

Ministerial Direction to the Royal Canadian Mounted Police: Information Sharing With Foreign Entities¹

In the current threat environment, terrorism is the top national security priority of the Government of Canada. In this context, it is essential that the Royal Canadian Mounted Police (RCMP) is able to maintain strong relationships with foreign entities, and can share information with them on both a routine and an urgent basis. The RCMP must also be able to quickly share information with other key domestic stakeholders, including federal departments and agencies that have the mandate and responsibility to respond to serious threats before they materialize.

The following Ministerial Direction provides guidance to the Commissioner of the RCMP, pursuant to section 5 of the *RCMP Act*, on information sharing with foreign entities. The guidance relates to RCMP investigations under subsection 6(1) of the *Security Offences Act*, and investigations related to a terrorist offence or terrorist activity as defined in section 2 of the *Criminal Code*.

1. Canada's Legal Obligations

Sharing information with foreign entities is an integral part of the RCMP's mandate. It is also a formal obligation pursuant to Canada's adoption of various international resolutions and agreements.

The Government of Canada opposes in the strongest possible terms the mistreatment of any individual by any foreign entity for any purpose. The Government also has a duty to its own citizens and to its allies to prevent individuals engaging in threat related activities from causing harm, whether in Canada or in a foreign country.

The Government of Canada does not condone the use of torture or other unlawful methods in responding to terrorism and other threats to national security. The Government is committed to pursuing a principled and proportionate response to these threats, while promoting and upholding the values Canada seeks to protect.

Canada is a party to a number of international agreements that prohibit torture and other forms of cruel, inhuman, or degrading treatment or punishment. These include the *International Covenant on Civil and Political Rights* and the *Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment (CAT)*. The *CAT* requires state parties to criminalize all instances of torture, and to take effective measures to prevent torture and other cruel, inhuman, or degrading treatment or punishment in any territory under their jurisdiction.

Torture is a criminal offence in Canada that has extraterritorial application. The *Criminal Code*'s provisions governing secondary liability also prohibit aiding and abetting the commission

¹ This Direction would not change existing legal authorities for sharing information with foreign entities. Although the term, foreign entity, has not been formally defined, it primarily refers to foreign government agencies and militaries. The term may also refer to military coalitions, alliances, and international organizations.

of torture, counselling the commission of torture whether or not the torture is committed, conspiracy to commit torture, attempting to commit torture, and being an accessory after the fact to torture.

More broadly, section 7 of the *Canadian Charter of Rights and Freedoms* guarantees that “everyone has the right to life, liberty, and security of the person.” Section 12 of the *Charter* prohibits “any cruel and unusual treatment or punishment,” which Canadian courts have described as behaviour “so excessive as to outrage the standards of decency.” This behaviour includes torture and other cruel, inhuman, or degrading treatment or punishment.

2. Definitions

“Mistreatment” means torture or other cruel, inhuman, or degrading treatment or punishment.

“Substantial risk” is a personal, present, and foreseeable risk of mistreatment.

- In order to be “substantial,” the risk must be real and must be based on something more than mere theory or speculation.
- In most cases, the test of a substantial risk of mistreatment will be satisfied when it is more likely than not that there will be mistreatment. However, the “more likely than not” test should not be applied rigidly because in some cases, particularly where the risk is of severe harm, the “substantial risk” standard may be satisfied at a lower level of probability.

3. Information Sharing Principles

Sharing information with foreign entities is an integral part of the RCMP’s mandate. It is also a formal obligation pursuant to Canada’s adoption of various international resolutions and agreements.

In sharing information, the RCMP must act in a manner that complies with Canada’s laws and legal obligations. It is to avoid any complicity in mistreatment by foreign entities.

The RCMP must assess and mitigate potential risks of sharing information in ways that are consistent with its unique role and responsibilities.

The RCMP must also assess the accuracy and reliability of information received, and properly characterize this information in any further dissemination. It must have in place reasonable and appropriate measures to identify information that is likely to have been derived from mistreatment.

The approval level that the RCMP requires in order to share information must be proportionate to the risk of mistreatment that may result: the greater the risk, the more senior the level of approval required.

The RCMP also has a responsibility to keep the Minister of Public Safety generally informed about its information sharing practices.

4. Decision Making Process When There Is A Substantial Risk of Mistreatment In Sharing Information

Except when there is a substantial risk, the RCMP is responsible for establishing approval levels that are proportionate to the risks in sharing information with foreign entities. The following decision making process applies when there is a substantial risk of mistreatment of an individual.

When there is a substantial risk that sending information to, or soliciting information from, a foreign entity would result in the mistreatment of an individual, and it is unclear whether that risk can be mitigated through the use of caveats or assurances, the matter will be referred to the Commissioner for decision.

In making his or her decision, the Commissioner will normally consider the following information, all of which must be properly characterized in terms of its accuracy and reliability:

- the threat to Canada's national security or other interests, and the nature and imminence of that threat;
- the importance of sharing the information, having regard to Canada's national security or other interests;
- the status of the relationship with the foreign entity with which the information is to be shared, and an assessment of the human rights record of the foreign entity;
- the rationale for believing that there is a substantial risk that sharing the information would lead to the mistreatment of an individual;
- the proposed measures to mitigate the risk, and the likelihood that these measures will be successful (including, for example, the foreign entity's record in complying with past assurances, and the capacity of those government officials to fulfil the proposed assurance);
- the views of the Department of Foreign Affairs and International Trade (DFAIT); and
- the views of other departments and agencies, as appropriate, as well as any other relevant facts that may arise in the circumstances.

The Commissioner may refer the decision whether or not to share information with the foreign entity to the Minister of Public Safety, in which case the Minister will be provided with the information described above.

The Commissioner or Minister of Public Safety shall authorize the sharing of information with the foreign entity only in accordance with this Direction and with Canada's legal obligations.

5. Use Of Information That May Have Been Derived Through Mistreatment By Foreign Entities

As a general rule, the RCMP is directed to not knowingly rely upon information derived through mistreatment by foreign entities.

In exceptional circumstances, the RCMP may need to share the most complete information in its possession, including information from foreign entities that was likely derived through mistreatment, in order to mitigate a serious threat of loss of life, injury, or substantial damage or destruction of property before it materializes. In such rare circumstances, ignoring such information solely because of its source would represent an unacceptable risk to public safety.

When there is a serious risk of loss of life, injury, or substantial damage or destruction of property, the RCMP will make the protection of life and property its priority. If the RCMP needs to share information that was likely derived through mistreatment with appropriate authorities in order to mitigate a serious threat, the matter will be referred to the Commissioner. All decisions shall be made only in accordance with this Direction and with Canada's legal obligations.

The RCMP will take all reasonable measures to reduce the risk that any action on its part might promote or condone the use of mistreatment. Measures will also be taken to ensure that the information which may have been derived through mistreatment is accurately described, and that its reliability is properly characterized. Caveats will be imposed on information shared with both domestic and foreign recipients to restrict their use of information, as appropriate.

6. Support

To help ensure a consistent understanding of the risks of sharing information with foreign entities, DFAIT will continue to make its country human rights reports available to the intelligence and law enforcement community.