

Summary authorized, see Annex A.



Communications Security
Establishment Canada

Centre de la sécurité
des télécommunications Canada



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MEMORANDUM FOR THE MINISTER OF NATIONAL DEFENCE

Ministerial Directive to Operationalize the Framework for Addressing Risks in Sharing Information with Foreign Entities

(For Approval)

Summary

- This Memorandum seeks your approval of the attached Ministerial Directive (MD) to operationalize the Framework for Addressing Risks in Sharing Information with Foreign Entities (the Framework), as attached as Annex A.
- This Framework establishes a consistent process of decision making by Deputy Heads and Agency Heads in cases where sharing information with foreign entities may give rise to a substantial risk of mistreatment.
- CSEC is one of five departments and agencies in the security and intelligence community required to implement the Framework through ministerial direction following Cabinet Confidence [REDACTED]. The purpose of separate MDs is to address each organization's unique operational needs while remaining consistent with the approved Framework.
- In the case of CSEC, the proposed MD remains consistent with the Framework while proposing to recognize CSEC's unique operational needs as a foreign signals intelligence (SIGINT) agency and its long-standing alliance with Five-Eyes cryptologic partners [REDACTED].
- It is recommended that you approve the attached proposed MD.

Background

- For CSEC, which has an existing MD on [REDACTED], the objective of this MD is to focus on operationalizing the Framework. The MD includes all direction from the Framework that is applicable to CSEC and is tailored in the following ways:

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- o The MD applies to [REDACTED]

[REDACTED]

- o In comparison to other implementing departments and agencies, CSEC has not requested inclusion in the MD of any additional direction on the use of information derived from mistreatment, which is beyond the operational scope of the approved Framework. As CSEC principally deals in information that is derived from SIGINT intercept, it is highly unlikely that the organization would be in receipt of information derived from mistreatment. The majority of SIGINT information CSEC receives is [REDACTED]
- o The Framework directs that agencies assess the reliability and accuracy of information received, and to characterize this information in further dissemination. The MD recognizes that CSEC is a foreign SIGINT agency and not an intelligence assessment agency and therefore directs CSEC to use caveats to address this Framework requirement, as appropriate.
- o Finally, the language in the MD recognizes the unique nature of CSEC's role, as part of a shared cryptologic infrastructure [REDACTED] in support of their national intelligence priorities.
- Once CSEC has an MD in place, it will join the Canadian Security Intelligence Service, the Royal Canadian Mounted Police, and the Canadian Border Services Agency who now have Ministerial Directives in place. CSEC will codify in policy interim Human Rights impact assessments and approval protocols that we have been applying to existing sanitization, action-on and release policy requirements in the absence of an MD.

- IRRELEVANT

[REDACTED]

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Recommendation

- It is recommended that you approve and sign the attached Ministerial Directive on the Framework for Addressing Risks in Sharing Information with Foreign Entities.


Next Steps

- Should you approve the MD, CSEC will:
 - Implement the Framework through revisions to current operational policy that will reflect the direction in this MD;
 - Keep you informed of any issues related to the implementation of this directive that warrant your consideration; and
 - Provide a copy of the MD to the CSE Commissioner.


John Adams
Chief

Attachment

I concur with the recommendation:


Stephen Rigby
National Security Advisor to the Prime Minister
Privy Council Office

cc: Robert Fonberg, Deputy Minister, National Defence

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**Framework for Addressing
Risks in Sharing Information with Foreign Entities¹**

- Sharing information with foreign entities is necessary in order to respond to national security threats. It is essential that Canadian intelligence and law enforcement authorities are able to maintain strong relationships with foreign entities, and can share information with them on both a routine and an urgent basis.
- Deputy Ministers and Agency Heads have been delegated the responsibility for making decisions with respect to the sharing of information with foreign entities.² Departments and agencies 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.

Objective

- The following Framework forms part of the suite of directives and policies that govern departments' and agencies' information sharing practices. The objective is to establish a coherent and consistent approach across the Government of Canada in deciding whether or not to send information to, or solicit information from, a foreign entity when doing so may give rise to a substantial risk of mistreatment of an individual.

Canada's Obligations

- 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)*. The *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.

¹ This Framework would not change existing legal authorities for sharing information with foreign entities. Although the term, foreign entity, has not been formally defined, it primarily refers to foreign government agencies and militaries. The term may also refer to military coalitions, alliances, and international organizations.

² For the purpose of this Framework, Deputy Minister also includes the Chief of Defence Staff.

- 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.

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 applied rigidly 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.

Information Sharing Principles

- Sharing information with foreign entities is an integral part of the mandates of Canadian intelligence and law enforcement authorities. It is also a formal obligation pursuant to Canada's adoption of various international resolutions and agreements.
- In sharing information, departments and agencies must act in a manner that complies with Canada's laws and legal obligations.
- Departments and agencies must assess and mitigate potential risks of sharing information in ways that are consistent with their unique roles and responsibilities.
- Departments and agencies must also assess the accuracy and reliability of information received, and properly characterize this information in any further dissemination.
- The approval level that departments and agencies require 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.

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- Departments and agencies also have a responsibility to keep their respective Ministers generally informed about their information sharing practices.

Decision Making Process

- Departments and agencies are responsible for establishing approval levels that are proportionate to the risks in sharing information with foreign entities. This Framework only 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 or assurances, the matter will be referred to the responsible Deputy Minister or Agency Head for decision.
- In making his or her decision, the Deputy Minister or Agency Head 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 fulfil the proposed assurance);
 - the views of the Department of Foreign Affairs and International Trade (DFAIT); and
 - the views of other departments and agencies, as appropriate, as well as any other relevant facts that may arise in the circumstances.
- The responsible Deputy Minister or Agency Head may refer the decision whether or not to share information with the foreign entity to his or her Minister, in which case the Minister will be provided with the information described above.
- The Deputy Minister/Agency Head or Minister shall authorize the sharing of information with the foreign entity only in accordance with Canada's legal obligations.

Approved by DM S&I on June 25, 2010

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Annex A

Support

- To help ensure a consistent understanding of the risks of sharing information with foreign entities, DFAIT will continue to make its country human rights reports available to the intelligence and law enforcement community.

Implementation

- Given the different mandates of departments and agencies, the Framework will be operationalized through individual Ministerial directions.

Approved by DM S&I on June 25, 2010

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