

13 September 2017

The Honourable Jean-Pierre Plouffe, CD
Commissioner, Communications Security Establishment
Office of the Communications Security Establishment Commissioner (OCSEC)
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The Honourable Pierre Blais, PC
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Security Intelligence Review Committee (SIRC)
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Re: Oversight of intelligence sharing between your government and foreign governments

To The Honourable Jean-Pierre Plouffe and The Honourable Pierre Blais,

We, the undersigned organizations and experts, are writing to share our concerns about the lack of transparency of intelligence sharing arrangements between your government and foreign governments, and to seek information from you about your oversight of these intelligence sharing arrangements.

The effective oversight of secret surveillance is among the fundamental guarantees against a government's unlawful interference with the right to privacy. But in many countries around the world, there is an alarming lack of effective oversight of arrangements to exchange intelligence with other countries. Yet, the interference with privacy remains the same regardless of whether a government conducts direct surveillance or obtains information from another government. Just as government surveillance must be transparent and subject to adequate safeguards and oversight, so too must intelligence sharing arrangements.

In the attached briefing, Privacy International elaborates on the international human rights implications of intelligence sharing between governments and offers recommendations to national intelligence oversight bodies. Privacy International is sharing this briefing with oversight bodies in over 40 countries as part of a project to increase transparency around intelligence sharing and to encourage oversight bodies to scrutinize the law and practice of

intelligence sharing in their respective countries. Working with national partners, Privacy International has also sent letters posing questions comparable to those posed here to similarly situated oversight bodies in these various jurisdictions.

Canada's intelligence agencies are not immune from these challenges. Information sharing by the Communications Security Establishment (CSE) is a particular challenge. CSE is a member of the Five Eyes alliance, and heavily integrated with other Five Eye agencies on both technical and operational levels. As noted in the attached report, CSE also enjoys close operational ties with other agencies around the world. The Canadian Security Intelligence Service (CSIS) also holds a significant quantity of often private information and both agencies have been implicated in cross-border sharing challenges in recent years.¹ The Security of Canada Information Sharing Act (and its proposed replacement, the Security of Canada Information Disclosure Act) exacerbates these challenges by allowing Government agencies to provide CSIS and CSE with private Canadian information for the purpose of meeting foreign states' security objectives.²

We recognize that each of your offices has recently conducted a review of intelligence sharing practices. In its review, the Office of the CSE Commissioner completed a multi-year comprehensive review of CSE's formal information-sharing practices with foreign entities, including the general legal and policy framework governing such arrangements as well as the arrangements themselves.³ For its part, SIRC reviewed two Ministerial Directions governing CSIS' disclosure of information to foreign entities as well as CSIS' relationship with traditional and non-traditional foreign partners.⁴

We are also aware that the Government is in the process of comprehensively reviewing Canada's entire national security framework. This includes proposals to create a unified national security review body (the National Security and Intelligence Review Agency "NSIRA") that will be empowered to more effectively examine intelligence sharing with foreign partners across the breadth of Government of Canada activities.

In spite of all this, questions remain. As national bodies mandated to oversee the activities of specific intelligence agencies, we believe OCSEC and SIRC are in the best position to respond to these questions. As noted above, Privacy International is working with national partners in over 40 other jurisdictions to deliver comparable questions to similarly placed oversight bodies:

¹ For a summary of these, see: Brenda McPhail, Access to Information Request: Canadian Security Intelligence Service, June 13, 2017, *ccla.org*, <https://ccla.org/cclanewsites/wp-content/uploads/2017/06/2017-06-13-FOI-Canadian-Security-Intelligence-Service.pdf> and ,International Network of Civil Liberties Organizations, "Surveillance and Democracy: Chilling Tales from Around the World", November 2016, <https://ccla.org/cclanewsites/wp-content/uploads/2016/11/Surveillance-and-Democracy-INCLO-report.pdf>.

² Security of Canada Information Sharing Act, SC 2015, c 20 s 2, sub-section 5(1) and section 2: "activity that undermines the security of Canada ... (i) an activity that takes place in Canada and undermines the security of another state". See also: Micheal Vonn, Written Submission of the British Columbia Civil Liberties Association (BCCLA) to the Consultation on Canada's National Security Framework", *BCCLA.org*, December 13, 2016, <https://bccla.org/wp-content/uploads/2016/12/2016-12-13-BCCLA-Submission-to-the-National-Security-Consultation.pdf>, pp 3-4.

³ OCSEC, Annual Report 2016-2017, <https://www.ocsec-bccst.gc.ca/a246/ann-rpt-2016-2017-eng.pdf>, pp 13-15.

⁴ SIRC, Annual Report, http://www.sirc-csars.gc.ca/pdfs/ar_2015-2016-eng.pdf, pp 26-28, 30-31.

- Is the intelligence agency required to proactively inform you about intelligence sharing arrangements they are intending, or would prefer to make with other intelligence agencies or governments?
- Do you have the power to access in full all relevant information about the intelligence sharing activities of your government?
- Do you have sufficient power and resources to review decisions to share intelligence and/or undertake independent investigations concerning the intelligence sharing activities of your government, including with respect to the substantive scope and proportionality of such sharing?
- Do you cooperate with any other oversight bodies, domestic or foreign, to oversee the intelligence sharing activities of your government? Are you able to share sufficient information with these other oversight bodies to provide adequate oversight and review?
- What, if anything, do you see as the primary current impediment to your capacity to substantively review intelligence-sharing activities of the agencies you oversee?
- To what extent is the Minister of National Defence involved in the negotiation, approval or internalization of intelligence-sharing agreements with foreign agencies or governments?

We would appreciate a response by 31 October 2017 and would be grateful if you could share with us non-confidential work products reflecting your answers to the above.

Please do not hesitate to contact us if you have any questions.

Thank you for your attention to this matter.

Sincerely,

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Privacy International

Micheal Vonn
Policy Director
BC Civil Liberties Association

Tamir Israel
Staff Lawyer
Samuelson-Glushko Canadian Internet
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Privacy International is a United Kingdom-based non-governmental organisation. Founded in 1990, it is the first organization to campaign on privacy issues at an international level. It undertakes research and investigations into government and corporate surveillance with a focus on the technologies that enable these practices. It litigates or intervenes in cases implicating the right to privacy in courts around the world. To ensure universal respect for the right to privacy, it advocates for strong national, regional and international laws that protect this right.

The BC Civil Liberties Association was established in 1962 and is the oldest and most active civil liberties group in Canada. It is funded by the Law Foundation of B.C. and by citizens who believe in what it does. Its mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. It achieves its mandate through its Advocacy in Action, Public Policy, Community Education, and Justice programs. The BCCLA is an autonomous, non-partisan charitable society. Though it strives to work cooperatively with other groups on common causes, it is unaffiliated with any other organization or political group. Its independence has been one of the BCCLA's enduring strengths for over 50 years.

The Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) is a law and technology clinic based at the Centre for Law, Technology & Society at the University of Ottawa's Faculty of Law in Canada. CIPPIC's mandate is to advocate in the public interest on diverse issues arising at the intersection of law and technology. In pursuit of its public mandate, CIPPIC regularly provides expert testimony before Canadian parliamentary committees, participates in the regulatory activities of various Canadian quasi-judicial bodies such as the Office of the Privacy Commissioner of Canada and the Canadian Radio-television and Telecommunications Commission, appears at all levels of Canada's judicial system, and participates in various international Internet governance fora. In addition, CIPPIC advises clients (organizational and otherwise) on matters with a public interest dimension, provides public education resources on various legal issues and, by its location at the Faculty of Law, provides direct training and education for law students.

Dr. Christopher Parsons received his Bachelor's and Master's degrees from the University of Guelph, and his Ph.D from the University of Victoria. He is currently the Managing Director of the Telecom Transparency Project and a Research Associate at the Citizen Lab, in the Munk School of Global Affairs with the University of Toronto. His research focuses on third-party access to telecommunications data. His work has been recognized by information and privacy commissioners, Canadian political parties, and national and international non-profits as advancing the state of privacy discourse.