

Communications Security
Establishment Commissioner

The Honourable Robert Décaray, Q.C.



Commissaire du Centre de la
sécurité des télécommunications

L'honorable Robert Décaray, c.r.

TOP SECRET // SI // CEO

Our File # 2200-66

February 15, 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 review of the Communications Security Establishment of Canada's (CSEC) records relating to [REDACTED]. 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)* and was prompted by the [REDACTED] relating to [REDACTED] a Canadian citizen. I examined CSEC's acquisition, use and exchange of information relating to [REDACTED]. Once the examination of CSEC's records [REDACTED] was completed, I had no concern with respect to the vast majority of CSEC's activities. However, I did have some concern, primarily with six particular identifiers (five [REDACTED] and one [REDACTED] relating to [REDACTED]) which could suggest that some activities of CSEC were directed at a Canadian. I therefore focused my attention on these six identifiers. I believe this is the first time that such a specific concern has arisen from a Commissioner.

The review had two objectives: (1) to assess whether CSEC's foreign intelligence activities relating to [REDACTED] complied with the law; and (2) to assess the extent to which CSEC protected the privacy of Canadians — including the privacy of [REDACTED] — in carrying out its activities. I assessed CSEC's activities for compliance with the law in the context of the limitations in the *NDA* for the protection of the privacy of Canadians, i.e., CSEC's foreign intelligence activities "shall not be directed at Canadians or any person in Canada" (paragraph 273.64(2)(a) of the *NDA*) and "shall be subject to measures to protect the privacy of Canadians in the use and retention of intercepted information" (paragraph 273.64(2)(b) of the *NDA*). The purpose of the review was not to

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assess the impact, if any, of the actions, if any, of CSEC relating to [REDACTED]
[REDACTED] The review also excluded examination of the [REDACTED]
[REDACTED]

To put this review in context, most significantly [REDACTED]

[REDACTED] Most of the activities under
review took place [REDACTED] years ago. At that time [REDACTED]

[REDACTED] Also, in many respects, it was early days for certain activities of CSEC.
[REDACTED] It is certain that CSEC now has more detailed policies, practices and training aimed at compliance with the law and the protection of the privacy of Canadians than what it had when it conducted activities relating to [REDACTED]

I found that CSEC conducted activities relating to [REDACTED] CSEC's records indicate that it acquired a very small number of communications that involved, or contained information about [REDACTED] CSEC exchanged identity and other information relating to [REDACTED] with the Canadian Security Intelligence Service (CSIS) and other Government of Canada (GC) agencies [REDACTED] At that time, the activities relating to [REDACTED] were considered by CSEC to be minor and peripheral to other [REDACTED] priorities and CSEC's activities relating to [REDACTED] very often did not produce any results, e.g., CSEC's records contain few transcripts and references to foreign leads, and only one foreign intelligence report relating to [REDACTED] authored by CSEC, with Canadian identity information suppressed in the report and replaced by a generic reference, as is the practice to protect privacy.

There were a number of positive indicators that CSEC did not direct its activities at [REDACTED] The context in CSEC's records and the interviews conducted support a finding that CSEC's activities relating to [REDACTED] were in accordance with the GC's intelligence priorities at the time, specifically to acquire foreign intelligence about [REDACTED] I also found that CSEC acquired, [REDACTED], but that CSEC did not conduct any activities relating to a vast majority of these identifiers because doing so may have resulted in directing activities at a Canadian, contrary to the NDA. Therefore, I had no questions about CSEC's activities relating to these identifiers.

However, as I said earlier, some records concerning six identifiers could suggest that some activities of CSEC were directed at a Canadian — [REDACTED] — contrary to the law, and my examination focused on these identifiers. The result of my review is that the totality of CSEC's records for these six identifiers and the interviews conducted do not permit me to conclusively determine the nature of, and what was the intent of, CSEC's activities concerning the six particular identifiers relating to [REDACTED] nor to conclusively determine whether CSEC had reasonable grounds to believe that its targeting and other activities relating to these six identifiers were directed at a foreign entity and would provide foreign intelligence. Based on the evidence available and on the context, I was unable to reach a definitive conclusion about compliance or non-compliance with the law for CSEC's activities concerning these six identifiers.

CSEC's records relating to [REDACTED] were sometimes unclear and not in agreement respecting whether CSEC had reasonable grounds to believe that the identifiers referred to in the documents were either: (i) [REDACTED] (ii) [REDACTED] (iii) or whether it was uncertain.

Therefore, while recognizing that CSEC has made significant changes to its policies and practices since the period under review, but to ensure compliance with the law and for accountability, I recommend that CSEC promulgate policy guidance respecting how to clearly and consistently identify — in its communications with GC [REDACTED] — whether an identifier or selector [REDACTED]

As well, I recommend that CSEC ensure that its foreign intelligence analysts are knowledgeable about and follow existing policy guidance, introduced since the period under review, respecting their responsibilities for determining and documenting the assessment of the foreign status of a targeted entity and the justifications for targeting that entity.

In addition, the absence of certain historical information in CSEC's targeting database and tool — [REDACTED] — further limited my ability to assess the lawfulness of CSEC's activities relating to [REDACTED] and could also affect my review of other activities of CSEC. During the period under review, CSEC did not always retain a history of targeting activity; however, it is positive that CSEC is taking actions to ensure the availability of information about targeting and selector management that is required for accountability and to demonstrate compliance with the law. I will monitor developments in this regard.

I also found that CSEC did not adequately protect the privacy of a Canadian — [REDACTED] — in three exchanges of information in [REDACTED] and one in [REDACTED]. Subsequent to questions from my office, CSEC recognized deficiencies, recorded these exchanges of information as incidents in its Privacy Incidents File, reminded its employees of best practices, and is working on new guidance to address operational

policy gaps. I believe that since the period under review, CSEC has taken appropriate actions for accountability and to help prevent re-occurrences of similar privacy incidents.

At my direction, my office has started a review of recent activities of CSEC's [REDACTED] that includes follow-up on matters raised in this review, particularly respecting the clarity of language in CSEC information exchanges with CSIS.

The enclosed report contains detailed information supporting my findings and recommendations. CSEC officials were provided an opportunity to review and comment on the report, for factual accuracy, prior to finalizing it.

If you have any questions or comments, I will be pleased to discuss them with you at your convenience.

Yours sincerely,



Robert Décaray

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

Enclosure: (1)

Office of the
Communications Security
Establishment Commissioner



Bureau du
Commissaire du Centre de la
sécurité des télécommunications

TOP SECRET // SI // CEO

Our File # 2200-66

**Review of CSEC Activities Relating to
an [REDACTED]**

February 15, 2013

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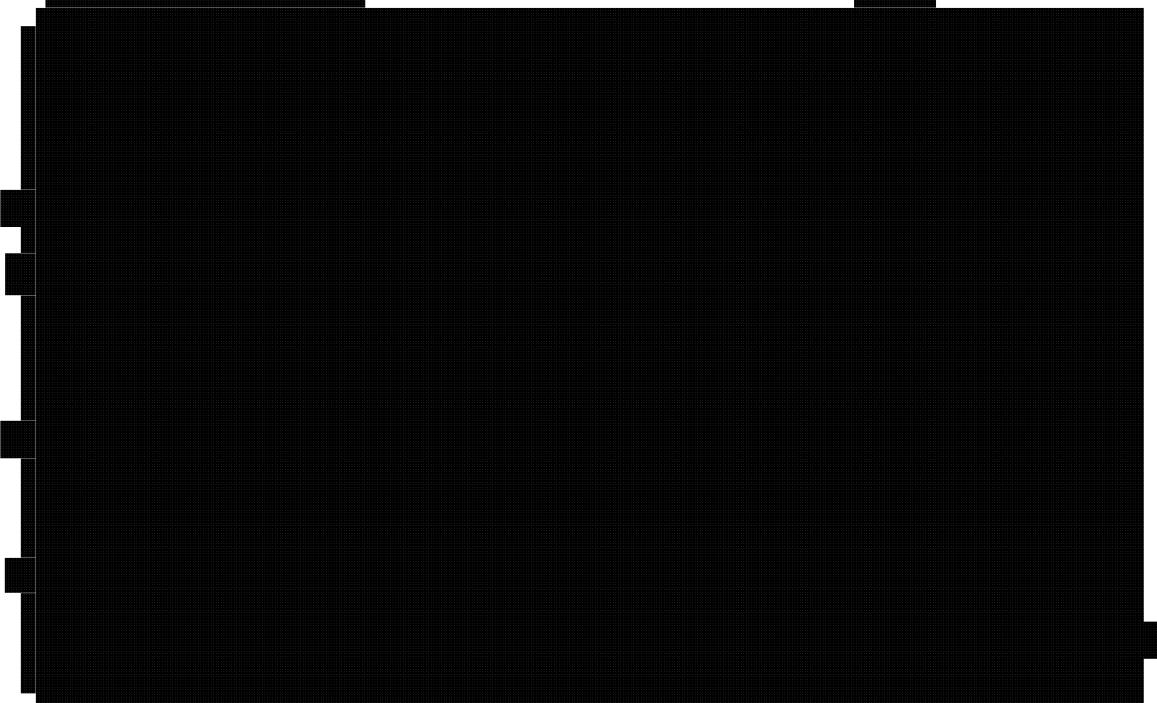
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I. AUTHORITIES

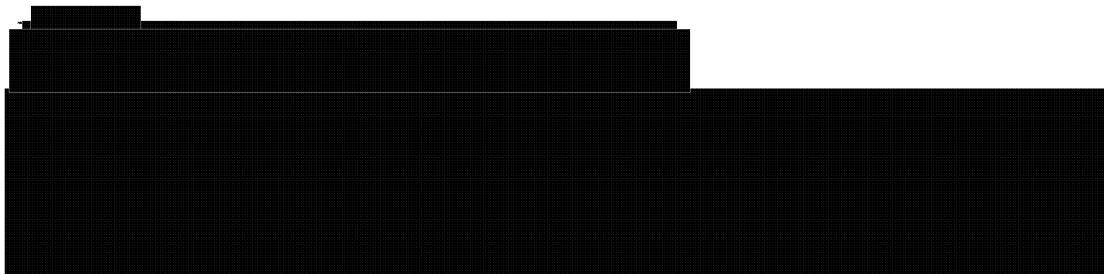
This review was undertaken under the Commissioner's general authority as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act (NDA)*.

II. INTRODUCTION



Rationale for conducting this review

This review was prompted by the [REDACTED] relating to [REDACTED]. The initial goal was to examine whether CSEC provided CSIS with information relating to [REDACTED] and, if so, whether CSEC complied with the law. Prior to commencing this review, the Commissioner's office was aware that CSEC conducted at least one activity relating to [REDACTED] because CSEC provided the office with a record [REDACTED] relating to [REDACTED] in the context of a past review.



III. OBJECTIVES AND CRITERIA

The objectives of the review were:

1. to assess whether CSEC's activities relating to [REDACTED] complied with the law; and
2. to assess the extent to which CSEC protected the privacy of Canadians — including the privacy of [REDACTED] — in carrying out its activities.

The Commissioner assessed CSEC's activities relating to [REDACTED] against these two objectives.

Specifically, the Commissioner assessed CSEC's activities in the context of the limitations in the *NDA* for the protection of Canadians, i.e., CSEC's foreign intelligence activities "shall not be directed at Canadians or any person in Canada" (paragraph 273.64(2)(a) of the *NDA*) and "shall be subject to measures to protect the privacy of Canadians in the use and retention of intercepted information" (paragraph 273.64(2)(b) of the *NDA*).

The purpose of the review was not to assess the impact, if any, of the actions, if any, of CSEC relating to [REDACTED]. The review also excluded examination of the [REDACTED]

Examination of such issues is outside the scope of the Commissioner's mandate.

IV. SCOPE

The Commissioner examined CSEC's activities in the performance of its foreign intelligence and assistance mandates — under paragraphs 273.64(1)(a) and (c) of the *NDA* — and involving its acquisition, use and exchange of information relating to [REDACTED] for the period of [REDACTED] to [REDACTED]

[REDACTED] (the date [REDACTED]). Most of CSEC's activities relating to [REDACTED] were conducted in [REDACTED]. For certain holdings, CSEC searched records dated prior to the period of time for the review (i.e., pre-[REDACTED]), but found no relevant records.⁴

The Commissioner's examination relied on the following primary sources of information:

1. CSEC's target knowledge database and targeting tool — [REDACTED] — for any records relating to [REDACTED]
2. CSEC's signals intelligence (SIGINT) reporting production and dissemination system — [REDACTED] — for references to [REDACTED]
3. releases by CSEC to GC [REDACTED]
[REDACTED] — of identity information relating to [REDACTED] suppressed in SIGINT reports;
4. records of CSEC exchanges of information in an operational context with CSIS relating to [REDACTED]
5. records of CSEC exchanges of information in an operational context [REDACTED] relating to [REDACTED]
6. IRRELEVANT
7. CSEC [REDACTED] identifiers (e.g., [REDACTED]) relating to [REDACTED] and [REDACTED]
8. interviews of CSEC employees.

V. METHODOLOGY

In total, the Commissioner and his office examined [REDACTED] hard-copy records, consisting of [REDACTED] pages of information, and containing [REDACTED] — [REDACTED] — relating to [REDACTED] CSEC exchanged much ([REDACTED] pages) of this information relating to [REDACTED] with CSIS in an operational context. CSEC generally [REDACTED]. In a note sent from CSEC to CSIS, CSEC indicated that it could not use Canadian identifiers or target them as selectors because doing so would constitute targeting of a Canadian by CSEC, contrary to the *NDA*.⁶ CSEC did not enter these unused identifiers in [REDACTED]. The Commissioner examined CSEC's activities relating to all of the information and identifiers. As a result of this

[REDACTED] is a database of CSEC target knowledge and a tool used by CSEC for targeting. The Commissioner's review report of March 15, 2011, on *CSEC SIGINT's Targeting and Selector Management Activities* provides detailed information on [REDACTED].

⁶ "Re: HQ/CT/[REDACTED] 647/3926 and HQ/CT/[REDACTED] 9901/4157" (undated).

examination, the Commissioner's review focused on six identifiers (five [REDACTED] and one [REDACTED]) relating to [REDACTED]. To ensure a common set of facts, the Commissioner's office put CSEC's records associated with these identifiers into a binder and shared it with CSEC (Annex C). For each identifier, CSEC's records were grouped by the Commissioner's office into seven categories:

1. records that describe the entity relating to the identifier;
2. any associated record in [REDACTED] (screenshots of [REDACTED] records for the six identifiers are enclosed in Annex D);
3. other records about any CSEC targeting of the identifier;
4. any records [REDACTED] of the identifier;
5. records of any CSEC acquired intercepted information relating to the identifier;
6. any reports produced by CSEC [REDACTED] relating to the identifier; and
7. any information relating to CSEC's sharing of the identifier with GC departments [REDACTED] in an operational context, including any disclosure of identity information relating to [REDACTED]

The Commissioner examined in detail these records, the office discussed them with CSEC during briefings and interviews, and CSEC provided answers to a number of written questions.

With the assistance of CSEC employees acting under our direction, the Commissioner's office tested the contents of [REDACTED] and [REDACTED] to verify that CSEC's electronic records were consistent with the hard-copy records provided by CSEC and that other records did not exist.

CSEC identified and the Commissioner's office interviewed a director and a manager (respectively a team leader and an intelligence analyst during the time under review) who worked in CSEC's [REDACTED] at that time and who had knowledge of CSEC's activities relating to [REDACTED]. CSEC did not identify any other employees who had first-hand knowledge of the details of these activities. One person at the centre of CSEC's activities relating to [REDACTED] was [REDACTED]
[REDACTED]

[REDACTED]
respectively — under entity record number [REDACTED] in [REDACTED] and labeled as a "protected entity" not to be targeted, and four [REDACTED] — under entity record number [REDACTED] in [REDACTED] and labeled [REDACTED]

This is a report of the outcomes of the Commissioner's review. Prior to forwarding a draft report to CSEC for comment as to factual accuracy, the office presented a summary of the findings to CSEC. The office held a number of discussions with CSEC on the draft report.

VI. BACKGROUND

In the absence of a Commissioner, on August 4, 2009, the former Executive Director of the Commissioner's office sent a request to CSEC to initiate a review of any CSEC records and activities relating to [REDACTED].⁸ In discussions in early September 2009, the former Chief of CSEC and CSEC managers verbally questioned the authority of the Commissioner's office to initiate a new review in the absence of a Commissioner and subsequently, on September 9, 2009, raised in writing a number of other concerns about the proposed review, including the amount of work that would be required to search for records and the inability of CSEC's operational systems and databases to be searched using information about Canadians. The then Chief of CSEC concluded that "CSEC is not in a position to fulfill [the] request at this time". On October 28, 2010, the new Commissioner wrote to the Chief requesting that CSEC identify for review information relating to [REDACTED]. On December 8, 2010, the Chief confirmed in writing that CSEC would begin to action the review. In November 2010, the Commissioner's office started to receive information from CSEC relating to [REDACTED]

VII. FINDINGS AND RECOMMENDATIONS

Context of period under review

To put this review in context, most significantly [REDACTED]
[REDACTED]

In CSEC's records, and in the information CSEC received and exchanged [REDACTED]
[REDACTED]

The number of records [REDACTED] in those records may give the impression that CSEC conducted a large quantity of activities relating to [REDACTED]. However, at that time, the activities relating to [REDACTED] were considered by [REDACTED] to be minor and peripheral to other [REDACTED] priorities. Also according to CSEC, and as supported by the records reviewed, its activities relating to [REDACTED] very often did not produce

⁸ Commissioner the late Honourable Charles Gonthier passed away on July 17, 2009. The Commissioner's office was without a Commissioner until the appointment of the Honourable Peter Cory on December 14, 2009, who remained until March 31, 2010. The office was again without a Commissioner until June 18, 2010, when the current Commissioner, the Honourable Robert Décary was appointed.

any results, e.g., CSEC's records contain few transcripts, foreign intelligence reports or reference to foreign leads.⁹

Most of the activities under review took place over [REDACTED] years ago. In many respects, it was early days for certain activities of CSEC. [REDACTED]

[REDACTED] CSEC had started acquiring and using information obtained under ministerial authorizations; prior to the enactment of the *NDA*, CSEC relied on authorities under the *Canadian Security Intelligence Services Act (CSIS Act)* for certain means of acquiring foreign intelligence.¹⁰ CSEC was learning how to use metadata and to conduct SIGINT development activities to identify potential foreign entities of foreign intelligence interest. CSEC was also learning how to cooperate with — under its foreign intelligence and assistance mandates — and use information from CSIS and the Royal Canadian Mounted Police relating to [REDACTED] activities. Guidance and policies for such activities were new or under development. There were daily discussions among managers and counsel about how to conduct activities of the [REDACTED] like those relating to [REDACTED]. CSEC's management of records was maturing; CSEC started to store reports in [REDACTED] and to attribute numbers and names to files. At that time, CSEC did not have a common information management plan or system, a subject of recommendations by past Commissioners.¹¹ CSEC's activities relating to [REDACTED]

[REDACTED] for CSIS pursuant to section 16 of the *CSIS Act*. At the time the activities under review took place, CSEC did not have much exposure to, or experience with, information relating to Canadians. CSIS provided CSEC with information about [REDACTED] including foreign identifiers. CSIS sometimes provided CSEC with [REDACTED]

[REDACTED] According to CSEC, at that time, much of the information received from CSIS was imprecise.¹²

CSEC recognized that information relating to Canadians was sensitive and must be handled properly. For this reason, information from CSIS or other GC departments containing information relating to Canadians was received by a [REDACTED] operations team within [REDACTED]. Analysts on this team had specialized technical skills and had demonstrated, according to a manager at that time, a high awareness of legal requirements and policies for the protection of the privacy of Canadians. In addition, at that time, CSEC did not store [REDACTED] reports relating to Canadians in [REDACTED] because CSEC wanted better control of such sensitive reports having a link to Canada, in order to ensure that Canadian information was not broadly accessible, even within CSEC.¹³

It is certain that CSEC currently has more detailed policies, practices and training aimed at compliance with the law and the protection of the privacy of Canadians than what it had

⁹ Interview, Manager, CSEC Operational Production and Coordination Centre, April 23, 2012, and interview, Director, SIGINT Requirements, CSEC, May 7, 2012.

¹⁰ This refers to s.16 of the *CSIS Act*.

¹¹ *Supra*, note 9.

¹² *Ibid.*

¹³ *Ibid.*

when it conducted activities relating to [REDACTED] it was not an objective of this review to conduct a detailed examination of all CSEC policies in place at that time and to compare them to CSEC's policies and procedures in place today. For example, at the time the activities under review took place, the processing of requests for the disclosure of Canadian identity information was done by the operational sections of CSEC. Subsequently, these functions were separated from operations and today they are performed by CSEC's Operational Policy section. An additional example is that CSEC employees did not at that time consistently put their names on all records using a signature block, which would identify a person's role and function at the time the record was created.¹⁴

In addition, during the period under review, the state of the telecommunications environment [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

CSEC activities relating to [REDACTED]

Finding no. 1: CSEC activities relating to [REDACTED] (1)

CSEC conducted activities relating to [REDACTED]
[REDACTED]

Finding no. 2: CSEC activities relating to [REDACTED] (2)

CSEC's records indicate that it acquired a very small number of communications that involved, or contained information about [REDACTED]

Transcripts used as the basis of one SIGINT report authored by CSEC and relating to [REDACTED] were retained as part of CSEC's official record. If SIGINT analysts had recognized private communications that did not contain foreign intelligence essential to international affairs, defence or the security of Canada, CSEC policy required the analysts to delete those communications to protect the privacy of the Canadian. It is not possible to determine how many private communications of or relating to [REDACTED] if any, CSEC may have intercepted and appropriately destroyed as non-essential.

CSEC exchanged identity and other information relating to [REDACTED] with CSIS and other GC agencies [REDACTED]

¹⁴ *Ibid.*

[REDACTED]

According to CSEC's records, the interviews conducted and the systems and databases observed by the Commissioner's office, all of the activities CSEC conducted relating to [REDACTED] were carried out under the authority of paragraph 273.64(1)(a) of the *NDA* "to acquire and use information from the global information infrastructure for the purpose of providing foreign intelligence, in accordance with Government of Canada intelligence priorities" (part (a) of CSEC's mandate); IRRELEVANT

IRRELEVANT

1. Compliance with the law

The Commissioner assessed for compliance with the law the activities CSEC carried out under part (a) of its mandate relating to [REDACTED] in the context of the limitations in the *NDA* for the protection of Canadians, i.e., CSEC's foreign intelligence activities "shall not be directed at Canadians or any person in Canada" (paragraph 273.64(2)(a) of the *NDA*) and "shall be subject to measures to protect the privacy of Canadians in the use and retention of intercepted information" (paragraph 273.64(2)(b) of the *NDA*).

Finding no. 3: Compliance with the law (1)

CSEC acquired, largely from [REDACTED] but CSEC did not conduct any activities relating to a majority of these identifiers because doing so may have resulted in directing activities at a Canadian, contrary to the *National Defence Act*; therefore, the Commissioner had no questions about CSEC's activities relating to a majority of the identifiers relating to [REDACTED] handled by CSEC.

Finding no. 4: Compliance with the law (2)

There are records concerning six particular identifiers relating to [REDACTED] that could suggest that some activities of CSEC were directed at a Canadian contrary to the law; however, based on the evidence available and on the context, it is not possible to reach a definitive conclusion about compliance or non-compliance with the law for CSEC's activities concerning these six identifiers.

The review of CSEC's hard-copy and electronic records and the interviews conducted resulted in a number of positive indicators that CSEC was not directing activities at [REDACTED]

- The context in CSEC's records and the interviews conducted support a finding that CSEC's activities relating to [REDACTED] were in accordance with the GC's intelligence priorities at the time, specifically to acquire foreign intelligence about [REDACTED]

- Most of the identifiers in [REDACTED] relating to [REDACTED] were grouped under a single entity labeled [REDACTED] and the two identifiers in [REDACTED] marked as [REDACTED] were labeled as a "protected entity" not to be targeted by CSEC;¹⁶
- CSEC records show that it did not action a request from CSIS for information concerning a number of identifiers [REDACTED] CSEC responded to CSIS that restrictions on its activities prevent it from querying on information about Canadians and that to do so would constitute targeting a Canadian.¹⁷ CSEC did not enter these unused identifiers in its targeting database and tool [REDACTED]. Therefore, the Commissioner had no questions about CSEC's treatment of and activities concerning a majority [REDACTED] acquired by CSEC; and [REDACTED]
- A number of CSEC records contain indicators that CSEC did not direct or did not intend to direct its activities at a Canadian — [REDACTED] (pp. 12-19 contain excerpts of these records and Annex C contains the complete records).

However, CSEC's hard-copy and electronic records concerning six particular identifiers relating to [REDACTED] five [REDACTED] and one [REDACTED] — also resulted in a number of records that raised questions about who was the targeted entity/subject of CSEC's activities and why was it targeted/what was the purpose of the activities. These records introduce the possibility that CSEC may have been aware — or ought to have been alerted to the possibility — that targeting or conducting activities using these six identifiers may consist of directing activities at a Canadian — [REDACTED] — and may result in the collection of the communications of [REDACTED] The totality of CSEC's records concerning these six identifiers relating to [REDACTED] — including those records that contain indicators that CSEC did not direct or did not intend to direct its activities at [REDACTED] — do not contain sufficient supporting evidence to answer these questions one way or the other.

In addition, CSEC's hard-copy and electronic records of its activities concerning these six identifiers relating to [REDACTED] are incomplete and the language contained within the records is inconsistent and sometimes imprecise. These gaps and contradictory and ambiguous language in CSEC's records, as well as the passage of time and changes in CSEC employees and systems, make it even more difficult for the Commissioner to make a definitive conclusion about compliance or non-compliance with the law for CSEC's activities concerning these six identifiers relating to [REDACTED]

The absence of basic historical information in [REDACTED] further limited the Commissioner's assessment of the lawfulness of CSEC's activities concerning these six

¹⁶ *Supra*, note 7; and Annex D.

¹⁷ E-mail from CSEC's [REDACTED] to CSIS "Re: HQ/CT/ [REDACTED] 7/647/3926 and HQ/CT/ [REDACTED] '9901/4157", (undated).

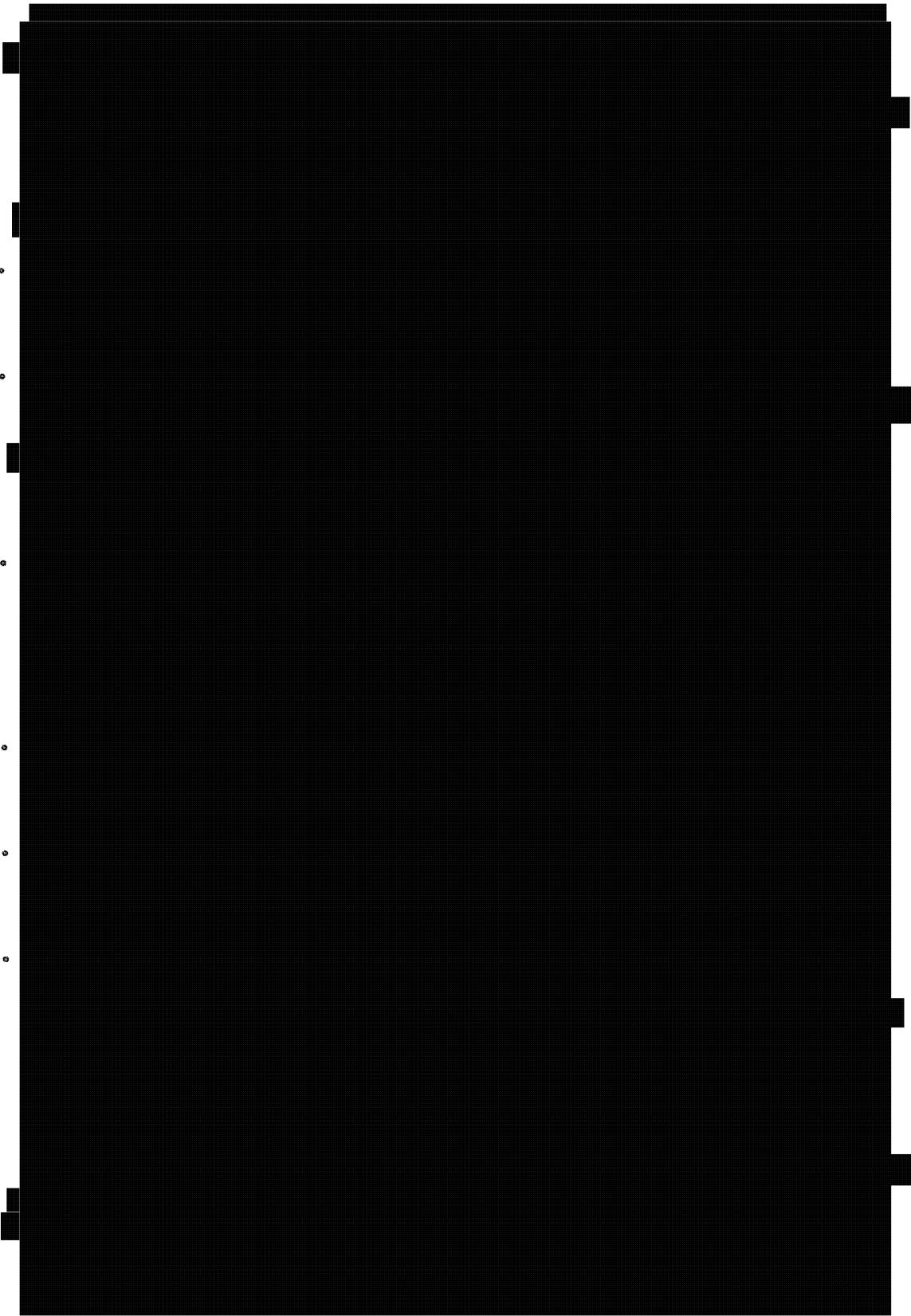
identifiers relating to [REDACTED] (the records in [REDACTED] relating to [REDACTED] are described in this report starting at p. 27).

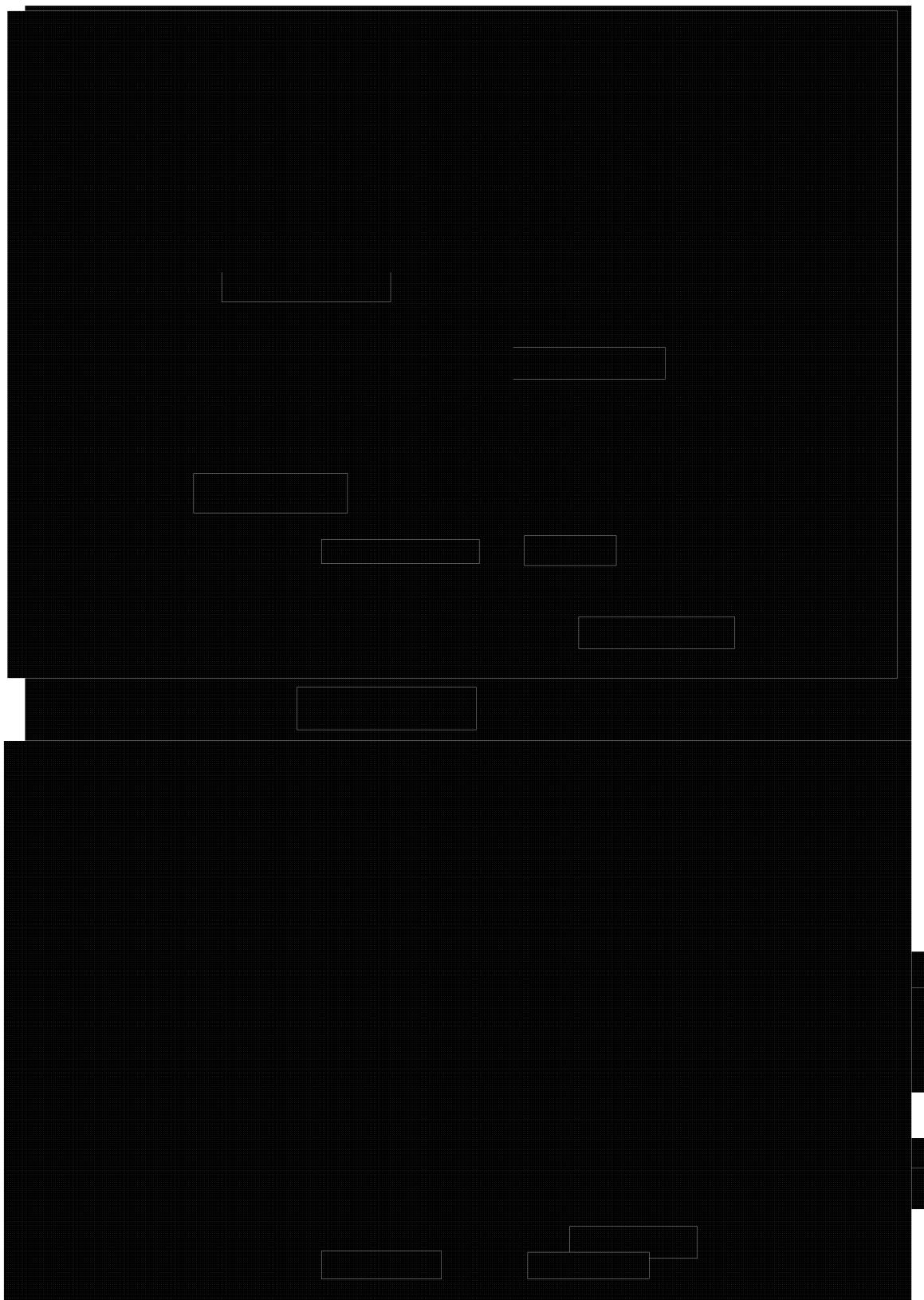
There are a number of positive indicators that CSEC did not direct its activities at [REDACTED]. However, the totality of CSEC's records and the interviews conducted do not permit the Commissioner to conclusively determine the nature of, and what was the intent of, CSEC's activities concerning six of the identifiers relating to [REDACTED] nor to conclusively determine that CSEC had reasonable grounds to believe that its targeting and other activities were directed at a foreign entity and would provide foreign intelligence.

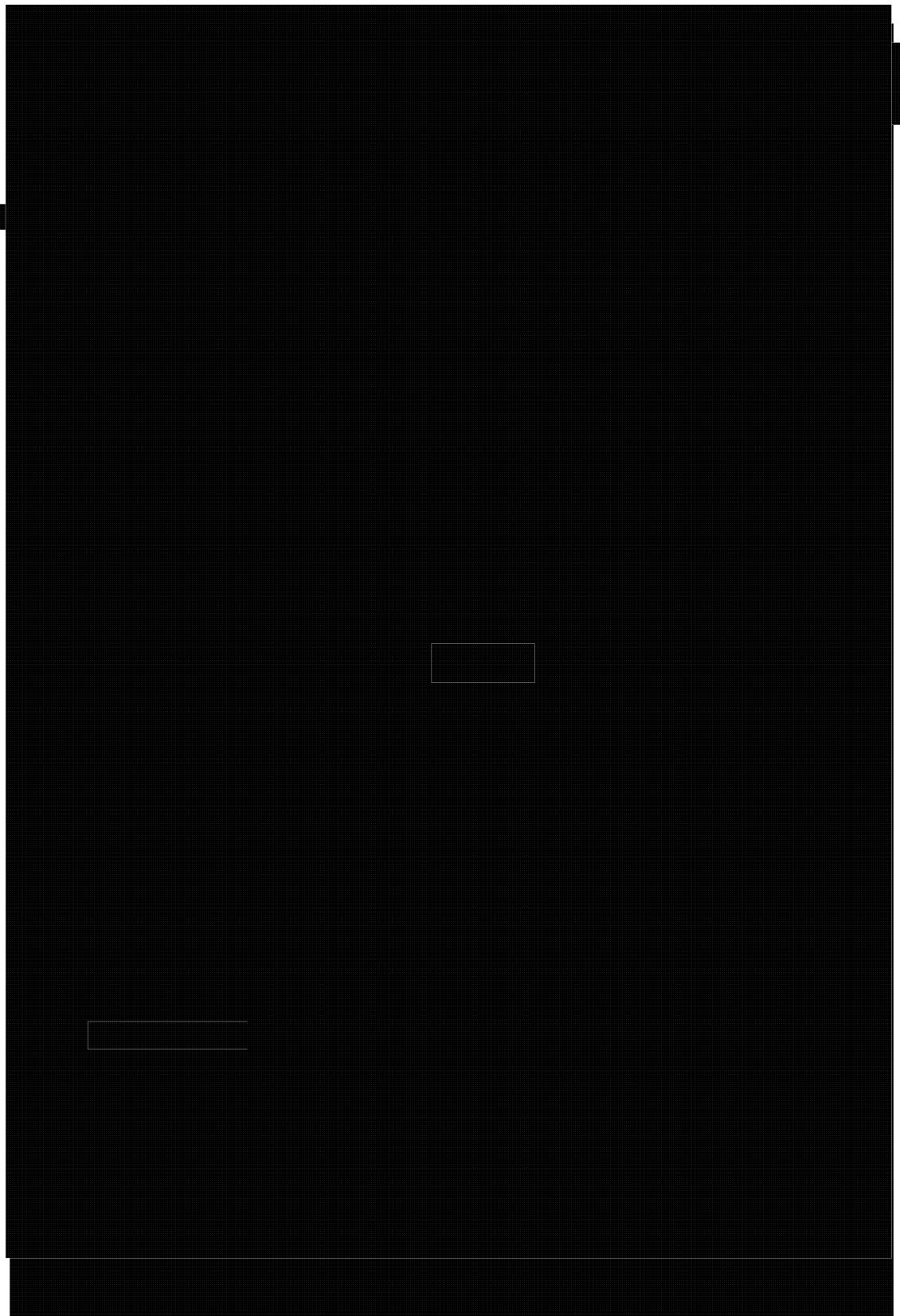
Excerpts from CSEC's records concerning six identifiers relating to

The following are excerpts from CSEC's records concerning the six identifiers in question relating to ██████████. Some of these records raise questions about who was the targeted entity/subject of CSEC's activities and why was it targeted/what was the purpose of the activities. The descriptions of the entity of interest and the justifications for targeting and other activities in these records are inconsistent and sometimes imprecise. The excerpts are grouped by identifier. For clarity, and to maintain the chronological order of events for each identifier, excerpts involving more than one of the six identifiers are repeated under each of the relevant identifiers.

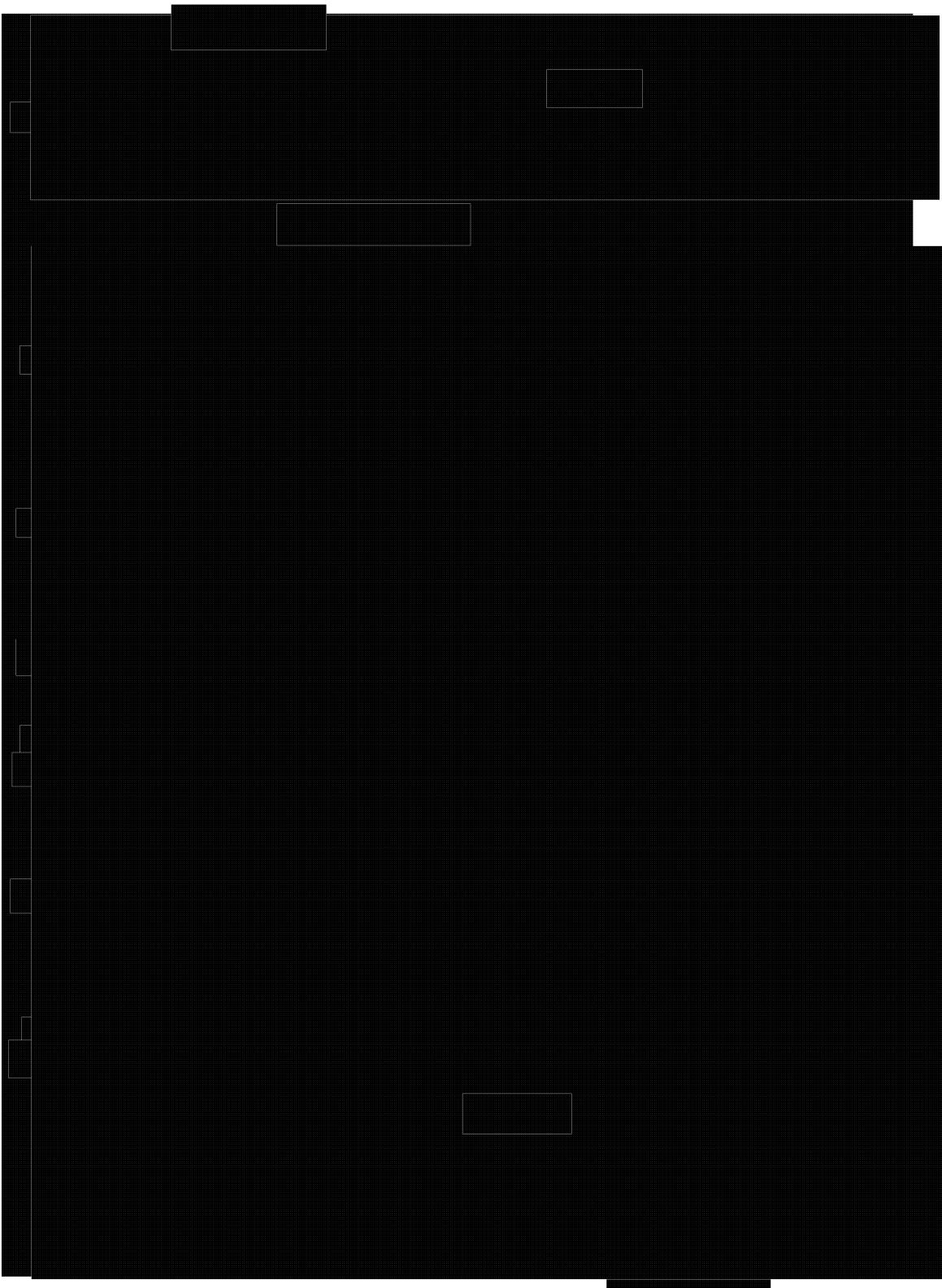
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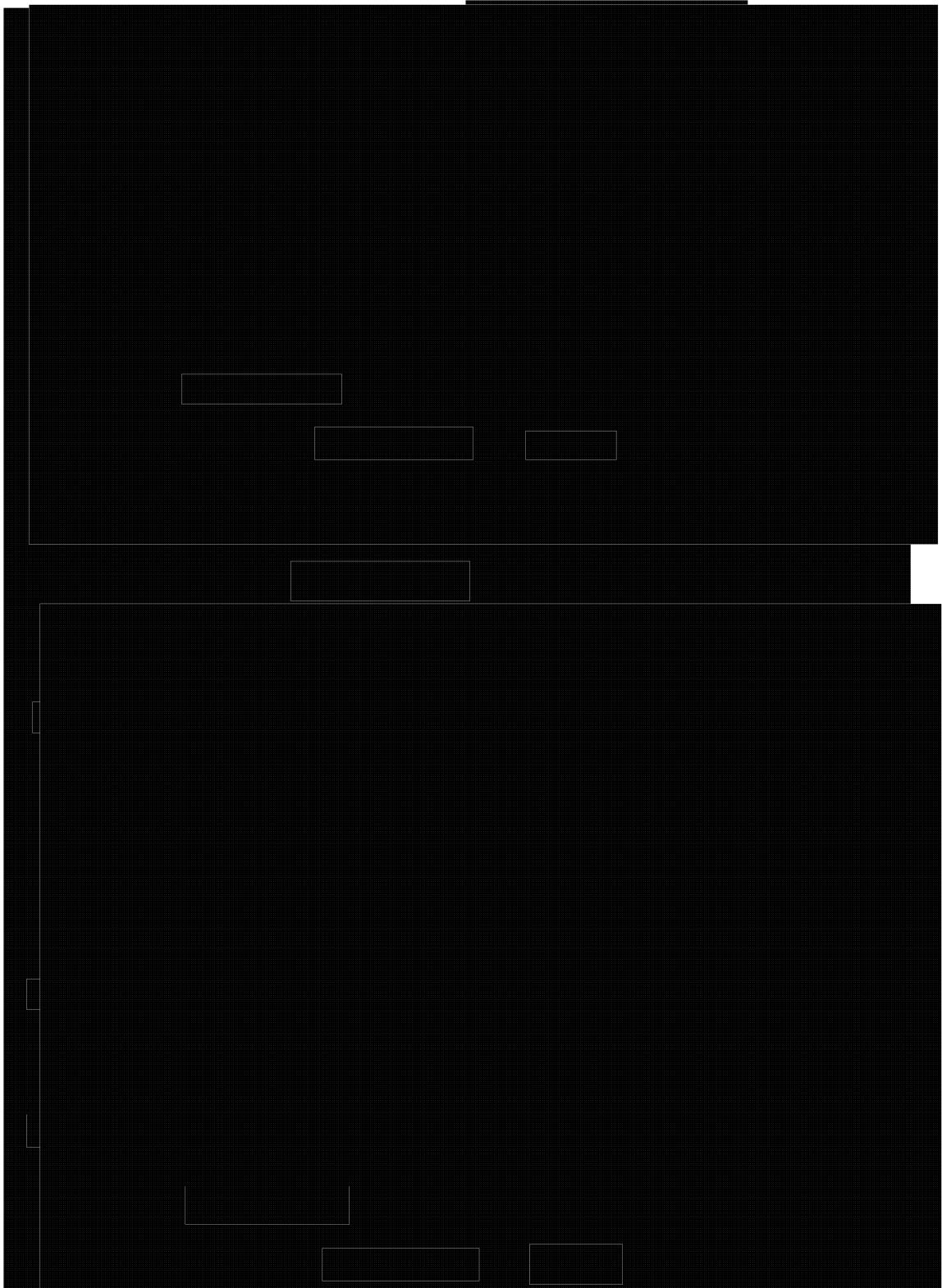


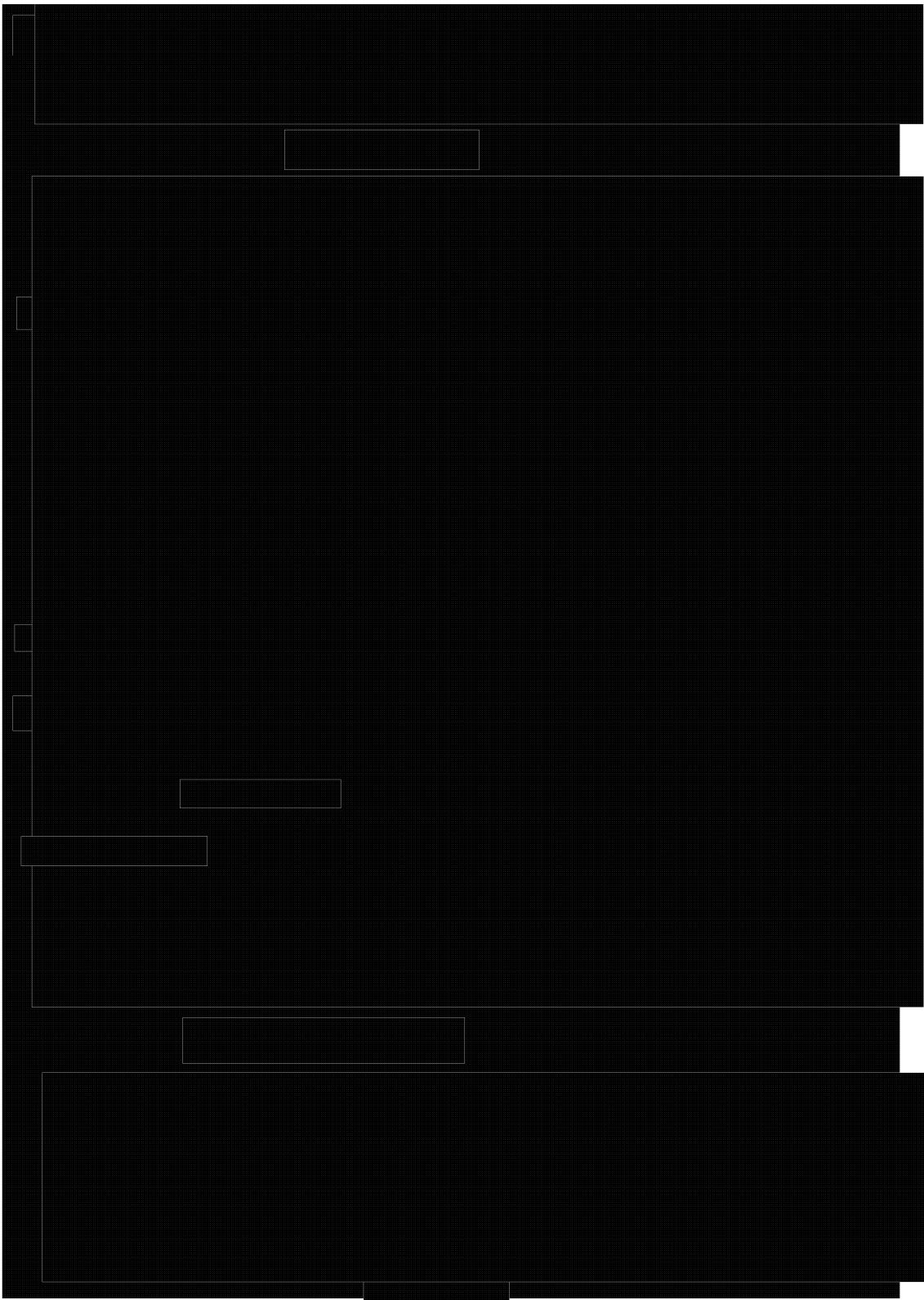


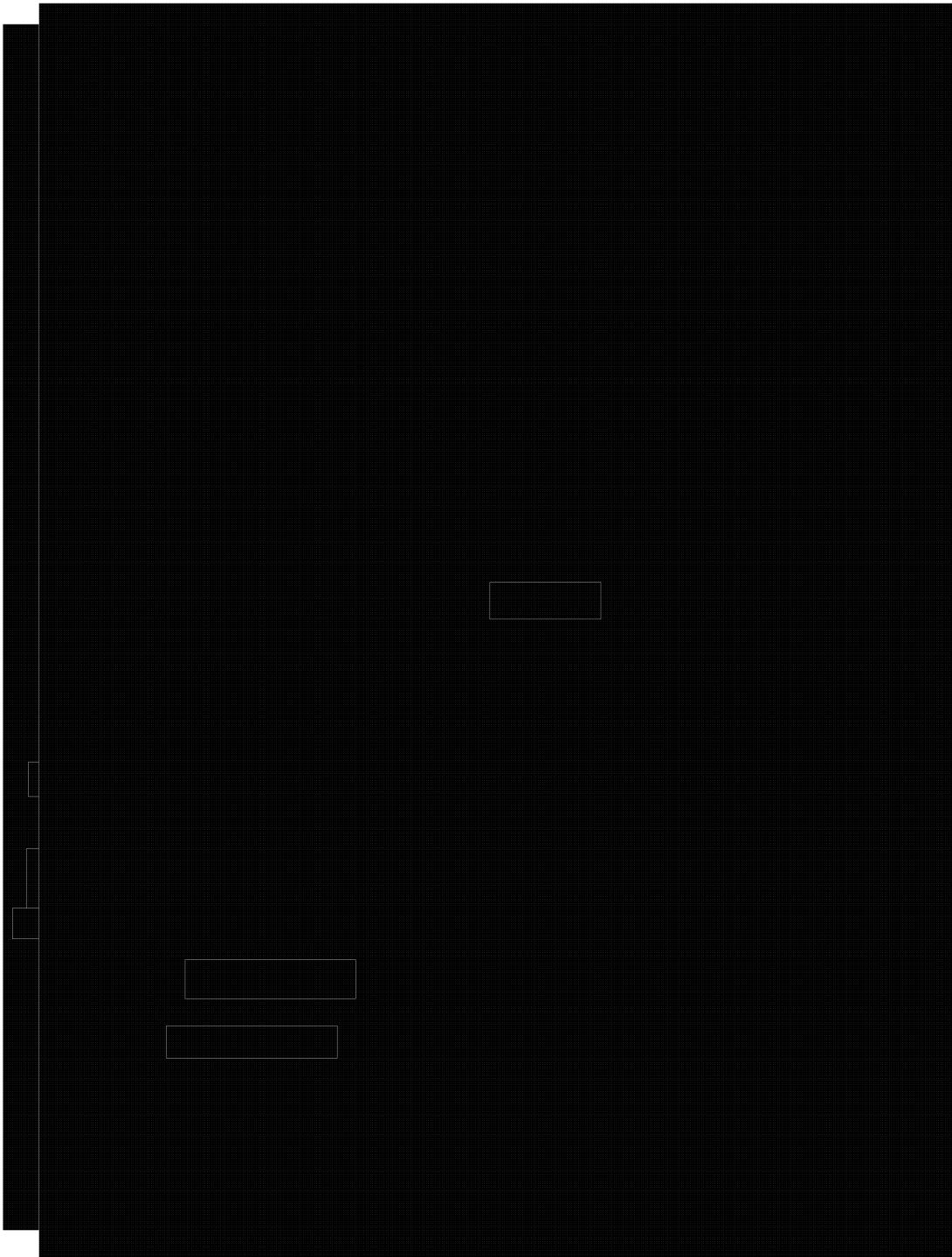


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Exchanges of information in an operational context with CSIS relating to

CSEC's activities carried out under part (a) of its mandate "shall not be directed at Canadians or any person in Canada". According to Justice Canada's opinion of October 1, 2003, entitled Solicitor-Client Privilege

Solicitor-Client Privilege

e

The Commissioner is in agreement with Justice Canada's opinion. Solicitor-Client Privilege
Solicitor-Client Privilege

However, the collection of foreign intelligence and the collection of information about a Canadian are not mutually exclusive. For example, while pursuing foreign intelligence using selectors [REDACTED] a Canadian [REDACTED] CSEC may unintentionally acquire private communications of or information about that Canadian, which may be assessed as relevant for foreign intelligence purposes.

For CSEC to demonstrate that it is not directing its activities at Canadians or any person in Canada, CSEC must clearly identify in its systems and databases, as well as in its communications with GC [REDACTED] the degree to which an identifier or selector is either:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

CSEC must also be able to identify whether it believes the entity is foreign or Canadian and whether it is located in or outside Canada.

As evidenced by the extracts of CSEC's records on pp. 12-19 of this report, a number of CSEC's hard-copy and electronic records relating to [REDACTED] — both records produced by CSEC and records CSEC obtained from CSIS — were sometimes unclear and not in agreement respecting whether CSEC or CSIS had reasonable grounds to believe that the identifiers referred to in the documents were either: (i) [REDACTED] (ii) [REDACTED] (iii) or whether the agencies were uncertain.¹⁹

For example, CSEC and CSIS regularly used ambiguous language such as [REDACTED] or [REDACTED] or phrasing like [REDACTED]. Such language does not clearly identify the relationship of an identifier or selector to [REDACTED].

In one particular case, a CSEC record indicated that CSEC intercepted [REDACTED] communications of "DNR [telephone] selectors [REDACTED]" (emphasis added). The Commissioner questioned under what authority CSEC had intercepted [REDACTED] communications [REDACTED]. CSEC responded that its use of language was "understandably misleading", the "DNR selectors in question were associated with the [REDACTED] file as a whole", that "was sometimes referred to as the [REDACTED] file for ease of reference within the team."²⁰

During an interview, an intelligence analyst stated that if the language used by CSIS in exchanges of information was unclear as to the ownership of a specific identifier or selector provided, CSEC would clarify this issue over the phone, in order not to target a Canadian but that these phone calls were not documented.²¹ The failure to document such exchanges

¹⁹ See Annex C respecting identifiers [REDACTED]

²⁰ E-mail from Senior Policy and Review Advisor, External Review and Policy Management, CSEC, to Director of Operations, OCSEC, October 7, 2011.

²¹ Interview, Manager, CSEC Operational Production and Coordination Centre, April 23, 2012.

is problematic and further limited the Commissioner's assessment of CSEC's compliance with the law.

CSEC's records and the interviews conducted do not permit the Commissioner to determine that CSEC's and CSIS' use of imprecise and inconsistent language for certain identifiers and selectors relating to [REDACTED] was intentional. However, in the Commissioner's view, CSEC ought to have been alerted to the possibility, even qualified by the context of the period under review, that any activities or interception using these identifiers may result in directing its activities at [REDACTED] contrary to the *NDA*.

If CSEC's GC [REDACTED] do not use clear and consistent language in their communications with CSEC, particularly relating to Canadians, CSEC should ask questions [REDACTED] to clarify the nature of that information and its possible relationship to Canadians prior to using the information for targeting. An official record of such discussions should be documented and retained in accordance with the retention and disposition authorities as governed by Library and Archives Canada.

Recommendation no. 1: Clarity of language — information sharing and relationship of identifiers and selectors to entities of foreign intelligence interest

It is recommended that CSEC promulgate policy guidance respecting how to clearly and consistently identify in its communications with Government of Canada [REDACTED] whether an identifier or selector [REDACTED]

Recommendation no. 2: Clarity of language — demonstrating legal compliance in conducting targeting activities

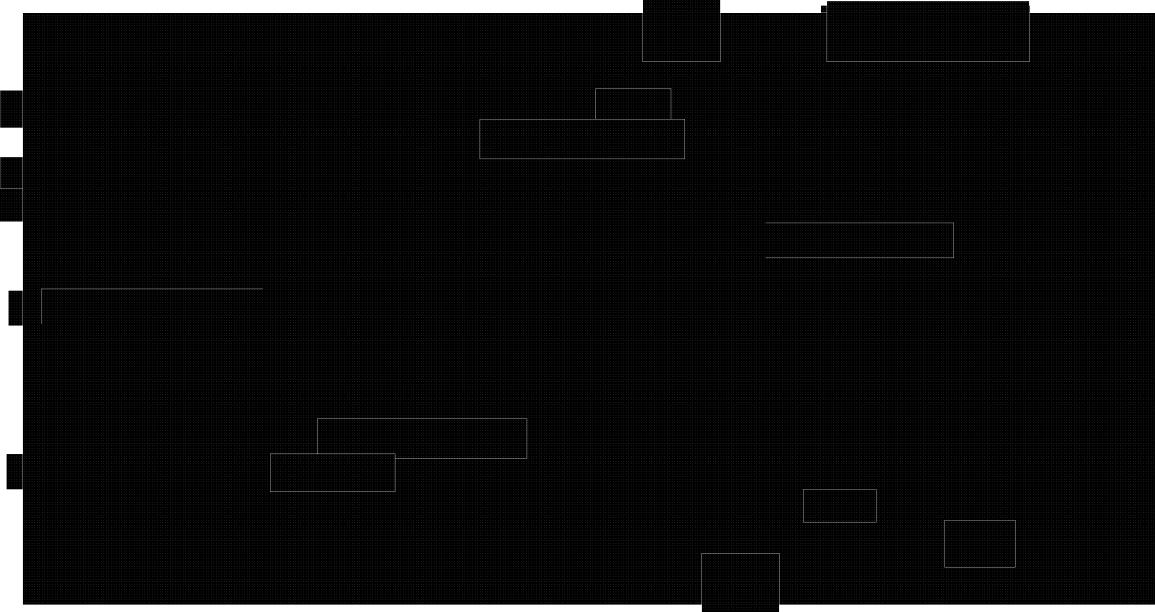
In light of the findings in this review, it is recommended that CSEC ensure that its foreign intelligence analysts are knowledgeable about and follow existing policy guidance, introduced since the period under review, respecting their responsibilities for determining and documenting the assessment of the foreign status of a targeted entity and the justifications for targeting that entity.

2. Protection of the privacy of Canadians

Finding no. 5: Protection of the Privacy of Canadians

CSEC did not adequately protect the privacy of a Canadian — [REDACTED] — in three exchanges of information in [REDACTED] and one in [REDACTED] however, since that time, CSEC has taken appropriate actions for accountability and to prevent re-occurrences of similar privacy incidents.

The Commissioner found deficiencies in some of CSEC's measures to protect the privacy of Canadians. Subsequent to questions from the Commissioner's office, CSEC recognized these deficiencies, recorded related incidents in its Privacy Incidents File, reminded its employees of best practices, and is working on new guidance to address operational policy gaps.



It is a positive development that, as a result of these two privacy incidents, CSEC re-distributed to its employees guidance on the best practices for the handling of information about Canadians that CSEC obtains from non-SIGINT sources. The Commissioner finds this guidance, which was and is available to all CSEC employees on its Intranet site, identifies appropriate measures to protect the privacy of Canadians for such exchanges of information. The potential impact on the privacy of Canadians of non-compliance with this guidance could be significant.

The Commissioner also questioned two other communications in [REDACTED]

[REDACTED] — in which CSEC identified [REDACTED] as part of analytical exchanges of information in support of shared [REDACTED] target awareness and development. In some cases, the Commissioner recognizes that the sharing of Canadian identity information is necessary, e.g., to protect the privacy of Canadians [REDACTED] individuals or of their identifiers, to prevent targeting. However, in these two exchanges of information, the Canadian identity information should have been suppressed and replaced by a

²² Past reviews of CSEC disclosures of Canadian identity information by the Commissioner and his predecessors have consistently demonstrated that CSEC acted lawfully and released such information only if the requesting agency had both the authority and operational justification to receive the information. CSEC policy OPS-I-1, *Procedures for the Release of Suppressed Information from SIGINT Reports*, May 8, [REDACTED] requires measures to protect the privacy of Canadians in the release of Canadian identity information suppressed from SIGINT reports.

generic phrase. CSEC agreed with the Commissioner's assessment, and as a result, retroactively made an additional entry in its Privacy Incidents File for these two exchanges of information.

In addition, it is a positive development that CSEC has identified a guidance gap in relation to instructing SIGINT employees on when they can and cannot share Canadian identity information [REDACTED]. CSEC has committed to promulgating this guidance before the end of the 2012-2013 fiscal year.²³ The Commissioner will monitor this development. The sharing of Canadian identity information [REDACTED] has the potential to jeopardize the privacy of that Canadian.

CSEC's recognition of and actions in response to the four privacy incidents identified by the Commissioner's office concerning CSEC exchanges of information [REDACTED] [REDACTED] relating to [REDACTED] demonstrates its commitment to transparency, that it takes seriously its commitment to promoting compliance and measures to protect the privacy of Canadians, and to prevent privacy incidents. It is a positive development that CSEC recorded the incidents in its Privacy Incidents File even though three of these incidents took place in [REDACTED] before the file was instituted by CSEC. This action, along with the many changes CSEC has made to its policies and procedures since the period under review, should help prevent re-occurrences of similar privacy incidents.

In addition to the above two primary criteria on compliance with the law and the protection of the privacy of Canadians, the Commissioner made a number of other observations concerning specific issues identified during the conduct of the review. These observations support the primary findings and recommendations and are described in the remainder of this section of the report.

CSEC [REDACTED] reporting relating to [REDACTED]

The Commissioner's office asked CSEC to search its [REDACTED] report database for reports containing [REDACTED]. CSEC's search revealed no reports. The Commissioner's office identified one report²⁴ in [REDACTED] relating to [REDACTED] by conducting a search for reports with [REDACTED] as a subject and "named Canadian" in the text. CSEC had shared the report, which it authored, with GC [REDACTED]

CSEC's search for releases of suppressed identity information identified one other report relating to [REDACTED].²⁵ This report was shared with CSEC and forwarded by CSEC to its GC partners.²⁶

²³ E-mail, Senior Policy and Review Advisor, CSEC, to Director of Operations, OCSEC, December 15, 2011.

²⁴ [REDACTED]

²⁵ [REDACTED]

²⁶ It is not the Commissioner's mandate and the Commissioner does not have the means to examine activities CSEC's [REDACTED] may have conducted relating to [REDACTED] other than those activities referred to in this report that are documented in CSEC's records.

The Commissioner had no questions about the contents of or the sharing of either of these two reports containing suppressed identity information relating to [REDACTED]

CSEC releases of suppressed identity information relating to [REDACTED]

CSEC searched electronic and hard-copy records and initially identified three releases of suppressed identity information relating to [REDACTED] — two releases to CSIS in [REDACTED] and [REDACTED] (name) and one to [REDACTED] [REDACTED] in [REDACTED] — from a single SIGINT report [REDACTED] (referred to above), [REDACTED] distributed by CSEC to GC partners.

Subsequent to the Commissioner's office's search of [REDACTED] CSEC identified three additional disclosures made in [REDACTED] — to CSIS, [REDACTED]

[REDACTED] name from the CSEC-authored report identified by the Commissioner's office.

Apart from the Commissioner's negative findings about CSEC's four exchanges of identity information relating to [REDACTED] (not relating to identities suppressed in reports and described in the section on the protection of the privacy of Canadians on pp. 22-24), the Commissioner found that CSEC's disclosures were made in accordance with the law, ministerial requirements and CSEC policy and procedures.

IRRELEVANT

CSEC [REDACTED] identifiers relating to [REDACTED]

During the period under review, CSEC regularly received requests for information from CSIS relating to foreign and Canadian identifiers, [REDACTED] [REDACTED] The Commissioner reviewed seven forms [REDACTED]

IRRELEVANT

²⁸ *Supra*, note 21.

[REDACTED] concerning 13 identifiers relating to [REDACTED]²⁹ CSEC conducted these activities under part (a) of its mandate.

The Commissioner found inconsistencies in the approval levels on these forms. Some of the forms had the approval of the Director General Intelligence (DGI) and the Deputy Chief of SIGINT (DC SIGINT), while others were approved by a Product Line Manager. This would not be the case today. During the period under review, CSEC had not officially published guidance respecting [REDACTED]

Indeed, CSEC policy

was first promulgated in

now requires that a

In addition, CSEC's [REDACTED] activities relating to [REDACTED] fall within the period of time when [REDACTED]

²⁹ E-mail, Senior Review and Policy Advisor, CSEC, to Director of Operations, OCSEC, October 7, 2011, with attachment containing seven [redacted] approved on: [redacted]

With the significant changes made by CSEC to its [REDACTED] activities since the period under review, the Commissioner considered it unnecessary to examine, in the present review, the authority for and conduct of CSEC's [REDACTED] relating to [REDACTED]

3. Records in [REDACTED] relating to [REDACTED]

The findings in this report on [REDACTED] should be read with the Commissioner's review report of March 15, 2011, on *CSEC SIGINT's Targeting and Selector Management Activities*. The findings in this report relating to a lack of historical data in [REDACTED] (described below) were not documented in the Commissioner's 2011 review because the sample of activities reviewed at that time were recent and not affected by the retention rules that caused the loss of historical data in the case of [REDACTED] records relating to [REDACTED]. Notwithstanding the findings in this review, the Commissioner is of the view that his findings of 2011 on [REDACTED] remain valid. Findings in this review relating to targeting activities conducted in [REDACTED] do not invalidate the findings in the 2011 review report relating to targeting activities conducted in [REDACTED]. The context of these two reviews is also different, e.g., CSEC conducted different activities under different policies and procedures, using different tools, and interacted with partner agencies in different ways.

Finding no. 6: Compliance with the law (3)

The absence of certain historical information in CSEC's targeting database and tool [REDACTED] — limited the Commissioner's ability to assess the lawfulness of CSEC's activities relating to [REDACTED] and could also affect review of other activities of CSEC.

Finding no. 7: Compliance with the law (4)

During the period under review, CSEC did not always retain a history of targeting activity; however, CSEC is taking actions to ensure the availability of information about targeting and selector management that is required for accountability and to demonstrate compliance with the law.

CSEC's targeting infrastructure is described by CSEC as a complex system of systems. It is made up of several components, including:

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED] is a user interface for two distinct databases, CSEC's target knowledge base (TKB) and the targeting tool (now [REDACTED] which is replacing [REDACTED]).

[REDACTED] Basically, the TKB contains information about entities of intelligence interest to CSEC, as recorded by intelligence analysts. The targeting tool contains targeting requests and a list of targeted selectors (i.e., identifiers used for interception).

Targeting and selector management are at the foundation of CSEC's SIGINT activities. The records in [REDACTED] are now the primary records for accountability purposes to demonstrate CSEC had reasonable grounds to believe that its targeting activities are directed at foreign entities located outside Canada and in accordance with a GC intelligence requirement, as required by law.³¹ The targeting systems that CSEC started to implement in July 2011 are designed to retain all targeting information according to the retention and disposition authorities as governed by Library and Archives Canada and record when and why CSEC targeted what entities. At the time of the targeting of the selectors of interest to this review, CSEC did not always retain a history of targeting activity and did not have a single system or place to maintain such information. [REDACTED] was not initially designed to keep a history of targeting activity.

The Commissioner's office requested that CSEC conduct an initial search of [REDACTED] for selectors relating to [REDACTED] which resulted in a number of identifiers relating to [REDACTED] as well as [REDACTED]. The office observed inconsistencies between hard-copy documents produced by CSEC and the electronic records in [REDACTED] relating to [REDACTED]. For example, certain records in [REDACTED] indicated that identifiers relating to [REDACTED] were "never targeted". However, the existence of transcripts of intercepted communications confirmed that those same selectors were in fact targeted by CSEC. The Commissioner requested that CSEC investigate these inconsistencies on a priority basis. After consultation and research over a period of two months, in December 2011, CSEC presented interim findings, and in January 2012, CSEC presented detailed findings, as follows.³²

The availability of historical records about targeting is dependent upon three factors:

- the date of the records (i.e., when you want the history from);
- the type of targeting (DNR or DNI using a strong³³ [REDACTED]
³⁴; and [REDACTED])
- the structure of the different CSEC systems at that point in time.

³¹ Other records, e.g., e-mails, de-targeting notes, transcripts of intercepted communications and records of meetings may also describe CSEC's targeting activities.

³² PowerPoint presentation by the Director, SIGINT Systems Development, CSEC, January 17, 2012, CERRID # 879726 and updated on February 12, 2012.

³³ A strong selector is metadata, such as a telephone or fax number or an e-mail or IP address.

Targeting Tools

CSEC acquired both [REDACTED] and [REDACTED] in the 1990s. These systems have been widely used among CSEC [REDACTED]. CSEC did not make any modifications to these systems when it acquired them or afterward, including to the rules built into the systems for the retention of information about targeting. According to CSEC, it had no influence over the features of [REDACTED] and [REDACTED] and had to accept them as they were.³⁵ [REDACTED]

[REDACTED] was designed to keep historical records [REDACTED] subsequent to de-targeting. Until July 2011, [REDACTED] contained actively targeted DNR selectors and selectors that were inactive for less than [REDACTED]. Since July 2011, the CSEC-designed targeting tool [REDACTED] handles DNR selectors. Only active targeting data was moved during the migration from [REDACTED] to [REDACTED]. Any DNR selectors that would have been de-targeted in [REDACTED] prior to July 2010 were deleted from the [REDACTED] database, and therefore could not be migrated to [REDACTED] in July 2011. For these deleted selectors, the associated targeting status field in the TKB can not display a targeting status as none is available.³⁶

[REDACTED] was designed to keep historical records for [REDACTED]. CSEC has used [REDACTED] for DNI strong selectors since approximately 2005. No historical records were migrated from [REDACTED] to [REDACTED] in July 2011, or previously. The TKB contains the targeting status and history for DNI selectors as of late 2007, when CSEC introduced targeting using [REDACTED].³⁷ At this time, the current version of [REDACTED] cannot accommodate complex selectors; CSEC continues to use [REDACTED] for these selectors. Therefore, to this date, targeting records respecting complex DNI selectors continue to be deleted after [REDACTED].³⁸

The following three slides from CSEC illustrate the current availability of historical targeting records for each type of record and targeting system.³⁹

³⁵ E-mail from Senior Policy and Review Advisor, External Review and Policy Management, CSEC, to Director of Operations, OCSEC, January 13, 2012.

³⁶ Targeting history, including information about de-targeting was not migrated, only the record of last action.

³⁷ [REDACTED]

[REDACTED] refer to CSEC SIGINT operations instruction CSOI-4-4, *Targeting and Selector Management Using [REDACTED] National SIGINT Systems, for Intelligence Reporting Purposes*, March 5, 2009.

³⁸ Targeting history, including information about de-targeting was not migrated, only the record of last action.

³⁹ *Supra*, note 32, slides 14-16.

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Data Available in Systems for CSE Targeting of DNR selectors [REDACTED]

July [REDACTED]	July [REDACTED]
All Active [REDACTED] selectors (last action record)	All [REDACTED] DNR targeting records including history
Detargeted [REDACTED] [REDACTED] selections (Not available, after detargeting)	All new and detargeted [REDACTED] selectors (last action record)
[REDACTED] the system of record	[REDACTED] the system of record

* History of target and de-target cycles was not migrated only last action

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Data Available in Systems for CSE Targeting of DNI Strong Selection [REDACTED]

July [REDACTED]	July [REDACTED]
[REDACTED] manual process/approval with [REDACTED] to [REDACTED] for distribution to [REDACTED] sites (last action record for active targeting only)	All DNI Strong Selection targeting records including history within [REDACTED]
Detargeted Strong Selections at 3rd Party sites	
[REDACTED] manual process/approval for distribution at [REDACTED] collection site at Leitrim (last action record for active targeting only)	[REDACTED] use of [REDACTED] for distribution to [REDACTED] and history within [REDACTED]

* History of target and de-target cycles was not migrated only last action

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Data Available in Systems for CSE Targeting of DNI [REDACTED]

[REDACTED] July [REDACTED]

[REDACTED] July [REDACTED]

[REDACTED] manual process/approval of [REDACTED] with [REDACTED] to [REDACTED] for distribution to [REDACTED]
(last action record for active targeting only)

De-targeted Boundary Selectors

[REDACTED] the system of record

* History of target and de-target cycles was not migrated only last action

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In addition, since [REDACTED] has evolved from a basic user interface for [REDACTED] and [REDACTED] to an automated and rules-based targeting system to encompass all targeting by CSEC [REDACTED]. The versions of the [REDACTED] tool used to target selectors prior to July 2011 no longer exist.⁴⁰

There is a process in [REDACTED] whereby a “never targeted” marking in the targeting status field of the TKB is displayed under two different scenarios:

1. for those selectors which were not in [REDACTED] when the records from [REDACTED] were migrated to [REDACTED] (no records from [REDACTED] were migrated to [REDACTED] and [REDACTED])
2. for selectors which have never been targeted (i.e., selectors which are not in [REDACTED] or selectors that were in [REDACTED] prior to the use of [REDACTED] for strong DNI selectors).

There is no automated mechanism by which one can distinguish between the two scenarios for the “never targeted” marking applied to selectors in the TKB. CSEC indicated that, as a result of this review, it now realizes this may be misleading, as some selectors were in fact

⁴⁰ *Supra*, note 32, slides 5-7.

targeted in [REDACTED] and [REDACTED] in the past, but [REDACTED] cannot find any history, and therefore displays the "never targeted" status.⁴¹

Therefore, a significant number of CSEC's historical targeting records have been deleted automatically by the rules built into the respective targeting systems, including some records of CSEC's targeting relating to [REDACTED] in 2003 and 2004.⁴² These historical records cannot be restored. For the records affected, including those relating to [REDACTED] using [REDACTED] alone, it is impossible to determine if and when CSEC targeted and de-targeted an identifier. It is unclear whether the "never targeted" marking indicates that certain identifiers in [REDACTED] including those relating to [REDACTED] examined in this review, were in fact never targeted or whether the systems cannot access historical records of targeting that have been deleted.

Going forward, CSEC's targeting systems are converging on CSEC-built systems designed to meet Canadian requirements [REDACTED]

These are: [REDACTED] as the user interface; [REDACTED] for selector management; and the TKB for target management. In future, all historical records respecting targeting will be stored in [REDACTED] which retains information indefinitely. Today, most records are being stored in [REDACTED]. [REDACTED] has handled DNR selectors (formerly in [REDACTED]) since July 2011 and non-complex DNI selectors (formerly in [REDACTED]) since late [REDACTED]. CSEC plans to decommission [REDACTED] in the 2012-2013 fiscal year and to migrate its targeting using complex selectors in [REDACTED] to [REDACTED] by the spring or summer of 2013. CSEC regularly performs backups on [REDACTED]

In summary, the targeting systems used during the period under review were not designed to keep a history of targeting activity; the systems were designed to indicate which selectors were targeted at the time of a query. CSEC has indicated that it "further intends to define retention rules and incorporate them in accordance with existing policies and guidelines, to ensure records are fully auditable in the future."⁴³ These will be positive developments.

Targeting Knowledge Base

The TKB contains information about entities of intelligence interest, as recorded by intelligence analysts. [REDACTED]

[REDACTED] TKB. The TKB stores only the [REDACTED] as entered, modified or deleted by a CSEC analyst. Only the most recent change to a TKB record is tracked and kept in the database in accordance with the retention and disposition authorities as governed by Library and Archives Canada. The historical values of previous changes are not kept. The systems changes which occurred in July 2011 had no impact on TKB records associated with this review, as none of the selectors were active during the migration, and therefore no targeting history was

⁴¹ E-mail from Senior Policy and Review Advisor, External Review and Policy Management, CSEC, to Director of Operations, OCSEC, February 13, 2012.

⁴² [REDACTED]

⁴³ *Supra*, note 41.

available (i.e., there was no loss of historical records). Therefore, this limitation (i.e., no historical records of changes to entities in the TKB) did not impact the assessment of whether CSEC's activities relating to [REDACTED] complied with the law and the extent to which CSEC protected the privacy of Canadians — including the privacy of [REDACTED] — in carrying out its activities. However, the Commissioner may examine the potential impact of this limitation in the context of a separate review.

In addition, the targeting requests that were reviewed relating to [REDACTED] used vague language to justify targeting those selectors, such as: associated with [an] [REDACTED] file as a whole; may have been engaged in activities [REDACTED] and may have been associated with [REDACTED].⁴⁴ However, since the period under review, and as documented in the Commissioner's review report of March 15, 2011, on *CSEC SIGINT's Targeting and Selector Management Activities*, targeting tools and their associated procedures and instructions have evolved significantly. Targeting justifications within the different targeting tools have been standardized, and are approved by the [REDACTED] Managers in [REDACTED] in line with the criteria established in the Canadian SIGINT Operations Instruction promulgated on March 5, 2009, entitled *Targeting and Selector Management Using [REDACTED] National SIGINT Systems for Intelligence Reporting Purposes* (CSOI 4-4). The pre-approved justifications, including who is the target, why it is being targeted and what is the targeted entity suspected or known to be doing, have been integrated into an automated targeting tool, in order to process targeting requests automatically. Because of these improvements, it is unlikely that what was observed about the targeting of selectors relating to [REDACTED] would re-occur. The targeting requests that were reviewed in relation to [REDACTED] were developed in a context during which no formal guidelines existed regarding these targeting justifications. Today, a targeting request needs to contain a clear pre-approved justification in order for it not to be rejected by CSEC's targeting tool.

IX. CONCLUSION

This review was undertaken under the Commissioner's general authority as articulated in Part V.1, paragraph 273.63(2)(a) of the *NDA* and was prompted by the [REDACTED] relating to [REDACTED] a Canadian citizen. The Commissioner examined CSEC's acquisition, use and exchange of information relating to [REDACTED] for the period of [REDACTED]. Once the examination of CSEC's records pertaining to [REDACTED] was completed, the Commissioner had no concern with respect to a majority of CSEC's activities. However, he did have some concern, primarily with six particular identifiers (five [REDACTED] and one [REDACTED] relating to [REDACTED] which could suggest that some activities of CSEC were directed at a Canadian. The Commissioner therefore focused his attention on these six identifiers. This is the first time that such a specific concern has arisen from a Commissioner.

The review had two objectives: (1) to assess whether CSEC's foreign intelligence activities relating to [REDACTED] complied with the law; and (2) to assess the extent to which CSEC

⁴⁴ E-mail from Senior Policy and Review Advisor, External Review and Policy Management, CSEC, to Director of Operations, OCSEC, October 7, 2011.

protected the privacy of Canadians — including the privacy of [REDACTED] — in carrying out its activities. CSEC's activities were assessed for compliance with the law in the context of the limitations in the *NDA* for the protection of the privacy of Canadians, i.e., CSEC's foreign intelligence activities "shall not be directed at Canadians or any person in Canada" (paragraph 273.64(2)(a) of the *NDA*) and "shall be subject to measures to protect the privacy of Canadians in the use and retention of intercepted information" (paragraph 273.64(2)(b) of the *NDA*). The purpose of the review was not to assess the impact, if any, of the actions, if any, of CSEC relating to [REDACTED]. The review also excluded examination of the validity of the [REDACTED]
[REDACTED]
[REDACTED]

To put this review in context, most significantly [REDACTED]
[REDACTED]

Most of the activities under review took place over [REDACTED] years ago. At that time [REDACTED]

Also, in many respects, it was early days for certain activities of CSEC. [REDACTED] It is certain that CSEC now has more detailed policies, practices and training aimed at compliance with the law and the protection of the privacy of Canadians than what it had when it conducted activities relating to [REDACTED]

CSEC conducted activities relating to [REDACTED] CSEC's records indicate that it acquired a very small number of communications that involved, or contained information about, [REDACTED] CSEC exchanged identity and other information relating to [REDACTED] with CSIS and other GC agencies [REDACTED] At that time, the activities relating to [REDACTED] were considered by CSEC to be minor and peripheral to other [REDACTED] priorities and CSEC's activities relating to [REDACTED] very often did not produce any results, e.g., CSEC's records contain few transcripts and references to foreign leads, and only one foreign intelligence report relating to [REDACTED] authored by CSEC, with Canadian identity information suppressed in the report and replaced by a generic reference, as is the practice to protect privacy.

There were a number of positive indicators that CSEC did not direct its activities at [REDACTED] The context in CSEC's records and the interviews conducted support a finding that CSEC's activities relating to [REDACTED] were in accordance with the GC's intelligence priorities at the time, specifically to acquire foreign intelligence about [REDACTED] CSEC [REDACTED]

[REDACTED] but CSEC did not conduct any activities relating to a vast majority of these identifiers because doing so may have resulted in directing activities at a Canadian, contrary to the *NDA*. Therefore, the Commissioner had no questions about CSEC's activities relating to these identifiers.

However, as stated earlier, some records concerning six identifiers could suggest that some activities of CSEC were directed at a Canadian — [REDACTED] — contrary to the law, and the Commissioner's examination focused on these identifiers. The totality of CSEC's records for these six particular identifiers relating to [REDACTED] and the interviews conducted do not permit a conclusive determination of the nature of, and what was the intent of, CSEC's activities concerning these six identifiers nor a conclusive determination of whether CSEC had reasonable grounds to believe that its targeting and other activities relating to these six identifiers were directed at a foreign entity and would provide foreign intelligence. The evidence available and the context did not allow a definitive conclusion about compliance or non-compliance with the law for CSEC's activities concerning these six identifiers.

CSEC's records relating to [REDACTED] were sometimes unclear and not in agreement respecting whether CSEC had reasonable grounds to believe that the identifiers referred to in the documents were either: [REDACTED]

[REDACTED] or whether it was uncertain.

Therefore, while recognizing that CSEC has made significant changes to its policies and practices since the period under review, but to ensure compliance with the law and for accountability, it is recommended that CSEC promulgate policy guidance respecting how to clearly and consistently identify — in its communications with GC [REDACTED] — whether an identifier or selector [REDACTED]

It is also recommended that CSEC ensure that its foreign intelligence analysts are knowledgeable about and follow existing policy guidance, introduced since the period under review, respecting their responsibilities for determining and documenting the assessment of the foreign status of a targeted entity and the justifications for targeting that entity.

In addition, the absence of certain historical information in CSEC's targeting database and tool — [REDACTED] — further limited the Commissioner's ability to assess the lawfulness of CSEC's activities relating to [REDACTED] and could also affect review of other activities of CSEC. During the period under review, CSEC did not always retain a history of targeting activity; however, it is positive that CSEC is taking actions to ensure the availability of information about targeting and selector management that is required for accountability and to demonstrate compliance with the law. The Commissioner has instructed that these developments be monitored.

CSEC did not adequately protect the privacy of a Canadian — [REDACTED] — in three exchanges of information in [REDACTED] and one in [REDACTED]. Subsequent to questions from the Commissioner's office, CSEC recognized deficiencies, recorded these exchanges of information as incidents in its Privacy Incidents File, reminded its employees of best practices, and is working on new guidance to address operational policy gaps. Specifically, it is a positive development that CSEC has identified a guidance gap in relation to

instructing SIGINT employees on when they can and cannot share Canadian identity information [REDACTED] CSEC has committed to promulgating this guidance before the end of the 2012-2013 fiscal year. The Commissioner has instructed that this development also be monitored.

At the Commissioner's direction, the office has started a review of recent activities of CSEC's [REDACTED] that includes follow-up on matters raised in this review, particularly respecting the clarity of language in CSEC information exchanges with CSIS.



Robert Décaray, Commissioner

ANNEX A — Findings and Recommendations

Recommendation no. 1: Clarity of language — information sharing and relationship of identifiers and selectors to entities of foreign intelligence interest

It is recommended that CSEC promulgate policy guidance respecting how to clearly and consistently identify in its communications with Government of Canada [REDACTED] whether an identifier or selector [REDACTED]

Recommendation no. 2: Clarity of language — demonstrating legal compliance in conducting targeting activities

In light of the findings in this review, it is recommended that CSEC ensure that its foreign intelligence analysts are knowledgeable about and follow existing policy guidance, introduced since the period under review, respecting their responsibilities for determining and documenting the assessment of the foreign status of a targeted entity and the justifications for targeting that entity.

Finding no. 1: CSEC activities relating to [REDACTED] (1)

CSEC conducted activities relating to [REDACTED]
[REDACTED]

Finding no. 2: CSEC activities relating to [REDACTED] (2)

CSEC's records indicate that it acquired a very small number of communications that involved, or contained information about, [REDACTED]

Finding no. 3: Compliance with the law (1)

CSEC acquired, largely from the [REDACTED] relating to [REDACTED] but CSEC did not conduct any activities relating to a majority of these identifiers because doing so may have resulted in directing activities at a Canadian, contrary to the *National Defence Act*; therefore, the Commissioner had no questions about CSEC's activities relating to a majority of the identifiers relating to [REDACTED] handled by CSEC.

Finding no. 4: Compliance with the law (2)

There are records concerning six particular identifiers relating to [REDACTED] that could suggest that some activities of CSEC were directed at a Canadian contrary to the law; however, based on the evidence available and on the context, it is not possible to reach a definitive conclusion about compliance or non-compliance with the law for CSEC's activities concerning these six identifiers.

Finding no. 5: Protection of the Privacy of Canadians

CSEC did not adequately protect the privacy of a Canadian — [REDACTED] — in three exchanges of information in [REDACTED] and one in [REDACTED] however, since that time, CSEC has taken appropriate actions for accountability and to prevent re-occurrences of similar privacy incidents.

Finding no. 6: Compliance with the law (3)

The absence of certain historical information in CSEC's targeting database and tool — [REDACTED] — limited the Commissioner's ability to assess the lawfulness of CSEC's activities relating to [REDACTED] and could also affect review of other activities of CSEC.

Finding no. 7: Compliance with the law (4)

During the period under review, CSEC did not always retain a history of targeting activity; however, CSEC is taking actions to ensure the availability of information about targeting and selector management that is required for accountability and to demonstrate compliance with the law.

ANNEX B — Interviewees

The following CSEC employees provided information or facilitated the review:

- Director, SIGINT Requirements (during period under review was an Analyst and a Team Leader in the [REDACTED])
- Director, SIGINT Systems Development
- Director, Disclosure, Policy and Review (formerly Director, Corporate and Operational Policy as well as Manager, External Review and Policy Management)
- Manager, SIGINT Programs Oversight and Compliance (SPOC)
- Manager, CSEC Operational Production and Coordination Centre (during period under review was an Analyst in [REDACTED])
- Analyst, [REDACTED] Director General Intelligence (DGI)
- Team Leader, [REDACTED] DGI
- Senior Advisor, SPOC
- Senior Policy Analyst, SPOC
- Senior Mission Management Officer, SPOC
- Senior Mission Management Officer, SPOC
- Senior Policy and Review Advisor, External Review and Policy Management

**ANNEX C — CSEC records relating to [REDACTED]
organized by identifier**

This binder is kept at the offices of the CSE Commissioner and it is available upon request. CSEC has a copy of the binder.

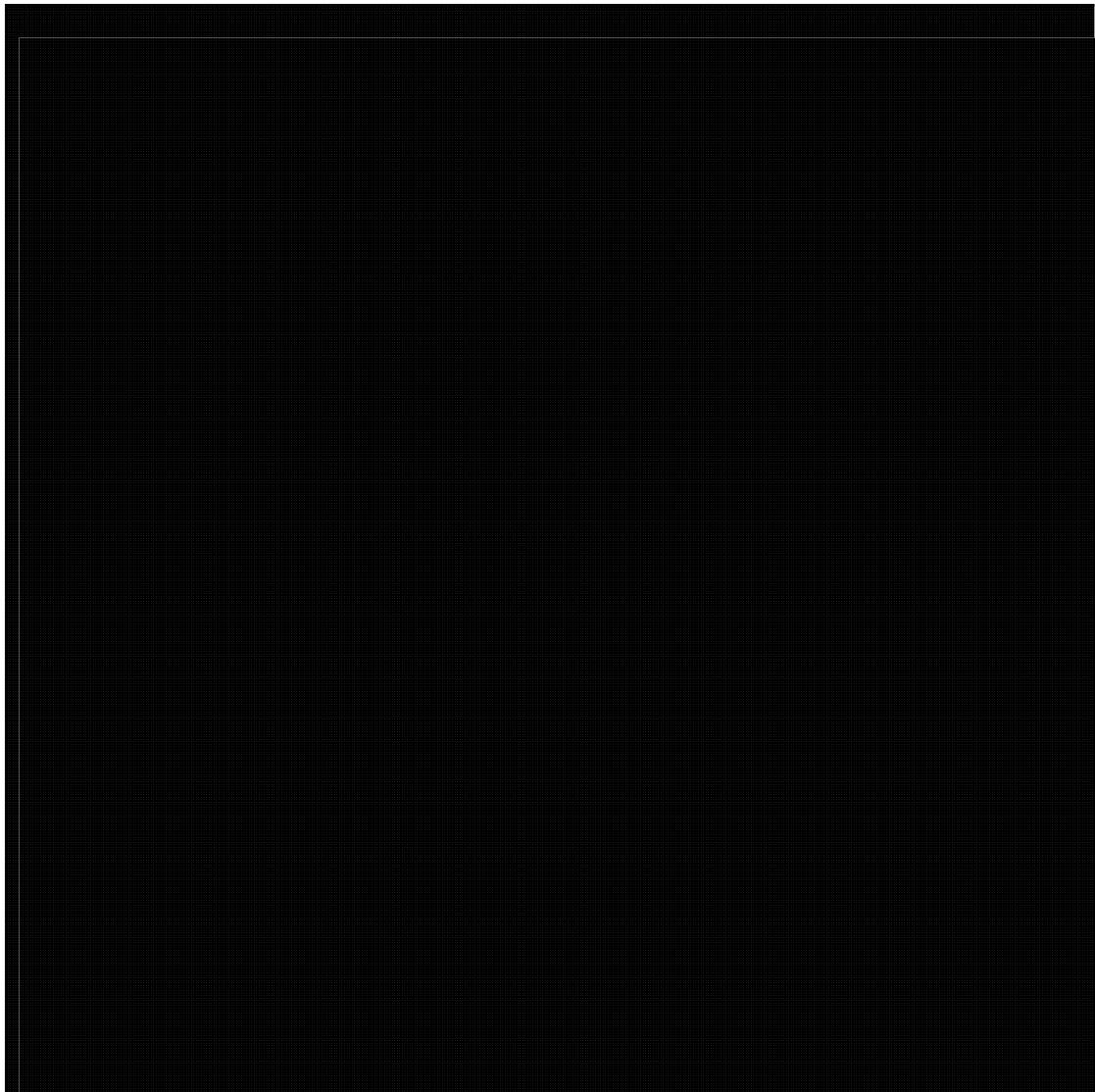
ANNEX D — Records in [REDACTED] of identifiers
relating to [REDACTED]

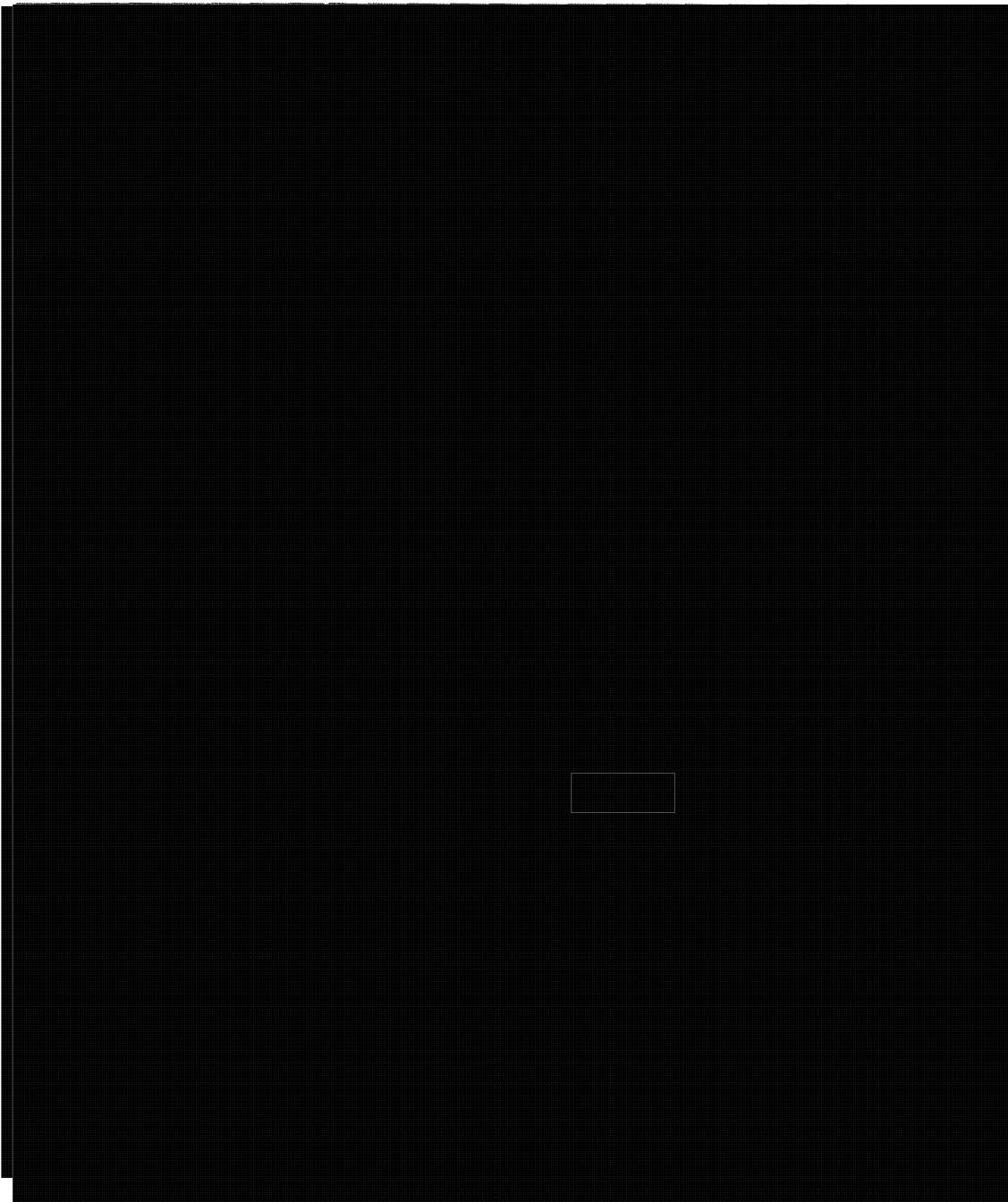
These records are kept at the offices of the CSE Commissioner and are available upon request. CSEC has a copy of the records.

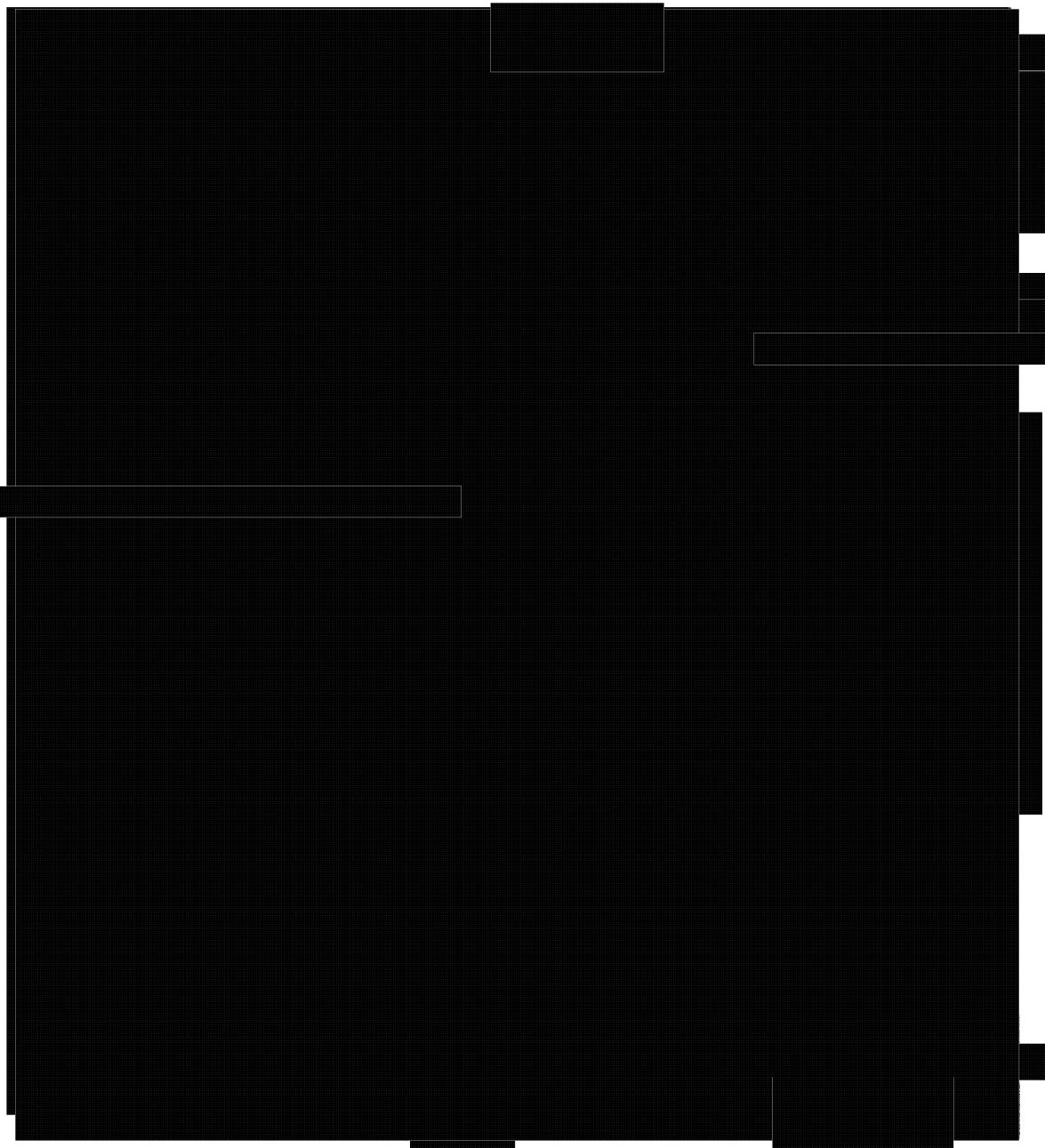
ANNEX E – Timeline of events relating to [REDACTED]

This timeline of certain events is included to put CSEC's activities relating to [REDACTED] in context. This list is not exhaustive and some of the events are unverified. This timeline is based on CSEC's records as well as a number of other sources, e.g., [REDACTED]

[REDACTED] The events listed do not necessarily involve CSEC or reflect CSEC's knowledge of the events at that time.

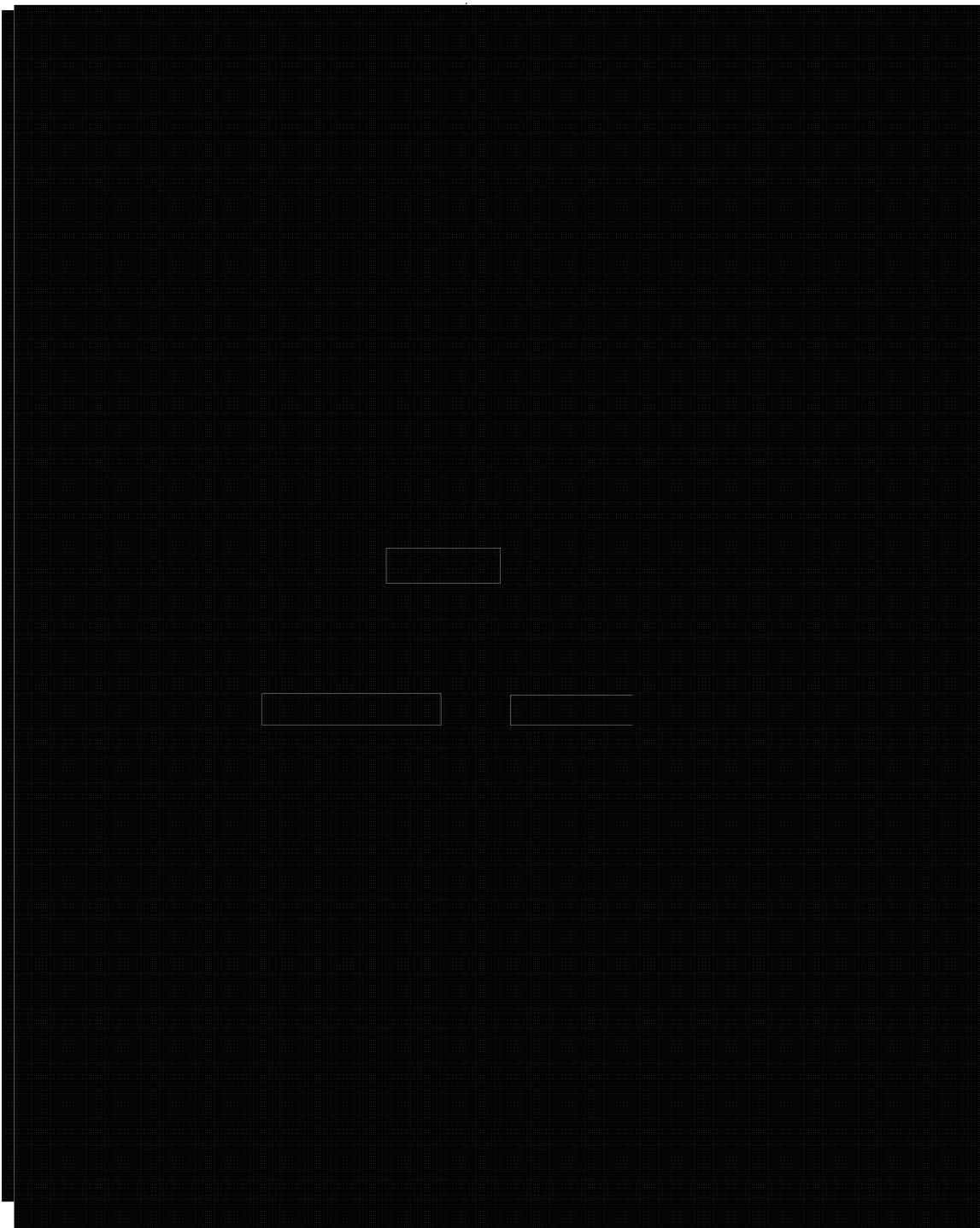


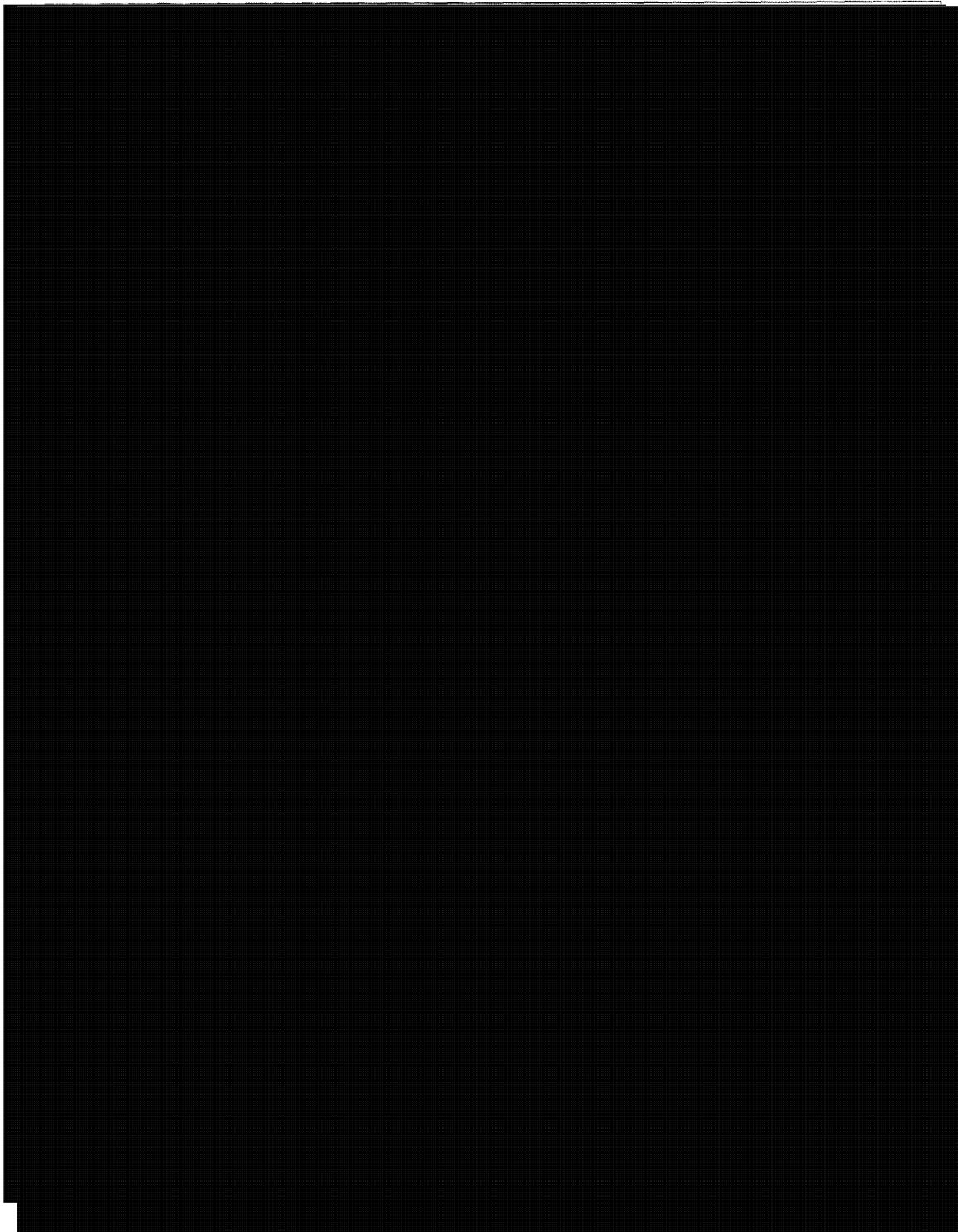




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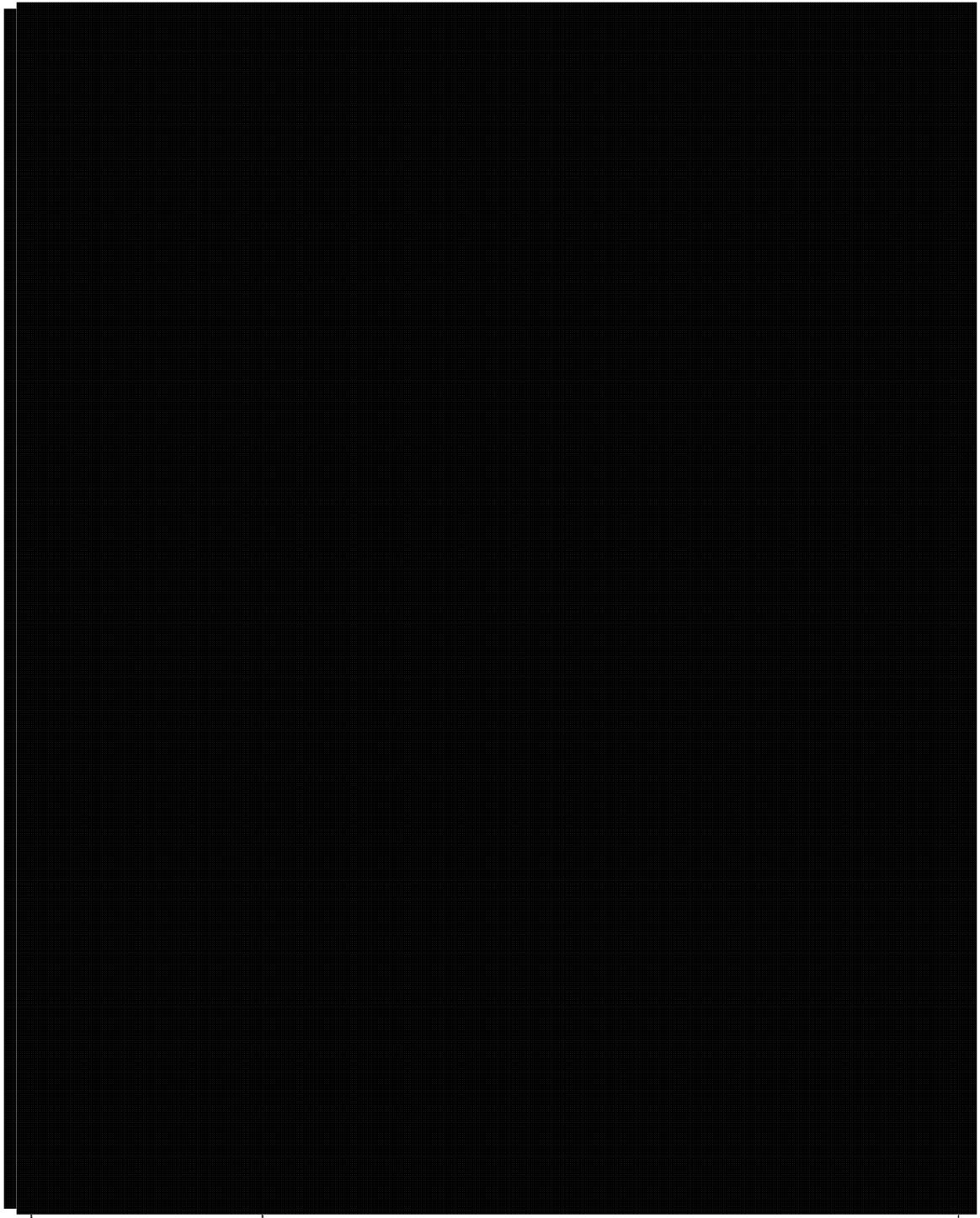
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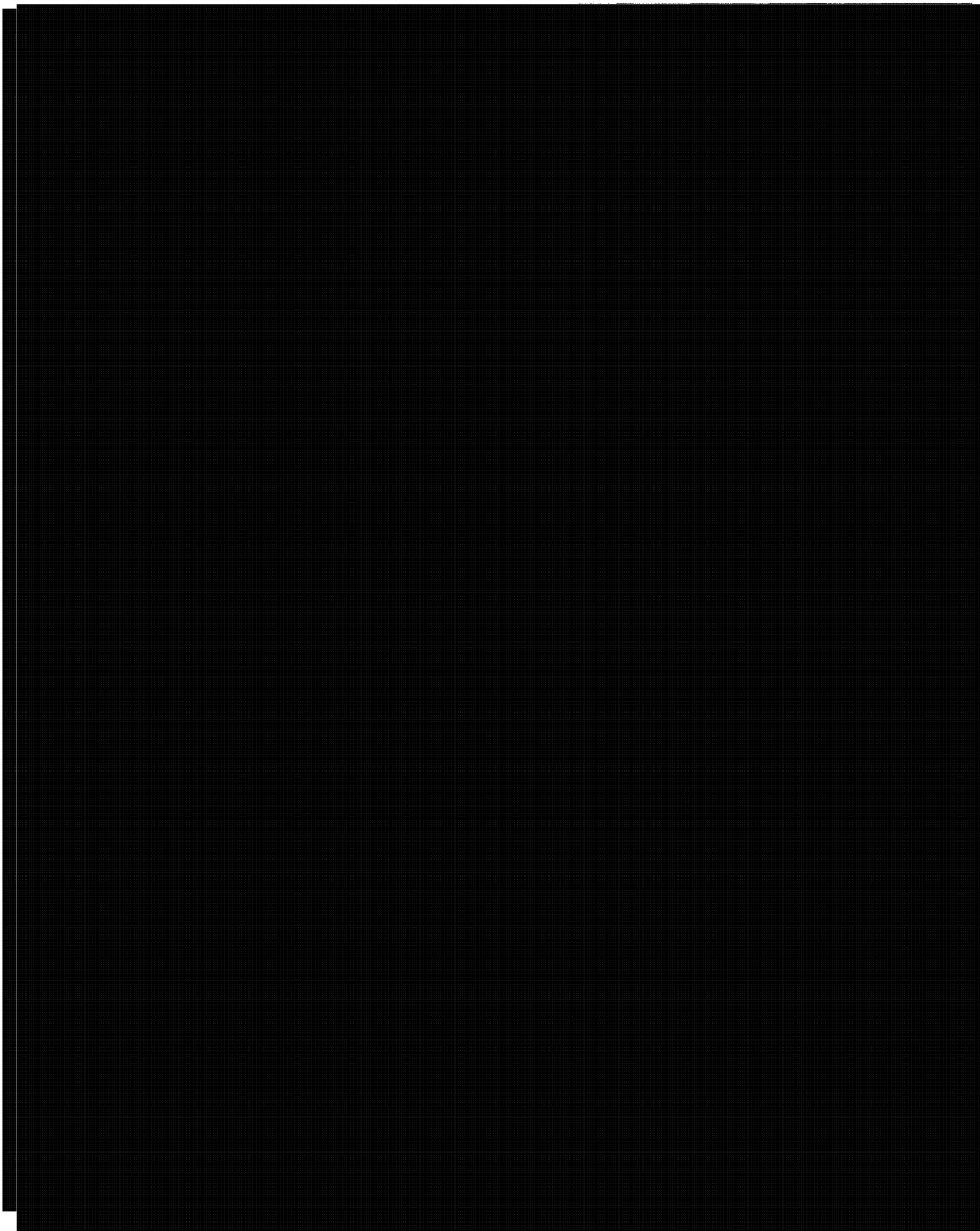
-45-

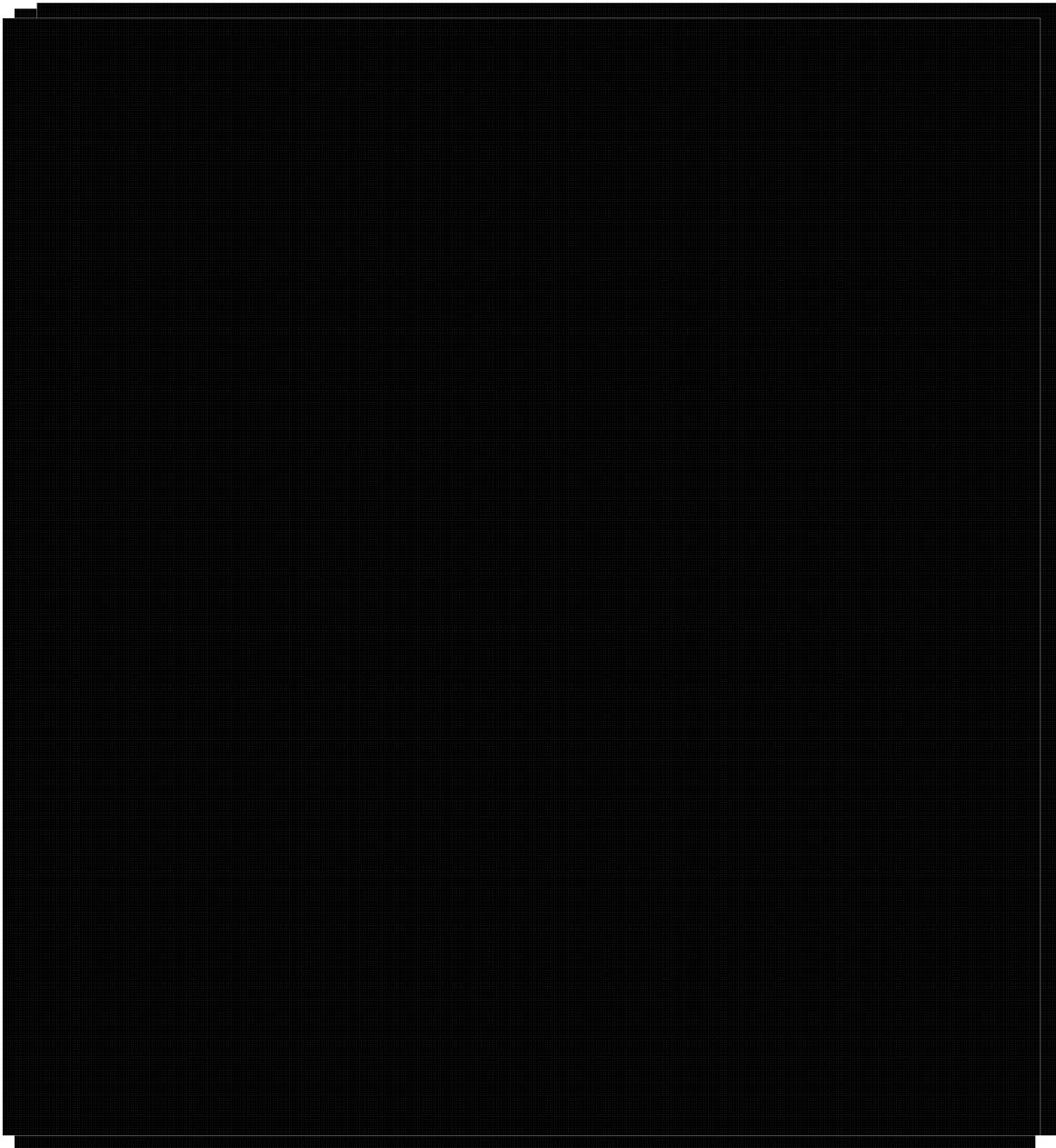
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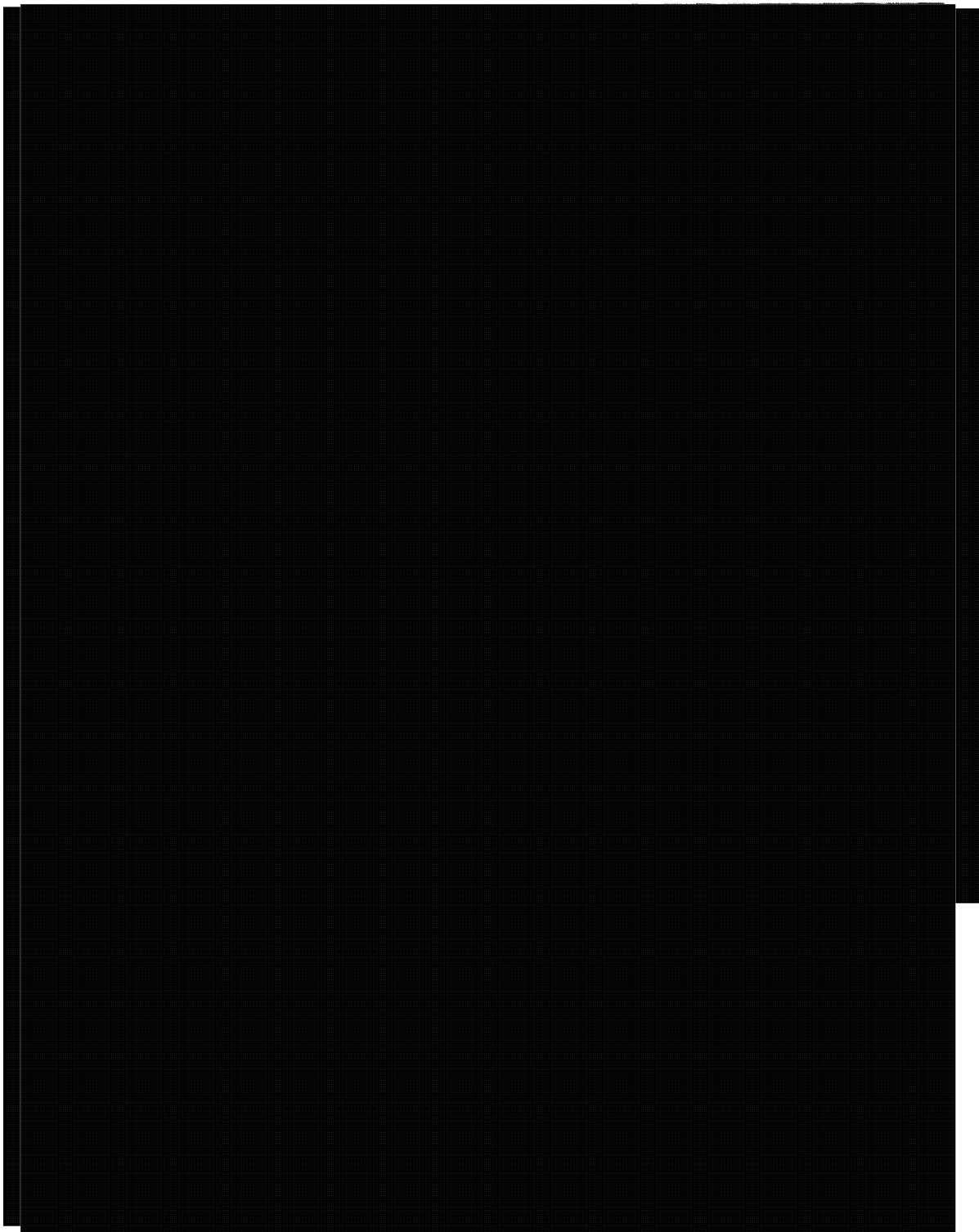


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