

Communications Security
Establishment Commissioner

The Honourable Robert Décary, Q.C.



Commissaire du Centre de la
sécurité des télécommunications

L'honorable Robert Décary, c.r.

SECRET // CEO

Our File # 2200-76

March 18, 2013

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
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Dear Mr. MacKay:

The purpose of this letter is to provide you with the results of my annual review of a sample of Communications Security Establishment Canada's (CSEC) disclosures of Canadian identity information (CII) to Government of Canada (GC) clients. It 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 activities were 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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Last year, CSEC faced a backlog in processing a record number of requests for the disclosure of suppressed CII contained in foreign signals intelligence reports. To reduce the impact on CSEC operations, the sample of disclosures selected for review was limited to nine months; the review covered the period of October 1, 2011, to June 30, 2012.

During the period under review, CSEC approved 1113 requests from GC clients for the disclosure of CII. CSEC denied six requests during that time. The review encompassed a sample of 223 requests from all of the nine GC clients that were provided with CII, which represents 20 per cent of the total number of requests. The 223 requests resulted in [REDACTED] separate disclosures of CII by CSEC. My officials examined the disclosure request forms used to document the clients' authority and justification for obtaining the CII, the associated foreign signals intelligence reports and the disclosures of CII.

My review did not result in any recommendations. The section responsible for processing the disclosure requests conducted its activities in a thorough manner. All of the requests reviewed were authorized, justified and well-documented.

It is a positive development that, in 2012, CSEC started using a new on-line secure system to process requests for and disclosures of CII. This responds to a recommendation made by former Commissioner Cory in his report on *Regular Privacy Reviews* (2010). CSEC provided my employees with a demonstration of the system. It is currently in use with three principal GC clients and, starting in the coming fiscal year, CSEC intends to extend its use to other GC clients as well as to its second party partners in the U.S., U.K., Australia and New Zealand. According to CSEC, the system has improved the timeliness of responses and resulted in better service to its clients. It enhances accountability by improving the tracking and retrieval of requests for and disclosures of CII. It also contains a number of features to protect the privacy of Canadians, e.g., the system is rules-based and automatically adds caveats to information exchanges. In addition, CSEC has committed to updating associated procedures when the system is used by all of its clients.

Should there be an instance of non-compliance while CSEC discloses CII, the potential impact on the privacy of Canadians could be significant. For this reason, annual reviews of a sample of disclosures will continue. Next year's sample will include the remaining three months excluded from this year, a detailed examination of the use of the new system, as well as a sample of disclosures of CII to CSEC's second party partners.

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

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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 Décary". The signature is fluid and cursive, with the first name "Robert" and last name "Décary" clearly distinguishable.

Robert Décary

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