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MEMORANDUM

TO: HQ and Regional
Directors General

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FILES: 280-39 / 370-692

c.c. Executive members

FROM: DDO

DATE: August 24th, 2011

SUBJECT: DDO DIRECTIVE ON INFORMATION SHARING WITH FOREIGN ENTITIES

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 Service be able to maintain strong relationships with foreign entities, and share information with them on both a routine and an urgent basis.

The Government of Canada opposes in the strongest possible terms the mistreatment of any individual by any foreign entity for any purpose. 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. Canada is a party to a number of international agreements that prohibit torture and other forms of cruel, inhuman, or degrading treatment or punishment and torture is a criminal offence in Canada which has an extraterritorial application.

The objective of this Directive is to provide a tool to the Service's employees to ensure that they comply with international and Canadian Legislation and that decisions to proceed or not with the use of a specific piece of information or with an information exchange, are made at a level commensurate with the possibility that:

- the information to be used may have been obtained through the mistreatment of individuals; or
- the exchange may result, directly or indirectly, in the mistreatment of individuals.

This DDO Directive applies to the sharing of information with all foreign entities, is guided by the Ministerial Direction on Information Sharing with Foreign Entities approved by the Minister on July 28th, 2011 and received by the Service on August 23rd, 2011 (Please see [Appendix 1](#)) and must be interpreted in a manner consistent with this Ministerial Direction.

Charts illustrating the information provided in this Directive are included in Appendix 2.

INFORMATION EXCHANGE WITH FOREIGN ENTITIES - GENERAL

In the context of this Directive "mistreatment" means torture or other cruel, inhuman, or degrading treatment or punishment as defined in the *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* and the *Criminal Code* of Canada.

The following other two definitions also apply to this Directive:

- Likely Derived: Means that it is more probable than not, that it is a real possibility.
- Substantial Risk: 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.

Employees must inform in writing their line manager of instances where they know or suspect a foreign entity to have engaged in mistreatment, as well as instances where Service information may have been misused or our caveats not respected.

All information exchanges with foreign entities must:

- provide balanced information with properly described context;
- describe threats and individuals in a manner that is properly qualified (proper use of terms such as suspected/believed/confirmed/extremists/terrorists);
- bear the appropriate caveat; and,
- be documented.

At any time, employees and managers may consult upward for direction on the advisability of a particular information exchange or use of information.

All deliberations coming from assessments requested in this directive as well as the resulting decisions must be documented and saved in the appropriate files, i.e: the operational file as well as the Information Sharing Evaluation Committee File, # 370-692.

A reference to the decision (from the [REDACTED] the Information Sharing Evaluation Committee or the Director) must also be indicated in the relevant [REDACTED] report(s).

USE OF INFORMATION RECEIVED FROM FOREIGN ENTITIES

When considering using information received from a foreign entity (examples: request for investigation, security certificate, etc), the following assessment criteria must be taken into consideration:

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- Does the Information come from a detention interview conducted abroad?
- Does the Information come from self-incriminating confession?
- Is there any other information indicating a potential mistreatment (such as, but not limited to: poor human rights records, practice of extraordinary rendition, ie transfers of suspects from one state to another outside the law, etc)?

If none of the assessment criteria are met, then the information can be used.

If one or more of the assessment criteria are met, the information must be reviewed by an [REDACTED] via appropriate channels. The [REDACTED] must assess the information and make a decision. In his decision-making process, the [REDACTED] can take into account some of the criteria that must be considered by the Information Sharing Evaluation Committee (Please see [Appendix 3](#)):

- If there is no potential mistreatment, the information can be used as usual.
- If there is a potential mistreatment, but the information does not need to be included in the action, namely, that the action could be undertaken by leaving out the problematic information without affecting the action, the information will not be used in the action.
- If there is a potential mistreatment and the information needs to be actioned, the case must be referred to the Information Sharing Evaluation Committee.

When an [REDACTED] refers a decision to the Information Sharing Evaluation Committee via a [REDACTED] the Committee must assess the information and make a decision (Please see [Appendix 3](#)):

- If the Committee determines that the information is likely not derived from mistreatment, the information can be used in an action without further consultation.
- If the Committee determines that the information is likely derived from mistreatment, but there is not a serious threat of loss of life, injury, or substantial damage or destruction of property, the information cannot be used in a specific action.
- If the Committee determines that the information is likely derived from mistreatment, and there is a serious threat of loss of life, injury, or substantial damage or destruction of property, the decision will be referred to the Director via appropriate channels.

INFORMATION TO SEND TO / SOLICIT FROM FOREIGN ENTITIES

When considering sending information to / soliciting information from a foreign entity, the following assessment criteria must be taken into consideration:

- Does the Information pertain to an individual in detention abroad?
- Could the Information result in a negative action against an individual (detention or other)?
- Is there any other information indicating a potential mistreatment if the information is sent / solicited (such as, but not limited to: poor human rights records, practice of extraordinary rendition, ie transfers of suspects from one state to another outside the

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law, etc)?

If none of the assessment criteria are met, then the information can be sent or solicited.

If one or more of the assessment criteria are met, the information must be reviewed by an [REDACTED] via appropriate channels. The [REDACTED] must assess the information and make a decision. In his decision-making process, the [REDACTED] can take into account some of the criteria that must be considered by the Information Sharing Evaluation Committee (Please see [Appendix 3](#)):

- If there is no potential mistreatment, the information can be sent or solicited, with appropriate caveats and/or assurances if required.
- If there is a potential mistreatment and ~~caveats~~ and/or assurances would likely mitigate the risks, the information will be sent / solicited with appropriate caveats and/or assurances.
- If there is a potential mistreatment and the information needs to be sent or solicited and caveats and/or assurances would likely not mitigate the risks, the case must be referred to the Information Sharing Evaluation Committee.

When an [REDACTED] refers a decision to the Information Sharing Evaluation Committee via a [REDACTED] the Committee must assess the information and make a decision (Please see [Appendix 3](#)):

- If the Committee determines that there is no substantial risk of mistreatment, the information will be sent / solicited with appropriate caveats / assurances.
- If the Committee determines that there is a substantial risk of mistreatment, but there is not a serious threat of loss of life, injury, or substantial damage or destruction of property, the information will not be sent/solicited.
- If the Committee determines that there is a substantial risk of mistreatment and there is a serious threat of loss of life, injury, or substantial damage or destruction of property, the decision will be referred to the Director via appropriate channels.

In conclusion, I wish to reiterate the need to foster an effective dialogue on this issue and for all operational managers to encourage consultation. Although balancing these responsibilities with our mandate to protect Canadians will, at times, pose difficult challenges, we need to remain sensitive to our responsibilities in protecting individuals from mistreatment which could result from our action, or inaction.

New policy and procedures regarding this subject will be developed.

Michel Coulombe
Deputy Director Operations