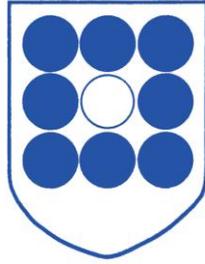


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CANADIENNE DES
LIBERTÉS CIVILES

90 ave Eglinton, Bureau 900
Toronto, ON M4P 2Y3
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Courriel : mail@ccla.org

June 13, 2017

Canadian Security Establishment

Re: ACCESS TO INFORMATION ACT REQUEST

To whom it may concern,

The Canadian Civil Liberties Association (CCLA) submits this request under the *Access to Information Act (ATIA)*¹ for access to documents concerning international data-sharing arrangements between Canada and any other country.

I. Background

We have provided the background and rationale for this request in order to establish that in light of domestic surveillance practices, there is a particular need for the release of the requested materials, and a public interest in access to this information. *Our specific request follows in section II below.*

The arrangements through which the Canadian government shares foreign-intelligence surveillance with other governments dramatically implicate the privacy of Canadian and non-Canadian persons. And yet those arrangements are largely shrouded in secrecy.

Since the disclosures of Edward Snowden in June 2013, the foreign-intelligence surveillance practices of Canada and other countries have come under intense public scrutiny. Numerous published news articles and documents have exposed the vast reach of international surveillance efforts, in which Canada's national security agencies play a part. For example, the Communications Security Establishment (CSE) tested a system in 2012 that allowed them to track individuals

¹ RSC, 1985, c. A-1 [ATIA].

who connected to free wi-fi at a Canadian airport for days afterwards.² Canada has also established spying posts and conducted espionage against trading partners at the request of the U.S. National Security Agency.³ And in early 2016, the Security Intelligence Review Committee (SIRC) alerted Canadians⁴ that since 2006, the Canadian Security Intelligence Service (CSIS) had been running a collection and retention program that illegally and indefinitely retained metadata information of third parties unrelated to specific threats.⁵ It should be noted that CSIS was under obligation to report on this program at various earlier points, and had not done so.

While some information has come to light regarding Canada's foreign-intelligence surveillance practices, very little is known about the extent to which the government shares information collected through that surveillance with other countries. Canada has agreements to share intelligence information with many countries, including France, Germany, and Israel.⁶ Canada is also a member of the "Five Eyes" along with the United States, the United Kingdom, Australia, and New Zealand, a partnership through which those countries share raw data, intelligence reports, and operations centers.⁷

The Five Eyes arrangements are not public but reportedly permit the sharing of data with minimal privacy safeguards. For example, each of the Five Eyes parties has pledged not to target one another's communications, but the CSE Commissioner notes the agency does not check on partners to ensure that the agreement is followed.⁸

Further, while we know little about the way these or other international information-sharing arrangements actually work, we do know that mistakes can happen here at home. For example, it was recently revealed that CSE shared

² Greg Weston, Glenn Greenwald & Ryan Gallagher, CBC News, "CSE used airport Wi-Fi to track Canadian Travellers: Edward Snowden documents," Jan. 31, 2014, <http://www.cbc.ca/news/politics/CSE-used-airport-wi-fi-to-track-canadian-travellers-edward-snowden-documents-1.2517881>

³ See Greg Weston, Glenn Greenwald & Ryan Gallagher, "Snowden document shows Canada set up spy posts for NSA" *CBC News* (9 December 2013), online: CBC News, <<http://www.cbc.ca/news/politics/snowden-document-shows-canada-set-up-spy-posts-for-nsa-1.2456886>>.

⁴ "Broader Horizons: Preparing the Groundwork for Change in Security Intelligence Review", SIRC Annual Report 2014-2015, online: http://www.sirc-csars.gc.ca/pdfs/ar_2014-2015-eng.pdf.

⁵ See *X (Re)*, 2016 FC 1105.

⁷ Privacy International, "Eyes Wide Open 4-21" (26 Nov 2013), online: Privacy International <<https://perma.cc/VX82-89TF>>.

⁷ Privacy International, "Eyes Wide Open 4-21" (26 Nov 2013), online: Privacy International <<https://perma.cc/VX82-89TF>>.

⁸ See Jean-Pierre Plouffe, "Communications Security Establishment Commissioner Annual Report 2015-2016" (Ottawa: June 2016) at 22-23, where he states CSE "does not as a matter of general practice seek evidence to demonstrate that these principles are in fact being followed."

Canadian's metadata with Five Eyes partners for a period of two years without properly de-identifying it.⁹ This makes the question of what protections our information receives after it is passed on to our partners of immediate and pressing interest.¹⁰

This access to information request seeks information necessary to understand Canada's international information-sharing arrangements.

II. Documents requested

We request records from the following information sources:

1. Intelligence (Record Number: CSE MIS 080)
2. Cyber Defence (Record Number: CSE 002)
3. Cooperation and Liaison (Record Number: PRN 904)
4. Any of the manuals listed on the Communications Security Establishment Sources of Federal Government and Employee Information page:
 - a. Administrative Policy Manual
 - b. Operational Policy Manual
 - c. Security Integrity Index Manual
 - d. Security Policy Manual
 - e. Security Screening Procedures Manual

From the above stated sources, we request the following records:

1. All agreements, memoranda of understanding, or other arrangements with foreign countries concerning the sharing between Canada and any other country of electronic foreign-intelligence surveillance data.¹¹

⁹ CBC News. "Canada's electronic spy agency stops sharing metadata with partners." <http://www.cbc.ca/news/politics/spy-canada-electronic-metadata-1.3423565>.

¹⁰Tamir Israel & Christopher Parsons, "Why We Need to Reevaluate How We Share Intelligence Data With Allies" *Just Security* (3 Feb 2016) online: Just Security <<https://www.justsecurity.org/29138/reevaluate-share-intelligence-data-allies/>>.

¹¹ For purposes of this letter:

1. the term "electronic foreign-intelligence surveillance data" is defined as data acquired through or derived from electronic surveillance conducted for foreign-intelligence purposes, and
2. the term "electronic-surveillance data" is defined as data acquired through or derived from electronic surveillance.

2. All policies, guidelines, manuals, directives, procedures, protocols, opinions, reports, awareness and briefing documentation, training materials, and memoranda concerning:
 - a. The circumstances in which Canada may share foreign-intelligence surveillance data with another country.
 - b. Any limitations on the sharing of foreign-intelligence surveillance data with other countries, including with respect to any information about Canadians that is incidentally shared.
 - c. The circumstances in which Canada may request or otherwise acquire from another country electronic-surveillance data.
 - d. Any limitations on the acquisition (whether by request or otherwise) of electronic-surveillance data from another country.
 - e. Any limitations on Canada's retention, use, or disclosure of electronic-surveillance data requested or otherwise acquired from another country, including the use of such data or data derived from it in civil, criminal, administrative, or other proceedings.
 - f. The circumstances, if any, in which Canada may request or otherwise acquire electronic-surveillance data from another country where Canada itself could not lawfully acquire the same data in the same manner.

For clarity, we are not requesting the personal information of any individual. Should any records contain both personal information and the policy information we have requested, we ask that you redact only personal information and release all policy information contained in the record to us.

III. Application Fee

Enclosed is a cheque for \$5.00 made payable to the Receiver General of Canada.

IV. Conclusion

We request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, if this is not possible, we would like to know the reasons, and we would then request that the records be provided

electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession.¹²

If this Access to Information request is denied in whole or in part, please provide the reasons for the denial including the specific provision of the *ATIA* on which the refusal was based or could reasonably be expected to be based, pursuant to subsection 10(1) of the *ATIA*. In addition, we ask for the opportunity to clarify our request if necessary.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to section 7 of the *ATIA*, we expect a response regarding this request within the thirty day statutory time limit.

Sincerely,

Brenda McPhail
Director, Privacy, Technology &
Surveillance Project
Canadian Civil Liberties Association
90 Eglinton Ave. E, Suite 900
Toronto, ON M4P 2Y3
(416) 363-0321 x253
BMcPhail@ccla.org

¹² See Interim Directive on the Administration of the Access to Information Act ss 7.4.6 (“When privacy, confidentiality and security considerations would not be compromised and it would not be unreasonable or impracticable to do so, provide records in the format requested by the requester, including machine-readable and reusable formats”), <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18310>.