue to conduct an annual review of a sample of CSEC's disclosures of CH to GC clients.

CSEC was informed of the results of this review prior to forwarding this letter to you.

If you have any questions or comments, I will be pleased to discuss them with you at your convenience.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Robert Décarie', with a stylized flourish at the end.

Robert Décarie

c.c. Mr. John Forster, Chief, CSEC