



TITLE
SUBTITLE

Order-in-Council on Avoiding Complicity in Mistreatment by Foreign Entities 2019 Annual Report



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Introduction

In accordance with subsection 7(1) of the *Avoiding Complicity in Mistreatment by Foreign Entities Act*, this report is presented to the Minister of Immigration, Refugees and Citizenship, and describes the activities that Immigration, Refugees and Citizenship Canada (IRCC) has undertaken to ensure compliance with the Order-in-Council on *Directions for Avoiding Complicity in Mistreatment by Foreign Entities*. As the Department received the Order-in-Council on September 4, 2019, the reporting period of this report is between September 4, 2019 and December 31, 2019.

Background

On June 21, 2019, the *Avoiding Complicity in Mistreatment by Foreign Entities Act* (ACMFEA) received Royal Assent as one part of the *National Security Act 2017*. The ACMFEA authorizes the Governor-in-Council to issue direction (via Orders-in-Council) to Deputy Heads on their organizations' respective international information sharing activities in order to ensure Canadian values and principles against torture and mistreatment are at the forefront/central to these activities.

On September 4, 2019, the Governor-in-Council formally issued an Order-in-Council to the Deputy Head of IRCC. The Order-in-Council directs that:

- 1) No disclosure of information be made to a foreign entity, which would result in a substantial risk of mistreatment of an individual, unless it is determined that the risk can be mitigated.
- 2) No request for information is made to a foreign entity, which would result in a substantial risk of mistreatment of an individual, unless it is determined that the risk can be mitigated.
- 3) No information that was likely obtained through the mistreatment of an individual by a foreign entity be used: in any way that creates a substantial risk of further mistreatment; as evidence in any judicial, administrative or other proceeding; or in any way that deprives someone of their rights or freedoms.

International Information Sharing Practices at IRCC

IRCC undertakes information exchanges with international partners to aid in the administration of legislation for which the Minister is responsible (the *Immigration and Refugee Protection Act*, the *Citizenship Act*, and the *Canadian Passport Order*) and to fulfill its mandate to facilitate the travel and integration of people to Canada, while maintaining the safety and security of Canadians.

International information sharing is a valuable tool that helps IRCC to, *inter alia*:

- Verify the identity of IRCC applicants, which makes processing applications easier and simplifies entry for legitimate travellers; and
- Strengthens decision-making by providing access to records that may be pertinent to determining an individual's eligibility and admissibility to Canada, including whether an individual poses a risk to the safety and security of Canadians.

The vast majority of IRCC's information sharing is with trusted partners - Australia, New Zealand, the United Kingdom, and the United States. These activities are governed by administrative arrangements that are available to the [public](#) and expressly preclude the sharing of information that may place an individual or their family at risk of torture or persecution. Information is only shared with partner countries in a manner that respects privacy laws, civil liberties and human rights.

In certain circumstances, IRCC may also exchange information with a foreign partner with whom it does not have an agreement or arrangement, as authorized by Section 8 of the *Privacy Act*.

Exchanges of this nature are only conducted at the discretion of an officer after considering the relevant authorities and the intended use of the information, including the likelihood of it leading to the mistreatment of an individual. Officers have been instructed to ensure that all exchanges are recorded for tracking purposes.

Implementing *Avoiding Complicity in Mistreatment*

Legal Requirements of the ACMFEA

As required by the ACMFEA, IRCC undertook the following in 2019:

- Published the Order-in-Council on its [website](#) as soon as was feasible after receipt.

- Formally notified the National Security and Intelligence Committee of Parliamentarians and the National Security and Intelligence Review Agency of the Order-in-Council as soon as feasible after receipt.

New Policies, Guidance and Procedures related to the Order-in-Council

To ensure compliance with the Order-in-Council, IRCC has instituted a new review process to assess the risk of exchanging information with foreign entities, which includes the creation of an internal Avoiding Complicity Assessment Committee. This committee will be convened in the event that:

- a proposed exchange with a foreign partner could meet the “substantial risk” threshold and there is doubt as to whether the proposed mitigation measures could eliminate the risk; or
- to support the Deputy Minister in determining whether the use of information that was likely obtained via mistreatment may be permitted to prevent the loss of life or significant injury as described by paragraph 3(1)(c) of the Order-in-Council.

This committee will submit any recommendations to the Deputy Minister for final decision as required.

Processes are also underway to make changes to IRCC’s information systems to allow for easier and more accurate tracking of any *ad hoc* exchanges with foreign entities where no information sharing arrangement exists.

Wide-ranging outreach and consultation took place across the Department to inform implicated sectors of the new requirements, and to solicit input on how best to operationalize the Order-in-Council. These consultations resulted in the development of detailed Program Delivery Instructions that were made available to IRCC officers in January 2020.

Activity Report

There were no IRCC information sharing activities (see specific categories below) that generated a substantial risk of mistreatment between September 4, 2019, when IRCC received the Order-in-Council, and December 31, 2019.

- *Disclosures of Information requiring referral to the Avoiding Complicity Assessment Committee*
IRCC had no cases.
- *Requests for Information requiring referral to the Avoiding Complicity Assessment Committee*
IRCC had no cases.
- *Uses of Information requiring referral to the Avoiding Complicity Assessment Committee*
IRCC had no cases.