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CERRID# 1009061

## MEMORANDUM FOR THE MINISTER OF NATIONAL DEFENCE

CSE [REDACTED] Collection Activities

(For Approval)

### ISSUE

The interception of private communications – those that originate or terminate in Canada and where the originator has a reasonable expectation of privacy – is prohibited under Part VI of the *Criminal Code*. However, Part VI of the *Criminal Code* does not apply if, pursuant to subsection 273.65(1) of the *National Defence Act* (NDA), you authorize the Communications Security Establishment (CSE) to intercept private communications in relation to an activity or class of activities for the sole purpose of obtaining foreign intelligence.

You may issue a Ministerial Authorization provided the legislated conditions are met. These Ministerial Authorizations are essential to the successful implementation of CSE's mandate; without them, the organization would be unable to collect the data from the global information infrastructure that it requires to extract foreign intelligence, in accordance with the intelligence priorities of Government of Canada.

The purpose of this Memorandum is to request a Ministerial Authorization for CSE's [REDACTED] collection activities that risk interception of private communications.

### CLASS OF ACTIVITIES TO BE AUTHORIZED: [REDACTED] COLLECTION

[REDACTED] Communications are transmitted on the global information infrastructure [REDACTED]  
[REDACTED]  
the global information infrastructure.

It is important that CSE have the capacity to engage in [REDACTED] collection because a [REDACTED]  
[REDACTED] on the global information infrastructure at any given moment. This makes [REDACTED]  
[REDACTED] potential sources of communications data that CSE can

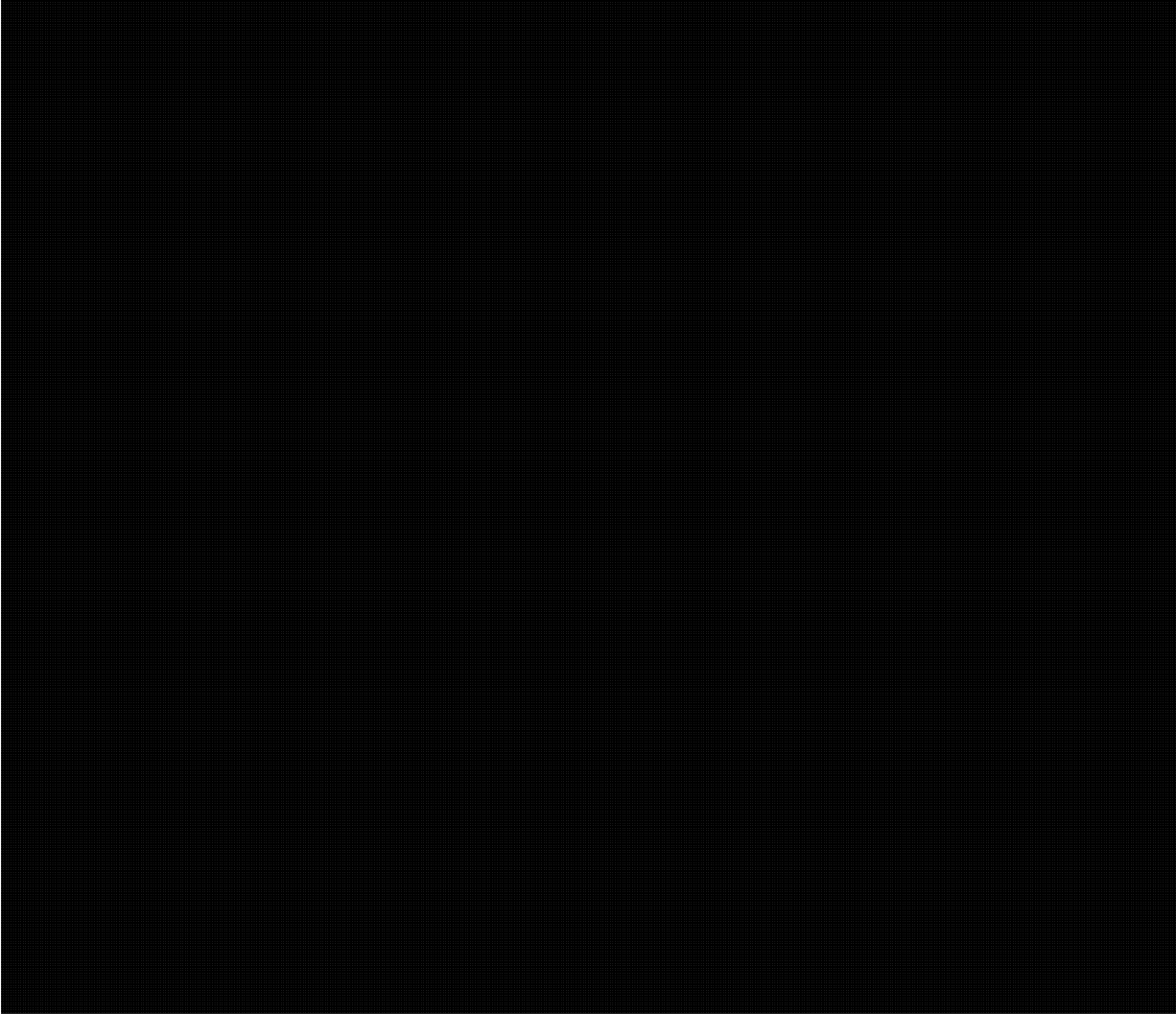
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collect in order to produce foreign intelligence. Because [REDACTED]  
[REDACTED] on the global information infrastructure can be [REDACTED] foreign  
[REDACTED]  
[REDACTED] can be [REDACTED] foreign entities that are of clear relevance to  
Government of Canada intelligence priorities.

CSE [REDACTED] collection currently accounts for [REDACTED] of intelligence reports  
produced by CSE.

**CSE [REDACTED] Collection Activities:** CSE conducts [REDACTED] collection activities by [REDACTED]  
[REDACTED] foreign [REDACTED] on the global information  
infrastructure that are suspected of being of foreign intelligence value to the  
Government of Canada.



**Interception of Private Communications:** CSE [REDACTED] collection activities risk interception of private communications [REDACTED] into the consolidated repository and are one-end Canadian.

### CONDITIONS TO BE SATISFIED

You may issue a Ministerial Authorization only if you are satisfied that CSE has met the four conditions set out in Subsection 273.65(2) of the NDA and is appropriately managing the risk of intercepting private communications.

- The interception will be directed at foreign entities located outside Canada;
- The information to be obtained could not be reasonably obtained by other means;
- The expected foreign intelligence value of the information that would be derived from the interception justifies it; and
- 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.

These conditions are met respectively as follows:

In order to demonstrate in advance that CSE has appropriate measures in place to meet each of these conditions, CSE uses a reasonableness standard that takes into account the particular context of the class of activity being authorized.

#### ***1. The interception must be directed at foreign entities located outside Canada***

In order to provide a reasonable assurance that interception activities are directed at foreign entities located outside of Canada, CSE maintains a list of selection criteria for identifying target [REDACTED]. These criteria are obtained from a number of sources, including analysis of previously-acquired SIGINT, metadata, information provided by other Government of Canada departments and agencies, information provided by Allied agencies, and open source information. This [REDACTED] collection activities makes it possible for CSE to be reasonably

assured that [REDACTED] that are targeted for [REDACTED] collection are likely to contain information of foreign intelligence value to the Government of Canada.

**2. The information could not be reasonably obtained by other means**

The nature of CSE's signals intelligence activities is such that the intercepted information (including any private communications) would not be shared voluntarily by the targeted foreign entity. Further, in most cases, the communications that are acquired or intercepted by CSE [REDACTED] collection activities are the only potential source for the information being sought.

**3. The expected value of the interception would justify it**

[REDACTED] provides CSE with unique access to the data and communications of targeted foreign entities and is an important source of foreign intelligence in accordance with Government of Canada intelligence priorities, including: Cabinet Confidence  
pertaining to Cabinet Confidence

Cabinet Confidence

After the expiration of the current Ministerial Authorization, CSE will report to you on the full period of the authorization for this program, in accordance with the reporting requirements outlined in the Ministerial Authorization.

**4. Satisfactory measures are in place to protect the privacy of Canadians**

CSE has measures 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. CSE's policies relating to accountability, the privacy of Canadians, and the conduct of [REDACTED] activities are outlined in the following Ministerial Directives and operational policies:

- [REDACTED] Ministerial Directive;
- Accountability Framework Ministerial Directive;
- Privacy of Canadians Ministerial Directive;
- Collection and Use of Metadata Ministerial Directive;
- OPS-1: Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSEC Activities; and
- OPS-3-1: Operational Procedures for [REDACTED] Activities

CSE employees must conduct activities in accordance with the most current version of these Ministerial Directives and operational policies. The organization will advise you of any revisions to policies and procedures that have an impact on measures to protect the

privacy of Canadians. OPS-1 is CSE's foundational policy on the protection of the privacy of Canadians and all other operational policies must comply with it. A copy of OPS-1 is attached for your reference at Annex A.

If CSE incidentally intercepts a private communication, a communication of a Canadian outside Canada, or a solicitor-client communication, the intercept can only be used or retained if it is deemed essential to international affairs, defence or security. This means that:

- communications that both originate and terminate in Canada, will, upon recognition, be marked accordingly and not be used further by CSE. These communications will be deleted immediately; and,
- intercepted solicitor-client communications will be treated in an exceptional manner, as set out in the conditions in the Ministerial Authorization.

The use and retention of any recognized intercepted private communications essential to foreign intelligence will be reported to you in accordance with the reporting requirements outlined in the Ministerial Authorization. CSE's activities are subject to annual review by the CSE Commissioner to ensure their lawfulness.

Solicitor-Client Privilege

### RECOMMENDATION

Ministerial Authorizations are vital legal instruments that enable CSE to fulfill its mandate without risk of criminal liability for the incidental interception of private communications. This Ministerial Authorization will permit CSE to continue its [REDACTED] activities and provide valuable foreign intelligence to the Government of Canada, as well as CSE's domestic and international partners. It is recommended that you approve the attached Ministerial Authorization "CSE [REDACTED] Collection Activities," to be effective December 1, 2012 to November 30, 2013.



John Forster  
Chief

Attachment