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INTELLIGENCE COMMISSIONER

DECISION AND REASONS

IN RELATION TO AN AUTHORIZATION FOR
THE CANADIAN SECURITY INTELLIGENCE SERVICE
TO RETAIN THE FOREIGN DATASET



PURSUANT TO SECTION 11.17 OF
THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT* AND
SECTION 17 OF THE *INTELLIGENCE COMMISSIONER ACT*

AUGUST 8, 2024

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I. OVERVIEW

1. This is a decision reviewing the conclusions of the Director of the Canadian Security Intelligence Service (CSIS or Service) authorizing CSIS to retain the [REDACTED] (Foreign Dataset) pursuant to subsection 11.17(1) of the *Canadian Security Intelligence Service Act*, RSC, 1985, c C-23 (*CSIS Act*).
2. The dataset regime set out in the *CSIS Act* provides CSIS with the ability to collect, retain, and analyse personal information that is not directly and immediately related to activities that represent a threat to the security of Canada.
3. CSIS may collect a foreign dataset if it is satisfied that the dataset – information stored as an electronic record, containing personal information as defined in section 3 of the *Privacy Act*, RSC, 1985, c P-21, and characterized by a common subject matter (s 11.01, *CSIS Act*) – is relevant to the performance of its duties and functions under sections 12 to 16 but cannot be collected or retained under those sections. CSIS must also reasonably believe that the information predominantly relates to non-Canadians who are outside Canada.
4. Following collection by CSIS, the Minister of Public Safety, or his designate, must authorize its retention, which must subsequently be approved by the Intelligence Commissioner. The Director of CSIS was designated by the Minister on September, 11, 2019, to authorize the retention of foreign datasets.
5. CSIS obtained the Foreign Dataset prior to the establishment of the dataset regime. It was therefore deemed to have been collected by CSIS on July 13, 2019, when section 96 of the *National Security Act, 2017* came into force. On October 11, 2019, the Director received a request from CSIS to issue an authorization for its retention. The Director issued the authorization (Authorization) on July 15, 2024. I return to the effect of a considerable delay in issuing an authorization in my remarks.

6. On July 19, 2024, the Office of the Intelligence Commissioner received the Authorization for my review and approval under the *Intelligence Commissioner Act*, SC 2019, c 13, s 50 (*IC Act*).
7. Having completed my review, I am satisfied that the Director's conclusions in relation to the retention of the Foreign Dataset are reasonable with the condition that the Authorization be valid for a period of one year. Consequently, I approve the Authorization to retain the Foreign Dataset pursuant to paragraph 20(2)(b) of the *IC Act*.
8. On June 20, 2024, amendments to the dataset regime of the *CSIS Act* came into force. Therefore, in conducting my review, I relied on the current version of the *CSIS Act*.

II. CONTEXT

9. Information on the Foreign Dataset, including its origin, a description of its contents, and the steps taken during its evaluation, can be found in the classified annex to this decision (Annex A). I am including this information in a classified annex for two reasons. First, it will prevent the redaction of a significant portion of this decision, thereby rendering its public version easier to read. Second, it will ensure that the nature of the facts that were before me, which would otherwise only be available in the record, are included in the decision.
10. The dataset regime set out in sections 11.01 to 11.25 of the *CSIS Act* provides CSIS with the authority to retain a foreign dataset. While information in a dataset is not directly and immediately related to a threat to the security of Canada, it must nevertheless be relevant to the performance of CSIS' duties and functions under sections 12 to 16 (s 11.01, *CSIS Act*).
11. Pursuant to subsection 11.17(1) of the *CSIS Act*, the Director, as the designated person, may authorize CSIS to retain a foreign dataset when he concludes the following: i) the dataset meets the definition of a foreign dataset in that it contains personal information predominantly related to non-Canadians or non-Canadian corporations who are outside of Canada; ii) the retention of the dataset is likely to assist CSIS in the performance of its duties

and functions under sections 12 (investigations of suspected threats), 12.1 (threat reduction measures), 15 (investigations for security assessments or advice to ministers) or 16 (collection of information concerning foreign persons and states in Canada); and iii) CSIS has complied with its obligations set out in section 11.1 of the *CSIS Act*. These obligations require CSIS to take reasonable measures to ensure the deletion of any information in respect of which there is a reasonable expectation of privacy that relates to the physical or the mental health of an individual, as well as the removal of any information from the dataset that by its nature or attributes relates to a Canadian or a person in Canada.

12. The authorization to retain a foreign dataset is only valid once approved by the Intelligence Commissioner in a written decision. Following this approval, designated CSIS employees can query or exploit the foreign dataset – and retain results – for the purposes of sections 12, 12.1, and 15 to the extent that it is strictly necessary, and for the purposes of section 16 if required to assist the Minister of National Defence or the Minister of Foreign Affairs. The query and exploitation of the dataset allows CSIS to make connections and detect patterns that would not otherwise be apparent with traditional means of investigation.

13. In accordance with section 23 of the *IC Act*, the Director confirmed in his cover letter that he provided me with all information that was before him when issuing the Authorization. He notes that when the request to retain the Foreign Dataset was received from CSIS [REDACTED], the following information was included:

- i. Draft of the Director's Authorization, dated October 11, 2019;
- ii. Memorandum to the Director from CSIS, dated October 11, 2019, requesting that the Director issue an authorization to retain the Foreign Dataset, with appendices (CSIS Memorandum);
- iii. Briefing Note to the Director describing how CSIS manages and maintains section 11 datasets for backup and recovery purposes, dated October 11, 2019; and
- iv. Designation of the Director by the Minister pursuant to section 11.16(1) of the *CSIS Act*, dated September 11, 2019.

14. The Director indicates that supplemental documents were subsequently added to the record following his order to the Service to take into account the concerns and comments of the former Intelligence Commissioner. He notes that these documents, although helpful in informing his conclusions, do not modify the original request:

- v. Briefing Note to the Director describing how CSIS manages and maintains section 11 datasets for backup and recovery purposes, dated [...];
- vi. [...];
- vii. [...];
- viii. Presentation Deck: Section 11 Ministerial Authorization of Foreign Datasets, dated December 10, 2019;
- ix. Briefing Note addressing how [...] information contained in certain datasets remains “likely to assist”, dated [...];
- x. Briefing Note to the Director regarding the removal of Canadian-related records from the Foreign Dataset, dated January 6, 2022;
- xi. Ministerial Direction to CSIS on the Government of Canada’s Intelligence Priorities [...]; and
- xii. Intelligence Requirements Charts pursuant to the 2023-2025 Canadian Intelligence Priorities and Outcomes.

15. I address an issue related to the contents of the record in my analysis.

III. STANDARD OF REVIEW

16. Pursuant to section 12 of the *IC Act*, the Intelligence Commissioner conducts a quasi-judicial review of the conclusions on the basis of which a ministerial authorization is made to decide whether they are reasonable.

17. The Intelligence Commissioner’s jurisprudence establishes that the reasonableness standard, as applied to judicial reviews of administrative action, applies to my review.

18. As indicated by the Supreme Court of Canada, when conducting a reasonableness review, a reviewing court is to start its analysis by examining the reasons of the administrative decision maker (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 79). In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 99 [Vavilov], 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.

19. 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 legislative environment 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 *CSIS Acts*.
20. A review of the *IC* and the *CSIS Acts*, in addition to the legislative debates, shows that Parliament created the role of the Intelligence Commissioner as an independent mechanism to ensure that government action taken for the purpose of national security and intelligence was properly balanced with respect for the rule of law and the rights and freedoms of Canadians. To maintain that balance, I consider that Parliament created my role as a gatekeeper. While reviewing the Minister's conclusions, I am to carefully examine whether the important privacy and other interests of Canadians and persons in Canada were appropriately considered and weighed as well as to ensure that the rule of law is fully respected.
21. With respect to an authorization to retain a foreign dataset, when the Intelligence Commissioner is satisfied (*convaincu* in French) that the Director's conclusions at issue are reasonable, he "must approve" the authorization (s 20(2)(a), *IC Act*). Conversely, where

unreasonable, the Intelligence Commissioner “must not approve” the authorization (s 20(2)(c), *IC Act*). The Intelligence Commissioner can also approve the retention of a foreign dataset with conditions if satisfied that the conclusions would be reasonable once the conditions are attached (s 20(2)(b), *IC Act*).

IV. ANALYSIS

22. Section 17 of the *IC Act* requires that I review the Director’s conclusions made under subsection 11.17(1) of the *CSIS Act* and on the basis of which the Authorization was made to conclude whether they are reasonable. Subsection 11.17(1) sets out three mandatory criteria that the Director must be satisfied have been met:

- i. The dataset is a foreign dataset;
- ii. The retention of the dataset is likely to assist the Service in the performance of its duties and functions under sections 12, 12.1, 15, or 16; and
- iii. The Service has complied with its obligations under section 11.1 to take reasonable measures to delete information related to the physical or mental health of an individual and to remove Canadian-related information from the dataset.

A. Are the Director’s conclusions reasonable?

- i. The dataset is a foreign dataset*

23. A foreign dataset must predominantly relate to individuals who are not Canadians and who are outside Canada, or corporations that were not incorporated or continued under the laws of Canada and that are outside Canada (ss 11.01 and 11.07(1)(c), *CSIS Act*).

24. After the collection of a dataset and during the evaluation period (which was 90 days at the time the Foreign Dataset was collected, and has been increased to 180 days since amendments to the *CSIS Act* came into force in June 2024), designated CSIS employees have the responsibility to confirm whether a dataset predominately relates to non-Canadians outside of Canada. Given the high number of records in most datasets, the evaluation generally uses a combination of manual and automated processes. Although the evaluation seeks to identify Canadian-related information, certain records, by their nature, may not include sufficient indicators that would allow a designated CSIS employee to confirm

whether they relate to Canadians or persons in Canada. As I mentioned in Decision 2200-A-2024-03, the evaluation may not lead to absolute certainty that there are no Canadian-related records (para 47). Rather, the purpose of the evaluation is to be able to confidently confirm whether the information in the dataset, as a whole, predominantly relates to non-Canadian individuals or to non-Canadian corporations not in Canada.

25. Relying on the CSIS Memorandum, the Director explains that the Foreign Dataset is a collection of individual datasets that contain personal information. He concludes that the collection meets the definition of a dataset as each dataset has a common subject matter. The Director does not explicitly identify the common subject matter of the information in the collection. The Director's conclusions state that they "raise similar privacy interests and share a common origin of collection" as well as the "same 'likely to assist' rationale." However, the CSIS Memorandum, on which the Director relies, states that the common subject matter [REDACTED] I am satisfied that the Director's conclusion is reasonable that the Foreign Dataset meets the definition of a dataset, although I will address to the issue of amalgamating a collection of datasets to form a single dataset in my remarks.
26. The Director relies on two facts to justify his conclusion that the dataset is a foreign dataset. First, he references CSIS' assessment that the dataset contains information that predominantly relates to non-Canadians [REDACTED]. Second, the Director states that the Foreign Dataset includes a type of information that could potentially be identified as Canadian-related [REDACTED]. However, CSIS assessed all information of this type as being foreign-related.
27. The reasonableness of the Director's conclusion rests on the evaluation conducted by CSIS. The evaluation process is described below and further in Annex A. Based on the description of that process, I find the Director's reliance on the results of the evaluation justified. Indeed, the results show that the nature of the information relates to the foreign state. I am satisfied that the record justifies the Director's conclusion that the dataset predominantly relates to non-Canadians outside of Canada, and therefore find this conclusion reasonable.

ii. The retention of the dataset is likely to assist CSIS

28. The record explains that the “likely to assist” threshold entails that there is a reasonable probability that the retention will assist the Service in any of its duties and functions under sections 12, 12.1, 15 or 16 of the *CSIS Act*. It is a threshold that is higher than a mere possibility, but lower than the standard of balance of probabilities.
29. Although the Director does not provide his interpretation or understanding of the “likely to assist” threshold, he sets out how the threshold is satisfied. He justifies the usefulness of the Foreign Dataset by first explaining how certain activities of [...] constitute a threat to the security of Canada and how its activities relate to the Government of Canada’s Intelligence Priorities for 2019-2021. [...].
30. In addition, [...].
31. The Director addresses the fact that, because the request was submitted for decision on October 11, 2019, the record makes references to the Intelligence Priorities for 2019-2021. He examined the new Intelligence Priorities for 2023-2025 and while structured differently, the relevant priorities are still present. As a result, he found that his conclusions remain valid.
32. Relying on the request presented to him by CSIS, the Director explains that the Foreign Dataset is likely to assist with [...]. Given the subject matter of the data records, this conclusion is reasonable. The Director also outlines the ways [...] is likely to assist CSIS in the performance of its duties and functions under sections 12, 12.1, and 15. Namely, the Foreign Dataset could help: [...]. I note that the CSIS request, prepared in 2019, explained that the Foreign Dataset would likely assist CSIS in the performance of its section 16 duties as well. However, the Director explains in the Authorization that CSIS [...].
33. In addition, the CSIS Memorandum explains that the Foreign Dataset has previously assisted CSIS in the performance of its duties pursuant to section 12, prior to the coming into force of the dataset regime in 2019.

34. The record addresses how older data in the Foreign Dataset still meets the “likely to assist” threshold. CSIS assesses that, while certain datasets may seem outdated, they contain highly reliable and immutable information [REDACTED]. As a result, they can still be used [REDACTED] for the purposes outlined above and thus remain likely to assist CSIS in the performance of its duties and functions. I accept that the Director relied on this rationale.
35. The Director does not address whether he is satisfied that CSIS had grounds to believe that the Foreign Dataset was relevant when it was collected. However, the context in which it was collected and the nature of the information in the dataset makes it clear that the Director had no concerns about how CSIS had exercised its collection authority. I take no issue with his conclusions in this respect.
36. The Director’s conclusions establish a nexus between a threat to the security of Canada, the Government of Canada’s Intelligence Priorities, and the information in the Foreign Dataset. They also make evident how the nature of the information in the dataset can assist CSIS in the performance of its duties and functions. My review of the reasons given by the Director leads me to find that his conclusions that the retention of the Foreign Dataset is likely to assist the Service are supported by his reasoning and the record, and are thus reasonable.

iii. CSIS has complied with its continuing obligations under section 11.1 of the CSIS Act

37. Pursuant to subsection 11.1(1) of the *CSIS Act*, CSIS has two continuing obligations in respect of a foreign dataset. It must take reasonable measures to ensure that:
- a) information in which there is a reasonable expectation of privacy that relates to the physical or mental health of an individual is deleted; and
 - b) information that by its nature or attributes relates to a Canadian or a person in Canada is removed.
38. When Canadian-related information is removed from a foreign dataset, pursuant to subsection 11.1(2), CSIS must either destroy it, collect it as a Canadian dataset, or add it as an update to an existing Canadian dataset.

39. In Decision 2200-A-2024-04, I commented on the impact of the recent legislative amendments to subsection 11.1(1). Those comments apply to this Authorization as well. Briefly, the new text states that CSIS “shall take reasonable measures to ensure” the deletion or removal of the information at issue, whereas the former text indicated that CSIS “shall” delete or remove this information. I noted that this legislative amendment lowers the applicable threshold as the text no longer requires certainty that CSIS has deleted or removed the information at issue. Thus, if the Director’s conclusions were reasonable under the previous text, I consider that they will be reasonable under the current legislation. Nonetheless, I noted that I was not convinced that the amendments actually changed CSIS’ obligations under subsection 11.1(1), but instead reflected the reality of how CSIS satisfied those obligations.
- a) Obligation to take reasonable measures to ensure the deletion of any information related to the physical or the mental health of an individual – paragraph 11.1(1)(a)
40. CSIS conducted an assessment [...] taking into consideration the nature of the datasets to determine if any information related to the physical or mental health of an individual was present. CSIS also examined sample contents [...] that could potentially contain health-related information. CSIS determined that there was no such information in the datasets that make up the Foreign Dataset.
41. Pursuant to its obligations under subsection 11.07(6) of the *CSIS Act*, the designated CSIS employees also conducted a review of the Foreign Dataset to delete personal information (as defined in section 3 of the *Privacy Act*) that, in the opinion of CSIS, is not relevant to the performance of its duties and functions, and may be deleted without affecting the integrity of the dataset. The employees did not identify any such information.
42. Referencing the methodology outlined above, the Director concludes that CSIS complied with its obligations under paragraph 11.1(1)(a) and confirms that it did not identify any physical or mental health information subject to a reasonable expectation of privacy. The Director acknowledges the continuing nature of CSIS’ obligation to delete such information should any be identified in the future.

43. Based on the nature of the information contained in the Foreign Dataset and the evaluation process explained in the record, I am of the view that the Director's conclusions that CSIS has met its obligations in paragraph 11.1(1)(a) – and that it will continue to do so – is reasonable.

- b) Obligation to take reasonable measures to ensure the removal of any information that by its nature relates to a Canadian or a person in Canada – paragraph 11.1(1)(c)

44. As defined in section 11.01 of the *CSIS Act*, a “Canadian” in the context of the dataset regime means a Canadian citizen, a permanent resident, or a corporation incorporated or continued under the laws of Canada or of a province.

45. In its evaluation, CSIS identified [REDACTED] information that could relate to a Canadian or a person in Canada. CSIS searched [REDACTED] CSIS determined that there were Canadian data subjects found in the Foreign Dataset. These data records have been removed from the dataset and destroyed.

46. In his conclusion, the Director confirms that he is satisfied that CSIS complied with its obligations under paragraph 11.1(1)(c) and that the Canadian-related records were destroyed in accordance with subsection 11.1(2) of the *CSIS Act*. He again acknowledges the continuing nature of CSIS' obligations to remove information related to a Canadian or a person in Canada should any more be identified in the future.

47. Based on the nature of the information contained in the Foreign Dataset and CSIS' evaluation methodology explained in the record, I am of the view that the Director's conclusions that CSIS has met its obligations in paragraph 11.1(1)(c) and subsection 11.1(2) – and that it will continue to do so – is reasonable. However, as explained below, the Director's conclusions are not based on a complete record.

48. On January 10, 2024, I received a classified letter dated December 29, 2023, from the Director explaining that on February 21, 2022, CSIS had discovered working documents relating to a foreign dataset whose retention had been approved by the previous Intelligence Commissioner. These working documents had been used during the evaluation of the foreign dataset in question. Some of the working folders included Canadian-related information. Although the documents had not been accessed since the evaluation period, their retention was contrary to CSIS' obligations to treat the Canadian-related information as required by subsection 11.1(2) – by destroying it or keeping it as a Canadian dataset within the evaluation period. The Director explained that the documents were deleted following the discovery of their existence. He was of the view that this compliance incident did not affect the validity of the authorization he had issued and that the Intelligence Commissioner had approved.
49. The classified letter was accompanied by two briefing notes. One of the briefing notes, dated April 16, 2022, and prepared by the [REDACTED] branch (which has since been restructured as the [REDACTED] branch), indicated that working documents related to a number of foreign datasets, not only the foreign dataset referred to in the December 29, 2023 letter, had been discovered. For some of the foreign datasets in question, requests had already been submitted to the Director seeking his authorization for their retention. Further, CSIS believed that some of the working documents contained information pertaining to Canadians. One of the foreign datasets for which a working document that contained information related to Canadians was discovered is listed as the [REDACTED] dataset – which, based on my review of the record, appears to be the Foreign Dataset that is the subject of this Authorization. The briefing note indicated that documents were destroyed in April 2022.
50. [REDACTED] set out certain steps that it would undertake to address the non-compliance incident. One step was to prepare and include supplemental information memorandum in the pending foreign dataset authorizations before the Director.
51. In a classified letter in response to the Director, dated January 19, 2024, I indicated that I was concerned about the lengthy delay in being informed of the non-compliance incident. I also agreed with the Director that the incident did not affect the validity of the authorization

approved by the former Intelligence Commissioner. Among other comments, I took note that a supplemental information memorandum would be included in pending authorizations before the Director and that I expected it would be included in the records before me.

52. The record before me does not include such a memorandum. Further, there is no reference in the record about the discovery of the retention of Canadian-related information beyond the evaluation period and its subsequent deletion. Even if CSIS assessed that a supplemental information memorandum was no longer necessary, given the above, I would have expected an explanation in the record. I am of the view that the Director, as the decision maker, should have had the information in the record before him and addressed the incident in his conclusions.
53. Indeed, I note that in the authorization that was the subject of the former Intelligence Commissioner's review in Decision 2200-A-2022-03 rendered on August 18, 2022, the record included such a memorandum on the same non-compliance incident. The Director addressed the non-compliance issue in his conclusions. The Intelligence Commissioner mentioned the non-compliance issue in his decision approving the retention of the foreign dataset.
54. The effect of the absence of information in the record relating to the compliance issue is not easily solved. On the one hand, I am satisfied that the Director's conclusions – based on an incomplete record – with respect to the statutory requirement are reasonable. The Foreign Dataset constitutes a tool that CSIS can use to better fulfill its mandate. On the other, an incomplete record could potentially have an effect on the reasonableness of the Director's conclusions.
55. On judicial review, an incomplete record is generally concerning because of the potential effect on natural justice. As noted by the Supreme Court in the context of a record not containing transcriptions of the hearing that had taken place before the decision-maker, "the denial of justice allegedly arises from the inadequacy of the information upon which a reviewing court bases its decision. As a consequence, an appellant may be denied his or her

grounds of appeal or review” (*Canadian Union of Public Employees, Local 301 v Montreal (City)*, [1997] 1 SCR 793 at para 80). Ultimately, a reviewing body must determine whether the missing information in the record is material to its decision, and if it can dispose of the matter properly without it.

56. Given that there is no party requesting a judicial review in the context of a review of a ministerial authorization by the Intelligence Commissioner, there is no denial of natural justice with respect to a particular applicant. Nevertheless, the Intelligence Commissioner’s oversight role is to ensure that important privacy, as well as other legal and constitutional interests, are appropriately considered in the national security context. As Intelligence Commissioner, I make my decisions on behalf of Canadians and persons in Canada. A complete record before the Director and myself is necessary for those rights and interests to be appropriately considered.
57. In that sense, although the Intelligence Commissioner’s role in representing interests of the Canadian public may not engage principles of natural justice with respect to a particular applicant, I am of the view that it engages broader principles of procedural fairness with respect to Canadians and persons in Canada. Indeed, if information that has a bearing on the rights of Canadians is not presented to, or considered by, the Director, their interests are not being fully considered. As stated by the majority in *Vavilov*, “reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (para 95).
58. As mentioned, a decision by the former Intelligence Commissioner considered information relating to the same compliance issue and found that it did not affect the reasonableness of the Director’s conclusions in the matter before him. In the matter before me, I have knowledge of what appears to be a non-compliance incident, described in general terms in a briefing note attached to the Director’s December 2023 letter. While the information about the compliance issue has, at some point, been presented to the Director, the information is not provided in the record before me or considered by the Director in his conclusions. Therefore,

I cannot find with sufficient certainty that had information on the non-compliance incident been included in the record, it would have had no bearing on the Director's conclusions.

59. Paragraph 20(2)(b) of the *IC Act* provides that I can approve an authorization with conditions if I am satisfied that the Director's conclusions are reasonable once the conditions are attached. The conditions must be related to the querying or exploitation of the foreign dataset or the retention or destruction of the dataset or a portion of it.

60. In the circumstances, I am of the view that a condition related to the retention of the Foreign Dataset renders the Director's conclusions reasonable, namely that it be retained only for one year instead of five years as authorized by the Director. This condition reflects that the Director's conclusions are reasonable that the section 11.1 statutory requirement have been satisfied, but that they are based on an incomplete record. It also reflects that the knowledge I have about the missing information does not suggest that the Director's conclusions would change had it been included in the record, while recognizing that the incomplete record is insufficient to justify a five-year retention period. The condition recognizes the Foreign Dataset's usefulness and allows CSIS and the Director to apply for a renewal of the ministerial authorization where CSIS includes all relevant information in the record, which is considered by the Director. Canadians expect CSIS to have adequate tools to carry out its activities, but also that information relevant to their interests will be considered when CSIS seeks authorization to conduct activities.

iv. The update provisions are reasonable

61. The *CSIS Act* requires that an authorization to retain a foreign dataset specify the manner in which CSIS may update it. Even though the *CSIS Act* does not explicitly state that the Director's conclusions concerning how a foreign dataset could be updated is subject to the Intelligence Commissioner's review, it nevertheless forms part of the reasonableness review. As stated in the Intelligence Commissioner's jurisprudence, CSIS cannot have *carte blanche* to modify and update a dataset after its authorization has been approved. Reviewing the reasonableness of the conclusions related to proposed update provisions ensures that these

will not change the nature of the authorized dataset and that the updates will satisfy the threshold of likely to assist CSIS in the performance of its duties and functions.

62. The Director approved one type of update: the removal of a certain type of information. Consequently, he acknowledges that no additional records could be added to the Foreign Dataset under this provision.

63. In my view, the Director's conclusions show his understanding of the update provision and the fact that it would not alter the nature of the dataset. As a result, I find the Director's conclusions with respect to the update provision reasonable.

V. REMARKS

64. I would like to make the following two remarks that do not alter my findings regarding the reasonableness of the Director's conclusions.

A. Delay in authorizing the Foreign Dataset

65. Although the Director acknowledges the passage of time from CSIS' request to retain the Foreign Dataset to the issuance of the Authorization, there is no explanation for the delay. In Decision 2200-A-2023-05, I remarked that substantial delays could affect the "likely to assist" requirement. The passage of time can render some facts irrelevant and undermine the reasonableness of the Director's conclusions because part of the reasonableness review is to ensure that conclusions are grounded in the factual context.

66. Indeed, this Authorization concretely illustrates the risk of a lengthy delay between the CSIS request and the Director's authorization. As mentioned, the CSIS request, prepared in 2019, explained that the Foreign Dataset would likely assist CSIS in the performance of its section 16 duties but the Director explains that [REDACTED]. [REDACTED] did not affect the reasonableness of the Director's conclusions in this instance because I found reasonable the conclusions that the Foreign Dataset is likely to assist with CSIS' duties under the other legislative provisions – sections 12, 12.1, and 15. Nevertheless, had the Authorization relied solely on the dataset

being “likely to assist” with section 16 duties, the Director’s conclusions may not have been reasonable given the passage of time and the consequent change in factual circumstances.

67. I recognize that the *CSIS Act* does not impose a time limit for the Director to issue an authorization after having received a request from CSIS. Parliament could have imposed a time limit in the recent amendments to the dataset regime, but chose not to. Nevertheless, it is my view that the 180-day evaluation period [previously 90 days] reveals Parliament’s intent that once CSIS requests the Director to issue an authorization, it should be reviewed promptly.

68. I understand that this Foreign Dataset and the foreign dataset approved in Decision 2200-A-2024-04 are the last two foreign datasets that were collected prior to the coming into force of the dataset regime in 2019 for which CSIS requested a retention authorization. There should therefore be no further CSIS requests that have a lengthy delay prior to the Director’s authorization. The Director has recognized the importance of reducing delays and has indicated that CSIS has enhanced the efficiency of the process.

B. Collection of separate datasets

69. The Foreign Dataset is a collection of separate datasets. As mentioned, the CSIS memorandum states that the common subject matter is [REDACTED].

70. When a dataset is a collection of other datasets, I am of the view that the common subject matter must be delineated with clear and understandable limits. This should be reflected in the Director’s conclusions. As an example, the use of the terms [REDACTED] could be broadly applied. In this instance, I understand from the record that it is information restricted to [REDACTED].

71. Nevertheless, if the understanding of a common subject matter becomes too uncertain or malleable, the collection of datasets may no longer meet the statutory definition.

VI. CONCLUSIONS

72. Pursuant to section 17 and paragraph 20(2)(b) of the *IC Act*, I am satisfied that the Director's conclusions made pursuant to subsection 11.17(1) of the *CSIS Act* and on the basis of which the retention of the Foreign Dataset was authorized are reasonable with the condition that the Authorization be valid for one year. As a result, the Authorization with the condition expires one year from the day of my approval.

73. 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.

August 8, 2024

(Original signed)

The Honourable Simon Noël, K.C.
Intelligence Commissioner