

Communications Security
Establishment Commissioner



Commissaire du Centre de la
sécurité des télécommunications

The Honourable Jean - Pierre Plouffe, C.D.

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Our file # 2200-90

August 14, 2014

The Honourable Robert Nicholson, P.C., Q.C., M.P.
Minister of National Defence
101 Colonel By Drive
Ottawa, ON K1A 0K2

Dear Minister:

The purpose of this letter is to provide you with the results of a "spot check" review of recognized foreign signals intelligence (SIGINT) private communications (PCs) used or retained by the Communications Security Establishment Canada (CSE) during the period of April 1, 2014, to June 20, 2014. CSE did not have knowledge either of when this "spot check" would be conducted or of the period of time under investigation prior to the commencement of the review. 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), as well as under my specific authority to review ministerial authorizations (MAs) found in subsection 273.65(8) of the *NDA*.

By law, CSE may only use or retain those SIGINT PCs that are essential to international affairs, defence or security (paragraph 273.65(2)(d) of the *NDA*). The purpose of this review was to determine, for compliance with the law and the protection of the privacy of Canadians, specifically whether the PCs intercepted, recognized and retained by CSE during the period of review met this essentiality test.

Subsection 273.65(1) of the *NDA* permits the Minister of National Defence to authorize CSE in writing — for the sole purpose of obtaining foreign intelligence (FI), and once he is satisfied that specific conditions set out in subsection 273.65(2) of the *NDA* have been met — to intercept PCs in relation to an activity or class of activities specified in an MA. These MAs set out the formal framework for dealing with PCs which have been intercepted unintentionally through SIGINT activities, and shield CSE from the prohibition respecting the interception of PCs found in Part VI of the *Criminal Code*. Currently, CSE conducts three distinct SIGINT collection activities or class of activities under MAs: (1) [REDACTED] collection activities; (2) [REDACTED] collection activities; and (3) [REDACTED] collection activities.

P.O. Box/C.P. 1984, Station "B"/Succursale «B»
Ottawa, Canada
K1P 5R5
T: 613-992-3044 F: 613-992-4096

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At the request of my office, CSE provided a list of all SIGINT PCs intercepted and recognized during the period we requested. During this time, CSE retained [REDACTED] PCs, [REDACTED] of which were used in a single End Product Report (report). CSE marked the other [REDACTED] recognized SIGINT PCs for deletion. [REDACTED] PCs were retained as essential to international affairs, defence or security, for use in future reporting.

My office examined the [REDACTED] used PCs and the associated report in CSE information repositories. My office also interviewed SIGINT personnel that had knowledge of the PCs and CSE systems and databases.

I am satisfied that the [REDACTED] used PCs were essential to international affairs, defence or security, as required by law.

I am also satisfied that the report based on PCs contained foreign intelligence relating to international affairs, defence or security.

To increase the assurance that I can provide to you in these kinds of reviews, my office also verified that all PCs that had been marked for deletion by CSE analysts were in fact deleted in CSE databases within [REDACTED] as required by CSE policy on retention and disposition of SIGINT information.

I found nothing to suggest that any of the PCs that were recognized by CSE were intercepted intentionally, which would be unlawful.

I also found no cases of an analyst retaining a PC longer than what was strictly necessary, that is no longer than necessary to determine if it was essential to international affairs, defence or security, which was a subject of concern in my March 2014 review of SIGINT MAs and PCs.

In fact, I conclude that the metrics and results of this review are a positive indication that CSE is taking action to quickly implement the recommendations in my March 2014 review, namely that:

CSE analysts should immediately annotate recognized PCs for essentiality to international affairs, defence or security, as required by the *NDA* or, if not essential, for deletion; and

CSE analysts should regularly assess, at a minimum quarterly, whether the ongoing retention of a recognized PC not yet used in an End Product Report is strictly necessary and remains essential to international affairs, defence or security or whether that PC should be deleted.

I am making no recommendations.

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CSE use or retention of PCs goes to the heart of my mandate to determine whether CSE activities complied with the law. I will continue to conduct "spot check" verifications of CSE use and retention of any recognized SIGINT PCs.

CSE officials were provided an opportunity to review and comment on the results of the review for factual accuracy, prior to finalizing this letter.

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 'JP Plouffe', with a stylized flourish at the end.

Jean-Pierre Plouffe

c.c. Mr. John Forster, Chief, CSE