

Communications Security
Establishment Commissioner

The Honourable Charles D. Gonthier, C.C., C.J.C.



Commissaire du Centre de la
sécurité des télécommunications

L'honorable Charles D. Gonthier, C.C., c.j.c.

TOP SECRET/COMINT/CEO

16 September 2008

The Honourable Peter G. MacKay, PC, MP
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Mr. MacKay:

CSE /CST
Chief's Office / Bureau du chef
08 10 152
SEP 17 2008
File / Dossier _____

Thank you for your correspondence dated July 3, 2008 (enclosed for reference), concerning the reports I submitted to you in January 2008 on the Communications Security Establishment Canada's (CSEC) *Collection and Use of Metadata* and on *Support to the Canadian Security Intelligence Service* (CSIS). Your letter also conveyed CSEC's responses to these reports. The responses contain two points with which I disagree – accounting for private communications, and legal guidance concerning parts (a) and (c) of CSEC's mandate. I am writing to clarify these matters.

With respect to my report on CSEC's *Collection and Use of Metadata* and the first recommendation dealing with accounting for private communications, it is accurate that CSEC's current practice is consistent with ministerial direction and CSEC policy. My view has been that the reporting requirement under ministerial authorizations may be too narrow. CSEC noted the recommendation may be based on information taken out of context. After exchanging information on this subject and meeting with CSEC, we disagree that it is taken out of context. I have instructed my staff to examine this issue in greater detail.

With respect to the second recommendation in my report on CSEC's *Collection and Use of Metadata*, and the second recommendation in my report on CSEC's *Support to CSIS*, I want to re-emphasize that I in fact agree with Justice Canada's interpretation and guidance respecting parts (a) and (c) of CSEC's mandate, as was stated in the conclusion of the report on *Support to CSIS* and again in my public annual report which was submitted to you in May, this year. What I question is which part of the mandate should be used as the proper authority in certain cases. This is important because it determines the legal requirement (e.g. ministerial authorization vs. a court warrant) in cases where activities may be "directed at" a Canadian; it also determines which agency

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is responsible for the information and how the information collected should be handled. As indicated in CSEC's response, this matter has been the subject of on-going discussions between CSEC and my officials for many months, most recently at a meeting last week. As a result of that meeting, I have asked my staff to pursue this issue.

I am pleased that CSEC agreed with the first and third recommendations in my report on CSEC's *Support to CSIS*.

If you have any questions or comments, I trust you will let me know.

Yours sincerely,



Charles D. Gonthier

c.c. Mr. John Adams, Chief, CSEC
Ms. Margaret Bloodworth, National Security Advisor, PCO
Mr. Robert Fonberg, Deputy Minister, National Defence

Att.

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