



Public Safety Sécurité publique
Canada Canada

Deputy Minister Sous-ministre

Ottawa, Canada
K1A 0P8

SECRET

DATE: AOUT 30 2011
 AUG

File No.: 6915-8 / 21112 / 378713

MEMORANDUM FOR THE MINISTER

**MINISTERIAL DIRECTION ON
INFORMATION SHARING WITH FOREIGN ENTITIES**

(Signature Required)

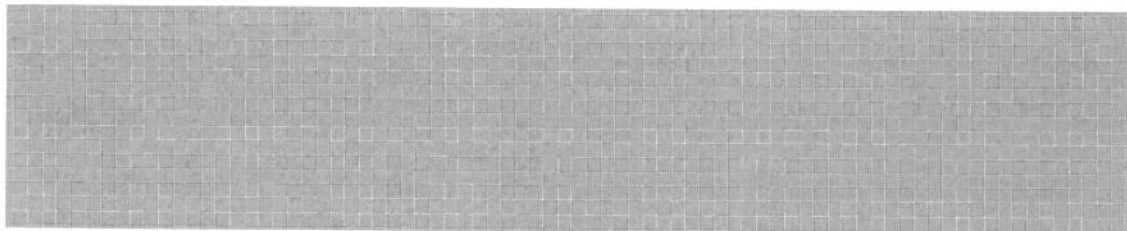
ISSUE

New Ministerial Direction (MD) to the Canada Border Services Agency (CBSA) and the Royal Canadian Mounted Police (RCMP) on sharing information with foreign agencies.

s.69(1)(g) re (c)

s.69(1)(g) re (e)

BACKGROUND

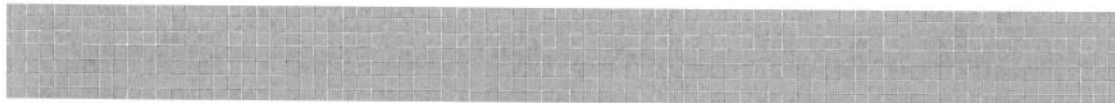


CONSIDERATIONS

In order for the Framework to come into effect, it must be issued to CBSA and RCMP as an MD (**Tab B**).

You approved an identical version of this MD on "Information Sharing with Foreign Entities" to the Canadian Security Intelligence Service on July 28, 2011 (**Tab C**).

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RECOMMENDATION

It is recommended that you approve the MD on "Information Sharing with Foreign Entities" by signing and dating the enclosed letter to the President of the CBSA (**Tab D**), and to the Commissioner of the RCMP (**Tab E**).

Should you require additional information, please do not hesitate to contact me or Lynda Clairmont, Assistant Deputy Minister, Emergency Management and National Security, at 990-4967.

A handwritten signature in cursive script, appearing to read "William V. Baker", followed by a long horizontal flourish.

William V. Baker

Enclosures: (5)

Prepared by: Darryl Hirsch

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Framework for Addressing Risks of Mistreatment in Sharing Information with Foreign Entities¹

- Sharing information with foreign entities is necessary in order to respond to national security threats. It is essential that Canadian intelligence and law enforcement authorities are able to maintain strong relationships with foreign entities, and can share information with them on both a routine and an urgent basis.
- Deputy Ministers and Agency Heads have been delegated the responsibility for making decisions with respect to the sharing of information with foreign entities.² Departments and agencies must carefully manage relationships with foreign entities, assisted by policies that guide information sharing practices, to ensure that the sharing of information does not give rise to a substantial risk of mistreatment.

Objective

- The following Framework forms part of the suite of directives and policies that govern departments' and agencies' information sharing practices. The objective is to establish a coherent and consistent approach across the Government of Canada in deciding whether or not to send information to, or solicit information from, a foreign entity when doing so may give rise to a substantial risk of mistreatment of an individual.

Canada's Obligations

- 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 (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.

¹ This Framework 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.

² For the purpose of this Framework, Deputy Minister also includes the Chief of Defence Staff.

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- 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 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.

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.

Information Sharing Principles

- Sharing information with foreign entities is an integral part of the mandates of Canadian intelligence and law enforcement authorities. It is also a formal obligation pursuant to Canada's adoption of various international resolutions and agreements.
- In sharing information, departments and agencies must act in a manner that complies with Canada's laws and legal obligations.
- Departments and agencies must assess and mitigate potential risks of sharing information in ways that are consistent with their unique roles and responsibilities.
- Departments and agencies must also assess the accuracy and reliability of information received, and properly characterize this information in any further dissemination.
- The approval level that departments and agencies require 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.

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- Departments and agencies also have a responsibility to keep their respective Ministers generally informed about their information sharing practices.

Decision Making Process

- Departments and agencies are responsible for establishing approval levels that are proportionate to the risks in sharing information with foreign entities. This Framework only 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 responsible Deputy Minister or Agency Head for decision.
- In making his or her decision, the Deputy Minister or Agency Head 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 responsible Deputy Minister or Agency Head may refer the decision whether or not to share information with the foreign entity to his or her Minister, in which case the Minister will be provided with the information described above.
- The Deputy Minister/Agency Head or Minister shall authorize the sharing of information with the foreign entity only in accordance with Canada's legal obligations.

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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.

Implementation

- Given the different mandates of departments and agencies, the Framework will be operationalized through individual Ministerial directions.

s.69(1)(g) re (c)

**Ministerial Direction to the Canada Border Services Agency:
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 Canada Border Services Agency (CBSA) is able to maintain strong relationships with foreign entities, and can share information with them on both a routine and an urgent basis. CBSA 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 President of CBSA, pursuant to subsection 8(1) of the *CBSA Act*, on information sharing with foreign entities.

1. Canada's Legal Obligations

Sharing information with foreign entities is an integral part of CBSA'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 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.

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.

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 CBSA’s mandate. It is also a formal obligation pursuant to Canada’s adoption of various international resolutions and agreements.

In sharing information, CBSA 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.

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

CBSA 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 CBSA 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.

CBSA 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, CBSA 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 President for decision.

In making his or her decision, the President 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 President 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 President 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, CBSA is directed to not knowingly rely upon information derived through mistreatment by foreign entities.

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In exceptional circumstances, CBSA 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, CBSA will make the protection of life and property its priority. If CBSA 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 President. All decisions shall be made only in accordance with this Direction and with Canada's legal obligations.

CBSA 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.

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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, Inhuman, 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.

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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.

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

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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.

Minister of Public Safety



Ministre de la Sécurité publique

Ottawa Canada K1A 0P8

SEP 09 2011

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Mr. Luc Portelance
President
Canada Border Services Agency
191 Laurier Avenue West
Ottawa, ON K1A 0L8

Dear Mr. Portelance,

Please find attached my new direction to the Canada Border Services Agency on
"Information Sharing with Foreign Entities."

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Vic Toews".

Vic Toews, P.C., Q.C., M.P.

Enclosure

Canada

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Minister of Public Safety



Ministre de la Sécurité publique

Ottawa, Canada K1A 0P8

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SEP 09 2011

Mr. William J. S. Elliott
Commissioner
Royal Canadian Mounted Police
1200 Vanier Parkway
Ottawa, ON K1A 0R2

Dear Mr. Elliott,

Please find attached my new direction to the Royal Canadian Mounted Police on
"Information Sharing with Foreign Entities."

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Vic Toews", is positioned above the printed name of the sender.

Vic Toews, P.C., Q.C., M.P.

Enclosure

Canada