

Communications Security Establishment Canada

Centre de la sécurité des télécommunications Canada

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MEMORANDUM	FOR	THE	MINIS	TER	OF	NAT	TIONAL	DEFENCE

CSE 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 the Government of Canada.

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

CLASS OF ACTIVITIES TO BE AUTHORIZED: COLLECTION

Communications are transmitted on the global information infrastructure

the global information infrastructure.

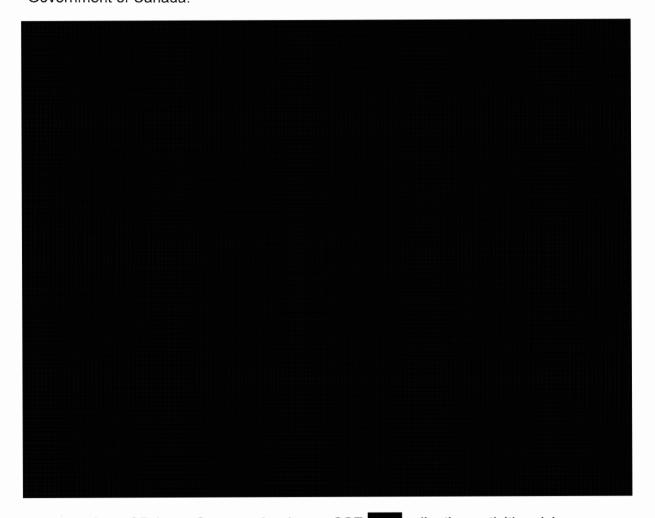
It is important that CSE has the capacity to engage in collection since a on the global information infrastructure at any given moment,

This makes

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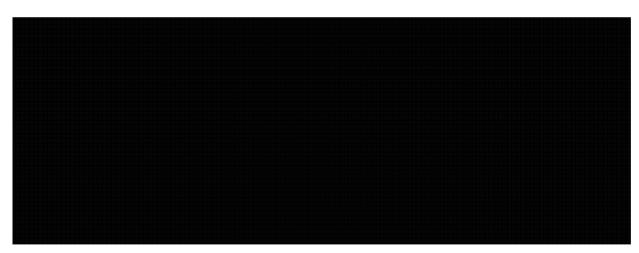


these potential sources of data that	t CSE can	fore	ign
intelligence. Because		on the global informa	
infrastructure can be	foreign		
	can be	foreign entities	tha
are of clear relevance to Government of Car	nada intelligence pi	riorities.	
CSE collection currently accounts for produced by CSE.	of	intelligence reports	
CSE Collection Activities: CSE cond	ducts collection	n activities by	
foreign		obal information	
infrastructure that are suspected of being of	foreign intelligence	e value to the	
Government of Canada			



Interception of Private Communications: CSE collection activities risk interception of private communications when they were acquired and either the sender or the recipient is located in Canada.

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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 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.
The control of the collection activities makes it possible for CSE to be
reasonably assured that
collection are foreign and located outside of Canada, and are likely to contain
information of foreign intelligence value to the Government of Canada.

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(inclu foreig interd	nature of CSE's signals intelligence activities is such that the collected information any private communications) would not be shared voluntarily by the target entity. Further, in most cases, the communications that are acquired or cepted by CSE collection activities are the only potentially reasonable so e information being sought.
3. TI	ne expected value of the interception would justify it
foreig Gove	provides CSE with unique access to the data and communications of targeted in entities and is an important source of foreign intelligence in accordance with rnment of Canada intelligence priorities. Specifically, this program has provide gence on Cabinet Confidence
	t Confidence
full pe	the expiration of the current Ministerial Authorization, CSE will report to you obtained of the authorization for this program, in accordance with the reporting rements outlined in the Ministerial Authorization.
full pe requi	eriod of the authorization for this program, in accordance with the reporting
full por requinate of the control of	eriod of the authorization for this program, in accordance with the reporting rements outlined in the Ministerial Authorization.
full por requi 4. Sa CSE private affair Cana	eriod of the authorization for this program, in accordance with the reporting rements outlined in the Ministerial Authorization. Atisfactory measures are in place to protect the privacy of Canadians has measures in place to protect the privacy of Canadians and to ensure that the communications will only be used or retained if they are essential to internates, defence, or security. CSE's policies relating to accountability, the privacy of dians, and the conduct of activities are outlined in the following Ministeriatives and operational policies: Ministerial Directive;
full perequited to the second	rements outlined in the Ministerial Authorization. Atisfactory measures are in place to protect the privacy of Canadians that measures in place to protect the privacy of Canadians and to ensure that the communications will only be used or retained if they are essential to internate, defence, or security. CSE's policies relating to accountability, the privacy of dians, and the conduct of activities are outlined in the following Ministeriatives and operational policies: Ministerial Directive; Accountability Framework Ministerial Directive;
full perequitation full perequit	rements outlined in the Ministerial Authorization. Atisfactory measures are in place to protect the privacy of Canadians that measures in place to protect the privacy of Canadians and to ensure that the communications will only be used or retained if they are essential to internate, defence, or security. CSE's policies relating to accountability, the privacy of dians, and the conduct of activities are outlined in the following Ministerial to the privacy of Canadians Ministerial Directive; Accountability Framework Ministerial Directive; Privacy of Canadians Ministerial Directive; Collection and Use of Metadata Ministerial Directive;
full perequi full perequi full perequi CSE private affair Cana Direct	rements outlined in the Ministerial Authorization. Atisfactory measures are in place to protect the privacy of Canadians that measures in place to protect the privacy of Canadians and to ensure that the communications will only be used or retained if they are essential to internate, defence, or security. CSE's policies relating to accountability, the privacy of dians, and the conduct of activities are outlined in the following Ministeritives and operational policies: Ministerial Directive; Accountability Framework Ministerial Directive; Privacy of Canadians Ministerial Directive;

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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 B.

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 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 "Communications Security Establishment

Collection Activities" to be effective 1 December

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2013 to 30 November 2014.

John Forster

Attachment

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