

Communications Security
Establishment Commissioner



Commissaire du Centre de la
sécurité des télécommunications

The Right Honourable Antonio Lamer,
CSE/CST
C., C.D., L.L.D., D.U.
Chief's Office / Bureau du chef

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File / Dossier 06-01236

Le très honorable Antonio Lamer,
c.p., c.c., c.d., L.L.D., d.u.

TOP SECRET/COMINT/CEO
(with attachments)

16 June 2006

The Honourable Gordon J. O'Connor, PC, MP
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister:

It has been my practice to submit to your office a classified report when I consider it advisable. In this regard, you will find attached my report on the activities of the Communications Security Establishment (CSE) as they relate to assistance to the Royal Canadian Mounted Police (RCMP). This report was prepared under my general authority articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act (NDA)*.

Activities undertaken by CSE in support of the RCMP can generally be divided into two main categories: foreign signals intelligence support, authorized under paragraph 273.64(1)(a) of the *NDA*; and technical and operational assistance, authorized under paragraph 273.64(1)(c) of the same Act.

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I am now able to provide you with the second phase of this report, which presents my findings and four recommendations (attached to letter) based on a review of CSE's foreign signals intelligence activities in support of the RCMP (also known as CSE's (a) mandate). However, at this time, I will not provide an assessment of the lawfulness of these activities pending a re-examination by CSE of its intelligence support to investigative and law enforcement clients.

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During this second review, my staff received briefings and answers to both verbal and written questions that were posed to a variety of CSE officials. They also obtained a listing of the (a) mandate activities CSE undertook on behalf of the RCMP during the period under review and chose seven (7) of these activities to examine in detail. As part of this in-depth examination, my staff received two separate demonstrations conducted by those CSE officials who had been directly involved in responding to RCMP requests for foreign signals intelligence support during the period under review.

By way of background, CSE provides regular foreign intelligence reporting to the RCMP under the authority of mandate (a). Most of these reports address general areas of interest that complement and support the RCMP's own mandated responsibilities. For review purposes, this is referred to as proactive support. In addition to this, CSE provides reactive support by responding to specific RCMP requests for intelligence-related information (also referred to as RFIs). As an example, the RCMP will provide CSE with S. 37 CEA [redacted] that has come to its attention during a criminal investigation in Canada, and will ask CSE to provide any information it has, or may be able to obtain, on that S. 37 CEA [redacted]. Any resulting information would be used by the RCMP to support its investigation of criminal suspects in Canada.

For the period January 01 to December 31, 2003, CSE received and responded to [redacted] requests for information from the RCMP, seven (7) of which my staff chose for detailed examination.

Many of the findings and recommendations made in my January 2005 report on CSE's support to the RCMP under the (c) mandate also apply to this second-phase review of assistance provided by CSE under mandate (a). For example, I recommended CSE amend and/or update its supporting instruments, including the Ministerial Directive, and the CSE-RCMP Memorandum of Understanding, which guide these kinds of support activities. I am pleased to report that, for the most part, CSE accepted these recommendations and is working to implement them.

CSE has also acknowledged that it must implement a formal system of record keeping, including file creation and numbering, so that it can accurately account for its mandated activities. I have reported in previous studies over the past several years¹, that CSE has no system to support the corporate filing and management of *hard-copy* or *electronic* documents and records. My reviews have confirmed that this creates a significant weakness in the organization's ability to account for its activities, particularly those related to safeguarding the privacy of Canadians. CSE has informed me, however, by way of correspondence sent in June 2006, that high priority has been given to the development and implementation of a corporate records management system, with both financial and human resources having been allocated to

¹ CSE Support to Law Enforcement, Royal Canadian Mounted Police, dated January 07, 2005, Page 19. A Study of the [redacted] Collection Program, dated March 15, 2005, Recommendation 4. Report on the Activities of CSE's [redacted] dated June 22, 2005, Recommendation 2. IRRELEVANT [redacted] dated November 13, 2002, Recommendation 4. A Study of the EPR Process – Phase II – Handling Information About Canadians, dated April 6, 2001, Recommendation 4. IRRELEVANT [redacted] dated March 5, 1998, Recommendation 1.

the implementation of a system that will deal with their hard-copy and electronic records requirements.

I am also able to advise you that, in response to the findings and recommendations made as a result of my first review of CSE support to the RCMP under mandate (c), CSE officials immediately acknowledged the need for a standardized system by which to receive, evaluate, action or reject, track and account for RFIs received from the RCMP (as well as other clients) and actioned pursuant to mandate (a). At the time of writing, I am advised that such a system has now been implemented. It will be examined during future reviews of the foreign intelligence assistance CSE provides to its clients pursuant to mandate (a).

During the course of this review, my office learned that CSE used formally documented criteria to assess all requests received by clients in order to determine whether the requests fall under the authority of mandate (a) or (c) as established by the *NDA*. These criteria, which include an assessment of whether the request meets the Government of Canada's foreign intelligence priorities, were developed over time and with the full involvement of CSE's Legal Services. My staff obtained both a briefing from Legal Services and all related written documentation.

However, from the detailed review of the seven RCMP RFIs, there are two issues that concern me and require further legal study by CSE.

The first issue is the appropriate authority to be used when CSE provides reactive intelligence support to a federal law enforcement agency. More specifically, CSE needs to examine whether mandate (a) allows it to target a foreign phone number at one of its [REDACTED] collection sources in response to a request for foreign information/intelligence on a foreign entity of interest to the RCMP by reason, and in support, of a criminal investigation being conducted against suspects in Canada.

Currently, CSE provides this type of support to the RCMP under its (a) mandate. After careful examination, I believe that in some instances, CSE ought not to have provided its assistance under mandate (a), and that the prerequisites for exercising this mandate in these instances were not met. As a result, I believe that CSE's provision of intelligence support in response to client requests, particularly those engaged in investigative and law enforcement activities directed against persons in Canada, requires re-examination by CSE officials. In the meanwhile, as I noted earlier, I will not provide an assessment of the lawfulness of CSE's activities in support of the RCMP undertaken under mandate (a) as currently interpreted and applied by CSE.

With respect to the second issue this review identified, I have recommended that CSE re-examine the various authorities that govern the disclosure of Canadian personal information to the RCMP and its other clients. Current authorities and practices have raised questions in my mind following an in-depth examination of relevant sections of the *National Defence Act* and the *Privacy Act*. In addition, [REDACTED]

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My position on these issues is articulated in the latter pages of the attached report and is supported by guidance received from my independent legal counsel.

Lastly, please find attached my Phase II report on CSE support to the RCMP, which includes detailed findings throughout, and four (4) recommendations listed at the end of the report.

As is my practice, I have provided officials at CSE with the opportunity to review and comment on a draft of the report prior to sending this final version to you. In the comments provided to us on June 8, 2006, CSE has acknowledged that the Phase II report "raises a number of issues that, from a policy/legal perspective, will generate further in-depth analysis by CSE and Department of Justice legal counsel." We anticipate that this analysis will include a discussion and perhaps even a formal articulation by CSE of its position regarding the application of the *National Defence Act* as it relates to the provision of foreign intelligence in accordance with the Government of Canada intelligence priorities. Our offices continue to have different views in this area. In the attached report (see pages 9 and 15) we have included only a brief discussion of what we recognize as being a distinction -- one traditionally made among Canada's intelligence community members -- between foreign, criminal and security intelligence.

This last issue, although raised as a result of the RCMP review, is of significant scope such that it is instrumental to almost any assessment of CSE's activities and their compliance with the laws of Canada. I have instructed my staff to pursue this issue independently and with CSE.

In closing, I would be grateful if you would kindly acknowledge receipt of my report. Should you have any questions or comments on this report or its recommendations, I hope you will let me know.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Antonio Lamer', with a long horizontal flourish extending to the right.

Antonio Lamer

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

CSE should take immediate steps to implement a *hard-copy* records management system, pending the development and implementation of a corporate *electronic* information and records management system. With both systems, particular attention should be paid to managing those records that are important to safeguarding the privacy of Canadians.

Recommendation no. 2:

We believe that CSE must re-examine its interpretation and application of mandates (a) and (c) and ensure that all decisions and resulting activities are based upon criteria that have been consistently applied and are statutorily defensible

Recommendation no. 3:

CSE should re-examine the authorities governing the collection, use and disclosure of personal information as established in, and governed by, the *National Defence Act* and the *Privacy Act*, and in particular, re-examine its interpretation and application of those authorities that govern the disclosure of Canadian personal information to the RCMP and other clients.

Recommendation 4:

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TOP SECRET/COMINT/Canadian Eyes Only

**Report to the CSE Commissioner on
CSE Support to Law Enforcement:
Royal Canadian Mounted Police (RCMP)
Phase II: CSE Mandate (a)**

16 June 2006

I. Authority

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

II. Introduction

The purpose of this study was to review and assess the lawfulness of CSE's activities as they relate to providing foreign signals intelligence support to the Royal Canadian Mounted Police (RCMP). This is the second review the Office of the Communications Security Establishment Commissioner (OCSEC) has conducted of CSE support to the RCMP during the period January 01 to December 31, 2003. IRRELEVANT

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CSE collects foreign signals intelligence in support of the Government of Canada's (GoC's) annual intelligence priorities, under the authority of paragraph 273.64(1)(a) of the *NDA* (referred to hereafter as the (a) mandate):

- (a) *to acquire and use information from the global information infrastructure for the purpose of providing foreign intelligence, in accordance with Government of Canada intelligence priorities;*

Under its (a) mandate authority, CSE provides several federal government clients with general foreign intelligence reporting and responds to specific requests for intelligence support. The RCMP is one such client.

The following report presents our findings as they relate to CSE's (a) mandate activities in support of the RCMP for the period January 01 to December 31, 2003.

We began this study on March 1, 2005. The delays in finalizing the report were caused in part by CSE's own operational priorities, which prevented staff from providing timely responses to our questions. We have been advised that steps will be taken to avoid similar delays in the future.

In addition, the original scope of the review was amended in response to some of our preliminary findings. Based on these findings, both CSE and OCSEC identified questions relating to two areas: 1) the interpretation and operational application of CSE's authority under mandate (a) to respond to requests from the RCMP; and 2) the authorities related to the disclosure of Canadian personal information. This report presents a detailed discussion of these two areas, including the current opinions held by CSE and OCSEC.

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III. Objectives

The objectives of this review were to:

- Identify and generally describe the nature of the CSE-RCMP relationship and the forms of assistance both sought and provided under the authority of CSE's (a) mandate.
- Identify and examine all related authorities that govern CSE-RCMP activities conducted pursuant to CSE's (a) mandate, including:
 - Ministerial Directives;
 - Memoranda of Understanding;
 - legal advice and opinions; and
 - policies and procedures.
- Identify CSE's (a) mandate activities, track a selection of them and assess their lawfulness and compliance with all related authorities.
- Examine CSE's process of reviewing, accepting/denying requests for assistance made by the RCMP under the authority of the (a) mandate, and identify and understand how CSE assigns priorities, and tracks and accounts for the assistance it provides the RCMP.
- Identify and examine any related records, files, correspondence, and any other material such as CSE internal audits or reviews conducted in respect of CSE's assistance to the RCMP.
- Examine, review and report on any other issue that may arise during the course of this study and that may impact on CSE's ability to conduct its activities lawfully and safeguard the privacy of Canadians.²

IV. Methodology

We received briefings and answers to both verbal and written questions that we posed to a variety of CSE officials, all of whom are identified in Annex A. We also obtained a listing of the (a) mandate activities CSE undertook on behalf of the RCMP during the period under review (see Annex B). This included ■■■ requests for intelligence-related information. We randomly chose seven (7) of these to examine in detail.

As part of our in-depth examination, we received two demonstrations conducted by those CSE officials who had been directly involved in responding to RCMP requests for foreign signals

² As stated above, we also examined the interpretation and operational application of CSE's authority under mandate (a) to respond to requests from the RCMP and the authorities related to the disclosure of Canadian personal information.

intelligence support during the period under review. We then developed a series of operational scenarios based on our examination of three (3) specific RCMP requests for information and on our preliminary findings. Using these scenarios, we asked CSE officials a number of questions in order to better understand both their interpretation and application of their (a) versus (c) mandate, and their interpretation of those statutes that govern the disclosure of Canadian personal information.

V. Foreign Signals Intelligence Support: (a) Mandate Activities

General Description

As part of its (a) mandate, CSE provides regular foreign intelligence reporting to the RCMP, most of which addresses general areas of interest that complement and support the RCMP's own mandated responsibilities. For example, the RCMP is always interested in knowing the possible domestic impacts of criminal activities occurring outside Canada, or any direct links these foreign activities may have to domestic criminal activities falling within the RCMP's mandate and authority. In our analysis below, we describe this service as *proactive* foreign intelligence support to the RCMP.

In addition to providing general reporting, CSE receives and responds to specific RCMP requests for intelligence-related information (also referred to as RFIs). As an example, the RCMP will provide CSE with [S. 37 CEA] that has come to its attention during a criminal investigation in Canada, and will ask CSE to provide any information it has, or may be able to obtain, on that [S. 37 CEA]. In our analysis, we refer to this service as *reactive* foreign intelligence support.

Authorities

In addition to its legislated authority as identified above, CSE's foreign signals intelligence support to the RCMP is guided by several supporting instruments, including:

- Ministerial Directive on *CSE Support to Law Enforcement and National Security Agencies*, signed by the Minister of National Defence and dated June 19, 2001;
- The RCMP-CSE Memorandum of Understanding (MOU), effective June 21, 1995, outlining the nature of operational and technical cooperation in relation to signals intelligence activities; and,
- Operational procedures, including OPS 4-1 entitled *Procedure for CSE Support to Law Enforcement*, dated 20 November 2001.

It is understood that when conducting its activities, CSE must respect the laws of Canada, including the *Criminal Code*, the *Charter* and the *Privacy Act*.

VI. Findings

General

Many of the findings and recommendations we made in our January 2005 report on CSE's support to the RCMP under the (c) mandate, are also directly applicable to the assistance provided by CSE under mandate (a). For example, we recommended CSE amend or update its supporting instruments, including its OPS-4-1 procedures, the Ministerial Directive, and the CSE-RCMP Memorandum of Understanding. CSE accepted these recommendations and is working to implement them.

CSE has also acknowledged that it must implement a formal system of record keeping, including file creation and numbering, so that it can accurately account for its mandated activities. We were advised that an *electronic* system is to be developed and implemented in fiscal year 2007/2008. However, as we have reported in previous studies over the past several years³, CSE has no system to support the corporate filing and management of *hard-copy* documents and records that are created pending the full implementation of an electronic system. We believe that this creates a significant weakness in the organization's ability to account for its activities, particularly those related to safeguarding the privacy of Canadians. CSE has advised us, however, by way of correspondence sent in June 2006, that high priority has been given to the development and implementation of a corporate records management system, with both financial and human resources having been allocated to the implementation of a system that will deal with their hard-copy and electronic records requirements.

The seven (7) mandate (a) RFIs we reviewed in depth led to new findings that are outlined below. This is followed by a discussion of issues that raised additional questions regarding CSE's interpretation and operational application of the *NDA* as it relates to mandates (a) and (c), as well as CSE's handling of personal information as defined in the *Privacy Act*.

RCMP Requests for Information (RFIs) 2003

CSE provided all available documentation for the seven (7) RFIs that we chose to examine in detail: nos. [REDACTED]. A summary of this documentation and our detailed findings may be viewed in Annex C. CSE staff also answered our questions and provided briefings and demonstrations when required. We note that throughout this process the people with whom we spoke were forthcoming and demonstrated a professional approach to the activities under review.

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³ CSE Support to Law Enforcement, Royal Canadian Mounted Police, dated January 07, 2005, Page 19. *A Study of the [REDACTED] Collection Program*, dated March 15, 2005, Recommendation 4. *Report on the Activities of CSE's [REDACTED]* dated June 22, 2005, Recommendation 2. IRRELEVANT dated November 13, 2002, Recommendation 4. *A Study of the EPR Process - Phase II - Handling Information About Canadians*, dated April 6, 2001, Recommendation 4. IRRELEVANT dated March 5, 1998, Recommendation 1.

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Our review of the documentation for the remaining six (6) RFIs proved difficult, due in part to the absence of a standardized system for receiving and tracking these requests. We noted once again that CSE had neither a hard-copy corporate records system in place nor any standardized documentation that would provide a mechanism for accurate recording and tracking of RCMP-generated RFIs. As a result, it was not always possible to draw a line from the authorities and requirements of legislation and policy, to CSE practices and the actual activities undertaken in response to a request from the RCMP.

Recommendation no. 1:

CSE should take immediate steps to implement a *hard-copy* records management system, pending the development and implementation of a corporate *electronic* information and records management system. With both systems, particular attention should be paid to managing those records that relate to safeguarding the privacy of Canadians.

We did observe that two of the six requests had Requirement Tracking Forms⁵, but we found that the information they contained was incomplete. For example, CSE's lead and contributing analysts were identified by first names only. Of particular note was that the four (4) evaluation criteria included on the two tracking forms did not appear to have been independently assessed. We observed that they were identically (or similarly) worded and appeared to have been automatically generated, as if from a template.

Three out of the six RFIs⁶ included written requests from the RCMP. The remaining three RFIs had no such documentation. While some RFIs had documentation that was more adequate than others, we had difficulty in determining how, from all available information, CSE would have been in a position to conduct a meaningful assessment of the request and determine with accuracy and consistency: a) whether or not the RCMP had the authority to make the request; and b) whether CSE had the authority and capacity to action it.

We were also unable to determine from the available documentation who in CSE had actually evaluated and approved the RFIs. Further, during one of our briefings,⁷ we were advised that, upon receiving an RFI for action, some analysts assumed that their superiors had fully and accurately assessed it. Therefore, they were of the opinion there was no necessity for them to evaluate or confirm an assessment, or a decision to proceed, which had been reached by others senior to them. In the absence of complete documentation, this gave us some concern.

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⁵ RFIs nos. [REDACTED]

⁶ RFIs nos. [REDACTED]

⁷ We received a briefing on, and demonstration of, CSE's target knowledge database known by the name [REDACTED]. This was relevant to RFI no. [REDACTED]. For further details see Annex C and footnote 8.

In response to the findings and recommendations made as a result of our Phase I review of CSE support to the RCMP under mandate (c), CSE officials immediately acknowledged the need for a standardized system by which to receive, evaluate, action or reject, track and account for RFIs received from the RCMP (as well as other clients) and actioned pursuant to mandate (a).

At the time of writing, we were advised that CSE has now implemented a standardized system and that all RFIs are now received in one central location in CSE (█ Group), where they are initially assessed and then forwarded to the appropriate area for further assessment and action if approved. We believe the implementation of this system will provide CSE with the infrastructure needed to support its activities. We will continue to monitor progress in this area.

We were also concerned to learn during our examination of RFI no. █ that CSE had received and recorded in its █⁸ S. 37 CEA █ provided by the RCMP that █ S. 37 CEA

S. 37 CEA

While CSE believes this information is not only pertinent but also necessary to understand the foreign target, we were advised that it does not use the information for targeting purposes. This information is retained in the CSE database and, in the opinion of the persons to whom we spoke, now belongs to CSE.

In response to our written follow-up questions on this issue, we were advised that "In general, should the RCMP pass information pertaining to identifiable Canadians to CSE in the context of a criminal investigation, information would be provided pursuant to paragraph 273.64(1)(c) request for operational assistance." In this instance, however, it was done under mandate (a).

We also received a follow-up response regarding RFI no. █ and our question as to whether or not CSE had released █ S. 37 CEA █ that had been suppressed in a written report passed to the RCMP. The answer was that it had not. At a later date, however, we learned that it had. The confusion was a result of the fact that there had been two reports generated by CSE dated some four (4) months apart (August and December 2003) both of which included an identical reference to suppressed trace information on the █ S. 37 CEA █ that was linked to the RCMP's original █ S. 37 CEA █. The RCMP⁹ did request and receive the details of this █ S. 37 CEA █ based on CSE's August report, but not on the later one. Conflicting answers to our question caused unfortunate confusion between our two offices.

Latterly, CSE advised that it does not have a "cross-referencing capability to facilitate determinations such as whether a given name, phone number or other piece of identifying information was previously released unless a specific release date or report number is provided." They further stated that "such a capability would require a true database-type storage system, which is an option that is currently under consideration". While CSE was able to satisfy our

⁸ The █ database is used to record and retain target-related information including that which links the target to Government of Canada foreign intelligence priorities, and identifying information such as phone numbers, e-mail addresses, and other information that may also be used to intercept target communications.

⁹ Reference e-mail from █ to █ sent March 10, 2005, 5:38 pm entitled *RCMP Review (man 'a') - Questions Concerning RFIs - a footnote and, a two-page undated document entitled Releases to RCMP in 2003*, received by hand from CSE (D2) on October 26, 2004. See also undated document e-mailed to OCSEC by CSE on June 8, 2006 entitled *CSE Comments on Draft "Report to the CSE Commissioner on CSE Support to Law Enforcement: Royal Canadian Mounted Police (RCMP) Phase II: CSE Mandate (a)"*. Copies kept in OCSEC file. Details about the handling of this RFI are provided in Annex D.

queries in this instance, we believe the circumstances surrounding this issue add weight to our concerns with respect to CSE's record-keeping practices and its ability to accurately track and account for its activities, particularly those that deal with safeguarding the privacy of Canadians.

Of further note was our examination of RFI no. [REDACTED]. In this case, the information available to us indicated that CSE would have targeted S. 37 CEA [REDACTED] received by the RCMP at [REDACTED] different collection sources: [REDACTED] IRRELEVANT

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While we do not wish to belabour the point, we believe that the confusion surrounding this issue would have been avoided if CSE had had a reliable records system in place during the period under review.

Finally, our examination of these six (6) RFIs raised fundamental questions for us about CSE's interpretation and application of its mandate (a) and (c) authorities. It also led us to question CSE's practices on issues such as retention and disclosure of information, particularly in relation to Canadian personal information. Our findings are outlined below.

VII. Interpreting and Applying Mandate (a) versus (c)

Background

CSE has formally documented criteria to assess all requests received by clients in order to determine whether the requests should fall under the authority of mandate (a) or (c) as established by the *NDA*. These criteria, which include an assessment of whether the request meets the GoC's foreign intelligence priorities that are established annually by Cabinet, were

¹⁰ We noted that the documents provided to us by CSE referred to S. 37 CEA [REDACTED] as having been "submitted for tasking", "tasked" and "not tasked". When we asked for clarification, we were advised by one CSE official that the correct term should have been "target". Apparently, to "task" means to task a [REDACTED] while to "target" means to input a selector (such as a phone number or an e-mail address) into a dictionary used to select communications traffic related to the target of interest. However, he confirmed that the terms are often mistakenly used interchangeably.

¹¹ Please see Annex B for detailed information.

developed over time and with the full involvement of CSE's Legal Services, made up of in-house Department of Justice Legal Counsel. We obtained both a briefing from CSE Legal Counsel and all related written documentation (see Annex F).

We used these criteria for our detailed examination of the six (6) RCMP-generated RFIs. Using the RFIs under review, we questioned CSE about the reasoning that led to their decisions to provide assistance to the RCMP¹² under the authority of mandate (a) versus (c). Our concern was to ensure that both the client's request and CSE's response were made under the appropriate authority in those circumstances where a law enforcement agency was seeking CSE's assistance in support of a lawful investigation in Canada.

Details of Findings

The questions we posed to CSE were relevant to three RFIs (nos. [REDACTED]) submitted to CSE by the RCMP during 2003.¹³ We needed to understand CSE's interpretation of its (a) versus (c) mandates, and which of these authorities would apply when CSE agreed to target [REDACTED] S. 37 CEA

[REDACTED] by the RCMP. In the case of RFI no. [REDACTED], CSE targeted a [REDACTED] S. 37 CEA
[REDACTED] by the RCMP [REDACTED] S. 37 CEA
[REDACTED] S. 37 CEA

In all three of the RFIs we examined, it seemed evident that the RCMP was ultimately seeking CSE support that would assist and further a criminal investigation against persons in Canada. While the target phone number was foreign, it seemed reasonable to assume that the target's communications could likely lead back to Canada and to the primary subject [REDACTED] S. 37 CEA

In a written reply, CSE's Acting Director General, Policy and Communications explained that each request for information received from the RCMP is independently evaluated. [REDACTED] IRRELEVANT

[REDACTED] IRRELEVANT

He went on to say that "when the RCMP provides [REDACTED] S. 37 CEA to CSE and requests information as to the contacts of that number, the activity is outside Canada [REDACTED] S. 37 CEA

[REDACTED] S. 37 CEA If the RCMP does not possess the lawful authority [REDACTED] S. 37 CEA CSE should not provide assistance to the RCMP under mandate 'c'." Thus, CSE holds the view that it may fulfill this request under its (a) mandate, should it determine that the numbers supplied by the RCMP would provide foreign intelligence in accordance with the GoC's intelligence priorities. CSE could

¹² This is, in fact, the third OCSEC review that has raised this issue. We held meetings with and posed questions to CSE during the (c) mandate review of CSE support to the RCMP and during the review completed in June 2005 on the [REDACTED]

¹³ Reference: RCMP RFI no. [REDACTED] dated 22-Oct-03, under the subject [REDACTED]
[REDACTED] RFI no. [REDACTED] under the subject [REDACTED] RFI no. [REDACTED] under the subject [REDACTED] entries.

¹⁴ See Annex G, p. 1 for reply from CSE Legal Services.

then deliver reports containing the foreign intelligence information to government departments and agencies, including the RCMP, if the information is of relevance to that department/agency.

Based on the foregoing, we referred back to the GoC's foreign intelligence priorities for the years 2002-2003 and 2003-2004, which were identical:

Cabinet Confidence

These foreign intelligence priorities are separate and distinct from the *criminal* and *security* intelligence priorities, also established annually by Cabinet as direction to federal law enforcement and security agencies.

With the foreign intelligence priorities in hand, we re-examined the information that accompanied the three RFIs in question.

We were quickly able to link RFI no. [REDACTED] to the foreign intelligence priorities. According to the information contained in the request, there were reasons to suspect that the criminal activity under investigation in Canada [REDACTED]

[REDACTED] Therefore, it was reasonable for CSE to suspect that the foreign numbers to be targeted would produce foreign intelligence information in support of the Cabinet Confidential priority.

However, from the information included in RFIs nos. [REDACTED] there was no evidence that the foreign numbers to be targeted would produce foreign intelligence as articulated in the GoC foreign intelligence priorities established for the period under review, or as defined in the *NDA*. One could only anticipate that the targeting would produce foreign *criminal* information or intelligence.

At this juncture, we realized we had some fundamental concerns that could only be addressed by formally identifying the general nature of the support and assistance CSE provides to its GoC clients, including the RCMP, followed by our own examination and determination of the lawful interpretation and application of CSE's mandate (a) and (c) authorities as they relate to this support and assistance.

Nature of Mandate (a) Support — Proactive and Reactive

As noted above in Section V (page 3), the CSE provides both *proactive* and *reactive* foreign intelligence support to the RCMP under mandate (a).

Reactive support involves CSE receiving and responding to requests for information on foreign entities of specific operational interest to its GoC clients. It is this type of support activity that

raises questions in relation to the legal interpretation and operational application of mandate (a) versus (c).

For the remainder of this report, we will focus exclusively, therefore, on CSE's reactive support. Ultimately, we seek to answer whether mandate (a) allows CSE to target a foreign phone number at one or more [REDACTED] collection sources in response to a request for foreign information/intelligence on a foreign entity of interest to the RCMP, by reason, and in support, of a criminal investigation being conducted against suspects in Canada.

Reactive Support — Responding to Requests

Typically, when CSE receives a request for intelligence support under the authority of mandate (a):

1. it conducts searches of the information retained in its [REDACTED] databases, using the foreign identifier (eg. phone number, e-mail address) passed to it by the client, in order to determine whether it already holds information on the foreign entity of interest; and,
2. using the client's foreign information, it targets, for interception purposes, its [REDACTED] foreign intelligence collection systems. (This review will not deal with the targeting of [REDACTED] collection system.)

Question 1: Does mandate (a) allow CSE to undertake these activities?

Based upon all of our research undertaken to date, we are in complete agreement with CSE that its mandate (a) authority allows it to carry out the searches described in the first instance above. In such cases, CSE does not engage in any actual new targeting or interception activities — it is merely running search queries against information already retained in its [REDACTED] databases. That said, however, we believe that when taking the decision to respond to such a request, CSE must also be satisfied that, on the basis of the information provided:

- the RCMP has the authority (e.g. the *RCMP Act*, the CSE-RCMP Memorandum of Understanding, and/or other instruments or agreements) to request the search;
- the RCMP is conducting a lawful investigation in Canada;
- the foreign identifying information was obtained lawfully by the RCMP; and,
- the nature of the request satisfies the criteria established and documented by CSE Legal Services as it relates to mandate (a) of the *NDA*.

In the second instance, that of CSE targeting its collection sources for interception purposes, we have a divergence of opinion, based upon the majority of RFIs we reviewed.

According to the responses to our questions regarding RFIs nos [REDACTED] in CSE's opinion, targeting a foreign phone number associated with a criminal suspect in Canada is authorized under mandate (a) when:

- the information CSE seeks to obtain will be acquired from the global information infrastructure;

Solicitor-Client Privilege

- the anticipated foreign intelligence will meet the GoC's intelligence priorities;
- the targeting will not be directed at Canadians or any person in Canada; and,
- when handling any resulting intercepted traffic, CSE will undertake measures to protect the privacy of Canadians.

Solicitor-Client Privilege

However, from the information and documentation made available to us, we are not convinced that all of the criteria were met for RFIs no [REDACTED]. As noted earlier in this report, these two RFIs did not include information that would link S. 37 CEA [REDACTED] or either the Canadian S. 37 CE [REDACTED] or the foreign entity of interest, with any one of the foreign intelligence priorities established for the period under review. The focus of the intelligence support was, in our opinion, S. 37 CEA [REDACTED]. Therefore, in the absence of a national security foreign intelligence hook, targeting the foreign entity for interception purposes would likely not be authorized by mandate (a).

Further, based on CSE's own mandate (a) versus (c) documentation, there are other factors that must be considered when trying to determine whether a client's request falls within the mandate (a) or (c) authority. Solicitor-Client Privilege [REDACTED]

Solicitor-Client Privilege

A second document presented by CSE's Senior Counsel in September 2004 states that:

Solicitor-Client Privilege

¹⁵ Solicitor-Client Privilege is used in a deck entitled Solicitor-Client Privilege [REDACTED]

Solicitor-Client Privilege prepared by Senior Counsel, CSE, dated 13 September 2004, p. 11.

¹⁶ See Annex F and document entitled: Solicitor-Client Privilege [REDACTED] presented by Senior Counsel, CSE, dated May 21, 2004.

¹⁷ See Annex F and document entitled: Solicitor-Client Privilege [REDACTED] prepared by Senior Counsel, CSE, dated 13 September, 2004, slide 4.

Solicitor-Client Privilege [redacted] In fact, based on the RFIs we examined in detail, we believe that these factors were not always adequately considered or applied by CSE to the (a) or (c) equation. In all instances, even though the interception activity was directed at a foreign target outside Canada, and [redacted] S. 37 CEA there was a known link between the foreign target and [redacted] S. 37 CEA It was the person(s) in Canada, in fact, who was/were [redacted] S. 37 CEA and the [redacted] S. 37 CEA of RCMP interest. It could be reasonably assumed that targeting the foreign entity would produce communications traffic that would lead back into Canada and to [redacted] S. 37 CEA [redacted] S. 37 CEA

So, we had to ask ourselves whether or not the targeting of these foreign entities, with known links to persons in Canada, would be authorized under CSE's mandate (a) authority which, by reason of par. 273.64(2)(a), places strict limits on directing such activities at Canadians and persons in Canada. More specifically, we believe the following questions should also be addressed.

Question 2: Does CSE's deliberate targeting of a foreign entity, where the foreign entity has known or even suspected links to a Canadian or a person in Canada who is of interest to the RCMP for criminal, and not necessarily national security reasons, constitute "directing its activities" as established in par. 273.64(2)(a) of the *NDA*?

Question 3: Further, when this deliberate targeting leads back to a person of law enforcement interest in Canada, should there be a time limit placed on any continued, non-warranted targeting?

Question 4: Following on Question 3, when does the continued, ongoing targeting of a foreign entity, which results in communications traffic that leads back to Canada, constitute "directing its activities" as established in par. 273.64(2)(a) of the *NDA*?

Question 5: IRRELEVANT

From our discussions with CSE officials to date, these questions have not yet been fully explored. We admit that the answers are not easily found. Further, we would fully expect that RCMP requests for CSE to engage in active intelligence interception at the request of a client may always require detailed examination and assessment.

Ultimately, we would anticipate that decisions to undertake these activities would be based on criteria that could be consistently applied and that would be statutorily defensible.

Recommendation no. 2:

We believe that CSE must re-examine its interpretation and application of mandates (a) and (c) and ensure that all decisions and resulting activities are based upon criteria that have been consistently applied and are statutorily defensible.

Until such time as this occurs, we will not provide an assessment of the lawfulness of CSE's activities in support of law enforcement under mandate (a) as currently interpreted and applied.

Implementing Recommendation 2 will also permit an assessment of CSE's activities in response to any client department seeking intelligence support based on foreign information obtained from and/or linked to persons in Canada under lawful investigation.

Setting aside this larger issue for the time being, we have the following findings with regard to the six (6) RFIs we examined in detail:

Re: The Activity of Conducting Database Searches:

- For all six (6) RFIs, CSE was authorized under mandate (a) to search its [REDACTED] existing databases in an attempt to locate and report on any information related to the foreign entity(ies) of interest to the RCMP, in support of a [REDACTED] S. 37 CEA [REDACTED]
S. 37 CEA [REDACTED]

Re: The Activity of Intercepting Communications:¹⁸

- RFIs no. [REDACTED]:

There was insufficient information available for us to determine the exact nature of the request, i.e., whether the RCMP was requesting CSE to act as a support to, or as an agent of, the RCMP.

- RFI no. [REDACTED]:

Based on the information provided, CSE was only asked to verify its databases. As stated above, this activity would be authorized under mandate (a). However, if CSE used the foreign phone numbers for targeting and interception purposes, it should have done so as an agent of the [REDACTED] S. 37 CEA [REDACTED] To do so, the RCMP [REDACTED] S. 37 CEA [REDACTED]
S. 37 CEA [REDACTED]

IRRELEVANT

This finding is based on the information provided, which indicates that the S. 37 CEA S. 37 CEA as well as any other information that CSE could supply that would S. 37 CEA

• RFI no. [REDACTED]:

A formal request for CSE assistance should have been initiated under mandate (c). In this instance, the RCMP's S. 37 CEA Branch was seeking CSE support in relation to S. 37 CEA S. 37 CEA The RCMP was interested in any information CSE could provide, in order to build a S. 37 CEA S. 37 CEA According to information provided to us by CSE, S. 37 CEA S. 37 CEA

Based on the information at hand, this does not, in our opinion, constitute foreign intelligence support under the authority of mandate (a).

• RFI no. [REDACTED]:

In this instance, the RCMP was seeking information that would appear to fall under mandate (a) because the S. 37 CEA was/were engaged in an activity, [REDACTED] A search of existing CSE databanks would therefore be authorized.

Until such time as CSE has fully examined and considered questions related to "directing its activities" as outlined earlier in this report, we are not in a position to provide an opinion as to whether or not mandate (a) would authorize CSE to target the foreign number for interception purposes S. 37 CEA

• RFI no. [REDACTED]:

In this case, the information sought by the RCMP does not fall within the foreign intelligence mandate as articulated in the foreign intelligence priorities established by Cabinet for the year under review. The information would constitute serious illegal activity regarding possible Cabinet Confidence Cabinet Confidence

Based on the little amount of information provided, the RCMP is seeking CSE assistance in an S. 37 CEA Any targeting undertaken by CSE for interception purposes ought to be done under mandate (c), S. 37 CEA

IRRELEVANT

In concluding this section of the report, we wish to provide the following comments and observations.

It is apparent that the annual foreign intelligence priorities handed down annually by Cabinet remain general. While there may be reasonable benefits to this, related to evolving intelligence targeting and collection requirements, we believe that, over time, the broad articulation of priorities may place unnecessary, or even unintended, limits on CSE's foreign intelligence acquisition authority under mandate (a).

We suggest that it would be beneficial to define the priorities in a manner that would complement the nature and scope of requests for intelligence support that CSE typically receives from its clients, particularly those engaged in law enforcement and security activities.

Further, and in a related issue, we have noted that among the CSE policies and procedures used to guide daily activities and decisions, there is little or no definitive guidance as to what constitutes foreign intelligence, criminal intelligence and security intelligence. We believe that such guidance is necessary so that CSE can make consistent and appropriate decisions regarding its activities and authorities pursuant to its (a) or (c) mandates. For example, using the RFIs we examined, we believe CSE should be able to determine whether it is being asked to provide foreign intelligence to the RCMP, S. 37 CEA about foreign persons related to criminal suspects under investigation in Canada. We believe the latter instance constitutes a request to provide operational support to a law enforcement agency, thus requiring CSE to conduct its activities under its (c) mandate.

Certainly, we would not attempt to argue against the nature of the activity being contemplated. Providing operational support to an RCMP-led criminal investigation against suspects in Canada seems reasonable, if not desirable, where statutory requirements allow.

CSE's Handling of Personal Information Under its (a) Mandate

This leads us to the last issue, which involves CSE's handling of personal information, including personal information about Canadians as defined by the *Privacy Act*, that is acquired incidentally as a result of its foreign intelligence collection activities.

Based on our preliminary findings, we asked CSE to identify the *Privacy Act* authorities that would apply in relation to the possible disclosure of any suppressed Canadian personal information in response to RCMP requests. It is understood that when collecting foreign intelligence, particularly in support of a Canadian criminal investigation led by the RCMP, CSE may incidentally acquire personal information about Canadians, referred to as *Canadian personal information*. This information may be retained if assessed as essential to the understanding of the foreign intelligence, and it may be included in foreign intelligence reporting if it is adequately suppressed by using only general references such as "a Canadian person" or "a Canadian firm". For digital information, such as Canadian phone numbers, the four last digits are omitted by CSE in its reporting, e.g., (613) 248-XXXX.

In our opinion, the process of suppressing this Canadian personal information is required in order to comply with the privacy provisions established in the *National Defence Act* and the *Privacy Act*.

When receiving a subsequent request for disclosure of the full details of Canadian personal information, CSE requires its clients, including the RCMP, to justify their authority to collect this information under their own respective mandates and provide an operational justification of their need to know this information. If authorized, CSE releases the information to them under the provisions of the *Privacy Act*.

Generally, CSE discloses the full details of Canadian personal information to the RCMP under the authority of mandate (a) of the *NDA* and paragraph 8(2)(a)¹⁹ of the *Privacy Act*.

Collection, Use and Disclosure under the NDA and the Privacy Act

In the opinion of CSE, mandate (a) of the *NDA* allows CSE to receive and use information from the S. 37 CEA [redacted] Use includes verifying its own existing databanks and targeting its [redacted] collection sources. CSE may then report all findings about the foreign entity, including any related Canadian personal information such as phone numbers, as long as the Canadian information is assessed as essential to the foreign intelligence and is suppressed in the report. CSE believes that if all conditions are met, it may subsequently disclose the full details of the Canadian information to the RCMP under the authority of paragraph 273.64(2)(a) of the *NDA* and paragraph 8(2)(a)²⁰ of the *Privacy Act*.

We note that "The *Privacy Act* does not confer authority for the collection, use or disclosure of personal information. That authority must be found in other Acts or regulations."²¹ For CSE, therefore, such authority is found in the *NDA*.

We believe that paragraph 273.64(2)(a) of the *NDA* authorizes CSE's collection, use and disclosure of, among other things, foreign information/intelligence, including *personal information about foreign entities*, in support of Government intelligence priorities, acquired from the global information infrastructure. In our opinion, however, the same does not apply to *Canadian personal information*. CSE's authority to acquire and collect Canadian personal information under its foreign intelligence mandate is severely restricted by subsection 273.64(2), which prohibits CSE from directing its mandate (a) activities at Canadians or permanent residents, and requires that any incidentally acquired but essential Canadian personal information be subject to certain privacy safeguards.

¹⁹ Paragraph 8(2)(a) of the *Privacy Act* states that personal information under the control of a government institution may be disclosed for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose.

²⁰ *Ibid.*

²¹ Treasury Board of Canada, Secretariat document: *PIA – Principle 5: Limiting Use, Disclosure and Retention*, online: www.tbs-sct.gc.ca/pgol-pged/piatp-pfefvp/assistant/mod21/mod21-6_e.asp (last modified: 18 November 2003).

We support CSE's opinion that *Canadian personal information*, acquired incidentally, may be *used* and *retained* if assessed as essential to the foreign intelligence (as per their authority found in paragraph 273.64(1)(a) and subject to the requirements articulated in paragraph 273.64(2)(b) of the *NDA*).

In our minds, however, *essentiality* does not denote or redefine *Canadian personal information* as foreign intelligence. Further, we do not believe the *NDA* confers authority on CSE to disclose the details of Canadian personal information under the rubric of foreign intelligence. We note that paragraph 273.64(2)(b) of the *NDA* makes reference only to the use and retention of such information. Disclosure of this subset of information by CSE would not, therefore, be governed by paragraph 8(2)(a) of the *Privacy Act*.

The details of *Canadian personal information* could be available, however, to any client that satisfied CSE of its *own* mandated authority to collect, use and retain it, and of its need to know it.

We believe, therefore, that the *Privacy Act* allows for the proactive or reactive disclosure of Canadian personal information by CSE as follows:

- CSE may disclose foreign information/intelligence, including Canadian personal information essential to foreign intelligence and appropriately suppressed, pursuant to paragraph 8(2)(a) of the *Privacy Act*.
- CSE may disclose the details of the suppressed Canadian personal information under paragraphs 8(2)(b) to (m) of the *Privacy Act*, as is appropriate to the nature of the request. In the case of the RCMP and other Canadian investigative bodies, disclosure would be authorized more typically by paragraph 8(2)(e)²² of the *Privacy Act* (not 8(2)(a)).

Disclosure under paragraph 8(2)(e) of the *Privacy Act* would necessitate the following:

- the request for information must come from an investigative body listed in the regulations to the *Privacy Act*;
- the request must be in writing;
- the authority for making the request must be specified;
- the purpose of the request (including the intended use of the information) must be specified; and
- the request must describe the information to be disclosed by CSE.

This would ensure that the requestor has the authority and operational justification to collect/receive this information, and that the information requested relates to a GoC intelligence priority. As a result, it would satisfy the privacy provisions established by the *National Defence Act*, the *Privacy Act*, and the *Charter*.

²² The paragraph states that personal information under the control of a government institution may be disclosed to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed.

Moreover, this would provide for an adequate accounting of CSE's disclosure of personal information about Canadians, information that CSE was not specifically authorized to target for collection purposes but that was acquired only incidentally as a result of its authorized foreign intelligence targeting activities.

In conclusion, and based on our examination of the foreign intelligence support activities undertaken on behalf of the RCMP for the period under review, we are of the opinion that the *NDA* and the *Privacy Act* must be interpreted and applied as follows:

- Paragraph 273.64(1)(a) of the *NDA* authorizes the collection of foreign intelligence, including personal information about foreign entities, using foreign selectors/identifiers²³ provided to CSE by the RCMP. (Note: CSE's own criteria must also be satisfied.)
- Should the foreign selector(s) produce foreign signals intelligence intercept, CSE may, under this same authority, provide foreign intelligence reporting to the RCMP, including the identification of personal information about foreign entities.
- Should the selector(s) produce foreign signals intelligence intercept that includes Canadian personal information that is assessed by CSE as essential to the foreign intelligence, CSE may, under this same authority, provide foreign intelligence reporting with suppressed references to the Canadian personal information.
- Should the RCMP subsequently request the details of the Canadian information, it would be required to justify its need and authority to receive the information in a formal request to CSE pursuant to the relevant section of the *RCMP Act*, (and/or any other regulatory instrument), and the relevant paragraph of subsection 8(2) of the *Privacy Act*, which in our minds would typically be paragraph 8(2)(e).
- If in CSE's assessment the request satisfies all necessary legislative and legal requirements, CSE would be authorized to disclose the information about the Canadian(s) to the RCMP.

Recommendation no. 3:

CSE should re-examine the authorities governing the collection, use and disclosure of personal information as established in, and governed by, the *National Defence Act* and the *Privacy Act*, and in particular, re-examine its interpretation and application of those authorities that govern the disclosure of Canadian personal information to the RCMP and other clients.

²³ It is understood that, on occasion, selectors may have a Canadian context but be known as attributable to a foreign entity outside Canada.

IRRELEVANT

VIII. Summary of Conclusions

From our detailed review of six RCMP RFIs, there are two issues that concern us and require further legal study by CSE.

Interpreting and Applying Mandate (a) versus (c)

The first issue is the appropriate authority to be used when CSE provides reactive intelligence support to a federal law enforcement agency. More specifically, CSE needs to examine whether mandate (a) allows it to target a foreign phone number at one of its [REDACTED] collection sources in response to a request for foreign information/intelligence on a foreign entity of interest to the RCMP, by reason and in support, of a criminal investigation being conducted against suspects in Canada.

Currently, CSE provides this type of support to the RCMP under its (a) mandate. After careful examination, we believe that in some instances, CSE ought not to have provided its assistance under mandate (a) and that the prerequisites for exercising this mandate in these instances were

not met. For example, we are of the opinion that the focus of the intelligence support was purely criminal and therefore did not fall within the GoC's foreign intelligence priorities. In these same instances, we believe that the interception may have been "directed at" a Canadian or a person in Canada, since the purpose of the request was to obtain information or intelligence, from intercepted communications, which would assist investigations directed against known suspects in Canada. We suggest that CSE should conduct this type of interception activity under its (c) mandate.

As a result, we believe that CSE's provision of intelligence support in response to client requests, particularly those engaged in investigative and law enforcement activities directed against persons in Canada, requires re-examination by CSE and Department of Justice officials.

In the meantime, we will not provide an assessment of the lawfulness of CSE's activities in support of the RCMP undertaken under mandate (a) as currently interpreted and applied by CSE.

Use, Retention and Disclosure of Personal Information

These questions of statutory interpretation and application in relation to CSE's (a) and (c) mandates led to the second issue of concern to us: CSE's use, retention and disclosure of personal information, and particularly, Canadian personal information.

In responding to requests for intelligence support from the RCMP, CSE typically verifies existing databases and targets their [REDACTED] collection sources. Any resulting information or intelligence is passed back to the RCMP in the form of a written report, with any incidental but essential Canadian personal information included but appropriately *suppressed*.²⁴ Upon written request, CSE discloses the details of the suppressed information in those instances where they believe the RCMP have the authority to receive the information and the need to know it. This same process applies to all CSE clients.

According to CSE, the disclosure of Canadian personal information to clients is typically, although not exclusively, governed by paragraph 8(2)(a) of the *Privacy Act* and considered consistent with CSE's foreign intelligence collection mandate.

Our review of CSE support to the RCMP does not lead us to the same conclusions in all instances. We have arrived at this opinion following a re-examination of the provisions of the *National Defence Act* and the *Privacy Act* undertaken by this office and by the CSE Commissioner's independent legal counsel.

Accordingly, we are of the opinion that disclosure to the RCMP of any resulting suppressed/essential Canadian personal information should, in certain instances, more typically be governed by paragraph 8(2)(e) of the *Privacy Act*, not 8(2)(a). In our minds, this would certainly apply in any instance where the request for intelligence support is, for example, purely criminal in nature, and where the request for disclosure of the Canadian personal information can

²⁴ Canadian personal information may only be acquired incidentally by CSE, and must be destroyed unless it is assessed as *essential* to the foreign intelligence as it relates to intelligence priorities established annually by the Government of Canada.

only be authorized on the basis of a lawful investigation being conducted in Canada, and then justified on the basis that it is needed to support a lawful criminal investigation against suspects in Canada.

The same would apply to similar requests made by any Canadian law enforcement or security agency where the information is sought in furtherance of enforcing a particular statute or law of Canada.

In the opinion of the CSE Commissioner's independent counsel:

Solicitor-Client Privilege

Counsel went on to state Solicitor-Client Privilege

Solicitor-Client Privilege

In our opinion, the disclosure of Canadian personal information by CSE in response to client requests should be re-examined by CSE, in the context of both the (a) and (c) mandates, in order to ensure that any such disclosure is authorized by the *National Defence Act* and is in conformance with the provisions as established in section 8 of the *Privacy Act*.

As already stated, our examination of the six RCMP RFIs led us to conclude that, in some instances, the authority for CSE to respond ought to have been found in par. 273.64(1)(c) of the *NDA*, not 273.64(1)(a). Certainly, in those instances where CSE responds to a request under paragraph 273.64(1)(c), S. 37 CEA any resulting

information, including Canadian personal information, belongs to the RCMP, S. 37 CEA

S. 37 CEA it is the RCMP's responsibility to look to its own authority to retain and use all collected information. CSE should not otherwise retain or use such information. Solicitor-Client Privilege

Solicitor-Client Privilege

Corporate Records Management System

Finally, we have observed that CSE has implemented new branch-level procedures that should facilitate its ability to record, track and account for its activities undertaken in support of requests

²⁵ Legal opinion provided by [redacted] to the CSE Commissioner on April 3, 2006 regarding Solicitor-Client Privilege p. 10.

²⁶ *Ibid.*

for intelligence support received from the RCMP. We are advised that CSE continues to move toward the implementation of a system to support the *corporate* filing and management of electronic and hard-copy documents and records.

A summary of our recommendations follows.

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

CSE should take immediate steps to implement a *hard-copy* records management system, pending the development and implementation of a corporate *electronic* information and records management system. With both systems, particular attention should be paid to managing those records that are important to safeguarding the privacy of Canadians.

Recommendation no. 2:

We believe that CSE must re-examine its interpretation and application of mandates (a) and (c) and ensure that all decisions and resulting activities are based upon criteria that have been consistently applied and are statutorily defensible

Recommendation no. 3:

CSE should re-examine the authorities governing the collection, use and disclosure of personal information as established in, and governed by, the *National Defence Act* and the *Privacy Act*, and in particular, re-examine its interpretation and application of those authorities that govern the disclosure of Canadian personal information to the RCMP and other clients.

Recommendation 4:

IRRELEVANT

List of Interviewees**Director General Intelligence**

Briefing and Answers to OCSEC's written questions, December 17, 2004

Production Line Manager, Intelligence Directorate, December 17, 2004; January 25, 2004

Acting Director, [REDACTED], Intelligence Directorate, January 25, 2005

Public Affairs and Communications Services Administration Officer

Provision of Requests for Information (RFIs) for review, December 22, 2004; January 25, 2005

Analyst, Intelligence Directorate

Metadata Search and Handling, Demonstration and Briefing, January 25, 2004

Manager, Operational Policy Group (D2)

Release of Suppressed Names, October 26, 2004

Analyst, Intelligence Directorate

Demonstration and Briefing on [REDACTED] database, January 25, 2005

Senior Advisor, Review

Discuss Preliminary Findings and Observations, June 7, 2005;

Submission of further questions and scenarios in relation to CSE's interpretation and application of mandates (a) and (c), June 22, 2005

ANNEX B

RCMP REQUIREMENTS & RFI's - 2003						
Date RFI Received	Subject/Description	From Org., Person, S/N	Assigned to	Product Released (date)	Product Title & Ref No.	

TOP SECRET//COMINT//CEO

33 of 78
A-2017-00017--03656

**Requests for Information (RFIs):
Description and Findings**

1. RFI no. [REDACTED]

Description:

RCMP's Criminal Intelligence Division (CID) provided CSE with a description of a [REDACTED] S. 37 CEA

[REDACTED] S. 37 CEA

[REDACTED] S. 37 CEA

According to the documentation provided to OCSEC, CID forwarded [REDACTED] S. 37 C to [REDACTED] S. 37 CEA to CSE for their information and for whatever action they deemed appropriate.

OCSEC Findings:

Based on our examination of all documentation provided to us, including the Requirement Tracking Form, we noted the following:

- The Requirement Tracking Form was not numbered.
- The information on the form was incomplete (i.e., no indication of who the task was assigned to, no associated date, no case file number and name).
- The only evaluation criteria included on the form were those that appeared to have been automatically generated as part of a macro. No details or reasons were given, specific to this request, to validate CSE accepting to action the request.
- It was not possible to properly identify the analysts working on the case because only their first names were noted i.e. [REDACTED]
- The form did not include any file number.
- Some of the [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA

While our examination of the documentation raised several issues, we decided not to pursue further questioning upon being advised by CSE that the case was dropped. We were advised that the [REDACTED] S. 37 CEA

[REDACTED] S. 37 CEA [REDACTED] CSE halted all activity in response to the request until such time as [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA When none was forthcoming, the RFI was closed.

2. RFI no. [REDACTED]

Description:

The RCMP provided CSE with documentation that included identifying information for several individuals, [REDACTED] S. 37 CEA [REDACTED] in Canada. Among the foreign and Canadian information were [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] CSE input the information into a target knowledge database called [REDACTED]

OCSEC Findings:

Since we were unfamiliar with the [REDACTED] database, we obtained a demonstration and briefing. This database is used to store and maintain target information (i.e. the names and any identifying information (including background information, [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] etc.)). We were advised that the system now requires that all targets, and their suspect or known activities, be directly related to a Government of Canada intelligence requirement.

Other findings included:

- There was no formal request for information among the documents sent by the RCMP.
- Information on CSE's Requirement Tracking Form was incomplete.
- No rationale for inputting target information into [REDACTED] was required during the period under review. Note: this is now a requirement.

For this RFI, we were most concerned about the presence, retention and use of information that identified citizens and permanent residents of Canada, all of whom were in some way connected with [REDACTED] S. 37 CEA [REDACTED] to be targeted. We asked how a CSE analyst would be satisfied that [REDACTED] S. 37 CEA [REDACTED] were, in fact, foreign or that they represented foreign entities who were to be targeted.

We were advised that CSE makes an assessment based on the information they have been provided by the RCMP. So, if the RCMP [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] CSE proceeds on the basis of that information. As reviewers, we were not convinced that the RCMP had provided sufficient information to CSE to be sufficiently satisfied that the targeting was going to be directed at a foreign entity. Certainly, technology is such that Canadian citizens can, for example, [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] This can pose a real difficulty for CSE to satisfy itself that its targeting is directed at a foreign entity. As reviewers we accept,

however, that CSE will always have to assess the information it is given in every instance and use its judgement when making targeting decisions. In this particular instance, however, and in the absence of a formal request for information outlining the circumstances surrounding this request, we were unable to determine from the documentation available, how CSE satisfied itself that all targeted numbers were associated with foreign individuals.

When asked, CSE confirmed that legal advice had not been sought in this instance.

We were also concerned with the fact that CSE was retaining the identifying information about both the citizens and permanent residents allegedly associated with the foreign targets of interest. This issue has been raised with CSE and is among those questions for which answers are still pending (as of October 1, 2005).

Note: to our knowledge, there was no reporting that resulted from this RFI.

3. RFI no. [REDACTED]

Description:

In its formal request for assistance, the RCMP advised CSE that it was

S. 37 CEA

S. 37 CEA

The request included S. 37 CEA associated with S. 37 CEA

S. 37 CEA The RCMP asked that CSE verify its databases in an attempt to identify the international links S. 37 CEA

OCSEC Findings:

We were satisfied that the information provided by the RCMP in its request for assistance was adequate.

We reviewed one report [REDACTED] that was generated by CSE in response to this request. It included minimized references S. 37 CEA

S. 37 CEA [REDACTED] S. 37 CEA

Based on the information we received from CSE, there is no record of the RCMP having requested the details of the S. 37 CEA referenced in the report.

We did note, however, that there was no CSE Requirement Tracking Form associated with this RFI so it was not possible for us to follow the process undertaken by CSE to assess, record and track this RFI.

4. RFI no. [REDACTED]

Description:

The RCMP provided CSE with a formal request for assistance in relation to a S. 37 CEA [REDACTED] being conducted by the Criminal Intelligence Directorate (CID). CID had S. 37 CEA [REDACTED] S. 37 C [REDACTED] The data was copied by the RCMP on to CDs which were passed to CSE. CSE was asked to access the data, so that the RCMP could ascertain if S. 37 CEA [REDACTED] posed an imminent threat to Canada's national security.

OCSEC Findings:

The information provided by the RCMP in their request was, in our opinion, adequate. It came in a letter format and included background detail and supporting information.

In view of the technical nature of this request, we were advised that it was passed to a different CSE branch ([REDACTED] Group) for further consideration and

IRRELEVANT

5. RFI no. [REDACTED]

Description:

The RCMP was investigating a [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] The RCMP's S. 37 CEA [REDACTED] submitted two formal requests for CSE's assistance. The first request sought CSE's assistance in gathering information or intelligence [REDACTED] (identified in the RFI) S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] and that were associated S. 37 CEA [REDACTED] The second follow-up request sought CSE's assistance in gathering personal information specific to S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] etc.). According to the RCMP, S. 37 CEA [REDACTED] S. 37 CEA [REDACTED] S. 37 CEA [REDACTED]

OCSEC Findings:

The information contained in the RCMP's first request [S. 37 CEA] was adequate for CSE's purposes. However, from the information provided in the follow-up request dated [S. 37 CEA] we were not able to understand the real nature of the RCMP's [S. 37 CEA] and, more importantly, their authority to undertake the activities. In our opinion, this type of information would have been necessary for CSE to assess its authority to respond to the request.

While there was no Requirement Tracking Form used in this instance, we were advised that this was so because the request fell outside the Security Product Line of reporting.

While the RCMP provided their own file number, there was no associated CSE file or RFI reference number. We were not provided with any documentation that would allow us to confirm that CSE had assessed, recorded or tracked their activities conducted in response to this RFI.

Through our discussions with CSE, we learned that CSE obtained the RCMP's permission to provide a report [S. 37 CEA]

[S. 37 CEA] as referenced in the RCMP RFI. This report was not provided to us.

As with other RFI's, there was no available documentation by which we could confirm or review CSE's assessment of this request and their authority to respond to it.

6. RFI no. [REDACTED]**Description:**

The RCMP sent two e-mail requests for information to CSE. The first dated [S. 37 CEA] was forwarded on behalf of [S. 37 CEA]

[S. 37 CEA] The e-mail advised that a [S. 37 CEA]

[S. 37 CEA] The RCMP asked if CSE would search [S. 37 CEA] and provide any resulting information.

The second e-mail dated [S. 37 CEA] was a follow-up request that provided CSE with [S. 37 CEA] and details of a text message [S. 37 CEA]

OCSEC Findings:

From our discussions, we learned that the case involved [S. 37 CEA] in Canada with a foreign phone number. We wanted to understand how CSE ensured that the person was foreign and whether or not they sought legal advice on proceeding with this request. In response to our questions, CSE advised that "in the absence of any collateral or other information to cause [them] to suspect otherwise, [CSE] treats ALL foreign phone numbers and other selectors as belonging to foreigners".

There was no Requirement Tracking Form associated with this RFI.

CSE's response to the request did, however, produce positive results that were subsequently reported back to the RCMP. The CSE reporting included minimized "information about Canadians" (phone numbers). Based on the Security Product Line Release Form we examined, the report received the necessary CSE approvals and sign-off before being provided to the RCMP.

We were advised that CSE did not release the minimized information to the RCMP. By this response, we assume that the RCMP did not request it in this instance.

7. RFI no. [REDACTED]

Description

By way of an e-mail, the RCMP, [S. 37 CEA]

[S. 37 CEA]

[S. 37 CEA]

(no other details) [S. 37 CEA]

stopped by [S. 37 CEA]

The RCMP

was interested in any information CSE may have that might suggest the

individual [S. 37 CEA]

Further, CSE was advised

that [S. 37 CEA]

believed that the individual

[S. 37 CEA]

The e-mail was received by CSE's Director General, Intelligence, who passed it on to another CSE official and instructed them to "provide a contact chain on this requirement and submit these numbers for tasking" at two collection

[REDACTED] In addition, the DG, Intelligence asked that it be determined if [IRRELEVANT]

[IRRELEVANT]

Two reports were generated as a result of this effort, one for the RCMP and a second for the SIGINT partners. From the wording of the e-mail we

examined, IRRELEVANT
IRRELEVANT

OCSEC Findings

By the wording of the RCMP's e-mail request, one had to assume that the RCMP request for CSE assistance was based on a lawful investigation into the activities of the foreign citizen with Canadian status. Further, one had to assume that S. 37 CEA

S. 37 CEA As indicated in previous RFI's, "in the absence of any collateral or other information to cause [them] to suspect otherwise, [CSE] treats ALL S. 37 CEA and other selectors as belonging to foreigners".

Based on our review of the documents we received from CSE, there was no evidence of a Requirement Tracking Form associated with this RFI.

By the very nature of this request, we believed that there would be a risk of intercepting private communications in response to the S. 37 CEA S. 37 CEA that was already linked to a person with Canadian status. Therefore, we asked CSE what their authority was to S. 37 one of their collection assets. CSE replied that as long as there was a Ministerial authorization in place in relation to the collection asset (i.e., the collection method), they could task it.

From the documentation we received from CSE, we were unable to determine whether CSE's IRRELEVANT
IRRELEVANT

RFI no. [REDACTED]

In response to our request to CSE to review all documents related to RFI no. [REDACTED], we were provided with the following:

- E-mail dated [REDACTED] S. 37 CEA from the RCMP [REDACTED] to CSE [REDACTED]
- E-mail dated October 16, 2003 from [REDACTED] (department not identified) to [REDACTED] (not further identified).
- Copy of report with serial number [REDACTED] dated [REDACTED] from [REDACTED] (believed to be at CSE in the Office of Counter Terrorism) to the RCMP, CT [REDACTED]
- Undated [REDACTED] release form for [REDACTED]
- Copy of report serial number [REDACTED] dated [REDACTED]
- Copy of identical report as above, but no serial number, dated [REDACTED]

By way of the e-mail dated [REDACTED] S. 37 CEA the RCMP submitted a request asking whether CSE could conduct a search on [REDACTED] S. 37 CEA The foreign number had been [REDACTED]

[REDACTED] S. 37 CEA CSE conducted the search and provided a written report to the RCMP under the serial number [REDACTED] dated [REDACTED] (as per copy provided to OCSEC) or dated [REDACTED] (as referenced in subsequent reporting, serial number [REDACTED]). While the search indicated that there was no direct contact with individuals in Canada, there was an indirect contact noted and the associated Canadian phone number was suppressed in the report.

By way of a second e-mail dated [REDACTED] S. 37 CEA the RCMP sent another request asking that searches be conducted on [REDACTED] S. 37 CEA

[REDACTED] S. 37 CEA This resulted in a second written report to the RCMP sent by CSE under the serial number [REDACTED] and dated [REDACTED]. In this report, there were several suppressed Canadian phone numbers. There was also reference made to [REDACTED] S. 37 CEA to CSE back in [REDACTED] S. 37 CEA as well as to the [REDACTED] report that had been generated.

In all of the RFI no. [REDACTED] documents provided to us by CSE, there was nothing to indicate whether or not the RCMP requested the details of the information suppressed in report [REDACTED]. However, based on our reading of a separate document passed to us several months earlier by CSE's Operational Policy section (D2) on 26 October 2004, we noted that CSE had released Canadian identifying information [REDACTED] S. 37 CEA to the RCMP on [REDACTED] S. 37 CEA in relation to report [REDACTED]. We believed this to be the report in question.

However, this answer did not accord to that given to us via e-mail by CSE wherein it was stated that the RCMP did not request the release of the suppressed Canadian phone numbers in the second instance.¹

In concluding our examination of this RFI, we realize that some of the confusion has to be attributed to there being two separate reports.

However, based upon our examination of the documentation provided to us by CSE, we remain of the opinion that the documents do not allow for either an accurate accounting or an informed review of what unfolded between CSE and the RCMP in the case of RFI no. [REDACTED]. The documents presented to OCSEC for the purpose of reviewing RFI no. [REDACTED] are on file.

¹ In an e-mail reply sent by CSE dated March 10, 2005, OCSEC was advised by D2 that no suppressed information had been released to the RCMP for the report generated for RFI [REDACTED] drafted under the serial number [REDACTED] and dated 17 December 2003. Subsequently, in a CSE document e-mailed to OCSEC on June 8, 2006, CSE confirmed that the information suppressed in this report had not been requested or released to the RCMP. By way of this same June 2006 document, however, CSE confirmed that it had received a request for the release of the one piece of suppressed information contained in report [REDACTED], dated 27 August 2003.

RFI no. [REDACTED]

Notes on file in OCSEC indicate that on December 22, 2004, two OCSEC analysts reviewed documentation provided by CSE on RFI no. [REDACTED] including two written end-product reports. In a follow-up, OCSEC sent an e-mail of the same date to [REDACTED] and [REDACTED] asking (see question no. 5) why two reports were issued – one from the SPL (Security Product Line), the other classified as TS / COMINT – Restricted (CEO). An explanation was provided to us in an e-mail reply dated January 19, 2005 authored by [REDACTED] CSE had wanted to share the technical information with its SIGINT partners so two reports were created -- one for the RCMP and one for the partners. This information does not seem to reflect that provided by CSE in its document passed to us on June 8, 2006.

Of further note is that among the RFI no. [REDACTED] documentation provided to us by CSE for our examination purposes is IRRELEVANT

IRRELEVANT

Based on the documentation provided to us by CSE, it is not possible to determine with any certainty what CSE's response was to this particular request for information.



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ANNEX F₁

SECRET

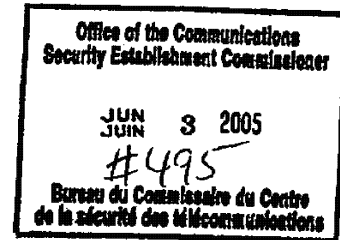
Your File Votre référence

Our file Notre référence

DGPC/23-05

June 2, 2005

Joanne Weeks
Executive Director
Office of the Communications Security
Establishment Commissioner
P.O. Box 1984, Station B
Ottawa, Canada
K1P 5R5



Dear Ms. *Joanne* Weeks:

CSE Mandates "A" Versus "C"

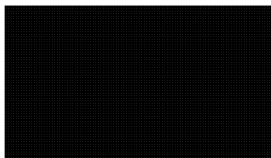
In your letter of March 1, 2005, you requested "copies of any ... legal opinions and documents relating to CSE's (a) and (c) mandates" further to the opinion prepared by [REDACTED] dated 9 May 2003.

CSE's Director, Legal Services has confirmed that, while operational guidance pursuant to and consistent with this opinion has been provided informally on a number of occasions, no further legal opinions have been prepared on this subject by his staff.

As part of this guidance, CSE counsel occasionally provides briefings on or related to this subject. For your interest, I have enclosed hard copies of the slides for three such briefings conducted during 2004. I hope you find them useful.

If you have any questions, my staff or I will be pleased to answer them.

Sincerely,



Director General,
Policy and Communications

Canada



CONFIDENTIAL

01 March, 2005

[REDACTED]
Director General, Policy and Communications
Communications Security Establishment
Sir Leonard Tilley Building
719 Heron Road
Ottawa, Ontario

KIG 324

Dear [REDACTED]

This letter is further to [REDACTED] e-mail to [REDACTED] dated 9 February 2005, concerning the Commissioner's review of CSE's support to the RCMP, phase II. We have been provided with a legal opinion prepared by [REDACTED] on the topic of IRRELEVANT
IRRELEVANT dated 9 May 2003, however, we were informed that there may be other opinions on this topic. I am therefore requesting copies of any other legal opinions and documents relating to CSE's (a) and (c) mandates.

As you are no doubt aware, this request falls within the powers conferred upon the Commissioner by 273.63(4) of the NDA wherein he has all the powers of a commissioner under the *Inquiries Act*, and may therefore "examine all papers, documents, vouchers, records and books of every kind belonging to the public office or institution". I understand that CSE's disclosure of these documents to this office does not amount to a waiver of any privilege, including solicitor-client privilege, that attaches to them.

Yours sincerely,

Joanne Weeks
Joanne Weeks
Executive Director

P.O. Box/C.P. 1084, Station "B" Succursale "B"
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66678 200505

ANNEX F2

ANNEX F2

Solicitor-Client Privilege

Solicitor-Client Privilege

Solicitor-Client Privilege

Solicitor-Client Privilege

Solicitor-Client Privilege

Solicitor-Client Privilege

Solicitor-Client Privilege

Solicitor-Client Privilege

ANNEX F3

Solicitor-Client Privilege

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Solicitor-Client Privilege

A-2017-00017-03679

Solicitor-Client Privilege

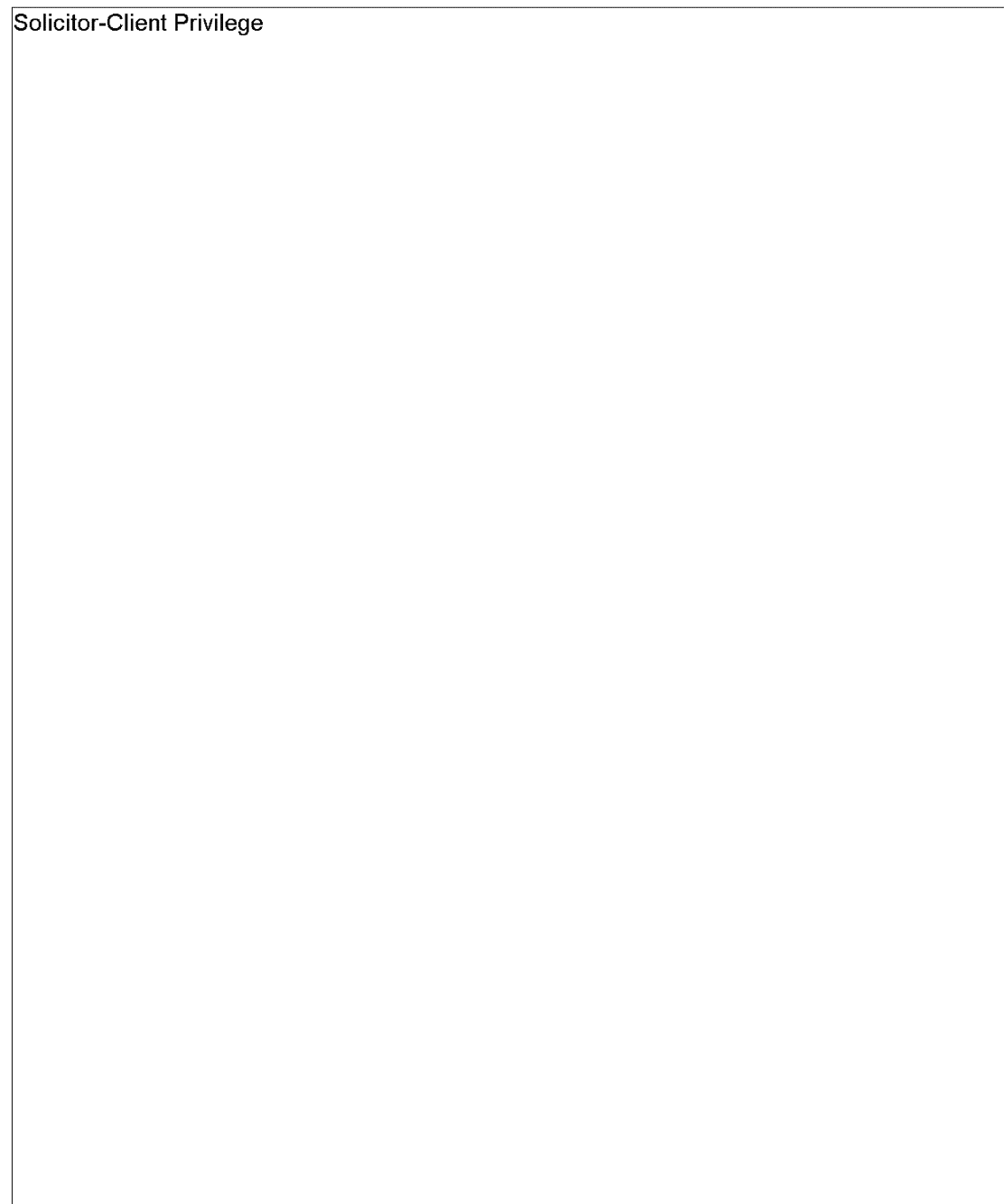
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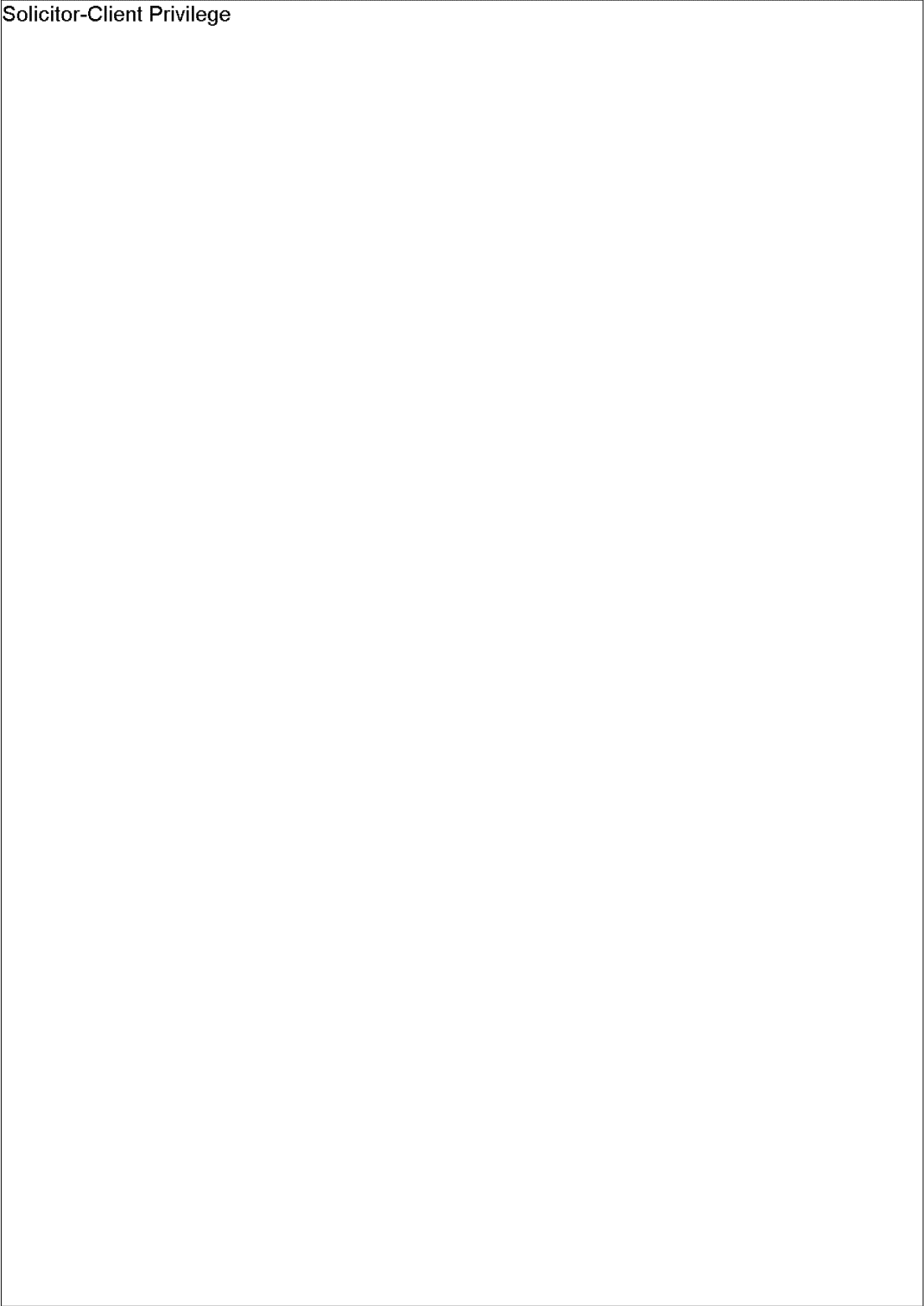
ANNEX F₁

Solicitor-Client Privilege



Solicitor-Client Privilege

Solicitor-Client Privilege



Solicitor-Client Privilege





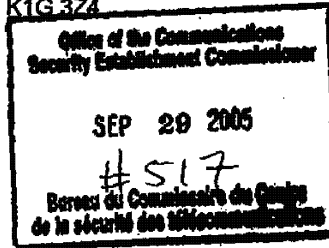
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ANNEX G
TOP SECRET COMINT
Canadian Eyes Only



Your file / Votre référence

Our file / Notre référence
DGPC/059-05

September 29, 2005

Joanne Weeks
Executive Director
Office of the Communications Security
Establishment Commissioner
P.O. Box 1984, Station B
Ottawa, Canada
K1P 5R5

Subject: CSE Support to the RCMP: Phase II—Follow-up Questions

Ref: Your subject letter dated 22 June 2005

Dear Ms *Joanne* Weeks:

Let me first offer my apologies for the delay in responding to your letter. What had appeared to be a reasonably straightforward task has proven, over the course of the summer, to be considerably more challenging. Specifically, it has become increasingly clear that, as our experience with interpreting and applying our new legislation and authorities in the post-9/11 environment increases, our collective understanding and views continue to evolve, as do our policies, procedures and practices, accordingly. This has been the case with respect to CSE's assistance to the RCMP, and has prompted additional analysis and consultation within CSE in response to your follow-up questions.

Adding to the complexity, there are typically a number of external factors that can influence the operational interpretation and application of policies and procedures in any given circumstance. As an example, a criminal investigation undertaken by the RCMP may or may not constitute a pursuit to be legitimately supported by CSE under the foreign intelligence part of its mandate, depending upon the foreign dimension of the actual or potential crime in question, the linkage between potential CSE action and established Government of Canada intelligence priorities, and the likelihood of the action impacting or focusing on a specific Canadian entity. Hence, there is an undeniable need for CSE to exercise judgement on a case-by-case basis to ensure that it always acts under, and in accordance with, the appropriate authority.

Canada

TOP SECRET COMINT
Canadian Eyes Only

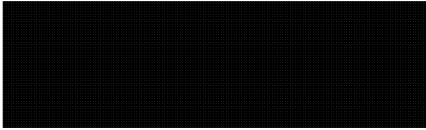
TOP SECRET COMINT
Canadian Eyes Only

In addition, as suggested in your letter, an RCMP requirement for intelligence would, quite naturally, tend to be focused on law enforcement (including security and crime prevention), consistent with the RCMP's mandate. This does not lessen the validity, however, of the RCMP's need for relevant foreign intelligence as produced by CSE. There is a foreign dimension to many criminal and law enforcement activities, and in many instances these activities are clearly related to international affairs, defence or security, a required element of foreign intelligence as defined in the *National Defence Act*.

These variables have posed a significant challenge in accounting for every conceivable scenario in answering your questions. Nevertheless, we have made, and will continue to make, every effort to provide you with the information you have requested, and to ensure our responses are as clear and comprehensive as possible.

As such, the attached document attempts to satisfy your requirement as we understand it. Should further clarification or elaboration be needed, I would be pleased to arrange in-person follow-up discussions through our respective offices.

Sincerely,



A/Director General, Policy and Communications

Attachment

TOP SECRET COMINT
Canadian Eyes Only

CSE Support to the RCMP: Phase II

Follow-up Questions

Issue No. 1

As part of an ongoing criminal investigation in Canada, the RCMP acquires S. 37 CEA but does not know to whom S. 37 CEA belongs. They would like to know if it may be linked to persons under their investigation. The RCMP S. 37 CEA and asks that it provide any information / intelligence it may have, or may be able to acquire, that relates to S. 37 CEA. CSE uses the S. 37 CEA as a digital "selector" and arranges to have it tasked at various collection sites for intercept purposes.

Questions:

1. Under what authority (legislation, section) may the RCMP task CSE to obtain information using S. 37 CEA?

There is no legislative provision that permits the RCMP to "task" CSE. However, consistent with the CSE-RCMP MOU, the RCMP may request the assistance of CSE.

IRRELEVANT

When the RCMP provides a S. 37 CEA to CSE and requests information as to the contacts of that number, the activity is S. 37 CEA

S. 37 CEA

S. 37 CEA

S. 37 CEA CSE should not provide assistance to the RCMP under mandate "c".

S. 273.64(1)(a) permits CSE to acquire and use information from the global information infrastructure for the purpose of providing foreign intelligence. This activity is subject to subsection (2) which provides that the foreign intelligence activity shall not be directed at Canadians or any person in Canada.

Should CSE determine that [S. 37 CEA] would provide foreign intelligence in accordance with the GoC's intelligence priorities, CSE may, at its own discretion, use [S. 37 CEA] for the purpose of obtaining foreign intelligence. CSE could thereafter provide the foreign intelligence information in the form of reports to government departments and agencies, including the RCMP, if the information would be of relevance to that department/agency.

It should be noted that any Government of Canada (GoC) client department or agency may submit to CSE a specific requirement for foreign signals intelligence.

2. *Does this request constitute a request for foreign intelligence or a request for assistance [S. 37 CEA] in support of a criminal investigation in Canada? Why?*

Although the RCMP and CSE could have initially viewed the request to constitute a request for technical or operational assistance, pursuant to the "c" mandate, on examination of the facts, CSE could come to the determination that it could not be conducted under "c" for the reasons discussed in (1) above.

If CSE were to determine that the information would be relevant to the provision of "foreign intelligence, in accordance with the Government of Canada intelligence priorities" [quote from 273.64 (1)(a) of the NDA]—e.g., foreign intelligence related to [Cabinet Confidence]

[Cabinet Cd] (as per Request for Information (RFI) number [redacted] dated [S. 37 CEA] S. 37 C, or [Cabinet Confidence] (as per RFI number [redacted] dated [S. 37 CEA]

—CSE could consider this request to represent a valid foreign intelligence requirement, in accordance with established Government of Canada Requirements (GCRs). Consequently, it could respond pursuant to 273.64 (1)(a) of the NDA and in accordance with the definition of "foreign intelligence" appearing in the NDA and option 3 of the Ministerial Directive (MD) on Support to Law Enforcement and National Security, which, apart from option 1, wherein the provision of technical and operational assistance is referenced, allows for the provision of "intelligence through (CSE's) signals intelligence program, in response to broad Government of Canada and agency-specific intelligence priorities."

3. *Under what authority may CSE respond to the tasking?*

Please see answers (1) and (2) above.

TOP SECRET//COMINT
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Issue No. 2:

CSE [S. 37 CEA] at three different collection sources: [REDACTED]
[REDACTED] IRRELEVANT
IRRELEVANT (Note: CSE's response presumes that this [S. 37 CEA] is
the one referenced in Issue No. 1, above.)

IRRELEVANT

Issue No. 3:

The [S. 37 CEA] results in communications intercept. The
resulting content of the intercept is analyzed and an intelligence report is
produced by CSE and passed to the RCMP.

IRRELEVANT

Issue No. 4:

An intelligence report produced by CSE also included information about a Canadian that was suppressed from the report.

6. *Under what authority may the RCMP subsequently request and obtain the information about the Canadian from CSE? Why?*

Any legitimate GoC recipient of a CSE report may request and obtain the release of suppressed information for its own use. However, there is a formal internal procedure and approval process that must be followed in considering such a request, which includes justifying the request and explaining the intended use of the information in writing, as well as honouring certain restrictions regarding handling, retention and action-on. (See OPS-1-1, Procedures for Release of Suppressed Information from SIGINT Reports, February 2003.)

OPS-1 6.9 states that information that may reveal the identity of a Canadian person, organization or corporation shall be suppressed. Any request from a client for the release of the suppressed name must be in writing, stating:

- why the information is required;
- how it relates directly to an operating program of their department;
- any potential or actual violation of a Canadian law that may be involved; and
- any follow-on action plan.

7. Under what authority may CSE disclose the information about the Canadian to the RCMP? Why?

Under the (a) mandate, CSE's legislation and policy provide authority which is subject to measures to protect the privacy of Canadians. The *Privacy Act* also permits CSE to disclose information pertaining to the foreign signals intelligence mandate pursuant to subsection 8(2). In addition, the Ministerial Directive pertaining to the Privacy of Canadians permits disclosure of the suppressed name of a Canadian person, business or organization in limited circumstances. Specifically, it states in respect of CSE's signals intelligence activities that CSE may retain and report information on Canadians or Canadian organizations found in the course of its signals intelligence activities only when:

- it is essential to protect the lives or safety of individuals;
- it contains evidence of serious criminal activity; or
- it is required to understand or exploit the foreign, security and defence intelligence."

Prior to 2004, CSE's Manager, Operational Policy served as the authority for releasing to domestic law enforcement agencies information suppressed from SIGINT reports. In 2004, this authority was transferred to the Director, Corporate and Operational Policy.

8. Which paragraphs of subsection 8 (2) of the Privacy Act would apply to the disclosure? Why not 8(2)(e)?

Within the context of foreign intelligence, 8(2)(a) normally applies. CSE can also rely upon 8(2)(b), (d), (f) and (m)(i). In addition, 8(2)(e) could apply in limited circumstances, where a disclosure is made for the purpose of aiding a criminal investigation. But this provision would not normally be used where, for example, 8(2)(a) would apply.

Issue No. 5:

In addition to providing CSE with S. 37 CEA (see Issue no. 1), the RCMP also S. 37 CEA

S. 37 CEA

S. 37 CEA Although never to be used for targeting purposes, CSE inputs and retains these names and identifying information in one of their target profile databases.

9. Under what authority may CSE receive and retain information that identifies Canadians which has been passed to them by the RCMP in the context of a criminal investigation in Canada?

In general, should the RCMP pass information pertaining to identifiable Canadians to CSE in the context of a criminal investigation, information would be provided pursuant to a s. 273.64(1)(c) request for operational assistance.

As the information pertains to identifiable Canadians, CSE would request the RCMP's assurance that the information passed was lawfully obtained and relates to the mandate of the RCMP.

The Ministerial Directive on Privacy of Canadians states in respect of CSE providing technical and operational assistance that CSE "...will take all possible measures to ensure that any information provided to CSE for processing has been lawfully obtained, and is handled in a manner consistent with the *Canadian Charter of Rights and Freedoms* and the *Privacy Act*."

A procedure (to be released as OPS-1-13) that specifically addresses the protection of collateral personal information, pursuant to the MD on the Privacy of Canadians, is in draft form.

10. Once in their possession, what uses, over time would CSE be authorized to make of this same information?

Information passed by the RCMP to CSE in the context of a criminal investigation would, where CSE provides assistance under the "c" mandate, be used for "c" purposes. However, where the RCMP includes S. 37 CEA

S. 37 CEA CSE can use that information under the "a" mandate to target that foreign person.

As an example, if the RCMP were to request CSE's assistance S. 37 CEA

S. 37 CEA