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Establishment Canada

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CERRID# 587835

MEMORANDUM FOR THE MINISTER OF NATIONAL DEFENCE

Interception Activities Conducted in Support of Canadian Forces Operations in Afghanistan

(For Approval)

PROPOSED MINISTERIAL AUTHORIZATION

The Communications Security Establishment (CSE) requests a Ministerial Authorization pursuant to subsection 273.65(1) of the *National Defence Act*.

ACTIVITY OR CLASS OF ACTIVITIES TO BE AUTHORIZED

For the sole purpose of obtaining foreign intelligence and subject to the conditions listed below, subsection 273.65(1) of the *National Defence Act* allows you to authorize CSE, in writing, to intercept private communications in relation to an activity or class of activities specified in the Ministerial Authorization.

Under this authority, CSE hereby requests a Ministerial Authorization to intercept private communications in relation to a class of collection activities conducted in support of Canadian Forces operations in Afghanistan. This class of collection activities uses a selection of information-gathering methods [REDACTED]

All CSE foreign intelligence collection activities conducted under paragraph 273.64(1)(a) of the *National Defence Act* are in accordance with Government of Canada intelligence priorities. [Cabinet Confidence]

"Intelligence Priorities for 2010-11" and issued to CSE in the Ministerial Directive "Communications Security Establishment: Government of Canada Intelligence Priorities for Fiscal Year (FY) 2010-2011". These priorities are promulgated via the National SIGINT Priorities List (NSPL), which encompasses the following categories: [Cabinet Conf]

[Cabinet Confidence]

[Cabinet Confidence]

As CSE cannot anticipate all possible international developments during a given year and the changes these may cause in client requirements, the NSPL categories and focus areas are necessarily flexible and could evolve in light of events, though they will always remain within the confines of the Government of Canada intelligence priorities.

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Among the foreign intelligence collection activities authorized under paragraph 273.64(1)(a) of the *National Defence Act* are collection activities conducted in support of Canadian Forces operations in Afghanistan. In recent years, CSE has worked with the Canadian Forces deployed in Afghanistan in [REDACTED]

[REDACTED]

The information-gathering methods used by CSE in support of Canadian Forces operations in Afghanistan [REDACTED]

[REDACTED]

that may convey many types of data to produce foreign intelligence in direct support of operations conducted by deployed forces, as well as intelligence of broader value to the Government of Canada, including the Canadian Forces. [REDACTED]

[REDACTED]

[REDACTED] For research and analysis [REDACTED] and SIGINT development), these collection activities also involve collecting communications signals [REDACTED]

[REDACTED]

[REDACTED] communications of foreign intelligence targets. Determining the possible foreign intelligence value of information acquired through these activities takes place following the application of such technical methods as are required to render the communications amenable to selection and analysis.

To date, CSE has not recognized any communications intercepted to be private communications as defined in the *National Defence Act*, i.e. communications that either terminate or originate in Canada and in which the originator has a reasonable expectation of privacy. However, analysis has indicated that such interception could occur in the

future, particularly in relation to the communications of Canadian Forces and other Canadian personnel in the area. A Ministerial Authorization is therefore necessary, as CSE may intercept private communications in the course of its collection activities in support of Canadian Forces operations in Afghanistan.

For your information, CSE also acquires telecommunication-related information used to identify, describe, manage or route all or part of the telecommunication, information referred to as "metadata", to gain a better understanding of the global information infrastructure and identify new targets. This activity, also authorized under paragraph 273.64(1)(a) of the *National Defence Act*, does not require a Ministerial Authorization and is conducted in accordance with the 2005 Ministerial Directive entitled "Collection and Use of Metadata".

CONDITIONS TO BE SATISFIED

Under subsection 273.65(2) of the *National Defence Act*, you must be satisfied that:

- 1) the interception will be directed at foreign entities located outside Canada;
- 2) the information to be obtained could not reasonably be obtained by other means;
- 3) the expected foreign intelligence value of the information that would be derived from the interception justifies it; and
- 4) satisfactory measures are in place to protect the privacy of Canadians and to ensure that private communications will only be used or retained if they are essential to international affairs, defence or security.

The standard used by CSE for each of the conditions listed in 273.65(2) is a reasonableness standard that takes into account the specific and particular context of signals intelligence activities. These requirements are met respectively as follows:

- 1) CSE follows a very strict set of procedures to reasonably assure itself that collection activities that risk the interception of private communications are directed at foreign entities located outside Canada. CSE has established and maintains an automated directory of selectors (such as telephone numbers, internet protocol addresses or e-mail addresses) used for intercepting the communications of targets of interest. These selectors represent the identifying and routing metadata [REDACTED]

This metadata provides CSE with a reasonably reliable way to identify who one of the communicants is likely to be, and whether he or she is located outside Canada.

These selectors are obtained from a number of sources, including but not limited to: open source information, analysis of previously acquired signals intelligence and

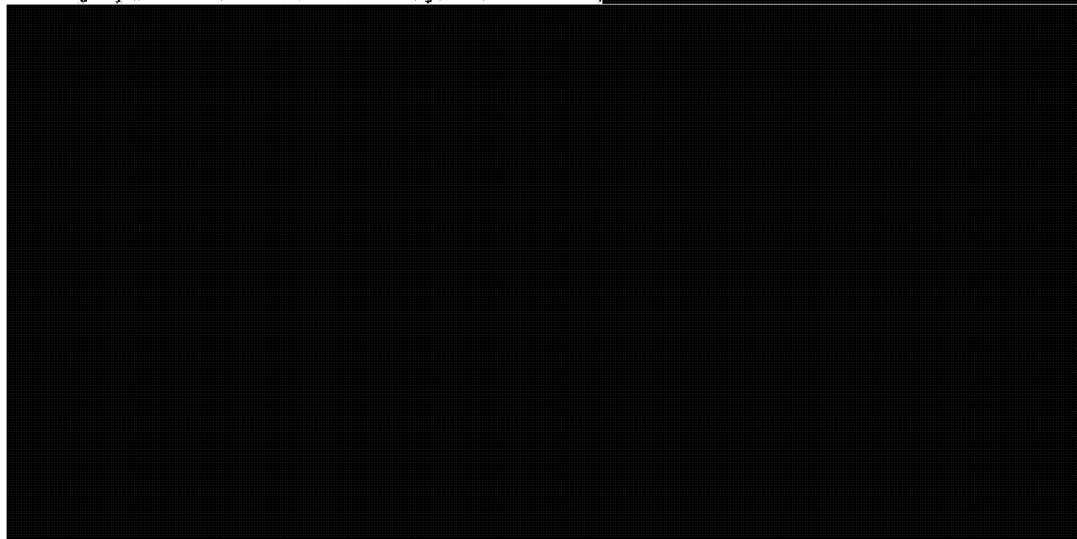
information provided by various departments and agencies of the Government of Canada, as well as allied agencies.

In accordance with procedures in place, prior to any targeting and before collection systems are tasked to collect communications, CSE personnel must be satisfied, based on all the information that CSE has available to it at the time, that the proposed selectors are associated with a foreign entity located outside Canada and relate to a Government of Canada intelligence priority (as most recently outlined in **Cabinet Confidence** and the associated Ministerial Directive). In

addition, selectors must meet the definition of the term 'metadata' in the Ministerial Directive entitled "Collection and Use of Metadata".

Consequently, a selector can only be used to intercept communications where CSE is satisfied that it is foreign and relates to the external component of communications. The content of communications is not scanned until CSE has reasonable assurance that such communications have at least one end located outside Canada. The use of selectors allows CSE to elevate the level of certainty that communications having no foreign intelligence value will not be intercepted. In the unlikely event that communications having both ends in Canada are intercepted, CSE will, upon recognition, take necessary steps to delete them from its databases.

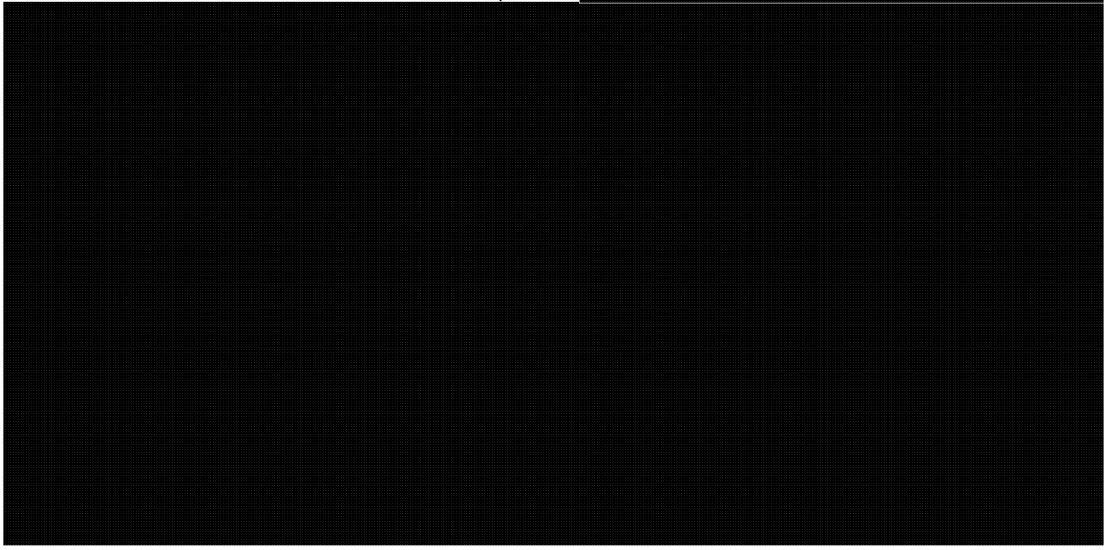
Regarding CSE's cyber threat detection activities, CSE proposes, because of the very specific nature of hostile cyber activities,



- 2) The information CSE is seeking to obtain could not reasonably be obtained by means other than interception because:

- information derived from the communications acquired by CSE, including information from any private communications that are intercepted, would not be shared voluntarily by the targeted foreign entities; and
 - the communications acquired by CSE, including those private communications that are intercepted, will in most cases be the only potential source for the information.
- 3) In its totality, the expected foreign intelligence value of the information to be derived from the interception justifies it. Experience [REDACTED] has shown that the chance of intercepting private communications is very small, and, were it to happen, would represent an unavoidable part of the collection process. The foreign intelligence value of these interceptions can be accurately judged in the context of the foreign intelligence derived from these activities in their entirety.

The collection activities conducted by CSE [REDACTED]



For your information, between the commencement of the current Ministerial Authorization on December 23, 2009 and May 31, 2010, [REDACTED] private communications or solicitor-client communications were recognized in collection from [REDACTED]

After the expiration of the current Ministerial Authorization, CSE will report to you on the full period of that authorization in accordance with the reporting requirements listed therein. Please note that in compliance with requirements, CSE reports on those intercepted private communications recognized by CSE.

- 4) Measures developed by CSE, in the form of operational policies and procedures, are in place and provide direction to CSE in protecting the privacy of Canadians and ensuring that private communications will only be used or retained if they are

essential to international affairs, defence or security. Essentiality is defined as containing information that is clearly related to the intelligence priorities of the Government of Canada.

CSE policies relating to accountability, the privacy of Canadians and the operation of this program are currently found in the following CSE documents:

- the Ministerial Directives entitled "Accountability Framework" (2001), "Privacy of Canadians" (2001), "Collection and Use of Metadata" (2005), and "Integrated SIGINT Operational Model" (2004); and
- the operational procedures entitled OPS-1: "Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSEC Activities" and OPS-1-13: "Procedures for Canadian [REDACTED] and Joint CSEC-CF Activities".

CSE employees involved in these collection activities conducted in support of Canadian Forces operations in Afghanistan, and the processing and analysis of information obtained as a result of such activities, are trained in these measures and are fully aware of their responsibilities in implementing them. The application of these measures is monitored by CSE management and is subject to review by the CSE Commissioner.

In accordance with the *National Defence Act*, you must be satisfied that the conditions set forth in subsection 273.65(2) have been met prior to issuing the attached Ministerial Authorization.

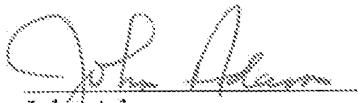
Solicitor-Client Privilege

NEW MINISTERIAL AUTHORIZATION TIMELINE

CSE wishes to inform you that it has implemented a new, synchronized approach to Ministerial Authorization requests, to establish a streamlined request cycle with a view to enhancing organizational effectiveness. As of this year, CSE will seek your approval on an annual basis for any new Ministerial Authorization to come into effect on December 1 and expire on November 30 of the following year. As such, your approval of the attached Ministerial Authorization will supersede the "Ministerial Authorization Interception Activities Conducted in Support of Canadian Forces Operations in Afghanistan", dated November 3, 2009.

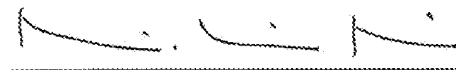
RECOMMENDATION

It is recommended that you approve the attached Ministerial Authorization "Interception Activities Conducted in Support of Canadian Forces Operations in Afghanistan", to be effective December 1, 2010 to November 30, 2011.


John Adams
Chief

Attachment

I concur with the recommendation:


Marie-Lucie Morin
National Security Advisor to the Prime Minister
and Associate Secretary to the Cabinet
Privy Council Office

cc: Robert Fonberg, Deputy Minister, National Defence.