

CSIS Policies and Procedures

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MEMORANDUM

TO: HQ and Regional
Director Generals

CLASSIFICATION : SECRET

FROM: DDO

DATE: 2008 11 19

SUBJECT: DDO DIRECTIVE ON INFORMATION SHARING WITH AGENCIES WITH POOR HUMAN RIGHTS RECORDS

- 1) There has been much attention of late placed on the Service's international information sharing practices.
- 2) The international exchange of information and intelligence is vital to safeguarding Canada's national security and public safety. In that context, however, the Service may be required to deal with foreign governments and agencies having poor human rights records. This Directive sets out the principles that will guide our actions in the sharing, seeking and use of information from such agencies or governments.
- 3) The objective of this Directive is not to curtail information exchange, but rather to ensure that decisions to proceed with an exchange are made at a level commensurate with the potential risks that the exchange may result, directly or indirectly, in the mistreatment of individuals.

INFORMATION EXCHANGE WITH FOREIGN AGENCIES - GENERAL

- 5) The Service respects human rights and due process. The Service does not countenance the mistreatment of individuals and our interactions with foreign agencies must accord with this principle. In the context of this Directive mistreatment includes: torture; cruel, inhumane or degrading treatment; extra-judicial rendition, arbitrary arrest or unlawful killing.
- 6) Employees should inform their line manager of instances where they know or suspect an agency to have engaged in mistreatment, as well as instances where our information may have been misused or our caveats not respected.
- 7) All information exchanges with foreign agencies must

be in keeping with s. 19 of the *CSIS Act*;

- provide accurate and balanced information;
- 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.

8) When sharing, seeking or accepting information from a foreign agency, employees must consider the record of that agency or the country, in regard to its use of mistreatment to collect information. In this respect, employees will be expected to be familiar with human rights (HR) agency and country profiles

9) When, having apprised him/herself of the HR profile of the agency or country, the employee, in consultation with line management, concludes there is no credible possibility that the exchange may result in, contribute to or originate from the mistreatment of an individual, the exchange can proceed without further consultation.

SHARING/SEEKING INFORMATION WITH AGENCIES WITH POOR HUMAN RIGHTS RECORD

11) When an employee, having regard to the HR profile of the agency or country and any other circumstance, believes there is a credible possibility that the sharing or seeking of information may result in, or contribute to the mistreatment of an individual, there must be consultation

14) At any time, the Branch _____ may consult upward for direction on the advisability of a particular information exchange.

SUBSTANTIAL RISK OF MISTREATMENT

15) If the Branch _____ concludes that, having regard to the HR record of the agency or country, there is a substantial risk that mistreatment may occur which cannot be eliminated or significantly mitigated by the imposition of a caveat, but that the information exchange should nevertheless be considered, he must refer the matter

16) All deliberations and decisions in this respect must be documented. Work is underway to develop an automated approval template to assist in that documentation process. Until such time as this template is available for use, employees will ensure that decisions made in this respect are fully documented on the appropriate file.

RECEIPT AND USE OF INFORMATION FROM AGENCY WITH POOR HR RECORD

17) When receiving or accepting information from a foreign agency, the employee should consider the following:

- ◆ assess the record of the foreign agency in regard to its respect for human rights;
- ◆ assess the origin of the information;

**PROTOCOL BETWEEN THE DEPARTMENT OF FOREIGN AFFAIRS AND
INTERNATIONAL TRADE AND THE CANADIAN SECURITY
INTELLIGENCE SERVICE CONCERNING COOPERATION IN RESPECT OF
CONSULAR CASES INVOLVING CANADIANS DETAINED ABROAD AS
PART OF A NATIONAL SECURITY OR TERRORISM-RELATED CASE**

THE DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE as represented by the Deputy Minister of Foreign Affairs (hereinafter referred to as "DFAIT") and **THE CANADIAN SECURITY INTELLIGENCE SERVICE** as represented herein by the Director (hereinafter referred to as CSIS or "the Service"):

RECOGNIZING that there should be coordination and coherence across government in addressing issues that arise when a Canadian is detained abroad in connection with a national security or terrorism-related case;

RECOGNIZING that in exercising his powers and carrying out his duties and functions, the Minister of Foreign Affairs, in accordance with Section 10, paragraph 2(a) of the *Department of Foreign Affairs and International Trade Act*, "...shall conduct all diplomatic and consular relations on behalf of Canada."

RECOGNIZING that under Section 13(2) of the *Department of Foreign Affairs and International Trade Act* "...a head of mission shall have the management and direction of his mission and its activities and the supervision of the official activities of the various departments and agencies of the Government of Canada in the country or at the international organization to which he is appointed."

RECOGNIZING that the Service "...shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada....", as defined in Section 2 and in accordance with Section 12 of the *CSIS Act*;

RECOGNIZING that for the purpose of performing its duties and functions under the *CSIS Act*, the Service may with the approval of the Minister after consultation by the minister with the Minister of Foreign Affairs "...enter into an arrangement or otherwise cooperate with the government of a foreign state or institution thereof...", in accordance with Section 17 of the *CSIS Act*;

RECOGNIZING that Canadian citizens are free to travel abroad; have a right to expect fair treatment from Canadian authorities; have the right to request consular assistance pursuant to the Vienna Convention on Consular Relations; and that the provision of consular services to Canadians abroad is one of DFAIT's core functions;

RECOGNIZING that if a Canadian detained abroad chooses to speak with Canadian consular officials, any information he/she gives them will remain confidential, subject to the provisions of the *Privacy Act*;

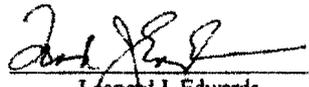
RECOGNIZING that DFAIT and CSIS in support of their respective mandates may need to share or request of one another information concerning Canadians detained abroad as part of a national security or terrorism-related case;

IN ORDER TO provide for greater coordination and coherence in addressing issues that may arise when a Canadian is detained abroad as part of a national security or terrorism-related case.

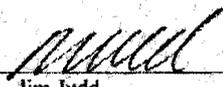
THE PARTICIPANTS consent to the following:

1. When it is determined that a Canadian citizen is detained abroad as part of a national security or terrorism-related case, DFAIT will initiate immediate enquiries with the Ministry of Foreign Affairs of the foreign state, and such other authorities as necessary to determine the status of the individual and seek consular access. DFAIT will promptly inform CSIS in order to seek any information which might assist in the delivery of consular services or provide CSIS information of potential relevance to threats to the security of Canada.
2. When CSIS becomes aware that a Canadian citizen is being detained abroad as part of a national security or terrorism-related case, the Service will promptly notify DFAIT, which will take the lead in ascertaining what other Canadian agencies, including investigative agencies, are or have been involved in the case, and in ensuring that there is a co-ordinated approach. This is particularly important where there is a suspicion that the conditions of detention are inconsistent with international human rights instruments or customary international law.
3. In the event that consular access has not been granted, DFAIT may request CSIS to approach the authorities of the foreign state, with the aim of helping to facilitate access by a consular officer to the detained Canadian citizen.
4. CSIS will not meet with a Canadian citizen detained abroad until after a consular officer has gained access, unless there are urgent national security or terrorism-related considerations. In such cases, the Service will consult with DFAIT before seeking access.
5. In cases involving a detained Canadian citizen where there may be national security or terrorism-related concerns, DFAIT and CSIS agree to keep one another fully informed of all relevant details of the case.
6. If there is credible information that a Canadian detained abroad is being or has been tortured or mistreated, the Minister of Foreign Affairs should be informed and involved in decisions relating to the Canadian response.
7. Where a situation is such that it involves the need for careful coordination between national security and investigative interests, on the one hand, and the obligation to respect both consular and human rights of a detained Canadian on the other, senior officials will be informed. The Deputy Ministers of DFAIT and Public Safety, the Director of CSIS and the Commissioner of the RCMP, as well as the National Security Advisor and if necessary, responsible ministers will be informed. Should senior officials differ on the best course of action, the Minister of Foreign Affairs and the Minister of Public Safety will decide.
8. In cases involving a detained Canadian citizen where there may be national security or terrorism-related concerns, or when the charges against such a citizen are also of a criminal nature, DFAIT and CSIS may consult with the RCMP pursuant their respective arrangements
9. The point of contact for communication between DFAIT and CSIS on this MOU will normally be the Director General for Security and Intelligence (ISD) or the Foreign Intelligence Division (ISF) and the Director General, International Region. In circumstances where for operational or practical reasons communication is through other contacts, CSIS will promptly inform ISD/ISF and DFAIT will promptly inform the Director General, International Relations of the communication.
10. This protocol may be amended at any time by written consent of both *Participants*.
11. This protocol will come into effect when signed by both *Participants*.
12. This Protocol may be terminated by the mutual consent of both *Participants*.

Signed at Ottawa on this 30 day of OCTOBER 2007, and at Ottawa this 2 day of NOVEMBER 2007, in the English and French languages, both versions being equally valid.


Leonard J. Edwards
Deputy Minister of Foreign Affairs

OCTOBER 30, 2007
date


Jim Judd
Director of CSIS

November 2, 2007
date

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