

JUL 03 2008

Minister
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Ottawa, Canada K1A 0K2

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The Honourable Charles D. Gonthier, C.C., Q.C.
Communications Security Establishment Commissioner
90 Sparks Street, Suite 730
P.O. Box 1984, Station "B"
Ottawa, Ontario
K1P 5R5

Dear Mr. Gonthier:

I am writing in response to two reports you sent to my office. The first report, dated 9 January 2008, is entitled *Ministerial Directive, Communications Security Establishment, Collection and Use of Metadata, March 9, 2005*. The second report, dated 16 January 2008, is entitled *Report to the CSE Commissioner on CSE Support to CSIS, Phase I: Mandate (a)*.

I am pleased to note that, during the course of both of these reviews, your office did not observe or report on any unlawful activity on the part of the Communications Security Establishment Canada (CSEC).

CSEC's responses to the recommendations presented in these reports are outlined in the accompanying enclosures. I am pleased that CSEC's actions to address many of the recommendations are concluded and others are in progress.

Sincerely,



Peter G. MacKay
Minister of National Defence

Enclosures: 2

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**ANNEX A:
CSEC Response to Recommendations in the OCSEC Report Entitled
*Ministerial Directive, Communications Security Establishment,
Collection and Use of Metadata, March 9, 2005***

Recommendation no. 1: Accounting for Private Communications

“CSE should re-examine and re-assess its current position and practice that requires that only those private communications recognized by intelligence analysts be accounted for.”

CSEC believes this recommendation may be based on information that may have been taken out of context during the review. According to CSEC operational policy², the only instances where persons other than intelligence analysts may incidentally come across private communications is during an [REDACTED] used periodically to analyse the intelligence value [REDACTED]

[REDACTED]

CSEC operational policy dictates that any content observed during these activities may not be used for foreign intelligence purposes and is not therefore retained.

Legally, there is no requirement under the SIGINT Ministerial Authorizations, the Ministerial Directive nor the *National Defence Act* to have anyone other than an intelligence analyst account for private communications.

CSEC's current position and practice of accounting is consistent with what is required by the Minister for accountability purposes.

² OPS-1-6, *Canadian [REDACTED] Procedures* (15 December 2006)

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Recommendation no. 2: Contact Chaining

“CSE should re-examine and re-assess the legislative authority used to conduct its contact chaining activities commencing with [REDACTED] particularly those supplied by federal law enforcement and security agencies engaged in ongoing criminal and national security investigations.”

This matter has been the subject of ongoing discussions with OCSEC regarding parts (a) and (c) of its mandate. OCSEC has forwarded a discussion paper on this topic to CSEC to which a response has been provided. However, CSEC remains of the view that the Solicitor-Client Privilege [REDACTED] CSEC will continue working with OCSEC to address the different interpretations with a completion date of May 2008.

CSEC is also working with its legal counsel to re-examine and re-assess the management direction regarding these contact chaining activities. Policy is being revised to clarify approval authorities for these activities and will be completed by July 2008. In addition, practices have been modified to better document the case-by-case rationales regarding the appropriateness of part (a) of the mandate for these activities.

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**ANNEX B:
CSEC Response to the Recommendations in the OCSEC Report Entitled
*Report to the CSE Commissioner on CSE Support to CSIS, Phase I: Mandate (a)***

Recommendation no. 1: Complete Requests for Information (RFIs)

“CSE should consider re-examining CSIS RFIs to ensure all information required under OPS-4-2 is contained in the RFI, including the written assurance that the information was acquired lawfully and in accordance with an investigation or warrant under Section 12 of the *CSIS Act*, and linked to a Government of Canada Requirement.”

CSEC agrees with this recommendation and over the course of the two and a half years of this review, CSEC has amended its policies and procedures to address the issues raised. Those changes have been implemented.

Recommendation no. 2: Application of parts (a) and (c) of mandate

“In accordance with Recommendation no. 1 above, as well as with Recommendation no. 2 from the RCMP Phase II review, CSE should re-examine its interpretation and application of mandates (a) and (c) and ensure that all decisions and resulting activities are based upon criteria that have been consistently applied and are statutorily defensible.”

CSEC agrees that all decisions and resulting activities should be based upon consistently applied criteria and be statutorily defensible. The interpretation of parts (a) and (c) of CSEC's mandate has been the subject of ongoing discussions with OCSEC. OCSEC has forwarded a discussion paper on this topic to CSEC to which a response has been provided. Further discussions are planned with OCSEC in May to address the different interpretations.

Recommendation no. 3: Review and Update CSEC-CSIS MoU

“CSE should review the Memorandum of Understanding between CSE and CSIS dated November 1, 1990, relating to information/intelligence exchange and operational support (Section 12 activities), to ensure it reflects current practices and agreements.”

CSEC agrees to work with CSIS in order to update the MoU, aiming for completion by the end of 2008.

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