

Communications Security
Establishment Commissioner

The Honourable Peter deC. Cory, C.C., C.D.



Commissaire du Centre de la
sécurité des télécommunications

L'honorable Peter deC. Cory, C.C., C.D.

TOP SECRET/COMINT/CEO

16 February 2010

The Honourable Peter G. MacKay, PC, MP
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
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CSE / CST Chief's Office / Bureau du chef FEB 18 2010 CCM - 10 - 00486 File / Dossier

Dear Mr. MacKay:

In November 2008 this office forwarded to you a report on the review of CSEC's *Disclosure of Information about Canadians to Government of Canada Clients*. During that review it was suggested, by CSEC, that monthly reviews could be conducted of the release of Canadian identity information that has been suppressed and replaced with a generic reference such as "a named Canadian", in end-product reports. After discussion, and given the importance of safeguarding the privacy of Canadians, particularly in the course of releasing Canadian identity information, this office agreed with the suggestion and proceeded with monthly reviews of all disclosures of information about Canadians to Government of Canada clients, beginning with January 2009. After two months, CSEC informed my office that the workload was more than they anticipated and it was agreed to re-assess the frequency after the first six months.

The purpose of this letter is to advise you of the results of the review by my office of the Communications Security Establishment Canada's (CSEC) activities related to the disclosure of information about Canadians to Government of Canada clients during the period January to June 2009. This review was carried out under the authority of my predecessor, the late Hon. Charles Gonthier, as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act (NDA)*.

The objectives of the review were to examine, on a monthly basis: the disclosures of information about Canadians to Government of Canada clients under CSEC's foreign intelligence mandate to ensure that they were in compliance with the law; and that measures were in place to protect the privacy of Canadians and to determine the extent to which those measures were applied in the use and disclosure of that information.

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It is CSEC's practice to count each release request form processed as one release, even though the form may contain more than one Canadian identity or more than one piece of identity information about a Canadian. We believe that in the context of protecting privacy, it is important to know how many individual identities are being released and to ensure there is accuracy and consistency in that reporting. To that end, in conducting this review, we requested, were provided with and reported the total number of identities released on each request form. We note that while CSEC does not as a matter of course compile statistics like this, it is consistent with the manner CSEC has reported disclosures in the Chief's 2008 and 2009 Annual Reports to the Minister.

Based upon the information reviewed and the interviews conducted, the findings related to CSEC's disclosure activities during the period January 1 to June 30, 2009, are that:

- activities were conducted in compliance with the law;
- activities were conducted in accordance with the MAs, MDs and any additional conditions imposed by the Minister;
- CSEC personnel are knowledgeable about, and acted in accordance with, CSEC's policies and procedures, and management monitoring is ongoing.

However, with respect to accounting for the actual numbers of Canadian identity information being released, the following recommendations have been made:

Recommendation 1:

That CSEC amend Operational Policy OPS-1-1 and all associated sectional operating instructions to include consistent directions or standards for the accounting and tracking of client request forms and the release to clients of each piece of Canadian identity information.

Recommendation 2:

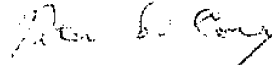
That CSEC give priority to the development of the automated tools necessary to enable it to accurately and consistently account for and report on the release of all Canadian identity information.

The enclosed review report contains detailed information on these recommendations as well as related issues.

As is the practice of this office, officials at CSEC have been provided an opportunity to review and comment on the factual accuracy of this report, prior to finalizing and forwarding it to you.

Please let me know if you have any questions or comments.

Yours sincerely,



Peter deC Cory

Enclosure

c.c. Mr. John Adams, Chief, CSEC ✓
Ms. Marie-Lucie Morin, National Security Advisor, PCO
Mr. Robert Fonberg, Deputy Minister, National Defence

TOP SECRET/COMINT/CEO

REGULAR PRIVACY REVIEWS

16 February 2010

I. AUTHORITIES

This report was prepared on behalf of the Communications Security Establishment Commissioner under his authority as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act (NDA)*.

II. INTRODUCTION

In November 2008 this office completed a review of CSEC's *Disclosure of Information about Canadians to Government of Canada Clients*. During this review it was suggested, by CSEC, that monthly reviews could be conducted of the release of Canadian identity information that has been suppressed in end-product reports. After discussion, and given the importance of safeguarding the privacy of Canadians, particularly in the course of releasing Canadian identity information (CII), we agreed with the suggestion and proceeded with monthly reviews of all disclosures of information about Canadians to Government of Canada clients, beginning with January 2009. When we had completed the first two months, CSEC informed us that the workload was more than they anticipated and we agreed to re-assess the frequency after the first six months.

III. OBJECTIVES

The objectives of these monthly reviews, as per paragraph 273.63(2) (a) of the *National Defence Act (NDA)*, were to examine, on a monthly basis: the disclosures of information about Canadians to Government of Canada clients under CSEC's foreign intelligence mandate to ensure that they were in compliance with the law; and that measures were in place to protect the privacy of Canadians and to determine the extent to which those measures were applied in the use and disclosure of that information.

IV. SCOPE

This review examined disclosures of information about Canadians to Government of Canada clients during the period January 1 to June 30, 2009, on a monthly basis. As with the review of disclosures completed in November 2008, we wished to determine:

- i) the amount of information about Canadians that was included in SIGINT (signals intelligence) reporting by CSEC and Second Parties;
- ii) the number of requests for release of identities from Government of Canada clients; and
- iii) CSEC's compliance with the law and all authorities, policies and procedures in the release of that information.

In addition we wanted to ascertain the number of identity releases within each month, the number of identity releases broken down by specific Government of Canada clients and the end-product reports involved. We also looked at the CSEC Privacy Incident File to identify any privacy incidents that related to identity releases in the period being reviewed, how these incidents were handled and any policy deficiencies which may have allowed the incidents to occur. Finally, we assessed how the disclosure of information about Canadians is processed, monitored, and managed.

V. CRITERIA

A) Legal Requirements

The Commissioner expected that CSEC would conduct its activities in a manner that was in accordance with the *NDA*, the *Charter of Rights and Freedoms*, the *Privacy Act*, the *Criminal Code*, and Justice Canada advice.

B) Ministerial Requirements

The Commissioner expected that CSEC would conduct its activities in a manner that was in accordance with all applicable ministerial authorizations (MAs) and ministerial directives (MDs), and any conditions imposed by the Minister of National Defence, particularly with respect to protecting the privacy of Canadians.

C) Policies and Procedures

The Commissioner expected that CSEC would have:

- i) appropriate policies and procedures that guide the disclosure of information about Canadians and that contain measures to protect the privacy of Canadians;
- ii) personnel who were aware of and complied with the policies and procedures; and
- iii) the means to determine if the activities had been conducted in a manner consistent with the policies and procedures.

VI. METHODOLOGY

The Commissioner's office met with CSEC representatives prior to the commencement of the monthly reviews. It was agreed that CSEC would have an eight week period for the management review of each month's releases and would provide the release forms at the beginning of each month, starting in April for January releases. Any privacy incidents which occurred or were handled during each month of review were also provided at the beginning of each month.

We conducted interviews with the manager of CSEC's Operational Policy section and provided written questions and requests for clarification on some matters throughout the process. We also requested and received a demonstration of how policy analysts process a request for the disclosure of personal information about Canadians. At the end of the six month period, we selected two of the six months to verify directly in the CSEC systems used by Operational Policy section that the material we were provided was consistent with the disclosure and release data held in the systems.

It should be noted that the comprehensive review of the *Disclosure of Information about Canadians to Government of Canada Clients*, completed in November 2008 concluded that all criteria, A, B and C, were met by CSEC. Taking the positive result into consideration, along with the importance of protecting privacy in the identity disclosure requests, we determined that the focus of these monthly reviews would be on the awareness of policies and procedures by personnel and how they implemented those policies and procedures.

VII. FINDINGS AND RECOMMENDATIONS

Disclosures

When end-product reports are produced by CSEC, any information that may reveal the identity of a Canadian or allied person or entity is replaced with a generic reference such as "a named Canadian". This is referred to as suppressed information. CSEC clients who can show they have the authority and need to know the suppressed information may submit a form requesting disclosure.

Policy analysts from CSEC's Operational Policy section are responsible for receiving all requests for the release of suppressed information contained in CSEC or Second Party end-product reporting, and for releasing identity information to clients. They assess each request, and if the form is complete and the justification is within the requesting agency's authorized mandate, the analyst will provide the information requested; if it is incomplete or the justification does not meet the requesting agency's mandate, the form will be returned to the requestor, who will be asked to provide further information or informed that the request has been denied.

The Manager, Operational Policy, who has held that position for close to two years, reviews all releases of suppressed information on a monthly basis and to date has never reviewed or encountered an inappropriate release.

Finding 1:

Based on our interviews and review of all documentation associated with the releases made during the period under review we found that the Operational Policy section consistently applied the policies and procedures related to this function.

Procedure for Second Party Reports

If a Canadian identity is suppressed in a Second Party report, CSEC must ask the Second Party for the information so CSEC can release it. CSEC does not need to justify the request to the Second Party because the suppressed information relates to a Canadian national and it is understood that the Second Party will automatically honour the request. Once CSEC receives the identity information, it inputs it into CSEC's SIGINT report database, known as [REDACTED] in a restricted access compartment. Consequently, CSEC may provide the information to other clients requesting it without having to go back to the Second Party.

**Accounting For and Tracking the Release of Canadian Identity Information**

From January to June 2009 CSEC processed 378 requests from Government of Canada clients for release of suppressed information contained in end-product reports. It is CSEC's practice to count each form processed as one release even though the form may contain more than one suppressed Canadian identity or piece of information about a Canadian. We were advised during the November 2008 review *Disclosure of Information about Canadians to Government of Canada Clients* that:

"A metric on the number of Canadian identifiers released monthly was developed a number of years ago for inclusion in the former Chief's dashboard (now defunct) as a measure of "actionable intelligence". It was not informative since it was not contextualized (number of identities requested based on how many reports issued; did not account for the same identities from the same reports released to different GC (Government of Canada) clients or the same identities from different reports released to the same or to different GC clients); it was skewed (a release of [REDACTED] which is rare but not atypical, from one report would greatly inflate the figures); and it was not representative of how well CSEC applied measures to protect the privacy of Canadians in the release of Canadian identity information (which is the bottom line when it comes to identity releases)."

We believe as previously stated in this report that the analysts and the Manager of the Operational Policy section are very cognizant of and apply the operational policies and

procedures, as they exist, in a manner consistent with those policies and procedures. However we noted that CSEC procedures contained in OPS-1-1, *Procedures for the Release of Suppressed Information from SIGINT Reports*, as well as the sectional working aids or operating procedures created by the Operational Policy section do not include specific directions or standards for the accounting or tracking of client request forms or the release of Canadian identity information to clients. OPS-1-1 simply states all request forms must be retained.

Recommendation 1:

That CSEC amend Operational Policy OPS-1-1 and all associated sectional operating instructions to include specific directions or standards to ensure the consistent accounting, tracking and reporting of client request forms and the release to clients of each piece of Canadian identity information.

In the context of protecting privacy, it is important to know how many identities are being released. Therefore, in this review report, we are reporting the total number of identities released on each request form, and have also tabulated the number of end product reports that generated those identities and the source of the reporting (See Annex I attached to this report). We found there had been [REDACTED] individual identities or pieces of information about Canadians released in the six month period reviewed. These pieces of identity information can be for example, names, telephone numbers, email addresses, IP addresses, or corporate names. Reporting the actual number of identities released rather than the number of requests, each of which can contain multiple identities, is a more accurate reflection of the amount of information about Canadians that is being released.

We noted that in the Annex of the Chief's *Annual Report to the Minister of National Defence, December 2008*, under "Special Reports", CSEC began to include these "individual" statistics showing the release of [REDACTED] pieces of Canadian identity information stemming from over [REDACTED] Canadian and allied foreign intelligence reports during the 2007-08 fiscal year covered by the report. This method of reporting was also used in the current 2009 report recently issued by the Chief. As previously mentioned CSEC has stated that accounting for individual identity releases was not informative as there was no context (number of identities released based on number of reports issued). It has now given this context within the current and previous Annual Reports. However the number of identities released is set in relation to the *total number* of CSEC and allied reports issued during the reporting period. We question the use of the total number of reports rather than putting that large number in relation to the number of reports that were actually subject to identity release requests, which would give a yet more accurate context.

As noted above, in conducting our reviews we have equated the number of individual pieces of identity information and/or Canadian identities released to the actual number of end product reports they are contained in, a significantly lower number than the total CSEC and allied reporting annually. Annex I of this report indicates that in the 6 month period covered by this review we calculated that the [REDACTED] individual pieces of Canadian

identity information released stemmed from [REDACTED] end product reports (produced by NSA, CSEC, DSD and GCHQ) which generated 378 request forms from 12 departments and agencies.

In addition we inquired as to how CSEC compiles the individual statistics for the purposes of the *Annual Report to the Minister of National Defence*. We were advised that the Operational Policy Section retrieves all the forms retained for that period and manually counts the individual releases on each form to arrive at the number reported in the Annual Report. Although the Operational Policy section maintains a database containing all *requests* made by clients for the release of Canadian identity information, it is our understanding that this system does not have the capacity to automatically log all data related to a release, such as the number of individual Canadian identities released or the number of reports associated with those releases. The manner in which they tabulate the information at the end of the year for the purposes of CSEC's Annual Report would no doubt be labour-intensive.

We have been advised that CSEC has approved the development of an automated system for the Operational Policy section; we also expect it will be capable of capturing all data related to the request and release of Canadian identity information. In light of what we believe to be the importance of being able to determine, at any given time, the quantity of Canadian identity information that is being disseminated to Government of Canada clients, it is important, for the consistency of reporting, that CSEC give priority to the development of such a system to ensure the Operational Policy section can track and analyse all data associated with the requests and releases. By knowing what and how much has been released to whom, CSEC will strengthen its ability to safeguard the privacy of Canadians.

Recommendation 2:

That CSEC give priority to the development of the automated tools necessary to enable it to accurately and consistently account for and report on the release of all Canadian identity information.

As previously mentioned the Operational Policy section of CSEC is very organized, thorough and knowledgeable about the policies and procedures which govern CSEC's release of this information. During the course of the review we posed numerous questions related to the releases we were reviewing and were provided with satisfactory answers.

Finding 2:

We found in our interviews that not only were staff knowledgeable and applied policy appropriately, but that the manager of Operational Policy actively monitors all releases being made. This is consistent with findings in the previous in-depth review of *Disclosure of Information about Canadians to Government of Canada Clients*

Privacy Incidents

Although Privacy Incidents may occur in relation to other CSEC operational activities, for the purpose of this review we only analysed those incidents which occurred as a result of information about Canadians not being suppressed in either CSEC or second party reports. In the cases we reviewed, the disclosures were assessed to be inadvertent acts. When discovered, the disclosure is assessed and dealt with in a manner deemed appropriate for each occurrence. The Corporate and Operational Policy section of CSEC maintains and controls access to the central privacy incident reporting file. We were advised that an incident is only entered into the file once corrective measures have been taken.

There were [REDACTED] privacy incidents reported for the period of review. All incidents related to Second Party end-product reporting where Canadian identities or information were not suppressed. In addition there were some minor procedural errors within CSEC for which the Operational Policy section took appropriate remedial action.

In these cases, it was explained that sometimes a Second Party is unaware that the entities included in the report are Canadian and are therefore included in an un-suppressed form. When this is identified by a recipient or the Operational Policy section, the Second Party is advised of the error and usually the reports and any attachments are cancelled and re-issued with the proper suppression of information. Notice is sent to all recipients of the reports to delete or destroy the original report they received. Generally the reason given is that there were reporting errors so as not to draw any undue attention to the situation. However, in some instances, as was the case in one incident we reviewed where [REDACTED] Canadians were named in [REDACTED] old SIGINT reports, it was determined that as the reports were issued in 2007, canceling and re-issuing them would draw unnecessary attention to the individuals. The Operational Policy section advised the Second Party in this instance that any future reporting should ensure the names are suppressed, and in order to minimize the damage caused by identifying the entities, analysts must not enumerate in reports or point in footnotes to the earlier reporting where the identity had not been suppressed.

We discussed this matter with the Operational Policy section, suggesting that "doing nothing" did not seem to be an appropriate action when the privacy of Canadians was at stake. After we met with the Manager of Operational Policy, we agreed that, although not an ideal resolution, under those sorts of circumstances any other action would only draw additional attention to the error and exacerbate the situation.

We were reassured when advised that CSEC is currently amending the operational policy which deals with naming, OPS-1-7, *SIGINT Naming Procedures*, to specifically address a process to handle occurrences of inadvertent naming in CSEC or Second Party reports. CSEC will also be taking into consideration Second Party policies when making amendments. We were also advised that under the amended policy the Director, Corporate and Operational Policy will decide, on a case-by-case basis, what action to

take. We were informed that the Director will have to consider factors such as the number of reports containing the unsuppressed Canadian identities, the identity of the individual and when the incident occurred. All decisions will be documented.

VIII. CONCLUSION

CSEC complies with the law, ministerial direction and policy, and is taking appropriate measures to ensure that the privacy of Canadians is safeguarded in respect of its release of Canadian identity information to Government of Canada clients. Based on our document review, interviews, and direct observation of CSEC's request release database, we found that the staff of the Operational Policy section is aware of and applies relevant law and policy, is professional and well-managed.

However, to reflect more accurately the actual privacy implications, we recommend that CSEC ensure its policies and procedures related to this activity clearly articulate the directions and standards required to consistently report on the number of individual pieces of Canadian identity information being released. We further recommend that CSEC develop the automated tools necessary to enable them to accurately and consistently account for and report on the release of all Canadian identity information.

At the end of the six months, as agreed with CSEC, we re-assessed whether we would continue these reviews on a monthly basis. Given the generally positive findings of this review, and in light also of the previous review of disclosures of Canadian identities (completed and forwarded to the Minister in November 2008), we are of the view that conducting monthly reviews of disclosures is not necessary. However, since this is an activity which can present a greater risk to privacy, we will instead conduct an annual review, based on a random sample of releases of identity information. This approach will continue to provide assurance that this activity remains in compliance with law and policy, continues to be well-managed and consistently records and reports related data.

ANNEX 1
STATISTICAL HIGHLIGHTS
 January to June, 2009

Total individual Canadian identities released <ul style="list-style-type: none"> • CSIS [REDACTED] (idents) • CBSA [REDACTED] (idents) • RCMP [REDACTED] (idents) • DFAIT [REDACTED] (idents) • INDUSTRY CANADA [REDACTED] (idents) • CSEC [REDACTED] (idents) • PUBLIC SAFETY [REDACTED] (idents) • CFIA [REDACTED] (idents) • CNSC [REDACTED] (idents) • DND [REDACTED] (idents) • PMO [REDACTED] (idents) • PCO [REDACTED] (idents) 	[REDACTED]
Number of forms submitted <ul style="list-style-type: none"> • CSIS [REDACTED] • CBSA [REDACTED] • RCMP [REDACTED] • DFAIT [REDACTED] • PCO [REDACTED] • Industry Canada [REDACTED] • CSEC [REDACTED] • Public Safety [REDACTED] • CFIA [REDACTED] • CNSC [REDACTED] • DND [REDACTED] • PMO [REDACTED] 	378
End Product Reports by author <ul style="list-style-type: none"> • NSA • DSD (Australia) • GCHQ • CSEC 	[REDACTED]
Number of Requests Declined by CSEC	4
Number of Privacy Incidents	[REDACTED]