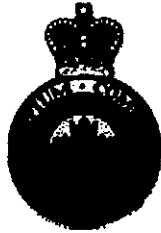


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June 2006
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OPS-1-10

Procedures for Metadata Analysis

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Annex 1	FormError! Bookmark not defined.

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1. Introduction

1.1 Objective

These procedures describe the process CSE and CFIOG analysts must follow when conducting metadata analysis, pursuant to paragraph 273.64(1)(a) of the *National Defence Act* (*NDA*) (known as "Mandate A") in pursuit of Foreign Intelligence (FI),

Metadata analysis conducted in support of Federal Law Enforcement or Security Agencies (LESAs) to obtain Security or Criminal Intelligence (mandated under paragraph 273.64(1)(c) of the *NDA*, known as "Mandate C") is handled only in accordance with OPS-4-1, *Procedures for CSE Assistance to Canadian Federal Law Enforcement and Security Agencies*, and OPS-4-2, *Procedures for CSE Assistance under Section 12 of the CSIS Act*.

1.2 Authority

In accordance with these procedures, metadata analysis

for the purpose of providing FI, pursuant to paragraph 273.64(1)(a) of the *NDA*.

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**1.3 Context and
Limitations**

Metadata analysis
may only be conducted
with the authorization of , in
accordance with these procedures, and only in
cases where there is a reasonable belief that the
activity will lead to Foreign Intelligence
see 2.4).

1.4 Application

CSE staff, Canadian Forces Information
Operations Group (CFIOG) staff, and any other
parties conducting metadata analysis (

under CSE authorities are bound by
these procedures.

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2.4 FI Test

The following questions must be addressed by analysts in metadata analysis.

Step	Considerations	If the answer is...	Then...
1	Is there a reasonable belief that will lead to FI	YES	Analysts provide detailed rationale, using the form at Annex 1, go to step 2.
		NO	, unless it can be done under "Mandate C" (see 1.1).
2	Will the expected FI satisfy a formal GCR (Government of Canada Requirement)?	YES	Include GCR number on form (Annex 1); submit for approval (see 2.6 below)
		NO	Do not proceed with metadata analysis.

2.5 Documenting Rationale

CSE Intelligence Branch and CFIOG analysts must document their rationale for believing a will lead to FI, using the form (Annex 1).

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2.6 Approvals

The rationale _____ is
presented by analysts using the form at Annex
1, _____

The rationale _____, is
presented by analysts using the form at Annex
1, _____

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**2.7 Emergency
Approval for**

In urgent situations (e.g. there is an imminent threat to life),

3. Requirements

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3.1 Records

Note that:

**3.2 Review of
Requirement
for**

Activities

is
subject to management monitoring, and to review
by various government review bodies, including
the CSE Commissioner.

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3.3 Reporting

SIGINT reports based on metadata analysis must adhere to existing policies and procedures including:

- OPS-1, *Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSE Activities*
- OPS-1-1,
- OPS-1-7, *SIGINT*.
- OPS-4-1, *Procedures for CSE Assistance to Canadian Federal Law Enforcement and Security Agencies*
- OPS-4-2, *Procedures for CSE Assistance under Section 12 of the CSIS Act*
- OPS-5-2, *CSE SIGINT Reporting Procedures*

3.4

3.5

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4. Metadata Analysis

4.1 CSE
Metadata

Metadata analysis 1

requires the prior
approval (see
Annex)

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June 2006

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4 Metadata analysis
.
2

5. Roles and Responsibilities

5.1

This table summarizes roles and responsibilities
under these procedures.

Who	Roles
-----	-------

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•	<ul style="list-style-type: none"> • Approving metadata analysis • Seeking legal advice when required
• Director, Legal Services	<ul style="list-style-type: none"> • Providing legal advice, when requested
•	<ul style="list-style-type: none"> • Approving metadata analysis • Reviewing rationales for metadata analysis
•	<ul style="list-style-type: none"> • Reviewing rationale and, if acceptable, recommending approval to of metadata analysis • Emergency approval authority (see 2.8) • Seeking legal advice from DLS when required
(for CFIOP activity)	<ul style="list-style-type: none"> • Reviewing and recommending proposals to in metadata analysis • Reviewing forms quarterly, to ensure continued FI relevance

* Note: personnel will consult DLS only in coordination with CSE

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6. Additional Information

6.1 Accountability

The following table outlines the accountability structure with respect to these procedures.

Who	Responsibilities
Deputy Chief SIGINT	<ul style="list-style-type: none"> • Approving these procedures
	<ul style="list-style-type: none"> • Applying these procedures • Recommending changes to these procedures
DG Policy and Communications	<ul style="list-style-type: none"> • Approving these procedures
Director, Legal Services	<ul style="list-style-type: none"> • Reviewing these procedures to ensure they comply with the law

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<p>All CSE</p> <p>Managers involved in</p>	<ul style="list-style-type: none"> Ensuring their staff have read and understood these procedures and any amendments to these procedures
<ul style="list-style-type: none"> CFIOG staff 	<ul style="list-style-type: none"> Reading, understanding and complying with these procedures and any amendments to these procedures
<p>Manager</p>	<ul style="list-style-type: none"> Revising these procedures when required Responding to questions concerning these procedures

6.2 References

- National Defence Act
- Ministerial Directive "Privacy of Canadians", June 2001
- OPS-1, *Protecting the Privacy of Canadians and Ensuring Legal Compliance in the Conduct of CSE Activities*
- OPS-1-1,
- OPS-1-7, *SIGINT*
- OPS-5-2, *CSE SIGINT Reporting Procedures*

6.3 Amendments

Situations may arise where amendments to these procedures may be required because of changing or unforeseen circumstances. All approved amendments will be announced to staff and will be posted.

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6.4 Enquiries

Questions related to these procedures should be directed to operational managers, who in turn will contact staff (e-mail) when necessary.

7. Definitions

7.1 Canadian

'Canadian' refers to

- a) A Canadian citizen, or
 - b) A person who has acquired the status of permanent resident under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and who has not subsequently lost that status under that *Act*, or
 - c) A corporation incorporated under an Act of Parliament or of the legislature of a province. (NDA)
-

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7.3

7.4

**7.5 Foreign
Intelligence
(FI)**

Foreign intelligence is information or intelligence about the capabilities, intentions or activities of a foreign individual, state, organization or terrorist group, as they relate to international affairs, defence or security.

7.6 Metadata

Metadata is defined as information associated with a telecommunication to identify, describe, manage or route that telecommunication

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June 2006
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**7.7 Metadata
Analysis**

Metadata analysis includes various types of
SIGINT activities

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s.21(1)(a)
s.21(1)(b)
s.23

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Legal Issues

•—In these reviews, two recommendations from the Commissioner relate to the interpretation of the CSEC mandates. In his view, some activities undertaken by CSEC under part (a) of the mandate (foreign intelligence) should have been undertaken under part (c) of the mandate (provision of technical and operational assistance to law enforcement and security agencies) rather than under its foreign intelligence mandate.

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The Commissioner indicated in his letter to you that OCSEC has shared a discussion paper on this topic with CSEC. In particular, the discussion paper suggested that

My organization has provided a response to this discussion paper and is awaiting a reply.

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In the meantime, CSEC will continue to conduct its activities in a manner consistent with the legal advice provided by the Department of Justice.

Ministerial Directives

In his letter to you, the Commissioner suggested that a number of Ministerial Directives issued prior to the amendments to the *National Defence Act* which provides CSEC with its legislated mandate, are still in force and should be reviewed to ensure they are consistent with the legislation. As noted in the response to previous reviews, I agree with the Commissioner and have committed to revisiting these three Ministerial Directives by the end of the year.

Policy Issues

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Communications Security
Establishment Canada

Centre de la sécurité
des télécommunications Canada

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Ottawa, Canada
K1G 3Z4

C.P. 9703
Terminus
Ottawa, Canada
K1G 3Z4

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~~COMINT/~~
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Your File Note reference

Our File Note reference
CSEC/052-08

The Honourable Peter G. MacKay, P.C., M.P.
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister:

I am writing to seek your approval to the attached response to two reports you received from the CSE Commissioner. The first report, dated 9 January 2008, was entitled *Ministerial Directive, Communications Security Establishment, Collection and Use of Metadata, March 9, 2005*. The second report, dated 16 January 2008, was entitled *Report to the CSE Commissioner on CSE Support to CSIS, Phase I: Mandate (a)*.

I am pleased to note that during the course of these reviews, the Commissioner did not observe or report on any unlawful activity on the part of Communications Security Establishment Canada (CSEC) or its staff. There are five recommendations contained in the reports.

As the Commissioner has already noted in his letter to you, there was a delay in completing the reports due to issues at both the Office of the CSE Commissioner (OCSEC) and CSEC. These reports, which are not an easy-read, are particularly complex compared to previous reports owing to the subject matter, which added to the time required OCSEC to complete the review and for CSEC to and respond to them, its recommendations. Due to these delays, many of the observations noted during the course of the review have already been addressed.

CSEC's proposed response to both reports' recommendations is attached as annexes to this letter. Below are CSEC's views concerning points raised by the Commissioner in his letter-letters to you but not included or referenced in the recommendations.

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Canadian Eyes Only~~

The Commissioner has noted that some CSEC operational policies and procedures, in particular the consistent use of terminology, could benefit from improved inter-policy consistency. CSEC will review and update the terminology used in policies and procedures, in order to improve consistency, by September 2008, address this issue as part of its ongoing policy suite renewal. Additional management direction will be provided to address any potential gaps identified by the Commissioner.

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Information Management

The Commissioner raises the issue of corporate records and information management in his letters to you. CSEC has already advised the Commissioner that it is implementing an electronic corporate records management system and has also improved its management of hard-copy files, especially those related to activities conducted under Ministerial Authorization. The plan is for the CSEC electronic information management system to be fully implemented by October 2008.

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As always, CSEC is open to discussion with the Commissioner's office regarding any aspects of OCSEC reviews.

Sincerely,

John Adams
Chief

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Enclosures

cc. Robert Fonberg, Deputy Minister, National Defence

I concur:

Margaret Bloodworth
National Security Advisor to the Prime Minister
and Associate Secretary to Cabinet

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

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ANNEX A:
CSEC Response to Recommendations in the OCSEC Report Entitled
*Ministerial Directive, Communications Security Establishment,
Collection and Use of Metadata, March 9, 2005*

Recommendation no. 1: Accounting for Private Communications

"CSE should re-examine and re-assess its current position and practice that requires that only those private communications recognized be accounted for."

~~CSEC has re-examined its position and practices.~~

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~~Legally, there is no requirement under the SIGINT Ministerial Authorizations, the Ministerial Directive nor the National Defence Act to account for private communications.~~

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~~Legally, there is no requirement under the SIGINT Ministerial Authorizations, the Ministerial Directive nor the National Defence Act to account for private communications.~~

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~~As detailed in the SIGINT Ministerial Authorizations, CSEC's current position and practice of accounting is consistent with what is required by the Minister for accountability purposes. are~~

² OPS-1-6.

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- s.15(1)
- s.16(2)(c)
- s.21(1)(a)
- s.21(1)(b)
- s.23

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CSEC has examined its current policy and:

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Recommendation no. 2:

"CSE should re-examine and re-assess the legislative authority used to conduct its activities"

CSEC has re-examined its legislative authorities used to conduct activities

This matter has been the subject of ongoing discussions with OCSEC regarding parts (a) and (c) of its mandate. OCSEC has forwarded a discussion paper on this topic to CSEC to which a response has been provided. However, CSEC remains of the view that the Department of Justice interpretation is the right one. CSEC will continue working with OCSEC to address the different interpretations with a completion date of May 2008.

CSEC is to re-examine and re-assess the management direction regarding these activities. Policy is being revised to clarify approval authorities for these activities and will be completed by July 2008. In addition, practices have been modified to better document the case-

³ OPS-1-6.

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- s.16(2)(c)
- s.21(1)(a)
- s.21(1)(b)
- s.23

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by-case rationales regarding the appropriateness of part (a) of the mandate for these activities.

legislative authority has been the subject of ongoing discussions with OCSEC. OCSEC has forwarded a discussion paper on this topic to CSEC to which a response has been provided. In any event, CSEC will continue to conduct its activities in a manner consistent with the legal advice provided by the Department of Justice. CSEC will continue working with OCSEC to resolve the different interpretations with a completion date of May 2008.

That being said, CSEC agrees with this recommendation and re-assess the legal authority and management direction regarding activities. Revised policy is in the final stages of development and will be completed by August 2008. practices

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ORIGINALS

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10 January 2011

**SCENARIO NOTE FOR CHIEF'S BRIEFING TO THE NATIONAL SECURITY ADVISOR
CSE COMMISSIONER'S REVIEW OF ACTIVITIES**

Introduction

This scenario note is provided in advance of your meeting with the National Security Advisor (NSA), Mr. Stephen Rigby, to brief him on the referenced review. Below are suggested speaking points for your briefing to the NSA.

Background

On 16 December 2010, CSEC received the Commissioner's latest review report, which examined activities conducted during the period of October 2008 to October 2009.

This was the first review that focused exclusively on these activities. Previous reviews – *CSEC Support to the Royal Canadian Mounted Police (2006)*, *CSEC's Collection and Use of Metadata (2008)*, and *CSEC's Support to the Canadian Security Intelligence Service (2008)* – dealt with activities tangentially.

These earlier reviews provided the grounds for the focused review. In each of the previous reviews, CSEC stated that its activities were conducted under part (a) of the mandate. However, the Commissioner believed that, in certain cases, part (c) of the mandate would have been a more appropriate authority. At issue was whether activities meant that CSEC's activities were "directed at" Canadians, and therefore not a part (a) activity.

Given the issues raised, you suspended activities from April 2007 to October 2008. Although satisfied that these activities were not "directed at" Canadians, you felt that additional policy guidance was necessary to ensure that these activities were done lawfully and that appropriate management accountabilities were in place. With the promulgation of OPS-1-10 *Procedures for Metadata Analysis* in September 2008, CSEC resumed activities. There were such activities during the period under review, all of which the Commissioner examined.

Over the next three months, it is anticipated that the Commissioner will complete five other reviews:

- SIGINT MAs (2007-2009)
- MAs (2008-2009)
- Disclosures of Canadian Identity Information to Government of Canada Clients
- SIGINT Management
- CSEC's activities related to

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TALKING POINTS

Commissioner's

Report

- Now that we have covered the CSE Commissioner's role and your part in our interactions, I am going to brief you on the latest report produced by the Commissioner, which was sent to the Minister – with a copy to your office - on 16 December 2010. The review examined CSEC's activities conducted during the period of October 2008 to October 2009. As you may have already noted, the report is very favourable.
- The Commissioner's primary objectives for the review were to:
 - acquire detailed knowledge of and document CSEC's new approach to activities
 - assess whether the activities complied with the law; and
 - assess the extent to which CSEC protected the privacy of Canadians in carrying out the activities.
- The review did not contain any negative findings or recommendations. I am pleased to note that the review found that CSEC conducted the activities in accordance with the law, Justice advice and Ministerial Directives.
- In addition, the review found that CSEC:
 - has appropriate policies and procedures that govern the activities;
 - managers and personnel are aware of, and comply with, these policies and procedures; and
 - has the means to monitor compliance with policies and procedures, maintain the integrity of these activities, and account for important decisions and information.
- The review also concluded that the were appropriately authorized under part (a) of the mandate. Moreover, the Commissioner noted that, with the changes made to these activities as outlined in OPS-1-10, he has no questions as to whether such activities would be more appropriately authorized under part (c).
- Given the Commissioner's view that these activities may affect the privacy of Canadians, he has asked to be made aware of the number of such conducted annually and will likely review samples on a regular basis.
- I note that the number of conducted during the period under review was unusually low, due to the fact that we had only recently restarted the activity. Over the course of the past year, CSEC has conducted significantly more and will continue to do so. These activities have been conducted in a similar manner to those subject to this review.
- We are preparing a letter of response on this review to the Minister of National Defence for your signature.

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Communications Security
Establishment Canada

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Your File Votre référence

Our file Notre référence
CCSE/006-11
652208

June 15, 2011

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister:

You received an executive summary letter from the CSE Commissioner, dated 16 December 2010, regarding a review entitled *A Review of CSEC Activities*

I am writing to seek your concurrence on a proposed response to the Commissioner, prepared by the Communications Security Establishment Canada (CSEC).

I am pleased to highlight that during the course of the review, the Commissioner found that CSEC complied with the law and with Justice Canada advice. As well, the Commissioner noted that CSEC's activities were conducted in accordance with Ministerial Directives on *Accountability Framework, Privacy of Canadians, Collection and Use of Metadata, and Support to Law Enforcement and National Security Agencies*.

In reviewing these activities, the Commissioner found that related policies and procedures were appropriate, well-known within the relevant CSEC activity areas, and adhered to by CSEC personnel. Further, the review determined that CSEC's management control framework for these activities is appropriate. The review made no recommendations for further improvements to the processes and activities that it examined.

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While there were no recommendations included in the review report, I have enclosed for your consideration a draft letter of response to the Commissioner. As always, I am available should you wish to discuss any aspect of this review.

Sincerely,

John Adams
Chief

Enclosure

I concur:

Stephen Rigby
National Security Advisor to the Prime Minister
Privy Council Office

cc: Mr. Robert Fonberg, Deputy Minister, National Defence

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s.15(1)

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The Honourable Robert Décary QC
Commissioner of the Communications Security Establishment
90 Sparks Street, Suite 730
P.O. Box 1984, Station B
Ottawa, Ontario
K1P 5B4

Dear Commissioner:

I am writing to respond to your 16 December 2010 report entitled *A Review of CSEC Activities*. It was reassuring to note that during the course of the review you found that CSEC complied with the law, ministerial requirements, and operational policies.

I note that this review resulted in only positive findings and did not produce any recommendations for further improving the examined activities. Since this review focused on fairly recently resumed activities, I was pleased to see that the supporting processes were deemed fully satisfactory.

Sincerely,

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence

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Communications Security
Establishment Canada

Centre de la sécurité
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Your File Votre référence

Our file Notre référence
CCSE/006-11
652208

JAN 27 2011

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister,

You received an executive summary letter from the CSE Commissioner, dated 16 December 2010, regarding a review entitled *A Review of CSEC Activities*. I am writing to seek your concurrence on a proposed response to the Commissioner, prepared by the Communications Security Establishment Canada (CSEC).

I am pleased to highlight that during the course of the review, the Commissioner found that CSEC complied with the law and with Justice Canada advice. As well, the Commissioner noted that CSEC's activities were conducted in accordance with Ministerial Directives on *Accountability Framework, Privacy of Canadians, Collection and Use of Metadata, and Support to Law Enforcement and National Security Agencies*.

In reviewing these activities, the Commissioner found that related policies and procedures were appropriate, well-known within the relevant CSEC activity areas, and adhered to by CSEC personnel. Further, the review determined that CSEC's management control framework for these activities is appropriate. The review made no recommendations for further improvements to the processes and activities that it examined.

MND REGISTRY REGISTRE DU MDN	
Referred to Transmis à	_____
FEB 01 2011	
File No. No. de Dossier	<u>11-01001</u>
Charged to Chargé à	_____

Canada

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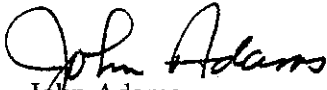
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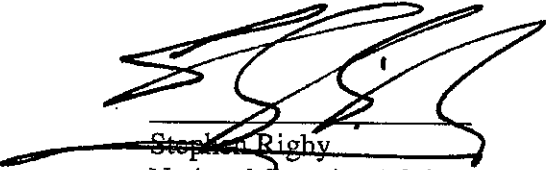
While there were no recommendations included in the review report, I have enclosed for your consideration a draft letter of response to the Commissioner. As always, I am available should you wish to discuss any aspect of this review.

Sincerely,


John Adams
Chief

Enclosure

I concur:


Stephen Righy
National Security Advisor to the Prime Minister
Privy Council Office

cc: Mr. Robert Fonberg, Deputy Minister, National Defence

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Minister
of National Defence



s.15(1)
Ministre
de la Défense nationale

Ottawa, Canada K1A 0K2

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FEB 09 2011

The Honourable Robert Décaré QC
Commissioner of the Communications Security Establishment
90 Sparks Street, Suite 730
P.O. Box 1984, Station B
Ottawa, Ontario
K1P 5B4

Dear Commissioner:

I am writing to respond to your 16 December 2010 report entitled *A Review of CSEC Activities*. It was reassuring to note that during the course of the review you found that CSEC complied with the law, ministerial requirements, and operational policies.

I note that this review resulted in only positive findings and did not produce any recommendations for further improving the examined activities. Since this review focused on fairly recently resumed activities, I was pleased to see that the supporting processes were deemed fully satisfactory.

Sincerely,

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence

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ADVICE FOR THE MINISTER

CSEC ISSUES

ISSUE: Why is the government putting national security at risk with the LTA project by hiring contractors to work at CSEC? Why is the government allowing the loss of more than 90 Public Service positions by hiring contractors rather than full-time public servants? Why was Plenary Properties, a foreign-owned Australian company, selected to construct the new facility for Canada's most secret intelligence organization? What is the government doing to ensure that Government of Canada computers and information are protected from cyber-attacks?

IF PRESSED ON IMPACT OF LONG-TERM ACCOMMODATION (LTA) PROJECT ON NATIONAL SECURITY

- National security is in no way at risk as a result of this project. All CSEC staff, including contractors, are subject to the appropriate security screening process and clearance level.
- Any private contractor hired for the new facility who will have access to sensitive information will be designated as a Person Permanently Bound to Secrecy and subject to the *Security of Information Act* in the same manner as CSEC employees.
- Contractors have been employed by CSEC for many years. At any given time, there are more than 100 contractors working at CSEC. All contractors have the appropriate security clearances, have sworn the appropriate oaths of secrecy and have signed the appropriate documents to be employed by CSEC.

IF PRESSED ON IMPACT OF LTA PROJECT ON CSEC EMPLOYEES' JOB SECURITY

- No CSEC employee will lose employment as a result of this public private partnership.
- The Chief of CSEC is fully committed to ensuring that any employee whose job is affected by the move to the new facility four to five years from now is guaranteed another position at CSEC or elsewhere within the federal public service.
- In fact, this project will create jobs – approximately 4000 construction jobs will be created as a result of this project.

IF PRESSED ON PLENARY GROUP (CANADA) AND CANADIAN BUILDER PCL CONSTRUCTION

- Plenary Group, the Plenary Properties consortium lead, is a Canadian company with offices in Toronto, Vancouver and Edmonton.
- Plenary Group has an Australian sister company with industry-leading experience in Australian-based public-private-partnership projects; however, this company is not involved in the project.
- Plenary Group has a proven track record of creating Canadian jobs. This project is expected to generate upwards of 4,000 jobs for Canadians, 99 percent of which are expected to be Canadian.
- With a project of this size and complexity, it is only reasonable to expect that the consortium would be Canadian-led and multinational in nature.

IF PRESSED ON CYBER COMPROMISES OF GOVERNMENT OF CANADA COMPUTER SYSTEMS

- CSEC provides the Government of Canada, departments and agencies advice, guidance and services on the protection of electronic information and infrastructures.
- CSEC is recognized as a key partner in Canada's *Cyber Security Strategy*.
- While the Government does not comment on the specific operational details of security-related incidents, I can assure you that CSEC continues to work with departments in addressing unauthorized attempts to access their networks.

IF PRESSED ON OCSEC ANNUAL REPORT, 2010-11

- As the Communications Security Establishment Commissioner confirmed in his annual report, CSE activities that he examined this past year were all in compliance with the law, ministerial requirements, and CSE policies and procedures.
- The Commissioner made a small number of recommendations, and expressed satisfaction that CSEC addressed deficiencies identified in previous annual reports.

IF PRESSED ON CSEC COLLECTION OF CANADIANS' PERSONAL INFORMATION

- CSEC does not target the communications of Canadians anywhere and has legislative measures in place for the protection of the privacy of Canadians.
- As the CSE Commissioner has noted in his 2010-2011 report, the focus of CSEC activity is foreign intelligence.
- The CSE Commissioner highlighted that all reviewed CSEC activities were authorized and carried-out in accordance with the law, ministerial requirements and CSEC's policies and procedures.
- In his report, the Commissioner highlights the degree of transparency and cooperation displayed by CSEC, as well as CSEC's genuine concern for protecting the privacy of Canadians.