

s.15(1)
s.16(2)(c)
s.23



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Your File Votre référence

Our file Notre référence

ACCSE 09-06

November 27, 2006

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

Dear Ms. Weeks:

In response to the request of 8 November 2006 from Bill Galbraith, I am pleased to provide you with a copy of the legal opinion .

As the attached document is a legal opinion, it contains information protected by solicitor-client privilege. As with previous requests for documents containing such privileged information, our disclosure of this document is pursuant to a lawful request by the Office of the CSE Commissioner pursuant to the powers conferred upon the CSE Commissioner by the *National Defence Act*, and does not constitute a waiver of any privilege attaching to the disclosed document.

As always, please do not hesitate to contact me should you have further questions in this regard.

Sincerely,

A/Director General, Policy and Communications

c.c. David Akman, Director, Legal Services

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**Pages 2 to / à 39
are withheld pursuant to section
sont retenues en vertu de l'article**

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**of the Access to Information
de la Loi sur l'accès à l'information**

s.15(1)

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Office of the
Communications Security
Establishment Commissioner



Bureau du
Commissaire du Centre de la
sécurité des télécommunications

TOP SECRET

8 November 2006

*Director: Corporate & Ops Policy
Would you please consult with
legal services with the objective
of satisfying the request for
the legal opinion.*

Associate Chief
Communications Security Establishment
719 Heron Road
Confederation Heights
Ottawa, Ontario
K1G 3Z4

Dear]

In your current, additional responsibility for the Policy and Communications Branch, this letter is further to inquiries we have made regarding the Commissioner's review of CSE's metadata activities which are defined in, and governed by, Ministerial Directive¹ and by draft operational procedures². Both of these documents establish a specific review responsibility for the Commissioner. This is the first such review. Specifically, we are requesting a legal opinion]

As background, when OCSEC examines a CSE activity, particularly for the first time, it is critical for assessing compliance that we have access to, among other things, any documentation that relates directly to the operational and legal framework that guides and governs the activity. Typically, we seek access to any legal advice or guidance that has been issued to CSE by the Department of Justice (DoJ).

References to DoJ legal advice as it relates to metadata activities are found in various CSE operational procedures. Moreover, since 2004, these activities have been undertaken based on the opinion or premise that the

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¹ Reference: *Ministerial Directive [MD], Communications Security Establishment, Collection and Use of Metadata, dated March 9, 2005*. Paragraph 10 of the MD states that these activities are to be reviewed by the CSE Commissioner.

² Reference: [redacted], entitled [redacted]. Paragraph 3.2 of these procedures refers to the CSE Commissioner's review of activities [redacted].

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s.15(1)

s.21(1)(a)

s.23

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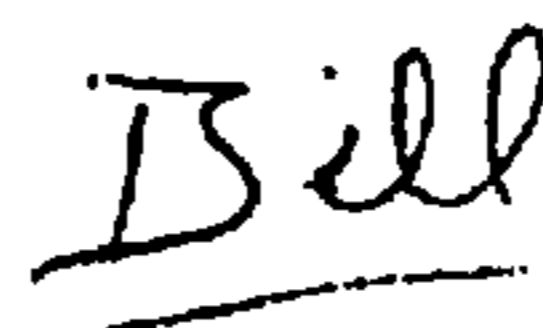
It is our understanding that other legal guidance has been sought on such subjects as _____ and _____ for example, as well as _____

To date, in support of our examination of CSE's metadata activities, we have been provided with a copy of a legal opinion _____

I would be grateful, therefore, for your assistance in providing the Commissioner's office with a copy of the _____ opinion and any other legal documentation you believe may be relevant to our review.

In closing, I am able to provide you assurance that 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,



William Galbraith
A/Executive Director

³ Reference MA and MD and CSE's February 2004 request to the Minister, page 6.

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To: Chief, Communications Security Establishment

**MINISTERIAL DIRECTIVE
COMMUNICATIONS SECURITY ESTABLISHMENT
COLLECTION AND USE OF METADATA**

1. This Directive is issued under my authority pursuant to subsection 273.62 (3) of the *National Defence Act*.
2. For the purpose of the CSE foreign intelligence acquisition programs:
 - a) "*metadata*" means information associated with a telecommunication to identify, describe, manage or route that telecommunication or any part of it
 - b)
 - c)
3. CSE will collect and use metadata under foreign intelligence acquisition programs according to principles enunciated in this Ministerial Directive. Any amendment to this Ministerial Directive will require my personal approval.

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- 4. CSE will apply procedures for the use and retention of metadata acquired through its program consistent with CSE's existing procedures to protect the privacy of Canadians.

- 5. In the fulfillment of its mandate as set out in paragraphs 273.64 (1) (a) and (b) of the *National Defence Act*, CSE any metadata acquired in the execution of its foreign intelligence acquisition programs

- 6. CSE will metadata, acquired through its foreign intelligence acquisition program to maximize its mandate activities as set out in the *National Defence Act*, Such will be subject to strict conditions to protect the privacy of Canadians, consistent with these standards governing CSE's other programs.

- 7. CSE must take the following steps to protect the privacy of Canadians:
 - (1)

 - (2)

 - (3)

 - (4)

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8. The metadata acquired in the execution of the CSE's foreign intelligence acquisition programs shall be used strictly for:
 - a)
 - b)
 - c)
9. The metadata acquired in the execution of CSE foreign intelligence acquisition programs
10. Activities undertaken pursuant to this Ministerial Directive will be subject to review by the CSE Commissioner as part of his mandate.
11. This Ministerial Directive replaces the Annex to the Ministerial Directive, signed by the Minister of National Defence on March 15, 2004.
12. This Ministerial Directives comes into force on the date it is signed.

Dated at Ottawa this 9th day of March 2005.



The Honourable William Graham
Minister of National Defence