

Robinson, Dana (PS/SP)

From: Robinson, Dana (PS/SP)
Sent: Wednesday, April 12, 2017 8:34 AM
To: ES&ML-QPMI@rcmp-grc.gc.ca; Desnoyers, Christine; Brookes, Erin (Ext.)
Cc: McAteer, Julie (PS/SP)
Subject: PCO Update on IMSI Catchers
Attachments: QP Card - IMSI - Stingray.docx

Importance: High

Good morning,

PCO is requesting an update to their card on IMSI catchers as the local police forces have said they are using them as well <http://www.cbc.ca/news/technology/cellphone-surveillance-police-canada-imsi-catcher-privacy-1.4066527>

I've attached the card – can we add the Criminal Code exemption for police forces to the existing lines about the devices being prohibited except for under certain exemptions? (MO believes this is Section 190 or 191).

Please provide EN by 9:45

Dana Robinson
Analyst/Analyste
Parliamentary Affairs | Affaires parlementaires
Public Safety Canada | Sécurité Publique Canada
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Government of Canada | Gouvernement du Canada

INTERCEPTION OF PRIVATE COMMUNICATIONS

- We recognize the concerns of potential illegal interception activities, and their potential implication on our democratic institutions, media freedoms and the privacy of Canadians.
- I can assure Canadians that our law enforcement and intelligence agencies only act in support of their legislative mandate to ensure the safety and security of Canada.
- Their activities must be in strict accordance with the Charter of Rights and Freedoms, the Criminal Code, and must recognize and respect the constitutional rights of all Canadians.
- We take these reports seriously, whether they are conducted by individuals or foreign actors and as indicated by the Minister of Public Safety, we are investigating them.

INTERCEPTION DE COMMUNICATIONS PRIVÉES

- Nous reconnaissons les préoccupations du risque d'interception illégale et par les répercussions éventuelles de telles activités sur nos institutions démocratiques, sur la liberté des médias et sur la protection de la vie privée des Canadiens.
- Je peux assurer les Canadiens que les organisations canadiennes de police et de renseignement n'agissent que dans le cadre de leur mandat législatif, pour assurer la sûreté et la sécurité du Canada.
- Leurs activités doivent être rigoureusement conformes à la Charte des droits et libertés, au Code criminel et doivent respecter les droits constitutionnels de tous les Canadiens.
- Nous prenons ce dossier au sérieux, qu'il provienne d'acteurs ou individus ou des acteurs étrangers et, tel qu'indiqué par le ministre de la Sécurité publique, ce dossier est sous enquête.

BACKGROUND

- On April 3, 2017, the CBC reported that technology was being used in downtown Ottawa to track cellular (mobile) devices. The media coverage alleges that the technology, commonly known as International Mobile Subscriber Identity (IMSI) catchers (preferred term is Mobile Device Identifier (MDI technology)), was used by an unknown party to track mobile devices.
- Follow-up media coverage occurred on April 4, which included comments from the Minister of Public Safety.
- The Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Services (CSIS) are investigating the alleged use of IMSI catchers in downtown Ottawa. The investigation is ongoing.
- Similar media coverage and investigations have recently taken place in the United States: <http://www.ibtimes.co.uk/someone-could-be-secretly-spying-mobile-communications-white-house-pentagon-who-1612274>.

Prohibiting unlawful use of IMSI Catchers

- There are federal statutes that prohibit the unlawful use of IMSI catchers and other technologies used to intercept or interfere with communications. For the unlawful use of IMSI catchers, the *Radiocommunication Act* includes prohibitions involving the unlawful interference or obstruction of radiocommunication, and the unlawful possession and operation of radio apparatus. Penalties under this Act include imprisonment (not exceeding one year) and fines.
- The *Criminal Code* includes prohibitions involving the unlawful possession or use of devices to intercept private communications. Penalties under the *Code* include imprisonment not exceeding two years (possession) and five years (use).

Federal use of IMSI Catchers

- The use of IMSI catchers by the RCMP and CSIS must be lawful, Charter compliant and subject to appropriate judicial oversight.
- In April 2017, the RCMP will engage Canadian media outlets to publicly confirm and provide general information on its use of IMSI catchers. This will be done to improve transparency and correct public misperceptions on the RCMP's use of this technology.
- The RCMP's use of technology to identify cellular devices is limited, only used with prior judicial authorization or in exigent circumstances to prevent imminent harm, and does not involve the collection of any private communications. The RCMP will continue to safeguard certain operational details on this technology to prevent criminals from evading law enforcement, and to prevent National Security Targets here and abroad from deploying countermeasures and detecting counter intelligence operations.

- IMSI catchers used by the RCMP do not involve the interception of private communications, and collect limited information only (non-content) from cellular devices. The *Radiocommunication Act* is therefore the most applicable federal statute to authorize and prohibit IMSI catchers with respect to RCMP general use. The *Criminal Code* is the most applicable legislative instrument with respect to obtaining prior judicial authorization (absent exigent circumstances) for the RCMP to deploy an IMSI catcher. Pursuant to the *Radiocommunication Act*, authorization is required to install, operate and possess radio apparatus designed to communicate with mobile devices on commercial mobile networks to obtain “transmission data” (as defined in the *Criminal Code*) associated with a mobile device or the mobile network. This authorization may apply to IMSI catchers depending on the capabilities of the technology. The RCMP has obtained the respective authorization from Innovation Science and Economic Development Canada (ISED). This authorization occurred recently in 2017 following ISED and RCMP analysis throughout 2016 and 2017 to determine the most appropriate legal framework for the use of IMST catchers, pursuant to the *Radiocommunication Act*.

OPC investigation

- On April 7, 2016, the RCMP received correspondence from the Office of the Privacy Commissioner (OPC) dated April 1, 2016, that indicated that the OPC had launched an investigation in response to a complaint the OPC had received that alleged that the RCMP “is contravening the collection provision of the *Privacy Act* by collecting personal information using ‘StingRay’ or similar devices known as IMSI catchers; and, has refused to either confirm or deny that it uses [IMSI] catchers as investigative tools.”
- The investigation is ongoing and the RCMP continues to fully cooperate with the OPC.

Name of PCO Policy Analysts: [REDACTED]

Secretariat: Security and Intelligence

Telephone number: [REDACTED]

s.15(1) - Subv

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- While we do not generally comment on operational matters, the activity that was reported on April 3 does not involve a Federal Canadian agency like the RCMP or CSIS

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- Je peux assurer les Canadiens que les organisations canadiennes de police et de renseignement ne peuvent agir que dans le cadre de leur mandat législatif, pour assurer la sûreté et la sécurité du Canada.
- Leurs activités doivent être rigoureusement conformes à la Charte des droits et libertés, au Code criminel et doivent respecter les droits constitutionnels de tous les Canadiens.
- Nous prenons ce dossier au sérieux, qu'il provienne d'acteurs ou individus ou des acteurs étrangers. Nous sommes équipés afin d'identifier et gérer ce genre d'activité.
- FR to be added

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Federal use of IMSI Catchers

The use of IMSI catchers by the RCMP and CSIS must be lawful, Charter compliant and subject to appropriate judicial oversight.

In April 2017, the RCMP will engage Canadian media outlets to publicly confirm and provide general information on its use of IMSI catchers. This will be done to improve transparency and correct public misperceptions on the RCMP's use of this technology.

The RCMP's use of technology to identify cellular devices is limited, only used with prior judicial authorization or in exigent circumstances to prevent imminent harm, and does not involve the collection of any private communications. The RCMP will continue to safeguard certain operational details on this technology to prevent criminals from evading law enforcement, and to prevent National Security Targets here and abroad from deploying countermeasures and detecting counter intelligence operations.

IMSI catchers used by the RCMP do not involve the interception of private communications, and collect limited information only (non-content) from cellular devices. The *Radiocommunication Act* is therefore the most applicable federal statute to authorize and prohibit IMSI catchers with respect to RCMP general use. The *Criminal Code* is the most applicable legislative instrument with respect to obtaining prior judicial authorization (absent exigent circumstances) for the RCMP to deploy an IMSI catcher. Pursuant to the *Radiocommunication Act*, authorization is required to install, operate and possess radio apparatus designed to communicate with mobile devices on commercial mobile networks to obtain "transmission data" (as defined in the *Criminal Code*) associated with a mobile device or the mobile network. This authorization may apply to IMSI catchers depending on the capabilities of the technology. The RCMP has obtained the respective authorization from Innovation Science and Economic Development Canada (ISED). This authorization occurred recently in 2017 following ISED and RCMP analysis throughout 2016 and 2017 to determine the most appropriate legal framework for the use of IMST catchers, pursuant to the *Radiocommunication Act*.

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Name of PCO Policy Analyst: [REDACTED]

Secretariat: Security and Intelligence

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Telephone number: [REDACTED]

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- Their activities must be in strict accordance with the Charter of Rights and Freedoms, the Criminal Code, and must recognize and respect the constitutional rights of all Canadians.
- We take these reports seriously, whether they are conducted by individuals or foreign actors and as indicated by the Minister of Public Safety, we are investigating them.
- Last week, to enhance transparency around the use of investigative techniques, the RCMP confirmed its use of technology to identify mobile devices during serious and priority investigations.
- The RCMP's use of this technology is limited, only used with prior judicial authorization or in exigent circumstances to prevent imminent harm, and does not involve the collection of any private communications.

- The RCMP takes strong measures to protect public safety and privacy rights when using this technique, and complies fully with the Charter of Rights and Freedoms, criminal laws and regulations.
- Data collected from this technique is only retained until the conclusion of court proceedings, as required by the courts, and is done to ensure the RCMP adheres to the principles of fundamental justice.
- I understand that other Canadian police services have also confirmed their use of technology to identify mobile devices during investigations.
- There are federal laws with appropriate oversight and conditions in place to ensure the lawful use of investigative techniques by police and security agencies.
- These measures help ensure the appropriate balance between privacy rights and the need to keep Canadians safe.

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Information (third party data)

Information (third party data) obtained through IMSI catchers is destroyed after court proceedings, appeal periods, and/or any specific orders from a judge. This retention policy is upheld by case law. On June 27, 2016, the Ontario Superior Court of Justice issued a decision in a Toronto Police Service case, in which RCMP provided technical support (“Project Battery”), which upheld the law enforcement use of IMSI catchers.

Specifically, the court found that an IMSI catcher “undoubtedly interferes to some extent with the privacy interests of third parties...these are minor and temporary interferences with privacy when balanced against the strong public interest in facilitating the investigation of very serious crimes...”. The court also identified that the RCMP: “were bound to withhold all innocent third parties’ cell phone serial number data from the investigators.” With respect to destroying third party data, the court stated: “I agree that destruction of this data, while cases remain pending before the Court, would only invite s. 7 Charter issues. However, once all cases are complete, the RCMP should consider destroying this irrelevant data...”

OPC investigation

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- The investigation is ongoing and the RCMP continues to fully cooperate with the OPC.

Use of IMSI catchers by other Canadian police services

On April 12, 2017, the CBC confirmed that other Canadian police services, including Calgary Police Service, Winnipeg Police Service and the Ontario Provincial Police use IMSI catchers.

Lawful use of IMSI catchers

The lawful use of an IMSI catcher requires authorization from Innovation Science and Economic Development Canada (ISED), pursuant to the *Radiocommunications Act*. Absent exigent circumstances, the RCMP also obtains judicial authorization prior to using an IMSI catcher.

The provisions under the *Criminal Code* (section 191) apply to devices that are primarily use for and capable of intercepting "private communications", i.e. the actual content of electronic communications. The RCMP's IMSI catchers are incapable of collecting private communications, and therefore these provisions do not apply to the RCMP's use of this technology.

Pursuant to the *Criminal Code* (section 191 (2) (a)), police services are exempted from criminal prohibitions involving the possession of a device used to intercept private communications.

Name of PCO Policy Analysts: [REDACTED]

s.15(1) - Subv

Secretariat: Security and Intelligence

Telephone number: [REDACTED]

QUESTION PERIOD NOTE

Date: April 6, 2017

Classification: UNCLASSIFIED

Branch / Agency: RCMP

Question Period Note / Note pour la Période des questions

INTERCEPTION OF OR INTERFERENCE WITH COMMUNICATIONS

ISSUE: CBC article regarding International Mobile Subscriber Identity catchers near Parliament Hill.

PROPOSED RESPONSE:

- **We recognize the concerns of potential illegal interception activities, and their potential implication on our democratic institutions, media freedoms and the privacy of Canadians.**
- **I can assure Canadians that our law enforcement and intelligence agencies can only act in support of their legislative mandates to ensure the safety and security of Canada.**
- **Their activities must be in strict accordance with federal laws including the Charter of Rights and Freedoms, the Criminal Code, and must recognize and respect the constitutional rights of all Canadians.**
- **We take these reports seriously, whether they are conducted by individuals or foreign actors and we are committed to detecting and pursuing such activities.**
- **While we do not generally comment on operational matters, the activity that was reported on April 3 does not involve a Canadian agency like the RCMP or CSIS.**
- **Yesterday, to enhance transparency around the use of investigative techniques, the RCMP confirmed its use of technology to identify mobile devices during serious and priority investigations.**
- **The RCMP's use of this technology is limited, only used with prior judicial authorization or in exigent circumstances to prevent imminent harm, and does not involve the collection of any private communications.**
- **The RCMP takes strong measures to protect public safety and privacy rights when using this technique, and complies fully with the Charter of Rights and Freedoms, criminal laws and regulations.**
- **Data collected from this technique is retained only until after the conclusion of court proceedings and is done so to ensure the RCMP adheres to the principles of fundamental justice. The Court has considered and supported this retention requirement.**

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CONTACTS:

Prepared by
RCMP – Jeffrey Morris

Tel. no.

613-843-4494

Approved by
RCMP

Tel. no.

613-843-4494

QUESTION PERIOD NOTE

Date: April 5, 2017

Classification: UNCLASSIFIED

Branch / Agency: RCMP

Question Period Note / Note pour la Période des questions

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PETER HENSCHERL,
DEPUTY COMMISSIONER
SPECIALIZED POLICING
SERVICES, RCMP

Tel. no.

613-843-4494

INTERCEPTION DE COMMUNICATIONS PRIVÉES

SUJET : Article de la CBC concernant des intercepteurs d'IMSI près de la Colline du Parlement

RÉPONSE SUGGÉRÉE :

- **Nous comprenons l'inquiétude que suscitent les activités de possible interception clandestine et les conséquences qu'elles pourraient avoir sur nos institutions démocratiques, sur la liberté de presse et sur la vie privée des Canadiens.**
- **Je tiens à rassurer la population canadienne que nos organismes de renseignement et d'application de la loi ne peuvent agir qu'au soutien de leurs mandats légitimes pour assurer la sécurité des Canadiens.**
- **Leurs activités doivent respecter scrupuleusement les lois fédérales, notamment la *Charte des droits et libertés* et le *Code criminel*, et elles doivent tenir compte des droits constitutionnels de tous les Canadiens et les respecter.**
- **Nous prenons très au sérieux le signalement de telles activités, qu'elles soient tenues par des particuliers ou par des étrangers, et nous nous engageons à les détecter et à en amener les responsables devant les tribunaux.**
- **Bien que nous n'ayons pas l'habitude de commenter les dossiers opérationnels, sachez que l'activité qui a fait l'objet d'un reportage le 3 avril n'est pas le fait d'un organisme fédéral canadien, comme la GRC ou le SCRS.**

INTERCEPTION DE COMMUNICATIONS PRIVÉES

CONTEXTE :

Le 3 avril 2017, la CBC a diffusé un reportage faisant état de l'utilisation au centre-ville d'Ottawa de moyens technologiques pour suivre des appareils cellulaires (mobiles). Selon le journaliste, la technologie, appelée capteurs d'IMSI (données d'identité internationale d'abonné mobile – préférablement identificateurs d'appareils mobiles) a été utilisée par une partie inconnue pour suivre des appareils mobiles.

Le dossier a fait l'objet d'un suivi médiatique le 4 avril, qui présentait des commentaires du ministre de la Sécurité publique.

La Gendarmerie royale du Canada (GRC) et le Service canadien du renseignement de sécurité (SCRS) enquêtent sur l'utilisation alléguée de capteurs d'IMSI au centre-ville d'Ottawa. L'enquête se poursuit.

Il y a eu récemment aux États-Unis aussi des reportages et des enquêtes semblables :

<http://www.ibtimes.co.uk/someone-could-be-secretly-spying-mobile-communications-white-house-pentagon-who-1612274>.

Interdiction de l'utilisation clandestine de capteurs d'IMSI

Il existe des lois fédérales qui interdisent l'utilisation clandestine de capteurs d'IMSI et d'autres technologies servant à intercepter des communications. La *Loi sur la radiocommunication* comporte des interdictions concernant l'action clandestine de brouiller ou d'entraver la radiocommunication et la possession ou l'exploitation illégale d'appareils radio. Cette loi prévoit des peines d'emprisonnement (ne dépassant pas un an) et des amendes.

Le *Code criminel* comporte des interdictions concernant la possession et l'utilisation illégale de dispositifs conçus pour intercepter clandestinement des communications privées. Le Code prévoit des peines d'emprisonnement ne dépassant pas deux ans (possession) et cinq ans (utilisation).

Utilisation fédérale des capteurs d'IMSI

L'utilisation de capteurs d'IMSI par la GRC et le SCRS doit être légale, conforme à la Charte et assujettie à une surveillance judiciaire adéquate.

En avril 2017, la GRC confirmera aux bureaux de presse canadiens son utilisation de capteurs d'IMSI. À cette occasion, elle fournira des renseignements généraux à cet égard, afin d'accroître la transparence et de corriger les fausses impressions répandues dans la population sur l'utilisation que la GRC fait de cette technologie.

L'utilisation par la GRC de la technologie de détection d'appareils cellulaires est limitée, elle repose forcément sur une autorisation judiciaire préalable ou sur une situation d'urgence pour éviter un danger imminent, et ne comprend pas le prélèvement de communications privées. La GRC continuera de protéger certains détails opérationnels liés à cette technologie afin d'éviter que des criminels se soustraient à l'application de la loi et d'éviter que des cibles de la Sécurité nationale, ici et ailleurs, mettent en place des contre-mesures et détectent des opérations de contre-espionnage.

Les capteurs d'IMSI qu'utilise la GRC ne servent pas à intercepter des communications privées mais à tirer seulement des renseignements limités (non liés au contenu) des appareils cellulaires. C'est donc la *Loi sur la radiocommunication* qui, des lois fédérales, s'applique surtout pour autoriser et interdire les capteurs d'IMSI pour l'usage général qu'en fait la GRC. Le *Code criminel* est l'instrument législatif sur lequel repose l'obtention de l'autorisation judiciaire préalable (sauf en situation d'urgence) pour permettre à la GRC de déployer un capteur d'IMSI. Conformément à la *Loi sur la radiocommunication*, il faut une autorisation pour installer, faire fonctionner ou posséder un appareil radio conçu pour communiquer avec des appareils mobiles dans des réseaux mobiles commerciaux afin d'obtenir des « données de transmission » (suivant la définition du *Code criminel*) associées à un appareil mobile ou au réseau mobile. Cette autorisation peut s'appliquer à des capteurs d'IMSI selon la capacité de la technologie. La GRC a obtenu l'autorisation nécessaire d'Innovation, Sciences et Développement économique Canada (ISDE). Cette autorisation s'est concrétisée récemment en 2017 après qu'ISDE et la GRC ont fait en 2016 et 2017 l'analyse nécessaire pour déterminer le cadre légal qui conviendrait le mieux à l'utilisation de capteurs d'IMSI, conformément à la *Loi sur la radiocommunication*.

Enquête du Commissariat à la protection de la vie privée

Le 7 avril 2016, la GRC a reçu du Commissariat à la protection de la vie privée une missive datée du 1^{er} avril 2016 indiquant que le CPVP avait ouvert une enquête en réponse à une plainte reçue au CPVP dans laquelle il est allégué que la GRC contrevient aux dispositions de la *Loi sur la protection des renseignements personnels* en recueillant des renseignements personnels à l'aide de StingRay ou d'appareils semblables connus comme des capteurs d'IMSI et qu'elle refuse de confirmer ou d'infirmer son utilisation de capteurs d'IMSI comme outils d'enquête.

L'enquête se poursuit et la GRC continue de coopérer pleinement avec le CPVP.

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