



National  
Defence

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SECRET

National Defence Headquarters  
Ottawa, Ontario  
K1A 0K2

Quartier général de la Défense nationale  
Ottawa (Ontario)  
K1A 0K2

To: Chief, Communications Security Establishment

**Ministerial Directive**  
**Communications Security Establishment**  
**Framework for Addressing Risks in Sharing Information with Foreign Entities<sup>1</sup>**

**1. Preamble**

This Directive is issued under my authority as Minister responsible for the Communications Security Establishment (CSE). This Directive provides direction to CSE on the operationalization of the *Framework for Addressing Risks in Sharing Information with Foreign Entities*, as **Cabinet Confidence**

This directive recognizes the unique roles and responsibilities of CSE in relation to information sharing with foreign entities where such sharing may give rise to a risk of mistreatment. The CSE intelligence mandate is focussed on foreign signals intelligence (SIGINT) collection and reporting to Government of Canada clients in accordance with the Government's intelligence priorities.

Sharing information with foreign entities is necessary to fulfill the CSE mandate. It is essential that CSE be able to maintain strong relationships with foreign entities, and can share information with them on both a routine and an urgent basis. CSE must carefully manage relationships with foreign entities, assisted by policies that guide information sharing practices, to ensure that the sharing of information does not give rise to a substantial risk of mistreatment.

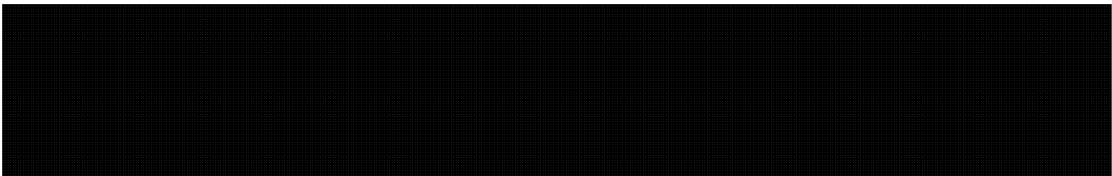
CSE also has a long-standing alliance with its Five-Eyes cryptologic partners, each of which has established policies and mechanisms related to information sharing that serve to inform and strengthen CSE's ability to assess risks in the sharing of information with foreign entities. CSE's information sharing with Five-Eyes cryptologic partners will continue under existing policies and protocols, given the unique nature of CSE's shared and collaborative access to the Five-Eyes SIGINT enterprise. I expect CSE to maintain these long-standing relationships. [REDACTED]

<sup>1</sup> This Ministerial Direction would not change existing legal authorities for sharing information with foreign entities. Although the term foreign entity is not formally defined in the Framework, the term entity is defined in the CSEC legislative framework to mean "a person, group, trust, partnership or fund or an unincorporated association or organization and includes a state or political subdivision or agency of a state." Accordingly, a foreign entity in the context of this directive would include any entity within the meaning of this definition that is not Canadian. The sharing of information with Canadian entities is not subject to this directive.

**Canada**

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As Chief, CSE and the agency head with management and control of the Establishment and all matters relating to it under the CSE legislative framework, you are responsible for making decisions with respect to the sharing of information with foreign entities where there is a substantial risk of mistreatment.

## 2. Background and Context

The Government of Canada opposes in the strongest possible terms the mistreatment of any individual by any foreign entity for any purpose. The Government also has a duty to its own citizens and to its allies to prevent individuals engaging in threat related activities from causing harm, whether in Canada or in a foreign country.

The Government of Canada does not condone the use of torture or other unlawful methods in responding to terrorism and other threats to national security. The Government is committed to pursuing a principled and proportionate response to these threats, while promoting and upholding the values Canada seeks to protect.

Canada is a party to a number of international agreements that prohibit torture and other forms of cruel, inhuman, or degrading treatment or punishment. These include the *International Covenant on Civil and Political Rights* and the *Convention against Torture* (CAT). CAT requires state parties to criminalize all instances of torture, and to take effective measures to prevent torture and other cruel, inhuman, or degrading treatment or punishment in any territory under their jurisdiction.

Torture is a criminal offence in Canada that has extraterritorial application. The *Criminal Code's* provisions governing secondary liability also prohibit aiding and abetting the commission of torture, counselling the commission of torture whether or not the torture is committed, conspiracy to commit torture, attempting to commit torture, and being an accessory after the fact to torture.

More broadly, section 7 of the *Canadian Charter of Rights and Freedoms* guarantees that "everyone has the right to life, liberty, and security of the person." Section 12 of the *Charter* prohibits "any cruel and unusual treatment or punishment," which Canadian courts have described as behaviour "so excessive as to outrage the standards of decency." This behaviour includes torture and other cruel, inhuman, or degrading treatment or punishment.

## 3. Definitions

"Mistreatment" means torture or other cruel, inhuman, or degrading treatment or punishment.

"Substantial risk" is a personal, present, and foreseeable risk of mistreatment. In order to be "substantial," the risk must be real and must be based on something more than mere theory or speculation. In most cases, the test of a substantial risk of mistreatment will be satisfied when it

is more likely than not that there will be mistreatment. However, the “more likely than not” test should not be rigidly applied because in some cases, particularly where the risk is of severe harm, the “substantial risk” standard may be satisfied at a lower level of probability.

#### **4. Principles for Sharing Information with Foreign Entities**

Sharing information with foreign entities is an integral part of the mandates of Canadian intelligence and law enforcement authorities, including CSE. It is also a formal obligation pursuant to Canada’s adoption of various international resolutions and agreements.

In sharing information, CSE must act in a manner that complies with Canada’s laws and legal obligations.

CSE must assess and mitigate potential risks of sharing information in ways that are consistent with the unique roles and responsibilities of CSE.

Under the approved Framework “departments and agencies must also assess the accuracy and reliability of information received and properly characterize this information in any further dissemination.” When sharing information either directly or indirectly with foreign entities [REDACTED] I expect CSE will use caveats that appropriately reflect the nature of its activities and the information it produces as a foreign signals intelligence agency.

The approval levels that CSE requires in order to share information must be proportionate to the risk of mistreatment that may result: the greater the risk, the more senior the level of approval required.

#### **5. Process for Decision Making**

Except when there is a substantial risk, CSE is responsible for establishing approval levels and processes that are proportionate to the risks in sharing information with foreign entities [REDACTED] The following decision making process applies when there is a substantial risk of mistreatment of an individual.

When there is a substantial risk that sending information to or soliciting information from, a foreign entity would result in the mistreatment of an individual, and it is unclear whether that risk can be mitigated through the use of caveats and assurances, the matter will be referred to you, the Chief of CSE, for decision.

In making your decision, you will normally consider the following information, all of which must be properly characterized in terms of its accuracy and reliability:

- The threat to Canada’s national security or other interests, and the nature and imminence of that threat;
- The importance of sharing the information, having regard to Canada’s national security or other interests;

- The status of the relationship with the foreign entity with which the information is to be shared, and an assessment of the human rights record of the foreign entity;
- The rationale for believing that there is a substantial risk that sharing the information would lead to the mistreatment of an individual;
- The proposed measures to mitigate the risk, and the likelihood that these measures will be successful (including, for example, the foreign entity's record in complying with past assurances, and the capacity of those government officials to fulfill the proposed assurance);
- The views of the Department of Foreign Affairs and International Trade (DFAIT); and,
- The views of other department and agencies, as appropriate, as well as any other relevant facts that may arise in the circumstances.

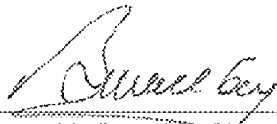
You may refer the decision whether or not to share information with the foreign entity to me, the Minister of National Defence, in cases where in your opinion I should be the decision-making authority. In these cases, I will be provided with the information described above.

You shall authorize the sharing of information with the foreign entity only in accordance with Canada's legal obligations.

#### 5. Implementation

I expect CSE to establish or amend policies, procedures, and practices as required to implement this Directive. I expect that you will keep me informed, through established reporting mechanisms, of any significant issues related to the implementation of this directive that in your opinion warrant my consideration.

Dated at Ottawa, Ont this 21<sup>st</sup> day of November, 2011.



The Honourable Peter Mackay, P.C., M.P.  
Minister of National Defence

cc. National Security Advisor, Privy Council Office  
Deputy Minister of National Defence