

s.15(1)

Office of the
Communications Security
Establishment Commissioner



Bureau du
Commissaire du Centre de la
sécurité des télécommunications

TOP SECRET//COMINT//CEO

**A Review of CSEC SIGINT's
Targeting Activities**

March 15, 2011

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A0344661_1-000001

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 s.21(1)(b)

I. AUTHORITIES

This review was conducted under the authority of the CSE Commissioner as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act (NDA)*.

The review is in conformance with signals intelligence (SIGINT) ministerial authorizations (MAs) permitting the unintentional interception of private communications (PCs) - as defined in section 183 of the *Criminal Code* - under collection programs known as

MA activities).¹ Section 273.63 and subsection 273.65(8) of the *NDA* mandate the CSE Commissioner to review activities carried out under MAs.

The review is also in accordance with ministerial directives (MDs) on “Accountability Framework”², “Privacy of Canadians”³, and that indicate that associated activities will be subject to review by the CSE Commissioner or that require CSEC to cooperate fully with the Commissioner in the exercise of reviews.

II. INTRODUCTION

Paragraph 273.64(1)(a) of the *NDA* mandates CSEC “to acquire and use information from the global information infrastructure for the purpose of providing foreign intelligence [FI], in accordance with Government of Canada [GC] intelligence priorities” [part (a) of CSEC’s mandate].

To comply with the *NDA*:

- CSEC must distinguish those communications which involve foreign entities located outside Canada and those that are not; and
- CSEC’s targeting activities must contain measures to protect the privacy of Canadians.

In a SIGINT context, *targeting* means “to single out for collection or interception purposes”.⁵ CSEC collects operationally meaningful data CSEC policy OPS-1, *Protecting the Privacy of Canadians and Ensuring Legal Compliance in the*

¹ Activities conducted under MA must be undertaken in accordance with conditions set out by the Minister of National Defence in the MAs, e.g., respecting measures to protect intercepted PCs. This review encompassed MA activities under the MAs in effect from December 23, 2007 to December 22, 2008 and from December 23, 2008 to December 22, 2009.

² Issued June 19, 2001.

³ Issued June 19, 2001.

⁴ Issued March 9, 2005.

⁵ OPS-1, p. 51 (CERRID# 142875-v6E).

Conduct of CSE[C] Activities, effective December 23, 2009, indicates

The Canadian SIGINT Operations Instruction (CSOI) CSOI-4-4,

In CSEC, there are two approaches to targeting (CSOI-4-4 refers):

1. *Targeting*, which allows SIGINT to direct its targeting activities at foreign entities⁷ located outside Canada and which are associated with foreign intelligence requirements.

Another approach to targeting

(OPS-3-1, Procedures for activities.)

⁶ |

⁷ An *entity* means: "a person, group, trust, partnership, or fund or an unincorporated association or organization and includes a state or political subdivision or agency of a state." (NDA, section 273.61).

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|

⁹ Targeting for is described at pp. 28-30.

The *NDA* requires that activities under part (a) of CSEC's mandate "shall not be directed at Canadians or any person in Canada" [paragraph 273.64(2)(a)].¹⁰

One of the conditions to issue an MA under the *NDA* is that the Minister of National Defence (Minister) must be "satisfied that the interception will be directed at foreign entities located outside Canada" [paragraph 273.65(2)(a) of the *NDA*].

All MAs include the following requirement:

To facilitate the review by the Commissioner of the Communications Security Establishment of the statutory requirement that interceptions of private communications must be directed at foreign entities located outside Canada, the Communications Security Establishment [Canada]

Targeting activities are also conducted pursuant to ministerial direction. Specifically, the MD on "Privacy of Canadians" indicates:

...it is incumbent upon you, as Chief of CSE[C], to ensure that CSE[C] does not target the communications of Canadians and will continue to adopt procedures to
 (p. 1)

CSEC's OPS-1 policy requires, at a minimum, to be subject to annual review to ensure they remain consistent with the GC intelligence priorities.

Rationale for conducting this review

CSEC's FI collection activities conducted under MA involve a number of distinct methods of acquiring information from the GII.

Rather than examine thoroughly individual MAs, it was assessed as more effective to examine thoroughly each process common to CSEC's FI collection activities under MA. This new approach, which cuts across the collection methods, is referred to as *horizontal review* and is designed to provide the Commissioner with an even more comprehensive understanding of how CSEC conducts its activities. Ultimately, its objective is to increase the degree of assurance the

¹⁰ In a crisis situation where the life and safety of Canadian individuals are threatened,

Commissioner can provide to the Minister that CSEC is complying with the law and protecting the privacy of Canadians.

Targeting are at the foundation of CSEC's SIGINT collection programs. SIGINT collection relies on targeting. Specific and important controls are placed on SIGINT targeting activities to ensure compliance with legal, ministerial and policy requirements.

III. OBJECTIVES

The objectives of the review were to:

- document CSEC SIGINT's targeting : activities and associated processes and practices;
- assess whether the activities comply with the law; and
- assess the extent to which CSEC protected the privacy of Canadians in carrying out the activities.

IV. SCOPE

The Commissioner's office examined CSEC's processes and practices in place while the review was being conducted – September 2009 to December 2010 – and tested specific activities for the period September 2008 to August 2009, that is, the period immediately preceding the start of the review, given that review is of past activities.

In addition to acquiring detailed knowledge of CSEC SIGINT's targeting activities, the Commissioner's office examined:

1. the legislative and policy framework;
 - 2.
 - 3.
 4. whether are in accordance with GC intelligence requirements (GCRs)¹¹ and consistent with CSEC's ;
 5. the extent to which technology is used and other efforts are applied to protect the privacy of Canadians;
 - 6.
 7. how (e.g., to ensure they remain in accordance with GC intelligence priorities)
 - 8.
 - 9.
-

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

10. CSEC's activities in response to previous associated findings and recommendations of the Commissioner, namely: a number of findings in the March 2008 review report respecting ; (see pp. 48-49 and p. 56) as well as finding no. 6 and recommendation no. 1 in the June 2008 review report and the September 2008 response from the Minister of National Defence (see pp. 49-50 and p. 56). (The March 2006 report on and the February 2005 report also provide background information respecting targeting ; and

11. CSEC's activities in response to previous associated recommendations of CSEC's Audit, Evaluation and Ethics Directorate, namely: recommendations 2.8.2 of the Directorate's April 2006 *SIGINT Legal Compliance* final report respecting (See p. 51)

The review did not include an examination of:

- information technology security activities under part (b) of CSEC's mandate¹⁴;
-
- targeting activities in support of federal law enforcement or security agencies under part (c) of its mandate¹⁶

; and

¹⁴ Paragraph 273.64(1)(b) of the *NDA* mandates CSEC "to provide advice, guidance and services to help ensure the protection of electronic information and of information infrastructures of importance to the Government of Canada."

¹⁵ The Commissioner's March 2009 report respecting CSEC's

¹⁶ Paragraph 273.64(1)(c) of the *NDA* mandates CSEC "to provide technical and operational assistance to federal law enforcement and security agencies in the performance of their lawful duties."

¹⁷ This will be addressed in a separate review.

¹⁸

¹⁹ This will be addressed in a separate review.

V. CRITERIA

A) Legal Requirements

The Commissioner expected that CSEC conducts its targeting activities in accordance with the *NDA, Privacy Act, Criminal Code, Canadian Charter of Rights and Freedoms* and any other relevant legislation and Justice Canada advice.

B) Ministerial Requirements

The Commissioner expected that CSEC conducts its targeting activities in accordance with ministerial direction, namely the requirements and approval frameworks outlined in relevant MAs and MDs.

C) Policies and Procedures

The Commissioner expected that CSEC:

- i) had appropriate policies and procedures that guide its targeting activities;
- ii) had personnel who are aware of and comply with the policies and procedures; and
- iii) had an effective management control framework to ensure that the integrity of the activities is maintained on a routine basis, including appropriately accounting for important decisions and information.

VI. METHODOLOGY

The Commissioner's office examined relevant written and electronic records, files, correspondence and other documentation, including policies and procedures and legal advice.²⁰ Throughout the course of the review, CSEC provided answers to a number of written questions.

The Commissioner's office conducted interviews with CSEC managers and other employees involved in the activities (Annex B). With the assistance of CSEC employees acting under our direction, we tested the contents of relevant databases and systems to ensure conformity with legal and ministerial requirements and associated policies and procedures.

As a first step, the Commissioner's office documented and described CSEC's targeting activities, processes and systems, the legislative and policy framework, and ensured a common understanding of concepts and terminology.

²⁰ If legal advice given to CSEC is shared with the Commissioner's office, this is done on the understanding that the sharing by CSEC of information which is subject to solicitor-client privilege does not constitute a waiver by CSEC of its privilege.

Subsequently, we assessed CSEC's activities against the established criteria and developed conclusions respecting the objectives. This is a report of the outcomes of the review.

Prior to forwarding a draft report to CSEC for comment as to factual accuracy, the Commissioner's office presented a summary of our findings to CSEC.

VII. BACKGROUND

In CSEC, there are two approaches to targeting (CSOI-4-4 refers):

1. *Targeting* which allows SIGINT to direct its targeting activities at foreign entities located outside Canada and which are associated with foreign intelligence requirements.

Another approach to targeting

i . (OPS-3-1, Procedures for activities.)

1. authorities

CSEC's and its analysts²¹ are responsible to

namely:

- to conduct research and document that all conditions for targeting have been met;
- submit targeting requests to CSEC's and
- on an annual basis, or more frequently as required,

²¹ In this report, references to a analyst may include

A analyst

A analyst

²³ Section 2.8, CSOI-4-4, p. 10.

²³ Section 3.4, CSOI-4-4, p. 16.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

2. Targeting: **tools**

On October 15, 2009, the Commissioner's office received a technical brief respecting targeting tools.

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des télécommunications Canada



CERRID# 368869, October 15, 2009, slide 6, e-mail from
November 27, 2009. Note: The above representation of a targeting system is a simplified
version for presentation purposes.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

²⁸ CERRID# 338097-v1A, November 27, 2009, e-mail from
p. 7 and CERRID# 699823, February 8, 2011, e-mail from Director,
p. 6.

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**is withheld pursuant to sections
est retenue en vertu des articles**

15(1), 16(2)(c), 21(1)(a), 21(1)(b)

of the Access to Information

**de la Loi sur l'accès à l'information
Loi sur l'accès à l'information**

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

3. How the tools



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 Communications Security Establishment Canada Centre de la sécurité des télécommunications Canada



CSE analyst

Canada

 
CERRID# 368869, slide 14, October 15, 2009, e-mail from
, November 27, 2009. Note: The above representation of a targeting system is a simplified
version for presentation purposes.

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 Communications Security Establishment Canada
Centre de la sécurité des télécommunications Canada



CSE analyst

Canada


CERRID# 368869, slide 13, October 15, 2009, e-mail from
November 27, 2009. Note: The above representation of a targeting system is a simplified
version for presentation purposes.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

4. How the tools process targeting

5. authorities

roles and responsibilities respecting targeting are namely:

- to validate and action, if appropriate, a targeting request of a analyst; and
- to inform a analyst of the status of a targeting request

authorities are detailed in CSOI-3-7,

by . For a targeting request, in accordance with CSOI-3-7, targeting is actioned provided that:

-
- the targeting is directed at a foreign entity outside Canada;
- the targeting is related to an active GC intelligence requirement; and
-

(pp. 24-27 and 34-36

If all elements of a targeting request are valid

If the request is deemed not valid,

³⁰ Effective September 2, 2008.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

On November 25, 2009, the Commissioner's office received a demonstration and briefing from the

In addition, the Commissioner's office examined examples of

s.13(1)(a)
s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

6. Volume of targeting requests

Respecting the quantity of _____ generally processed by _____ the Commissioner's office
asked CSEC for information concerning the targeting requests
in June to August 2009. CSEC responded.³⁴

³⁴ CERRID# 338097-v1C, e-mail from
January 8, 2010, p. 21.

³⁵ CERRID# 338097-v1H, e-mail from
September 1, 2010, p. 2.

s.13(1)(a)
s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

³⁷ *Supra*, note 35, at p. 3.
³⁸ *Supra*, note 35, at p. 3.

The Commissioner's office also asked for information respecting the number of analysts' CSEC responded:⁴⁰

s.13(1)(a)
s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

⁴⁰ *Supra*, note 34, at p. 23.

⁴¹ *Supra*, note 34, at pp. 23-24.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

7. Targeting

Targeting

CSOI-4-4,

as follows:

March 5, 2009, (p. 33) describes a

Section 2.5 of CSOI-3-7 indicates that

⁴² According to CSOI-4-4,

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

In accordance with CSOI-3-7 and CSOI-4-4,

⁴³ CERRID# 338097-v1E, February 19, 2010, e-mail from
pp. 12-13 and CERRID# 699823, February 8, 2011, e-mail from Director,
p. 8.

⁴² OPS-5-14,

June 2006, ;

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

Associated GCRs and priority

The analyst must associate the [redacted] with an entity [redacted] of FI interest. According to CSEC, the GCRs are prioritized regularly

Foreign assessment

The analyst must make an informed assessment of the foreign status of the entity [redacted].

In isolation, some of these factors may be insufficient to make an assessment. It is the analyst's responsibility to determine whether there is enough information to make an informed assessment of the foreign status of the entity. [redacted]

A [redacted] analyst [redacted] or a Canadian dual-national, e.g., intelligence suggests that the person studied or worked in Canada or has relatives in Canada. In such a case, an analyst may obtain passport or [redacted]

CSOI-4-4 was effective March 11, 2009.

⁴⁷ The Commissioner receives a copy of the CSEC *Intelligence Priorities Ministerial Directive* that outlines the yearly GC intelligence priorities as approved by the Ad Hoc Committee of Ministers on Security and Intelligence. The MD directs CSEC to use these priorities to guide its FI activities in accordance with its legislative authority. CSEC derives the GCRs from this direction. CSOI-1-1

s.15(1)
s.21(1)(a)
s.21(1)(b)

Once the assessment to determine foreignness is made, the analyst must document it by assigning the entity

The analyst

CSOI-4-4

CSOI-4-4

brief and interviews, November 25, 2009, and August 25, 2010.
** Section 3.4, pp. 15-16.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

According to CSEC as indicated in CSOI-4-4⁵⁰,

analysts perform ongoing maintenance

Once a analyst sends

⁵⁰ Section 3.3, *Demonstrating Legal Compliance*, p. 15.

⁵¹ Demonstration and interviews, October 5, 2009.

⁵² Interview, November 25, 2009.

⁵³ CSOI-4-4, section 3.12,

p. 20.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

The Commissioner's office asked CSEC to explain the rationale

CSEC explained

8. Targeting

On December 22, 2009, a [redacted] analyst provided an overview briefing on targeting [redacted] including targeting processes, roles and responsibilities, associated documentation,

⁵⁴ *Supra*, note 35. at p. 3.

⁵⁵ E-mail from

October 6, 2010.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

and information repositories.

OPS-3-1,
December 23, 2009,
(c) of its mandate.

conducted under both parts (a) and

Commissioner Gonthier's February 26, 2009, review
report respecting CSEC activities under the 2004 to 2007 Ministerial Authorizations

The analyst interviewed by the Commissioner's office indicated that he

⁵⁶ E-mail from

are described in OPS-3-1,

November 25, 2010.

⁵⁷

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

Like targeting involving _____ and in accordance with OPS-1, all targeting requests for _____ requires the following information to be researched by a _____ analyst and documented in _____

However, CSOI-4-4 does not apply to _____ Section 1.3 of CSOI-4-4 notes:

OPS-3-1 does not contain detailed guidance like the CSOI-4-4 instructions. (See finding no. 16, .

9. Targeting for

s.15(1)

s.16(2)(c)

s.21(1)(a)

s.21(1)(b)

⁵⁸ *Supra*, note 28, at p. 13.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

⁵⁹ CERRID# 368869-v1, e-mail from
, November 27, 2009, at slide 4 (with amendments).

⁶² *Supra*, note 59.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

⁶³ *Supra*, note 43, at p. 7.

s.15(1)

s.16(2)(c)

s.21(1)(a)

s.21(1)(b)

⁶⁴ *Supra*, note 43, at pp. 7-8.

⁶⁵ *Supra*, note 43, at p. 8.

CSOI-4-4 contains detailed guidance respecting the actions, roles and responsibilities respecting the process for

The Commissioner's office questioned the following statement in CSOI-4-4:

⁶⁶

⁶⁷ *Supra*, note 35, at p. 5.

⁶⁸ *Ibid.*

⁶⁹ Section 4.4,

, pp. 25-26.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

⁷⁰ *Supra*, note 28, at pp. 2-3.

The Commissioner's office accepts CSEC's explanation and has no remaining questions respecting targeting. CSEC has indicated that it will consider revisions to its procedures and we will monitor any changes made.

⁷¹ E-mail from

⁷² *Supra*, note 28, at p. 4.

December 10, 2010.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

10. Volume of/metrics

⁷³ *Supra*, note 35, at p. 18.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

As of 31 August 2009, the following

⁷⁴ *Supra*, note 34, at pp. 18-19.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

The Commissioner's office asked CSEC: "
CSEC responded:

CSEC's written response is consistent with the answers provided by analysts in interviews.

The Commissioner's office asked CSEC a number of questions

responded:

CSEC

⁷⁵ *Supra*, note 28, at p. 12.

⁷⁶ *Supra*, note 28, at p. 6.

⁷⁷ *Supra*, note 28, at pp. 6-7.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

11. Targeting by CSEC

⁷⁹ *Supra*, note 43, at pp. 10-11.

s.13(1)(a)
s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

Assessment to determine foreignness

Targeting

Associated GCR

⁸⁰ CERRID# 605885, September 1, 2010, e-mail from
pp. 2-14.

s.13(1)(a)
s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

VIII. FINDINGS AND RECOMMENDATION

A) LEGAL REQUIREMENTS

Finding no. 1: Compliance with the Law

Based upon the information reviewed and the interviews conducted, CSEC conducts its SIGINT targeting activities in accordance with the law.

⁸¹ *Supra*, note 43, at pp. 4-5.

⁸² CERRID# 452880, February 19, 2010, e-mail from

⁸³ *Supra*, note 43, at p. 5.

Finding no. 2: Protection of Canadians

CSEC has sufficient policies and processes to satisfy the legal requirement not to direct its SIGINT interception activities at a Canadian (anywhere) or any person in Canada.

The *NDA* requires that activities under part (a) of CSEC's mandate, including SIGINT targeting activities, shall be:

- consistent with the GC intelligence priorities (paragraph 273.64(1)(a))⁸⁴;
- not directed at Canadians or any person in Canada (paragraph 273.64(2)(a)); and
- subject to measures to protect the privacy of Canadians in the use and retention of intercepted information (paragraph 273.64(2)(b)).

The Commissioner's office's examination and sample results indicate that CSEC is consistent with the GC intelligence priorities.

The number of analysts'

The number of analysts'

Finding no. 3: Targeting by CSEC for

⁸⁴ According to OPS-1, are subject to annual review to ensure they are consistent with GC intelligence priorities.

⁸⁵ CERRID# 699823, February 8, 2011, e-mail from Director, , p. 10.

Finding no. 4: Targeting by CSEC for

***Finding no. 5: Targeting by CSEC,
Canada Intelligence Requirements***

Government of

Finding no. 6: Demonstrating Legal Compliance

It is a positive development – that assists in demonstrating compliance with the law, ministerial requirements and policy

***Finding no. 7: Targeting
Privacy Protection***

Systems that Promote

CSEC takes measures in the design of its targeting
to promote compliance with the law and the protection of
the privacy of Canadians.

Finding no. 8: Targeting

The Commissioner's office will monitor ongoing CSEC efforts to address
targeting

The Commissioner's office will monitor CSEC efforts

The Commissioner's office will also monitor CSEC efforts

1. Targeting of

2.

Finding no. 9:

During the period under review, CSEC responded appropriately to
1

Sections 2.6 and 2.7 of OPS-1 and section 3.15 of CSOI-4-4 require CSEC

⁸⁶ *Supra*, note 80, at pp. 3-14.

3. CSEC's activities in response to the 2008 review of CSEC's activities conducted under the MD and MA

Finding no. 10: Demonstrating Legal Compliance – Follow-up to Commissioner's 2008 Review

The improvements to CSEC's policies and procedures – namely CSOI-3-7 and CSOI-4-4 –

in the Commissioner's 2008 review of CSEC's activities.

Specifically, the Commissioner's office considers findings 12, 13, 25, 27 and 28 of Commissioner Gonthier's 2008 review as addressed.⁹¹

89

|

;

⁹⁰ CERRID# 345109, October 22, 2009, e-mail from

91

CSOI-4-4 requires analysts to record

4. CSEC's activities in response to the 2008 review of CSEC's activities

Finding no. 11: Targeting Requests – Follow-up to 2008 Review of CSEC's Activities

Improvements to CSEC's policies and procedures – namely CSOI-4-4 -
review of CSEC's activities. : in the Commissioner's 2008

Finding no. 6 in Commissioner Gonthier's 2008 review report was:

1

Finding no. 28:

⁹² This is a requirement of all MAs

⁹³ *Supra*, note 28, at p. 8.

The Minister responded to the report in a September 10, 2008, letter:

In your letter, you questioned how CSEC can confirm

CSOI-4-4, section 5,

CSEC has also invested significant development resources to address this previous finding of the Commissioner.

CSEC described the status of this work as follows:

Presently, CSEC is finalizing work

⁹⁴ *Ibid*, at p. 7.

5. CSEC's activities in response to 2006 CSEC audit of SIGINT Legal Compliance

***Finding no. 12: Targeting Requests – Follow-up to 2006 CSEC
Audit of SIGINT Legal Compliance***

The Commissioner's office is satisfied that CSEC
in CSEC's 2006 SIGINT Legal Compliance Final (audit) Report
targeting requests.

An April 12, 2006, audit by CSEC's Directorate of Audit Evaluation and Ethics (DAEE)
entitled "SIGINT Legal Compliance Final Report"

As a follow-up to the 2006 audit, the Commissioner's office asked CSEC how it has
addressed this recommendation of DAEE

CSEC responded:

6. Legal Advice

Finding no. 13:

⁹⁵ *Ibid*, at pp. 14-15.

The Commissioner's office has no questions

B) MINISTERIAL REQUIREMENTS

Finding no. 14: Ministerial Direction

Based upon the information reviewed and the interviews conducted, CSEC conducts its SIGINT targeting activities in accordance with ministerial direction.

CSEC met the requirement in the ministerial authorizations to facilitate the review by the CSE Commissioner of the statutory requirement that interceptions of private communications must be directed at foreign entities located outside Canada by

⁹⁷ *Supra*, note 43, at p. 8.

CSEC met the requirement in the Ministerial Directive on Privacy to have procedures ..

One of the conditions to issue an MA under the *NDA* is that the Minister of National Defence must be "...satisfied that... the interception will be directed at foreign entities located outside Canada" [paragraph 273.65(2)(a)].

C) POLICIES AND PROCEDURES

Finding no. 15: Appropriateness of Policies and Procedures

Operational policies and procedures for SIGINT targeting activities are in place and provide sufficient direction to CSEC employees respecting the protection of the privacy of Canadians.

The Commissioner's office expected that CSEC would have appropriate policies and procedures that guide its SIGINT targeting activities. CSEC has a number of policy instruments – issued under the authority of the Chief, CSEC – and procedures – issued under the authority of the DC, SIGINT, CSEC – that contain guidance respecting targeting ; Overall, the following policies and procedures provide comprehensive guidance for targeting and selector management activities:

- a) OPS-1, *Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSEC Activities*, effective and last updated March 11, 2010 (CERRID# 142875-v6J);

OPS-1 is CSEC's "cornerstone" policy and provides direction respecting the protection of the privacy of Canadians in the use and retention of intercepted information and compliance with the laws of Canada, including Part V.1 of the *NDA*, and with ministerial direction.

- b) OPS-1-13,

(CERRID# 319956-v5);

s.15(1)
s.21(1)(a)
s.21(1)(b)

c) OPS-3-1,
(CERRID# 317036-v3);

d) OPS-4-3,
(CERRID# 198900-v2);

e) CSOI-1-1, ;

f) CSOI-3-7,

g) CSOI-4-4,

⁹⁸ Interview, Manager,

August 25, 2010.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

Finding no. 16: Policies and Procedures for

CSOI-4-4

Recommendation no. 1: Policies and Procedures for
CSEC should provide specific guidance for

h)

i)

CSEC's activities in response to the 2008 reviews of CSEC activities conducted under MAs

Finding no. 17: Guidance for Targeting to 2008 Reviews of CSEC's - Follow-up Activities

Improvements to CSEC's policies and procedures – namely CSOI-3-7 and CSOI-4-4 – address the recommendation in the Commissioner's 2008

Recommendation no. 1 of the 2008 MA report was that: "CSEC adopt and publish, as soon as practicable, written guidance respecting the process analysts are to follow"

On September 18, 2008, CSEC promulgated CSOI-3-7 which addresses the authorities and responsibilities of analysts CSOI-4-4

Finding no. 18: Awareness of Personnel

CSEC employees interviewed and observed were aware of relevant policies and procedures and their application to SIGINT targeting activities.

Finding no. 19: Policies and Procedures

Based upon the information reviewed and the interviews conducted, CSEC met the policy requirement that : are subject at a minimum to annual review to ensure that the remain consistent with the Government of Canada intelligence priorities.

The Commissioner's office expected that CSEC employees would be aware of and comply with the policies and procedures respecting SIGINT targeting activities.

All of the CSEC employees with whom the Commissioner's office spoke were forthcoming and demonstrated knowledge of and a professional approach to the activities under review. The managers and employees in and in that we interviewed demonstrated a mastery of SIGINT targeting activities and associated policies and procedures.

The Commissioner's office conducted interviews with analysts to assess their awareness of and compliance with the policies and procedures. Annex F provides details respecting the approach and sample for the interviews. The employees interviewed and observed were aware of relevant policies and procedures and their application to SIGINT targeting activities. The information and documentation reviewed indicated that the actions of the employees were in compliance with policies and procedures. The analysts regularly reviewed to ensure that the remain consistent with the GC intelligence priorities.

Finding no. 20: Management Control Framework

CSEC managers routinely and closely monitor SIGINT targeting activities to make certain the activities comply with governing authorities.

The Commissioner's office expected that CSEC would have an effective management control framework to maintain the integrity of SIGINT targeting activities, including appropriately accounting for important decisions and

information. To assess CSEC's compliance with this criterion, the Commissioner's office asked CSEC a number of questions respecting its active and compliance monitoring activities.

The Commissioner's office asked CSEC: pursuant to section 2.8 of CSOI-4-4,

CSEC responded:

The Commissioner's office asked CSEC whether management monitoring occur annually or more frequently. CSEC responded: "Monitoring is ongoing, with a minimum requirement of once per year. CSEC team leaders send reminders to their team members to conduct validation.

Interviews with employees and managers confirmed that validation occurs on an ongoing basis.

The Commissioner's office asked CSEC: consistent with section 2.1 of OPS-1-8,

please describe in concrete terms what

does respecting CSEC SIGINT's targeting activities. CSEC responded:

In accordance with OPS-1-8 and ensure that:

- staff is familiar and complies with all policies and instructions that impact targeting;

⁹⁹ *Supra*, note 28, at p. 14.

¹⁰⁰ *Ibid.*

-
- staff validates at least once per year.

While not in the period of review, CSOI-5-8,

. If identifies a problem in a given area, meets with the supervisor and staff of that area, and provides additional guidance to ensure compliance and prevent further incidents.¹⁰¹

The Commissioner's office asked CSEC: Consistent with section 1.5 of OPS-1-8, please provide copies of documentation maintained for audit and review purposes respecting activities in relation to CSEC SIGINT's targeting activities for the period of June 1, 2009, to August 31, 2009. CSEC responded:

-
-
-
-

and

¹⁰¹ *Supra*, note 43, at p. 10.

•
For the period under review, _____ has produced the following monthly reports:

- CERRID #322588 (August 9 to August 31, 2009); and
- CERRID #317976 (July 9 to August 6, 2009).

[The Commissioner's office reviewed and has no questions respecting these reports (CERRID# 447609 and 447612).]

In accordance with CSOI-5-8,

Finally, the Commissioner's office asked CSEC: please describe in brief the differences between _____ CSEC responded:

In accordance with OPS-1-8, .

¹⁰² *Ibid*, at pp. 10-11.

, in accordance with CSOI-5-8,

CSEC's answers to the above questions, as well as the results of the interviews with [redacted] and [redacted] employees, permit the Commissioner's office to conclude that,

[redacted], CSEC has a robust management control framework for SIGINT targeting [redacted] activities. While not in the period of review, [redacted] appears to provide a solid foundation [redacted] of SIGINT targeting [redacted] activities.

IX. CONCLUSION

CSEC's FI collection activities conducted under MA

[redacted]. Rather than examine thoroughly individual MAs, it was assessed as more effective to examine

¹⁰³ *Ibid*, at pp. 11-12.

thoroughly each process common to CSEC's FI collection activities under MA. This new approach, which cuts across the collection methods, is referred to as *horizontal review* and is designed to provide the Commissioner with an even more comprehensive understanding of how CSEC conducts its activities. Ultimately, its objective is to increase the degree of assurance the Commissioner can provide to the Minister that CSEC is complying with the law and protecting the privacy of Canadians.

To comply with the *NDA*, CSEC must distinguish those communications which involve foreign entities located outside Canada and those that are not. CSEC's targeting activities must also contain measures to protect the privacy of Canadians.

The objectives of the review were to: document CSEC SIGINT's targeting activities and associated processes and practices; assess whether the activities comply with the law; and assess the extent to which CSEC protected the privacy of Canadians in carrying out the activities.

Based upon the information reviewed and the interviews conducted, CSEC conducts its SIGINT targeting activities in accordance with the law. CSEC has sufficient policies and processes to satisfy the legal requirement not to direct its SIGINT interception activities at a Canadian (anywhere) or any person in Canada. During the period under review, CSEC responded appropriately to the

CSEC takes measures in the design of its targeting to promote compliance with the law and the protection of the privacy of Canadians. As identified in this report, recent enhancements made or planned assist in ensuring and demonstrating compliance with the law, ministerial requirements and policy.

1

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)


Based upon the information reviewed and the interviews conducted, CSEC conducts its SIGINT targeting activities in accordance with ministerial direction.

Operational policies and procedures for SIGINT targeting activities are in place and provide sufficient direction to CSEC employees respecting the protection of the privacy of Canadians. CSEC employees interviewed and observed were aware of relevant policies and procedures and their application to SIGINT targeting activities. CSEC managers routinely and closely monitor SIGINT targeting activities to make certain the activities comply with governing authorities.

In addition to the above-noted objectives, the Commissioner's office examined CSEC's activities in response to previous associated findings and recommendations of the Commissioner in the June 2008 review report and the March 2008 review report respecting

Finally, the Commissioner's office examined CSEC's activities in response to previous associated recommendations of CSEC's Audit, Evaluation and Ethics Directorate. The Commissioner's office is satisfied that CSEC

A list of findings and the recommendation is enclosed at Annex A.


Robert Décaré, Commissioner

ANNEX A – Findings and Recommendation

Finding no. 1: Compliance with the Law

Based upon the information reviewed and the interviews conducted, CSEC conducts its SIGINT targeting ; activities in accordance with the law.

Finding no. 2: Protection of Canadians

CSEC has sufficient policies and processes to satisfy the legal requirement not to direct its SIGINT interception activities at a Canadian (anywhere) or any person in Canada.

Finding no. 3: Targeting by CSEC

Finding no. 4: Targeting by CSEC for

Finding no. 5: Targeting by CSEC for

Finding no. 6: Demonstrating Legal Compliance -

It is a positive development – that assists in demonstrating compliance with the law, ministerial requirements and policy – that in March 2009, were required – by policy and by technical means – to record

Finding no. 7: Targeting Protection that Promote Privacy

CSEC takes measures in the design of its targeting to promote compliance with the law and the protection of the privacy of Canadians.

Finding no. 8: Targeting

The Commissioner's office will monitor ongoing CSEC efforts in targeting

Finding no. 9:

During the period under review, CSEC responded appropriately to

Finding no. 10: Demonstrating Legal Compliance – Follow-up to Commissioner's 2008 Review

The improvements to CSEC's policies and procedures – namely CSOI-3-7 and CSOI-4-4

Finding no. 11: Targeting Requests – Follow-up to 2008 Review of Activities

Improvements to CSEC's policies and procedures – namely CSOI-4-4 -

Finding no. 12: Targeting Requests – Follow-up to 2006 CSEC Audit of SIGINT Legal Compliance

The Commissioner's office is satisfied that CSEC's 2006 SIGINT Legal Compliance Final (audit) Report targeting requests.

Finding no. 13:

Finding no. 14: Ministerial Direction

Based upon the information reviewed and the interviews conducted, CSEC conducts its SIGINT targeting activities in accordance with ministerial direction.

s.15(1)
s.16(2)(c)
s.21(1)(a)
s.21(1)(b)

Finding no. 15: Appropriateness of Policies and Procedures

Operational policies and procedures for SIGINT targeting activities are in place and provide sufficient direction to CSEC employees respecting the protection of the privacy of Canadians.

Finding no. 16: Policies and Procedures for Targeting

Operational policies and procedures applicable to

Finding no. 17: Guidance for Targeting – Follow-up to 2008 Reviews of CSEC's

Improvements to CSEC's policies and procedures – namely CSOI-3-7 and CSOI-4-4 – address the recommendation in the Commissioner's review and the finding in the 2008 review relating to guidance for targeting

Finding no. 18: Awareness of Personnel

CSEC employees interviewed and observed were aware of relevant policies and procedures and their application to SIGINT targeting activities.

Finding no. 19: Policies and Procedures

Based upon the information reviewed and the interviews conducted, CSEC met the policy requirement that : are subject at a minimum to annual review to ensure that the remain consistent with the Government of Canada intelligence priorities.

Finding no. 20: Management Control Framework

CSEC managers routinely and closely monitor SIGINT targeting activities to make certain the activities comply with governing authorities.

Recommendation no. 1: Policies and Procedures for Targeting
CSEC should provide specific guidance for targeting.

ANNEX B – Interviewees

Director,
Manager,
Manager,
Manager,
Manager,
Team Leader,
 Analyst,
Specialist - Linguist, Middle East and North Africa,
Intelligence Analyst,
Intelligence Analyst,
Intelligence Analyst,
Intelligence Analyst,
Intelligence Analyst,
Intelligence Analyst,
Intelligence Analyst,
Intelligence Analyst,
Intelligence Analyst, Office of Counter Terrorism,

Senior Advisor,
Director,
A/Director,
Manager,]

ANNEX C – Generic “Screenshots”

Source: CERRID# 364700, 10 pages, hand delivered by
] on November 2, 2009.

**Pages 73 to / à 82
are withheld pursuant to sections
sont retenues en vertu des articles**

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

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

ANNEX D -

Source: CERRID# 358663, six pages, e-mail from
October 22, 2009 and one page
handout from November 25, 2009.

**Pages 84 to / à 90
are withheld pursuant to sections
sont retenues en vertu des articles**

s.15(1)

s.16(2)(c)

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

ANNEX E - Summary of

Source: CERRID# 345109, one page, e-mail from
October 22, 2009.

Page 92
is withheld pursuant to sections
est retenue en vertu des articles

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

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

ANNEX F – Interviews

We conducted interviews with analysts to assess their awareness of and compliance with the policies and procedures respecting SIGINT targeting activities.

Initially, CSEC proposed a list of names of analysts with varying lengths of experience in and at CSEC. We randomly selected analysts:

1. Analyst with less than one year experience at CSEC;
2. Analyst with less than three years of experience;
3. Analyst with between three and 10 years experience; and
4. Analyst with over ten years of experience.

CSEC provided the number of reports produced by the analysts (as primary author) by month for the period of review. We selected for review, again at random, the “nth” report from specific months:

We reviewed reports with the above analysts.

Following these interviews, we selected, at random using the directory of employees on CSEC’s Intranet (i.e., not from a list proposed by CSEC), an additional analysts. As was done previously, CSEC provided the number of analysts produced as primary author by month for the period of review and we selected at random, specific reports for review:

¹⁰⁴ We did not question the analyst respecting this

¹⁰⁵ Not completed due to time constraints.

This next set of analysts accounted for an additional ; reviewed.

Proceeding in this manner permitted us to prepare questions in advance respecting the we selected and provided the analysts with time to refresh their memories.

We asked each analyst general questions respecting their work designed to test their knowledge of the policies and procedures respecting SIGINT targeting activities. For each of the analysts' , we assessed whether the selectors and documentation in ! associated with the complied with the policies and procedures. We used the following checklist to record our findings.

Reports:

ANNEX G - Sample

**Pages 96 to / à 101
are withheld pursuant to section
sont retenues en vertu de l'article**

s.15(1)

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

Source: CERRID# 605885, September 1, 2010, e-mail from
pp. 15-23.