

**MEMORANDUM TO THE DIRECTOR**

**MINISTERIAL BRIEFING**

**16:00 – 17:30**

**Wednesday, 4 June 2014**

**269 Laurier, Minister's Boardroom**

The Minister will be briefed on the following items, as per the agenda (**TAB 1**):

2. Ministerial Directive (MD) on Information Sharing with Foreign Entities (Public Safety).

**BACKGROUND**

Public Safety Canada (PSC) will lead the briefing on one item that directly involves CSIS – the MD on Information Sharing. For this item, you may be called upon to articulate the Service's position and/or provide additional information.

Please note, originally threat diminishment and *CSIS Act* modernization were scheduled to be discussed but have now been dropped from the agenda. No reason for the change in the agenda was provided.

**AGENDA ITEM 1 –**

(StratPol)

No documentation has been provided for this item,

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**AGENDA ITEM 2 – MD ON INFORMATION SHARING** (StratPol)

Public Safety will present on the MD on Information Sharing with Foreign Entities (**TAB 3**) previously briefed to the Minister's Office. The deck will convey a brief history of the Directive; its key principles; the decision making process for both the use and sharing/soliciting of information; some key challenges; and agency-specific issues. The briefing is largely informational.

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Public Safety officials indicated that the MO had requested that PSC maintain greater visibility on these cases and potentially become involved in the ISEC. It is unclear what prompted the

suggestion, how it would be implemented, and what value PSC would bring to the discussion. Whereas the MD and DDO Directive specify the involvement of representatives from DFATD and DOJ,

Currently, DFATD brings significant consular and diplomatic information and expertise to contribute to decision-making; similarly, DOJ (i.e. a DLS rep), brings unique legal expertise. In terms of accountability, SIRC also has the mandate to review all matters related to the ISEC.

### *CSIS Implementation of Ministerial Directive on Information Sharing with Foreign Entities*

CSIS implemented the MD through the DDO Directive on Information Sharing with Foreign Entities (**TAB 7**). The DDO Directive sets out key principles, criteria, and decision making processes for both the use and active sending/soliciting of information, specifically where there is potential for mistreatment or negative action (detainment, arrest, etc).

The MD and DDO Directive maintain two key principles: 1) Canada must abide by its legal obligations (including international treaties) and 2) Information sharing is vital for operational success and protecting Canada's national security. The Directives outline the principles and considerations in making decisions when

If you require any further information, please do not hesitate to contact me.

Tom Venner  
Assistant Director  
Policy and Strategic Partnerships

#### **Enclosed:**

- **TAB 1:** Agenda, Ministerial Briefing – 4 June (not received in time for meeting)
- **TAB 3:** MD on Information Sharing Deck (Public Safety)
- **TAB 4:** CSIS ISEC Case Summaries (CSIS)
- **TAB 5:** CSIS EDG CT ISEC Deck (CSIS)
- **TAB 6:** RCMP Case Summaries (RCMP)
- **TAB 7:** DDO Directive on Information Sharing (CSIS) (CSIS Governance System – DDO Directives – Info. Sharing Entities report and 3 annexes)



This document has been approved by A/Commr. James Malizia

### RCMP Information Sharing – Risk of Human Rights Abuses

There have been five instances in the past year (2013-04-01 to 2014-03-31) in the course of active investigations when the RCMP conducted formal risk assessments in conformity with the Ministerial Direction and RCMP operational policy on information sharing:

#### Case #1:

A request by investigators to interview a Canadian held in prison was denied based on the assessment that detainees face a risk of torture and other degrading abuse in order to extract confessions.

#### Case #2:

A request for subscriber information on a telephone number used from a particular foreign country was denied. The assessment noted *inter alia* the existence of the death penalty in the foreign country, that executions were carried out in the past year, and that reliable human rights organizations have found torture and mistreatment occur there.

#### Case #3:

Investigators raised the question of whether they could proceed to obtain corroborating information suggesting that the subject of an investigation was killed in a foreign country. The request was denied. Human rights reports consulted for the purpose of the assessment determined that security forces have committed degrading human rights offences, torture, arbitrary arrests and intimidation of foreigners.

#### Case #4:

Investigators requested permission to obtain further details from a complainant by contacting him in a foreign country through local authorities. The request was denied following a risk assessment that identified human rights abuse, widespread corruption and links to known terrorist groups.

#### Case #5:

Investigators requested information on a particular subject of interest in a foreign country. The request was denied on the basis of human rights concerns including harsh, violent, and overcrowded prison conditions; lengthy pretrial detention; high levels of impunity for crime and unlawful killings by security forces.

## CSIS Information Sharing Evaluation Committee (ISEC) Cases and Decisions

There have been ten cases where the CSIS Information Sharing Evaluation Committee has met and considered the use of information potentially derived from mistreatment or active sharing/soliciting of information where a potential for mistreatment has been identified.

### Case #1:

A request to send information to a foreign agency regarding a kidnapping was **granted** after it was determined that sending the information would not cause a substantial risk of mistreatment.

### Case #2:

A request to send information to an allied foreign agency regarding a terrorist target of mutual interest was **granted** after it was determined that there was no substantial risk of mistreatment in sending the information provided that assurances were obtained.

### Case #3:

Deliberations occurred in relation to a request to send information due to the potential for violence during any negotiations and/or rescue attempts. The committee supported the passage of the information though the decision was recognized as falling outside of ISEC's mandate.

### Case #4:

ISEC received a request to use information in an intelligence report that was acquired from a foreign agency's custodial interview of a detained individual. After careful consideration of open source information and relevant factors, the request was **granted**, as it was determined to be unlikely that mistreatment had occurred in the case.

### Case #5:

A request to interview a Canadian detained abroad was **granted** after it was determined that there was no substantial risk of mistreatment if proper assurances were sought with the relevant authorities prior to the Service interview.

## Case #6:

A request to use information from interviews by a foreign agency in a federal court warrant was **denied** because the need to use the self-incriminating statements and information is outweighed by the possibility that the individual was mistreated while detained by the foreign agency.

## Case #7:

A two-fold request to conduct a trace check with foreign agencies on a Canadian target and to interview a foreign national detained by a foreign agency with knowledge of same Canadian target was **referred** to the Director for decision as there was deemed to be substantial risk of mistreatment in relation to the proposed interview.

\*Please note, subsequently, events overcame any need for a decision by the Director, as the information was acquired through other means with no substantial risk of mistreatment.

## Case #8:

A request to use information from a foreign agency in a federal court warrant was **denied** as it was determined that there was a substantial likelihood the individual was mistreated while detained by the foreign agency in question.

## Case #9:

A request to share information acquired from a foreign agency with a domestic agency was **granted**. Due diligence was exercised to confirm the information, and, it was determined that the information was likely not derived from mistreatment or torture.

## Case #10:

A request to conduct trace checks and share information on a Canadian target with foreign agencies was **granted** after it was determined that there was no substantial risk of mistreatment.

Secret

# Executive Director General Counter-Terrorism

ISEC Decisions Update

Effective 2014 02 18



# Type of Decision

