

Communications Security
Establishment Commissioner

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



Commissaire du Centre de la
sécurité des télécommunications

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

TOP SECRET/COMINT/CEO

19 November 2008

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

Dear Mr. MacKay:

First, may I offer you my congratulations on your re-election and reappointment as Minister of National Defence.

The purpose of this letter is to advise you of the results of a review by my office of the Communications Security Establishment Canada's (CSEC) activities related to the disclosure of information about Canadians to Government of Canada clients. This review was carried out under my authority as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act* (NDA). The objective of the review was to examine the disclosure of information about Canadians to Government of Canada clients under CSEC's foreign intelligence mandate to ensure that it was in compliance with the law and that measures were in place to protect the privacy of Canadians, and to determine the extent to which those measures were applied in the use and disclosure of that information.

By way of background, when end-product reports are produced by CSEC, any information that may reveal the identity of a Canadian or allied entity is replaced with a generic reference. This is referred to as suppressed information. CSEC clients who can show they have the authority and need to know the suppressed information may submit a form requesting disclosure. CSEC's Operational Policy section assesses the request, and if the form is complete and the justification sound, the analyst will provide the information requested; if it is incomplete or the justification is not sound, the form will be returned to the requestor, who will be asked to provide further information or informed that the request has been denied.

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Based upon the information reviewed and the interviews conducted, my findings related to CSEC's disclosure activities during the period October 1 to December 31, 2007 are that:

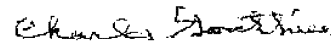
- activities were conducted in compliance with the *NDA*, the *Charter*, the *Privacy Act*, the *Criminal Code*, and Justice Canada advice;
- activities were conducted in accordance with the MAs, MDs and the additional conditions imposed by the Minister;
- CSEC personnel are knowledgeable about, and acted in accordance with, CSEC's policies and procedures, and management monitoring is ongoing.

The enclosed review report contains detailed information on these findings as well as related issues.

As is my practice, I have provided officials at CSEC an opportunity to review and comment on the factual accuracy of this report, prior to finalizing and forwarding it to you.

Please let me know if you have any questions or comments.

Yours sincerely,



Charles D. Gonthier

c.c. Mr. John Adams, Chief, CSEC
Ms. Marie-Lucie Morin, National Security Advisor, PCO
Mr. Robert Fonberg, Deputy Minister, National Defence

TOP SECRET/COMINT/Canadian Eyes Only

**Disclosure of Information about Canadians to
Government of Canada Clients**

19 November, 2008

I. AUTHORITIES

This report was prepared on behalf of the Communications Security Establishment Commissioner under his authority as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act* (NDA).

II. INTRODUCTION

When end-product reports are produced by the Communications Security Establishment Canada (CSEC)¹, any information that may reveal the identity of a Canadian or allied entity is replaced with a generic reference, e.g. "a Canadian business person," or "a Canadian company." This is referred to as suppressed information. This process is also followed by the Second Parties². The information that is suppressed includes, but is not limited to, contextual identifiers, such as [REDACTED] names, addresses, phone numbers and any other information that may reveal the identity of a Canadian or allied entity. Government of Canada clients or Second Parties that have the authority and "need to know" the suppressed information may submit a formal request to CSEC in order to obtain it.

In conducting this review the Commissioner's office has not looked at the production of intelligence reporting and its governing policies, procedures and authorities, but focussed solely on the process and activities that follow the production and dissemination of those reports. It is the intent of this review to provide a more detailed look at the process of disclosure of information about Canadians by CSEC and in the case of this report, specifically to Government of Canada clients. The Commissioner's office has identified a separate review in its current work plan that will deal with the sharing of information about Canadians with Second Parties, [REDACTED]

III. OBJECTIVES

The objectives of the review, as per paragraph 273.63(2)(a) of the *National Defence Act* (NDA), are to examine the disclosure of information about Canadians to Government of Canada clients under CSEC's foreign intelligence mandate to ensure that it was in compliance with the law and that measures were in place to protect the privacy of Canadians,

¹ The Communications Security Establishment's (CSE) name was changed to Communications Security Establishment Canada effective September 27, 2007, in order to comply with the Government of Canada's Federal Identity Program. However, the Establishment's former acronym may be used throughout this report to reflect quotes and references predating this change.

² The Second Parties are CSEC's four signals intelligence (SIGINT) partners: the U.S. National Security Agency (NSA), the U.K. Government Communications Headquarters (GCHQ), the Australian Defence Signals Directorate (DSD), and the New Zealand Government Communications Security Bureau (GCSB).

and to determine the extent to which those measures were applied in the use and disclosure of that information.

IV. SCOPE

This review examined disclosures of information about Canadians to Government of Canada clients during the period October 1 to December 31, 2007 to determine: i) the amount of information about Canadians that was included in SIGINT (signals intelligence) reporting by CSEC and Second Parties; ii) the number of requests for release of identities from Government of Canada clients; iii) CSEC's compliance with the law and all authorities, policies and procedures in the release of that information; and iv) how the disclosure of information about Canadians is processed, monitored, and managed.

V. CRITERIA

A) Legal Requirements

The Commissioner's office expected that CSEC would conduct its activities in a manner that was in accordance with the *NDA*, the *Charter of Rights and Freedoms*, the *Privacy Act*, the *Criminal Code*, other relevant legislation and Justice Canada advice.

B) Ministerial Requirements

The Commissioner's office expected that CSEC would conduct its activities in a manner that was in accordance with all applicable ministerial authorizations (MAs) and ministerial directions (MDs), and any conditions imposed by the Minister of National Defence, particularly with respect to protecting the privacy of Canadians.

C) Policies and Procedures

The Commissioner's office expected that CSEC would have:

- i) appropriate policies and procedures that guide the disclosure of information about Canadians and that contain measures to protect the privacy of Canadians;
- ii) personnel who were aware of and complied with the policies and procedures; and
- iii) the means to determine if the activities had been conducted in a manner consistent with the policies and procedures.

VI. METHODOLOGY

The Commissioner's office requested statistics showing the number of disclosures of Canadian identities and information about Canadians during the period October 1 to December 31, 2007, broken down by month, week and Government of Canada client. From the total of 816 identity releases made during this three-month period, we chose a sample of 161 to review in detail. This represented releases to various Government of Canada departments during each weekly period of each month. We ensured that client departments that had not been covered in any previous reports were in this disclosure-focussed review. All reports relating to the 161 releases were also reviewed.

We conducted interviews with the manager of CSEC's Operational Policy section. This section is responsible for receiving all requests for release of suppressed information contained in end-product reporting, and for releasing identity information to clients.

VII. BACKGROUND

The Commissioner's office has conducted several reviews of CSEC's activities that have examined the disclosure of Canadian identities contained in end-product reports to clients (Government of Canada or Second Party). As mentioned in the introduction to this report, this review has limited its focus to the process of releasing suppressed information about Canadians to Government of Canada clients only.

Authorities and Documents Relating to the Release of Suppressed Information from End-Product Reports

We examined all CSEC internal audit reports, policies and procedures, legal opinions and other authorities relating to suppressed information in end-product reports and its release that applied to the period of this review. We also compared then-current policies and procedures with the versions that are now in effect. The authorities examined are:

- OPS-1, *Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSE Activities*, 18 March 2008 (previous versions dated 15 December 2006 and 23 December 2007 reviewed).
- OPS-1-1, *Procedures for the Release of Suppressed Information from SIGINT Reports*, 08 May 2008 (previous version dated 06 January 2006 reviewed).
- OPS-1-7, *SIGINT Naming Procedures*, 02 September 2005.
- OPS-1-8, *Active Monitoring of Operations to Ensure Legal Compliance and the Protection of the Privacy of Canadians*, 18 March 2008 (previous versions dated 28 July 2004 and 20 December 2007 reviewed).
- Operational Policy Section Working Aid (procedure) related to the *Release of Suppressed Information* (31 July 2008).
- CSEC Audit and Evaluation, *Audit of SIGINT End Product Reporting*, May 2007.

VIII. FINDINGS

A) Legal Requirements

Finding 1: Compliance with the Law

Based upon the information reviewed and the interviews conducted, CSEC conducted its activities related to the disclosure of information about Canadians, in accordance with the *NDA*, *Charter*, *Privacy Act*, *Criminal Code*, and Justice Canada advice.

In October 2007, the Commissioner's office was advised that CSEC had received legal guidance concerning the Solicitor-Client Privilege

Solicitor-Client Privilege This advice is also Solicitor-Client Privilege CSEC's examination of this issue was in response to recommendations by the Commissioner's office that Solicitor-Client Privilege Solicitor-Client Privilege

Justice Canada determined that Solicitor-Client Privilege Solicitor-Client Privilege

Solicitor-Client Privilege The Commissioner's office has no questions regarding Justice Canada's advice, and acknowledges that CSEC has taken steps to implement this advice. For example, Solicitor-Client Privilege Solicitor-Client Privilege

B) Ministerial Requirements

Finding 2: Ministerial Requirements

Based upon the information reviewed and the interviews conducted, CSEC conducted its activities related to the disclosure of information about Canadians in accordance with all MAs, MDs and additional conditions imposed by the Minister that related to this activity directly or indirectly.

³ Recommendation 3, *CSE Support to Law Enforcement: RCMP Phase II: CSE Mandate (a)*, 16 June 2006. The Commissioner's office report on the *Role of the CSE's Client Relations Officers and the Operational Policy Section (D2) in the Release of Canadian Identities*, 30 March 2007 also contained similar recommendations.

C) Policies and Procedures

Finding 3: Policies and Procedures

Based on a thorough review of all CSEC policies and procedures, the Commissioner's office found that:

- CSEC has comprehensive policies and procedures that guide the disclosure of information about Canadians and that contain measures to protect the privacy of Canadians;
- personnel are aware of and comply with the policies and procedures; and
- management monitoring is ongoing, thereby ensuring the activities are being conducted in a manner consistent with policies and procedures.

The *NDA*, *MAs*, and *MDs* that were issued require CSEC to take measures to protect the privacy of Canadians. CSEC's processing of requests for release of identities is governed by specific policies and procedures that reflect the direction and measures stated in the aforementioned authorities. The corporate policy documents examined for this review contain these requirements and direct all employees to ensure any personal information about Canadians is suppressed in an end-product report prior to dissemination in order to render impossible the identification of the individuals or allied entities.

Overview of the Release Process

As previously noted, when reports are received by CSEC's clients, all personal or identifying information about Canadians or allied entities is suppressed and replaced with generic identifiers. If a client believes that it is necessary and in keeping with that client's operational mandate to know the suppressed information, they will complete and forward a copy of CSEC's *Request for Release of Suppressed Information* form to CSEC's Operational Policy section. The process and the documentation used was examined quite extensively in our review of the *Role of the CSE's Client Relations Officers and the Operational Policy Section in the Release of Canadian Identities*⁴ and therefore will not be described in detail here, as the basic process and documentation set out in that report has not changed. In summary, the analysts within Operational Policy follow a well-articulated process. If the form is complete and the justifications sound, the CSEC analyst will provide the identity information requested; if incomplete or the justification is not sound, the form will be returned to the requestor, who will be asked to provide further information or informed that the request has been denied. We have been informed that there have indeed been instances where inadequate requests are returned to the client, but the Operational Policy Section does not keep statistics of such returns, although copies of all returned forms are retained.

⁴ Submitted to the Minister of National Defence, 30 March, 2007.

Information about Canadians

The Commissioner's office reviewed all of the reports related to the identity releases made during the review period and determined that any personal or identifying information about a Canadian that was present in any CSEC or Second Party report had been suppressed or minimized in accordance with CSEC and/or Second Party policy, procedures and agreements. The amount of information about Canadians contained in the reports reviewed was consistent with what we have observed in the past and raised no issues of particular concern. The reports reviewed that related to the identity releases made by CSEC to Government of Canada clients were issued by the National Security Agency (NSA) (approximately █% of the reports), CSEC (█%) and the Australian Defence Signals Directorate (DSD) (█%).

The Manager of Operational Policy, whose section is responsible for the release of identity information, advised that, in addition to the corporate policies and procedures, the section has a "working aid" or procedural document that details each step of the process to be followed by employees. We were told that all personnel are trained within the section and are very cognisant of the requirements for releasing suppressed information. We were provided with a copy of the "working aid." The Manager of Operational Policy noted that this document is reviewed on a continuing basis to ensure it reflects current policies, procedures and practices.

In accordance with the CSEC OPS-1-8 policy entitled *Active Monitoring of Operations to Ensure Legal Compliance and the Protection of the Privacy of Canadians*,⁵ the Manager of Operational Policy reviews releases made on a monthly basis to ensure policy requirements have been met and provides monthly updates to the Director, Corporate and Operational Policy. All staff are also regularly advised when there are changes to policy or process, as well as notified of new clients or changes in client requirements. In addition, the Operational Policy unit meets at least every 2–3 months to discuss best practices and improvements.

Previous Recommendations

In previous reviews by the Commissioner's office (*Role of the CSE's Client Relations Officers and the Operational Policy Section in the Release of Canadian Identities* and *CSE Support to CSIS Phase I: CSE Mandate (a)*),⁶ findings and recommendations were made with the intent of encouraging CSEC to apply a more rigorous process for releasing and accounting for identities that are released to clients. These recommendations related to:

- the release of the same identities to different clients within the same department;

⁵ OPS-1-8, *Active Monitoring of Operations to Ensure Legal Compliance and the Protection of the Privacy of Canadians*, dated 20 December, 2007 (revised 18 March 2008).

⁶ Submitted to the Minister of National Defence, 16 January 2008.

- including the appropriate *Privacy Act* section on the release form; and
- ensuring any further action intended by the requestor is clearly stated.

In the course of this review, we were pleased to note that the Commissioner's recommendations were accepted by CSEC and that changes have been introduced to its process for handling requests and releases of identities as a result. The forms used by clients to request identity releases have been amended, and now require more detailed explanations on the part of the requestor; they are also examined with more rigour by analysts than had been observed in previous reviews conducted by the Commissioner's office. Clients must very clearly articulate the authorities under which they are requesting the information, how the information is intended to be used, and what further action may be contemplated using the disclosed information. This is supported by and in compliance with the relevant CSEC policies.⁷

Release of a Canadian Identity Suppressed in a Second Party Report

As indicated in the Commissioner's office's report on *CSEC's Activities Conducted under the [REDACTED] Ministerial Authorization*,⁸ CSEC or its Government of Canada clients may observe suppressed Canadian identities in reports issued by a Second Party. In the course of that review, CSEC advised that it is not evident whether a suppressed Canadian identity in a Second Party report was obtained as a result of Second Party collection or the sharing of communications acquired from its own collection. However, when CSEC receives a request from a Government of Canada client for the release of a suppressed Canadian identity in a Second Party report, CSEC will ask the Second Party originator for the identity, and will then apply the appropriate policies and procedures to assess whether the suppressed information should be released.

As is the procedure for all requests, CSEC will enter any released identities into the database named [REDACTED]⁹ in order to facilitate responding to any future requests from other clients for the release of the same suppressed identities. Access to this suppressed identity information in [REDACTED] is very restricted. It is only available to the intelligence production staff responsible for a particular report and to staff in the Operational Policy section.

The *Audit of SIGINT End Product Reporting* prepared by CSEC's Directorate of Audit, Evaluation and Ethics and dated May 2007 recommended that CSEC implement a program of regular assessments to continue a high level of compliance with its OPS-1 policy, *Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSEC Activities*. CSEC's management response contained in the report

⁷ CSEC policy OPS-1-1, "Procedures for the Release of Suppressed Information from SIGINT Reports," effective January 3, 2006 and D2 (Operational Policy Section) Working Aid, dated July 2008.

⁸ Submitted to the Minister of National Defence, 11 June 2008.

⁹ [REDACTED] is CSEC's SIGINT production and dissemination system. It is used for gathering client requirements; end-product report (EPR) authoring, storage and searching/retrieval (including Second Party reporting). It also allows for monitoring and logging of client access to EPRs.

indicated that in accordance with the provisions of its OPS-1-8 policy, CSEC would initiate periodic reviews by the end of January 2008. Although the audit recommendation was specific to control, access and dissemination of end-product reports, it is worth noting that this review has determined that management monitoring is an ongoing practice within the Operational Policy Section for the purpose of disclosure of information about Canadians.

IX. CONCLUSION

During the period of review, there were 816 requests for the release of Canadian identities contained in end-product reports. From the 161 requests we reviewed in detail, we can conclude that:

- CSEC's activities relating to the disclosure of information about Canadians to Government of Canada clients were conducted in compliance with the *NDA*, the *Charter*, the *Privacy Act*, the *Criminal Code* and Justice Canada advice;
- these activities were also in accordance with the MAs, MDs and the additional conditions imposed by the Minister;
- CSEC has comprehensive policies and procedures that guide the disclosure of information about Canadians and contain measures to protect the privacy of Canadians; and
- CSEC personnel were knowledgeable about, and acted in accordance with, CSEC's policies and procedures in place during the period of review and management monitoring is ongoing, thereby ensuring the activities have been conducted in a manner consistent with policies and procedures.