

File: CSE-2025-02



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**INTELLIGENCE COMMISSIONER
DECISION AND REASONS**

IN RELATION TO A FOREIGN INTELLIGENCE AUTHORIZATION
FOR [REDACTED]
PURSUANT TO SUBSECTION 26(1) OF THE
COMMUNICATIONS SECURITY ESTABLISHMENT ACT AND
SECTION 13 OF THE *INTELLIGENCE COMMISSIONER ACT*

MARCH 25, 2025

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ANNEX A

I. OVERVIEW

1. This is a decision reviewing the conclusions of the Minister of National Defence (Minister) in relation to a Foreign Intelligence Authorization for [...] (Authorization) issued on February 23, 2025, pursuant to the *Communications Security Establishment Act*, SC 2019, c 13, s 76 (*CSE Act*).
2. This Authorization sets out the same activities approved by the Intelligence Commissioner in April 2024 (Decision CSE-2024-01). No new operational authorities are being sought. The Authorization also does not include the one class of activities I did not approve in last year's decision; the record indicates that the Communications Security Establishment (CSE) continues to examine my reasons and assess how best to address them.
3. As part of its mandate, CSE collects information that can be used and analysed to provide foreign intelligence to the Government of Canada in accordance with its intelligence priorities. Pursuant to a ministerial authorization, CSE may collect foreign intelligence on or through the "global information infrastructure" (GII) – essentially the Internet and telecommunications networks, and devices – in a manner that contravenes certain Canadian laws or infringes on the privacy interests of Canadians and persons in Canada.
4. The authorization issued by the Minister is only valid once approved by the Intelligence Commissioner. A foreign intelligence authorization is valid for up to one year following the Intelligence Commissioner's approval and the current one expires on April 3, 2025.
5. On February 24, 2025, the Office of the Intelligence Commissioner (ICO) received the Authorization for my review and approval under the *Intelligence Commissioner Act*, SC 2019, c 13, s 50 (*IC Act*).
6. For the reasons that follow, I am satisfied that the Minister's conclusions in relation to activities and classes of activities enumerated at paragraphs 58 and 59 of the Authorization are reasonable.

7. Consequently, pursuant to paragraph 20(1)(a) of the *IC Act*, I approve the ministerial Authorization for [REDACTED].

II. CONTEXT

8. CSE is the national signals intelligence agency for foreign intelligence and the technical authority for cybersecurity and information assurance (s 15(1), *CSE Act*). Its mandate has five aspects, one of which is foreign intelligence. A detailed legislative context of CSE's collection of foreign intelligence from portions of the GII is set out in past Intelligence Commissioner foreign intelligence decisions found on the ICO's website.
9. In summary, CSE collects information on or through the GII that provides intelligence about foreign targets located outside of Canada (s 16, *CSE Act*). Foreign intelligence constitutes information about the capabilities, intentions or activities of foreign targets (i.e., individuals, states, organizations or terrorist groups) in relation to international affairs, defence or security, including cybersecurity (s 2, *CSE Act*).
10. When foreign intelligence collection activities may contravene any laws adopted by Parliament, or lead to the acquisition of information that infringes on the reasonable expectation of privacy of Canadians or persons in Canada, CSE must obtain an authorization (s 26, *CSE Act*).
11. The authorization provides the Minister's conclusions – effectively the reasons –supporting the activities or classes of activities that CSE may carry out. The Minister must, among other conditions, conclude that the proposed activities are reasonable and proportionate, and that measures are in place to protect the privacy of Canadians or persons in Canada (s 34, *CSE Act*).
12. To approve the activities or classes of activities specified in a foreign intelligence authorization, the Intelligence Commissioner must be satisfied that the Minister's conclusions are reasonable (s 13, *IC Act*). It is only then that CSE may carry out the authorized activities.

13. In the context of a foreign intelligence authorization, CSE is prohibited from directing its activities at a Canadian or any person in Canada and from infringing the *Canadian Charter of Rights and Freedoms* (*Charter*) (s 22(1), *CSE Act*). However, CSE may incidentally acquire information relating to Canadians or persons in Canada (s 23(4), *CSE Act*). Incidentally means that the information acquired was not itself deliberately sought (s 23(5), *CSE Act*).
14. In accordance with section 23 of the *IC Act*, the Minister confirmed in his cover letter that he provided me with all information that was before him when issuing the Authorization. The record is therefore composed of:
- a) The Authorization dated February 23, 2025;
 - b) The Chief of CSE's Application dated February 12, 2025, including six annexes:
 - i) Ministerial Directive – Government of Canada Intelligence Priorities for 2023–2025;
 - ii) National SIGINT Priorities List – January 2025;
 - iii) Outcomes Report for 2024;
 - iv) Mission Policy Suite for Foreign Intelligence (MPS) approved February 18, 2021;
 - v) Ministerial Order – designations for the purpose of section 43, *CSE Act*; and
 - vi) Summary of CSE's Measures to Protect the Privacy of Canadians;
 - c) Briefing Note from the Chief of CSE to the Minister dated February 13, 2025;
 - d) Briefing Deck – Overview of the Activities; and
 - e) Deck presentation to the Intelligence Commissioner and staff in January 2025.

III. STANDARD OF REVIEW

15. When determining whether the Minister's conclusions are reasonable, the reasonableness standard, as applied to judicial reviews of administrative action, applies to my review. My analysis is therefore centered on the Minister's actual reasons, that is his conclusions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, para 79). In *Canada (Minister of*

Citizenship and Immigration) v Vavilov, 2019 SCC 65, at paragraph 99, the Court succinctly describes what constitutes a reasonable decision:

A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.

16. Relevant factual and legal constraints can include the governing statutory scheme, the impact of the decision and principles of statutory interpretation. Indeed, to understand what is reasonable, it is necessary to take into consideration the context in which the decision under review was made as well as the context in which it is being reviewed. It is therefore necessary to understand the role of the Intelligence Commissioner, which is an integral part of the statutory scheme set out in the *IC* and *CSE Acts*.
17. When the Intelligence Commissioner is satisfied (*convaincu* in French) that the Minister's conclusions at issue are reasonable, he "must approve" the authorization (s 20(1)(a), *IC Act*). Conversely, if not so satisfied, the Intelligence Commissioner "must not approve" the authorization (s 20(1)(b), *IC Act*).

IV. ANALYSIS

18. On February 23, 2025, the Chief of CSE submitted a written Application for a Foreign Intelligence Authorization for [REDACTED] (Application) to the Minister. The Application sets out the foreign intelligence activities that could contravene Canadian laws or interfere with the reasonable expectation of privacy of Canadians or persons in Canada that CSE wishes to carry out.
19. The Application also describes how the Chief proposes CSE will analyse, process and retain the acquired information and the measures in place to protect the privacy of Canadians and of persons in Canada, in cases where it incidentally acquires information about them.

20. Based on the facts presented in the Application submitted by the Chief, the Minister concluded on reasonable grounds that the Authorization is necessary and that the conditions of subsections 34(1) and (2) of the *CSE Act* were met.
21. Consequently, the Minister issued a one-year authorization for CSE to carry out the foreign intelligence activities set out at paragraphs 58 and 59 of the Authorization. A description of the activities can be found in the classified annex to this decision (Annex A). Including this information in a classified annex renders the public version of this decision easier to read and ensures that the decision contains the nature of the facts that were before me, which otherwise would only be available in the record.
22. The activities specified in the Authorization are the same as those I approved last year. Nevertheless, as established by the Intelligence Commissioner's jurisprudence, the Minister must be provided with the best available information when determining whether to authorize activities. This means that the information in the Authorization, as well as supporting materials, must be updated to reflect the most current operational activities undertaken by CSE. How the activities have been undertaken in the past may be a factor in determining whether the Minister's conclusions are reasonable.
23. I would also like to note that although the record before me stands on its own, my understanding of the activities has been enhanced by presentations provided by CSE to myself and my staff in a forum where questions, not directly related to a specific file, can be asked (s 25, *IC Act*).

A. Updated Record

24. The current record reflects updated operational information as well as new information that addresses remarks I have made in past decisions.
25. In last year's decision with respect to the same activities (CSE-2024-01), in a remark relating to intelligence reports sent outside of CSE, I recommended that an additional element that may interest the Minister in future reviews is whether the reports resulting from information

acquired pursuant to the authorization were shared with international partners. The Outcomes Report now provides this information.

26. I also note that the Outcomes Report describes a new way in which to report on the use of information gathered pursuant to certain activities set out in this Authorization for cyber defence outcomes. This information allows CSE to block attacks from cyber threat actors on Government of Canada systems, and notify Canadian victims of cyber intrusions by foreign threat actors. I note that a similar explanation would have been helpful to include in regards to a change in what can be described as the ‘top level’ metric in the Outcomes Report. This top level metric has changed from reporting the total number of “communications viewed or assessed” (as in previous outcomes reports) to instead reporting the total number of “communications acquired”. An explanation in the Outcomes Report for this change and the reasons for it would have been especially helpful given that the change resulted in a significantly higher number in relation to communications, which is itself important for contextualizing the other included metrics.
27. CSE indicates that it is continuing to work with the Department of Justice to address considerations I raised in Decision CSE-2023-01 regarding the conflict of interest the Minister would potentially be placed in if they had to decide whether to approve the use or retention of solicitor-client privileged information obtained under the Authorization. The Minister, as a representative of the Government, would have to balance the protection of a fundamental legal privilege with the Government’s foreign intelligence objectives. I note this issue has not materialized to date, given – as with previous years – no solicitor-client communications were incidentally acquired, used, analysed, retained, or disclosed.
28. Also in Decision CSE-2023-01, I remarked that there was a “key addition” to one of the activities set out in that authorization. I requested the Chief or Minister to inform me should CSE proceed with an activity of this type. In the record of Decision CSE-2024-01, the Chief indicated that both the Minister and I would be informed when an operation of this nature has been undertaken. I received such a notification in the last year.

29. Finally, in another foreign intelligence decision rendered in 2024 (CSE 2024-03), I made a remark in relation to the Supreme Court of Canada decision in *R v Bykovets*, 2024 SCC 6 [Bykovets], where the majority recognized in the circumstances of the case an elevated privacy interest in an IP address, which CSE classifies as metadata. I remarked that CSE should provide the results of any analysis it has conducted to determine whether the Court's decision impacts what constitutes a reasonable retention period for metadata that could contain information relating to a Canadian or person in Canada, such as an IP address. In the record before me, the Chief informed the Minister that there are important distinctions between the facts contained in *Bykovets* and CSE's foreign intelligence activities [...].
30. As set out in section 13 of the *IC Act* relating to the issuance of a foreign intelligence authorization, I must review whether the Minister's conclusions on the basis of which the Authorization was issued (s 26, *CSE Act*), are reasonable.

B. Subsection 34(1) of the *CSE Act* – Determining whether the activities are reasonable and proportionate

i. Reviewing the Minister's conclusions that the activities are reasonable

31. To issue a foreign intelligence authorization, the Minister must conclude that “there are reasonable grounds to believe that any activity (*activité en cause* in French) that would be authorized is reasonable and proportionate, having regard to the nature of the objective to be achieved and the nature of the activities” (s 34(1), *CSE Act*). The Minister concluded, at paragraph 9 of the Authorization that he had reasonable grounds to believe that the activities are reasonable given the objective of acquiring information from or through the GII for the purpose of providing foreign intelligence in accordance with the Government's intelligence priorities, described in the Ministerial Directive to CSE on the Government of Canada Intelligence Priorities for 2023-2025 and the National SIGINT Priorities List. Looking ahead to the next intelligence cycle, I note that a future Ministerial Directive could specifically address the role of intelligence priorities in relation to the ministerial authorization process.

32. With respect to the specific activities described at paragraphs 58 and 59 of the Authorization, I find that the Minister's conclusions are reasonable. The Minister's conclusions demonstrate that there is a rational connection between those activities and the objective of collecting foreign intelligence on or through the GII. The record shows that the specific activities contribute to CSE's foreign intelligence mandate. The Minister understood and explains how the activities set out in the Authorization are necessary for foreign intelligence collection. The Minister also confirmed that policy measures are in place to protect information relating to Canadians or persons in Canada (IRTC) that is incidentally acquired. Given the safeguards in place, the proposed activities and their objectives justify any potential impairment of Canadian privacy interests.

ii. Reviewing the Minister's conclusions that the activities are proportionate

33. The Minister concluded, at paragraph 10 of the Authorization that he had reasonable grounds to believe that the activities described at paragraphs 58 and 59 of the Authorization were proportionate "given the nature of the activities and the manner in which they are conducted." I am again satisfied that the Minister's conclusions in this regard are reasonable with respect to the authorized activities.

34. The Minister identifies the reasons for which the activities are necessary and useful, notably for acquiring information to create intelligence reporting, as well as for supporting other CSE activities. He recognizes that the activities can lead to the acquisition of large volumes of information. For that reason, the Minister explains that CSE [...]. Collection is targeted to limit any incidental acquisition of Canadian-related information. Further, [...] also reduces the likelihood that CSE analysts will encounter IRTC.

35. I am satisfied that the Minister conducted a balancing exercise taking into account the objective and nature of the activities. He identifies what he considers are important interests, namely the acquisition of information and the protection of privacy, and explains how the activities sought to achieve a reasonable balance between them. I am satisfied that the interests considered and the balancing conducted is reasonable.

36. I also find that the Minister considered the effects of the activities on the rule of law. The Minister identifies the Acts of Parliament, including *Criminal Code* offences, that have the potential to be contravened depending on the circumstances of the activity or operation undertaken. The Minister explains that CSE will carry out its activities in a way that will limit the potential offences. Indeed, the activities must be within the scope of the activities outlined in this Authorization. If there is a contravention of an Act of Parliament not listed in the Application – for example CSE knows beforehand that the activities will result in a contravention of an Act of Parliament not listed in the Application or when CSE contravenes an Act of Parliament not listed, without prior knowledge – the Chief will inform both the Minister and the Intelligence Commissioner. I am satisfied that when an Act of Parliament is breached, the impact of the breach will be limited.

C. Subsection 34(2) of the *CSE Act* – Conditions for issuing an authorization

37. When the Minister finds that the activities are reasonable and proportionate pursuant to subsection 34(1) of the *CSE Act*, the Minister may issue an authorization for foreign intelligence activities only if he also concludes that there are reasonable grounds to believe that the three conditions set out at subsection 34(2) of the *CSE Act* are met, namely:

- a) any information acquired under the authorization could not reasonably be acquired by other means and will be retained for no longer than is reasonably necessary;
- b) any unselected information acquired under the authorization could not reasonably be acquired by other means, in the case of an authorization that authorizes the acquisition of unselected information; and
- c) the measures referred to in section 24 will ensure that information acquired under the authorization that is identified as relating to a Canadian or a person in Canada will be used, analysed or retained only if the information is essential to international affairs, defence or security.

i. Any information acquired under the authorization could not reasonably be acquired by other means (s 34(2)(a))

38. The Minister explains that the specific nature of the activities set out in the Authorization are an important source of foreign intelligence and without them, CSE's capacity to produce

foreign intelligence would be diminished. The activities set out in the Authorization, which are currently being carried out by CSE pursuant to last year's authorization, [...] and therefore allow CSE to acquire information that would otherwise not be available to CSE. Further, the activities set out in the Authorization allow for the collection of information that is useful and valuable due to the method of acquisition.

39. As a result, I find reasonable the Minister's conclusions that without the Authorization, the information that would be acquired pursuant to activities specified in the Authorization could not be reasonably acquired by other means.

ii. Any information acquired under the authorization will be retained for no longer than is reasonably necessary (s 34(2)(a))

40. The Minister explains that CSE's [...] the type of information that is collected. The information is then automatically assigned a retention period based on how it has been classified.
41. The Minister's rationale establishes a connection between the types of information and their defined retention periods and explains why those periods are necessary for operational reasons. The Minister explains that there exist technical and operational reasons for CSE to retain certain types of information for longer periods of time. The Minister also specifies that information will only be retained to further the foreign intelligence aspect of CSE's mandate and in accordance with its MPS which complies with the *Privacy Act*, RCS, 1985, c P-21 and the *Library and Archives of Canada Act*, SC 2004, c 11. Information that is not used for foreign intelligence purposes within the retention period will not be kept. Indeed, CSE's systems automatically delete or overwrite information at, or prior to, the expiry of the retention period.
42. In my view, the Minister's conclusions demonstrate that the retention periods are reasonably necessary for the different types of information. The conclusions also show that measures and safeguards are in place to ensure that any information acquired under the Authorization will be retained for no longer than the associated retention periods.

iii. Any unselected information acquired under the authorization could not reasonably be acquired by other means (s 34(2)(b))

43. The Authorization explicitly provides that unselected information could be acquired to help CSE to better understand the GII and find targets on the GII in the furtherance of its foreign intelligence mandate.
44. The *CSE Act* defines unselected information as information acquired without the use of terms or criteria to identify foreign intelligence interest (s 2, *CSE Act*). Therefore, when acquiring unselected information, all of the information, including any information in which there could be Canadian privacy interests, is captured. For that reason, the *Act* requires that particular attention be given to unselected information that is acquired through the activities.
45. In his conclusions, the Minister explains how CSE must acquire unselected information for a number of technical and operational reasons and provides examples supporting his rationale. Indeed, the value of the activities depends on acquiring unselected information. In turn, the activities are necessary to acquire the unselected information. I am therefore satisfied that the Minister has reasonable grounds to believe that unselected information could not reasonably be acquired by other means with respect to activities set out in the Authorization.

iv. Measures to protect privacy will ensure that information acquired under the authorization identified as relating to a Canadian or a person in Canada will be used, analysed or retained only if the information is essential to international affairs, defence or security (s 34(2)(c))

46. Section 24 of the *CSE Act* requires CSE to have measures in place to protect the privacy of Canadians and of persons in Canada in the use, analysis, retention and disclosure of information related to them acquired in the course of activities further to the foreign intelligence aspect of its mandate. At paragraph 50 of the Authorization, the Minister concludes that he has reasonable grounds to believe that the measures referred to in section 24 have been met.
47. As stated by the Minister, CSE is prohibited from directing its activities at Canadians or persons in Canada (s 22, *CSE Act*). Nevertheless, the Minister explains that the proposed

activities may result in the incidental acquisition of information that is later identified as relating to a Canadian or a person in Canada. I return to the language used by the Minister in a remark.

48. The Minister's conclusions describe the measures in place to protect the privacy interests of Canadians and persons in Canada and to ensure that information relating to a Canadian or a person in Canada can only be retained if it is assessed to be essential to international affairs, defence or security interests, including cybersecurity.

49. The adequacy of the privacy measures, and therefore the reasonableness of the Minister's conclusions, rests on the strength of the policies and the robustness of their application by CSE. The MPS sets out the measures that must be applied by CSE for the retention, use and disclosure of information related to Canadians or persons in Canada. Appropriate access to the information is limited to CSE employees authorized to operate under CSE's foreign intelligence mandate and on a need-to-know basis for the purpose of their work. The employees must have the proper accreditations and complete training on CSE's authorities, operational policies, and conditions for handling information with a privacy interest.

50. As I have found in past decisions, I am satisfied that CSE's same definition of "essential" is reasonable. As indicated by the Minister and the Chief, on a quarterly basis, operational managers "must review" the retained information and revalidate whether it is still essential. Information that is no longer essential must be deleted. In addition, CSE also has a compliance program which monitors that its operations comply with the MPS as well as the conditions of the Authorization under which they are carried out.

51. CSE also applies privacy protection measures to information with a Canadian privacy interest that is used and disclosed outside of CSE to other government departments or partners. As explained in the Authorization, the most common privacy protection measure is to suppress releasable Canadian identifying information by replacing it with a generic term such as "named Canadian", unless the information is necessary to understand the foreign intelligence. Further, unsuppressed information may only be disclosed if the recipient or class

of recipients have been designated by Ministerial Order, and the disclosure is essential to international affairs, defence, security or cybersecurity (s 43, *CSE Act*).

52. Given the multiple layers of internal controls to protect privacy and limit access to unassessed information, I find the Minister's conclusions are reasonable that there are appropriate measures in place to protect the privacy of Canadians and that IRTC will only be retained, analysed and used if it is essential to international affairs, defence or security, including cybersecurity.

V. REMARKS

53. I would like to make the following two remarks to assist in the consideration and drafting of future ministerial authorizations, which do not alter my findings regarding the reasonableness of the Minister's conclusions.

A. Information responsive to a remark – solicitor-client privilege

54. The current process for treatment of acquired information that is subject to solicitor-client privilege requires the destruction of the information unless the Chief has reasonable grounds to believe the communication is essential to international affairs, defence or security interests. Before using, analysing, retaining or disclosing the information, the Chief must advise and seek corresponding directions from the Minister. In a remark made in Decision CSE-2023-01, I raised the issue that although jurisprudence has recognized that solicitor-client privilege could be pierced for reasons of public safety, it was less clear that there exists judicial support for piercing the privilege and retaining the information for reasons of "international affairs".
55. The Chief's briefing note to the Minister indicates that a Federal Court decision rendered on October 24, 2024 leaves the door open to the Canadian Security Intelligence Service to seek judicial authorization to retain or use solicitor-client communications based on an "international affairs" exception. The Chief states that CSE will therefore continue to include international affairs as a valid reason to pierce solicitor-privilege under its process.

56. A copy of the Federal Court decision was not included in the record, which is only an issue because it appears that a public version of it has yet to be released. Given that the Chief's comments stem from my remark, I would expect the information relevant to any response to my remark to be available for my review. Without this information, I cannot evaluate whether my remark has been addressed.

B. Language describing the incidental acquisition of IRTC

57. Both the Application from the Chief and the Minister's Authorization use conditional language that the activities conducted pursuant to the Authorization, such as "may result" in the incidental acquisition of IRTC. I acknowledge that CSE does not have certainty with respect to what information it will acquire pursuant to an authorization. Nevertheless, CSE has been conducting the specific activities set out in this Authorization for a number of years. The improvement with respect to the detail of the information provided in the outcomes reports – those included in the records accompanying authorizations as well as the section 52 End of Authorization Reports – show that IRTC is incidentally being collected.

58. Although the Minister may rely on the outcomes reports of past authorizations showing the operational realities to support his conclusions, the record presented to the Minister nevertheless uses conditional language with respect to the possibility of incidentally acquiring IRTC. The Minister's conclusions reflect this language. I am of the view that the language used in the Chief's application and the Minister's conclusions relating to the incidental acquisition of IRTC could be better contextualized to reflect CSE's operational reality, which is that the authorized activities will almost certainly result in the incidental acquisition of IRTC.

VI. CONCLUSIONS

59. Based on my review of the record, I am satisfied that the Minister's conclusions made under subsections 34(1) and (2) of the *CSE Act* in relation to activities and classes of activities enumerated at paragraphs 58 and 59 of the Authorization are reasonable.

60. I therefore approve the Authorization pursuant to paragraph 20(1)(a) of the *IC Act*.
61. As indicated by the Minister, and pursuant to subsection 36(1) of the *CSE Act*, this Authorization expires one year from the day of my approval.
62. As prescribed in section 21 of the *IC Act*, a copy of this decision will be provided to the National Security and Intelligence Review Agency for the purpose of assisting the Agency in fulfilling its mandate under paragraphs 8(1)(a) to (c) of the *National Security and Intelligence Review Agency Act*, SC 2019, c 13, s 2.

March 25, 2025

(Original signed)

The Honourable Simon Noël, K.C.
Intelligence Commissioner