~~TOP SECRET//[redacted]//CEO~~

File: CSIS-2025-02

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INTELLIGENCE COMMISSIONER

DECISION AND REASONS

IN RELATION TO A DETERMINATION OF A CLASS OF CANADIAN DATASETS PURSUANT TO SECTION 11.03 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT* AND SECTION 16 OF THE *INTELLIGENCE COMMISSIONER ACT*

MAY 14, 2025

Canada

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I. OVERVIEW

1. This is a decision reviewing the conclusions of the Minister of Public Safety and Emergency Preparedness (Minister) in relation to the determination of a class of Canadian datasets (Authorization) made pursuant to the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23 (*CSIS Act*).

2. An authorization relating to classes of Canadian datasets is the initial step that can lead to CSIS retaining large amounts of personal information on Canadians and individuals in Canada that is unrelated to a threat to the security of Canada, and that CSIS could not otherwise collect and retain when performing its duties and functions. The Intelligence Commissioner's review ensures that this step is undertaken in a manner that is reasonable and that takes into account the privacy interests of Canadians and individuals in Canada.

3. The Authorization is the second renewal of a class of Canadian datasets originally approved in 2023 (Decision CSIS-2023-03). While the class is unchanged, the Minister's conclusions and supporting documents have been updated to address the remarks I made in last year's decision (Decision CSIS-2024-02) as well as to reflect legislative amendments made to the dataset regime *CSIS Act* that came into force in June 2024. This is the first authorization in relation to a class of Canadian datasets made by the Minister since those amendments.

4. On April 25, 2025, pursuant to subsection 11.03(1) of the *CSIS Act*, the Minister determined, by order, Class 2023-1 as a class for which collection is authorized. The same day, 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*).

5. Pursuant to the *IC Act*, the Intelligence Commissioner must provide a written decision either within 30 days after the day on which the Authorization is received, or within any other period agreed to with the Minister (s 20(3)(b)). In his cover letter, the Minister "requests" that I render my decision by May 22, 2025 – a few days prior to the baseline 30-day period – which is the date on which the current authorization is set to expire. The Minister explains that, subject to my approval, this would ensure that there is no break in the validity of the existing class of Canadian datasets. I agreed to issue my decision by the requested date.

6. Having completed my analysis, I am satisfied that the Minister's conclusions made under subsection 11.03(2) of the *CSIS Act* in relation to the class of Canadian datasets Class 2023-1 are reasonable. Consequently, pursuant to paragraph 20(1)(a) of the *IC Act*, I approve the Authorization of Class 2023-1.

II. CONTEXT

7. The dataset regime set out in sections 11.01 to 11.25 of the *CSIS Act* provides CSIS with the legal authority to collect, retain and analyse datasets. A dataset is defined as a collection of information that is characterized by a common subject matter, is stored as an electronic record, contains personal information, as defined in section 3 of the *Privacy Act*, RSC, 1985, c P-21, and is relevant to the performance of its duties and functions under any of sections 12 to 16 but cannot be collected or retained under any of those sections (s 11.01, *CSIS Act*). Acquiring datasets pursuant to section 11 of the *CSIS Act* cannot circumvent the requirement to obtain a warrant under section 21 of the same Act.

8. Canadian datasets contain information that is not publicly available at the time of collection and predominantly (*comportant principalement* in French) – interpreted by CSIS as more than 50 per cent of its content – relate to Canadian citizens, permanent residents, Canadian companies, and individuals within Canada (s 11.07(1)(b), *CSIS Act*). The query (a specific search or series of searches in relation to a person or entity) and exploitation (computational analysis or analyses) of Canadian datasets enable CSIS to make connections or identify connections and trends that would not otherwise be apparent using traditional investigative techniques.

9. In previous decisions relating to classes of Canadian datasets, I have set out the process that must be followed and the accountability mechanisms set out in the legislation that must be respected prior to CSIS collecting, retaining and using Canadian datasets. In summary, the Minister determines the classes of Canadian datasets for which collection is authorized, and the classes must subsequently be approved by the Intelligence Commissioner. To determine a class, the Minister must conclude that the querying or exploitation of datasets in the class could lead to results that are relevant to the performance of CSIS' duties and functions under

section 12 (investigation of threats), 12.1 (measures to reduce threats), 15 (investigations for the purpose of providing security assessments pursuant to section 13 or advice on security matters in relation to immigration pursuant to section 14) or 16 (collection of information within Canada concerning foreign persons and states) of the *CSIS Act*. I note that the addition of section 15 is a result of the 2024 legislative amendments.

10. CSIS may then collect a Canadian dataset when it reasonably believes that it falls within an "approved class". Once collected, CSIS evaluates the dataset to see if, in fact, it is a Canadian dataset and to confirm that it belongs to an approved class. If CSIS wishes to retain the dataset to query or exploit it in the future, it must then obtain judicial authorization from a designated judge of the Federal Court. Datasets that do not belong to an approved class must be destroyed, unless CSIS requests a new class determination from the Minister.

11. The 2024 amendments to the *CSIS Act* did not modify this overall process, but rather extended certain time limits under it: CSIS now has 180 days, rather than 90, to evaluate the dataset after collection (s 11.07(1)); the Minister's determination of classes Canadian datasets can now be valid for a period of up to two years, rather than having to determine classes at least once every year (s 11.03 (2.1)); and a designated judge of the Federal Court can authorize the retention of Canadians datasets for a period of up to five years, instead of two (s 11.14(2)).

12. Once judicial authorization is granted, designated CSIS employees can, for the purposes of sections 12, 12.1 and 15, query or exploit the Canadian dataset 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 (s 11.2, *CSIS Act*).

13. CSIS can retain the results of a query or exploitation if this is done under section 12, or, to the extent that it is strictly necessary, for the purposes of sections 12.1 or 15, or for the purposes of section 16 if the retention is required to assist the Minister of National Defence or the Minister of Foreign Affairs. Results that cannot be retained for these purposes must be destroyed without delay (s 11.21, *CSIS* Act).

14. Further to the new amendments, CSIS may also disclose Canadian datasets. CSIS' applications for judicial authorization must set out the manner in which CSIS intends to disclose the dataset, and the authorizing designated judge shall establish any terms and conditions respecting disclosure that the judge considers necessary (s 11.13 and 11.14, *CSIS Act*).

15. 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 April 25, 2025;
    b) The Memorandum from the Deputy Minister of Public Safety Canada to the Minister dated April 22, 2025;
    c) The Memorandum from the Director of CSIS to the Minister dated April 7, 2025;
    d) The Application dated April 7, 2025, including seven annexes:
        i) [...];
        ii) Updated version of the Government's Intelligence Requirements Charts pursuant to the 2023–25 Canadian Intelligence Priorities and Outcomes, dated January 2025;
        iii) Canada's Intelligence Priorities, made public for the first time in September 2024;
        iv) Examples of datasets that would be included and excluded from the proposed class;
        v) Document outlining the measures and authorities that protect the privacy rights of Canadians;
        vi) Ministerial directions to CSIS; and
        vii) Copies of relevant CSIS operational policies; and
    e) A copy of the Intelligence Commissioner's decision CSIS-2024-02.

III. STANDARD OF REVIEW

16. The *IC Act* requires the Intelligence Commissioner to review whether the Minister's conclusions are reasonable. I will therefore apply the reasonableness standard, as applied in judicial reviews of administrative action.

17. 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. 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.

18. Relevant factual and legal constraints can include the governing statutory scheme and the impact of the decision. The governing statutory scheme set out in the *IC* and *CSIS Acts* highlights the role of the Intelligence Commissioner as an independent mechanism to ensure that government action taken for the purpose of national security and intelligence is properly balanced with the respect of the rule of law and the rights and interest of Canadians.

19. 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, where unreasonable, the Intelligence Commissioner "must not approve" the authorization (s 20(1)(b), *IC Act*). In both cases the Intelligence Commissioner must set out his reasons for doing so.

IV. ANALYSIS

20. On April 7, 2025, the Director of CSIS submitted a written application to the Minister seeking renewal of the class of Canadian datasets referred to as Class 2023-01 (Application).

The Application sets out how the statutory requirements are satisfied; the description and scope of the class including examples of datasets that would be included and excluded from the class; the rationale for the class supporting CSIS' performance of its duties under sections 12, 12.1, 15, and 16; as well as the compliance and privacy safeguards in place. Relying on the Application and the Memorandum from the Deputy Minister, the Minister issued the Authorization.

21. The proposed class in the Authorization sets out three criteria that define the class and that CSIS must reasonably believe are satisfied prior to collecting any datasets. I note that these criteria remain unchanged from last year's authorization:

    a) The Service reasonably believes that the dataset is […];

    b) […]

    c) […]

A. Updated record

22. The past approvals of class 2023-01 do not entail that it will automatically be approved again. Every ministerial authorization is distinct and is reviewed on its own record.

23. Having reviewed the record before me, I am satisfied that it contains new information showing a clear evolution of the file since the initial approval and the efforts made by CSIS to address the remarks I made in last year's decision as well as the legislative amendments made to the dataset regime. Indeed, I commend CSIS for the improvements.

24. In last year's decision, I noted that a logical implication of the Minister's conclusions was that the "other information" that could be included in a dataset falling within the class could not include information in which Canadians have a reasonable expectation of privacy (Decision CSIS 2024-02 at para 49). As a result, the definition of the class now expressly excludes [a specific type of] information in which Canadians have a reasonable expectation of privacy. The Minister's conclusions also take note of this exclusion when discussing his conclusion that the class is appropriately limited.

25. Also in last year's decision, I remarked that the *Ministerial Directive to CSIS on the Government of Canada Intelligence Priorities* (Direction) issued by the Minister referred to the 2021–23 intelligence priorities and not the new 2023–25 priorities. CSIS had indicated it expected that an updated Direction would be issued "imminently". Consequently, I requested that once issued, a copy of the Direction be forwarded to my office, with any changes that could have been relevant to my decision clearly reflected. A new Direction was issued by the Minister in October 2024, but my office did not receive a copy until receiving the record now before me in April 2025. Based on my own comparison, I have confirmed that the updated 2023–25 intelligence priorities are similar to their previous iterations and that the Direction did not substantively change.

26. With regard to Cabinet confidences, I noted last year that although I am not statutorily entitled to the documents covered by this privilege, access to them, even in redacted form, should be considered in future applications. This would allow me to gain a better understanding of the record as it relates to CSIS' operational activities and be helpful – and in some cases necessary – when the Minister relied on Cabinet documents for me to determine whether the Minister's conclusions were reasonable. I welcomed the initiative from the Deputy Minister of Public Safety to explore the possibility of providing me with such documents in the future.

27. As was the case last year, the Memorandum from the Deputy Minister of Public Safety to the Minister acknowledges the potential utility of the information contained in Cabinet Confidences documents, particularly in relation to Canada's Intelligence Priorities as they help to contextualize CSIS' duties and functions. I am pleased to observe that in the Memorandum to the Minister, Public Safety endeavours to continue efforts to provide me with the most complete record possible for my review. For completeness, I note, however, that the copy of the Ministerial Direction to CSIS contained a minor redaction of a date on the grounds of Cabinet Confidences which was not redacted in the previous direction included in last year's record.

28. The Application and Authorization have been amended to reflect amendments to the *CSIS Act* enacted in June 2024, in particular CSIS' new section 15 dataset authorities. For example, it is specified that the information in Canadian datasets under the class could be used not only [...] but also inform security assessments. The addition of section 15 expands not only the scope of Canadian datasets that CSIS may collect and retain, but also the use of any retained Canadian dataset. I note that it also aligns it with CSIS' pre-existing authority to – the extent that is strictly necessary – retain, query and exploit a foreign dataset for these same purposes. The expansion of how Canadian datasets can be used underscores the importance for CSIS to take into account the reliability of the information in the datasets, both when deciding whether or not to collect the datasets and when using information from them.

29. The Minister also authorized the class for the new maximum two year validity period. On this point, given the discretionary nature of determining the validity period and the fact that it is a change from past authorizations, I note that the Minister's conclusions could have been strengthened by explaining his rationale.

30. Finally, in last year's decision I noted that the record indicated that an application for judicial authorization to retain a Canadian dataset was before the Federal Court. This followed a remark made in Decision CSIS-2023-03 in which I indicated that it would be helpful for the Intelligence Commissioner to receive decisions rendered by the Federal Court with respect to the retention of Canadian datasets as they may offer guidance relating to the interpretation of the dataset regime. The update provided in the current record indicates that the application was made to the Federal Court in [...] and that the Court "continues to be seized with this application and has not yet issued the judicial authorization for the retention of the [Canadian dataset]." CSIS' memorandum raises, from its point of view, the importance of renewing the current class by identifying the risk that if the class to which the dataset belongs ceases to be valid, this could weigh on the pending Federal Court decision. The memorandum indicates that "[d]espite the passage of time, CSIS continues to assess that the [Canadian dataset] contains information, [...] which remains valid and relevant to the performance of CSIS' duties and functions." As noted above, information in a dataset can only be retained and used

by CSIS after obtaining judicial authorization. I add that the passage of time diminishes the practicality of the dataset regime established by the legislation.

31. As set out in section 16 of the *IC Act* relating to the determination of a class of Canadian datasets, I must review whether the Minister's conclusions on the basis of which the Authorization was issued are reasonable. Given that the Authorization constitutes the second renewal of class 2023-01, and the Minister's conclusions – subject to the updates noted above – have not substantively changed, my reasons highlight what I consider are the central elements of the Minister's analysis.

B. Are the Minister's conclusions reasonable?

32. The *CSIS Act* creates a series of steps that must be satisfied which can lead to the eventual retention of information in a Canadian dataset. Each step involves meeting a legal threshold that is higher than the previous step. The first step is the determination of a class by the Minister ("could lead to results that are relevant"); the second is collection by CSIS ("reasonably believes that the dataset belongs to an approved class"); the third is retention, which must be authorized by a designated judge of the Federal Court ("likely to assist") who shall specify any terms and conditions considered necessary respecting the querying and exploitation of the dataset; and the last step is querying or exploitation and ingesting the result into CSIS operational databases (for sections 12, 12.1 and (newly) 15 – "strictly necessary"; for section 16 – "required to assist").

33. This decision pertains to the first step, where the Minister must conclude that the querying or exploitation of any dataset in the class could lead to results that are relevant to the performance of CSIS' duties and functions under sections 12, 12.1, 15 or 16 of the *CSIS Act* (s 11.03(2)).

i. The application of the threshold – "could lead to results that are relevant"

34. CSIS operational policy provides guidance to designated CSIS employees responsible for determining whether the "could lead to results that are relevant" threshold has been met. The

relevance threshold in law is not high and I find CSIS' policy guidance to be based on a reasonable interpretation of this threshold.

35. The Minister explains that the main purpose of querying or exploiting a dataset that would fall within the proposed class is to [...]. He describes how satisfying the main purpose of the class is relevant to its duties and functions under sections 12, 12.1, 15 and 16, and more generally, foundational to its mandate. The third criterion of the class – [...] – ensures that this purpose is satisfied.

36. He further explains that the other two criteria circumscribe the class to establish a nexus to these duties and functions. More specifically, the second criterion – [...] – is derived from the 2023–25 Government's Intelligence Requirements and the Cabinet-approved 2023–25 Government of Canada Intelligence Priorities, which serve as the foundation for the Direction to CSIS issued by the Minister. This criterion is therefore directly linked to CSIS' performance of its duties and functions.

37. Finally, the Minister explains that the third criterion, which describes the nature of the source of the information, contributes to the reliability of the information in the dataset. Reliability of the information is necessary in order to obtain results that could be relevant to the performance of CSIS' duties and functions.

38. I am of the view that the information in the datasets that could fall within the proposed class exhibits a nexus to duties and functions under sections 12, 12.1, 15 and 16. The Minister's rationale demonstrates that information in the datasets could [...]. His conclusions make it clear that he was satisfied that the "could lead to results that are relevant" threshold was met.

39. As a result, I find that the Minister's conclusions with respect to the threshold are reasonable. The examples provided in the record and the reliance on the three criteria defining the proposed class of datasets support that querying or exploiting datasets falling within the proposed class could lead to results that are relevant to the performance of CSIS' duties and functions under sections 12, 12.1, 15 and 16 of the *CSIS Act*.

ii. The class is sufficiently defined

40. As stated in my past decisions, satisfying the threshold that the class could lead to results that are relevant to CSIS duties does not entail that the Minister's conclusions relating to the determination of the class are reasonable. The Intelligence Commissioner reviews the conclusions made under subsection 11.03(2) of the *CSIS Act* and on the basis of which the Minister determines the class. Evaluating the Minister's conclusions is not a mechanical exercise; I am guided by the factual and legal constraints that relate to the conclusions, and consider the impact of the authorization.

41. An authorization determining a class of Canadian datasets can have a large impact on privacy interests of Canadians and persons in Canada as it allows CSIS to potentially use personal information that it could not otherwise lawfully collect. I am satisfied that the Minister turned his mind to ensuring that the class does not allow for overbroad collection.

42. More specifically, I am again satisfied that the cumulative effect of the three criteria delineating the class sufficiently limits collection to datasets that will have tangible impact on the performance of CSIS' duties. Indeed, the definition of the class creates a necessary link between datasets falling within the class on the one hand, and CSIS' duties and functions on the other.

iii. Protecting the privacy rights of Canadians and individuals in Canada

43. I also find that the Minister turned his mind to the impact on privacy interests of Canadians and individuals in Canada.

44. Once again, the record includes a document outlining the measures and authorities to protect privacy, to which some minor amendments have been made. The document provides information and an explanation about the legislative as well as policy and procedural steps taken to protect the privacy rights of Canadians and individuals in Canada. For example, it underscores that only employees designated by the Director may evaluate, query, or exploit Canadian datasets (s 11.06, *CSIS Act*).

45. In addition, the record includes ministerial directions and relevant portions of CSIS' operational policies and guidelines governing the collection, retention and use of Canadian datasets. These documents provide assistance in identifying the types of datasets collected by CSIS and their associated requirements and considerations. They also provide direction to employees on the collection, retention, querying and exploitation of the datasets. Notably, only designated CSIS employees can evaluate and use Canadian datasets.

46. Prior to their designation, the employees must successfully complete a mandatory training program which explains CSIS' obligations and mechanisms to protect personal information retained in the datasets. As I have noted in previous decisions, designated CSIS employees shoulder important responsibilities. Up-to-date policies have an important role to play in providing them with necessary guidance and properly operationalizing statutory requirements and privacy protections. I further address this issue in my remarks.

47. In his conclusions, the Minister makes reference to the documents provided by CSIS that explain "the various safeguards and limits". He states that he believes those safeguards to be "robust". Indeed, given that the proposed class would allow for the collection of information CSIS could not otherwise collect in the performance of its duties, it is important that those safeguards be extremely robust. The information can only be accessed and used in accordance with the *CSIS Act*, and the safeguards must ensure that the *CSIS Act* requirements are respected.

48. I am of the view that the policy framework and the documents in the record establish proper safeguards to protect privacy interests. I am also satisfied that designated CSIS employees should be able to understand the limits of the proposed class.

49. Considering the above, I am satisfied that the Minister's conclusions made under subsection 11.03(2) of the *CSIS Act* are reasonable.

V. REMARKS

50. I would like to make three additional 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. Caretaker Convention

51. Both Public Safety and CSIS' memoranda to the Minister briefly discuss the 'caretaker period' and the corresponding application of the caretaker convention. According to the Privy Council Office (PCO)-issued *Guidelines on the conduct of Ministers, Ministers of State, exempt staff and public servants during an election* (PCO Guidelines), which Public Safety's memorandum references, the caretaker period begins upon the dissolution of Parliament and ends either when a new government is sworn-in or when an election result returning an incumbent government is clear. The caretaker period was therefore most recently in effect from March 23 to April 29, 2025.

52. According to the Office of the Intelligence Commissioner's records, the present file is the first in which both a CSIS application was made and an authorization was issued during the course of a caretaker period. Although this is not the first authorization to be issued by a Minister during a caretaker period (Decision CSIS-2019-03), it is the first in which the caretaker convention is explicitly referenced in the record.

53. The PCO Guidelines provide that Ministers must restrict themselves to matters that are routine, or non-controversial, or urgent and in the public interest, or reversible by a new government without undue cost or disruption, or agreed to by opposition parties (in those cases where consultation is appropriate).

54. CSIS assessed, and Public Safety concurred, that determining the class is permissible during the caretaker period because it is a "routine decision" that is "in the public interest" and "also reversible as any future Minister could direct CSIS not to collect datasets" under the class.

55. I appreciate that these considerations regarding the caretaker period were provided to the Minister. I am of the view that all applications made during caretaker periods in the future

should do the same in order to assist the Minister in making the determination of whether issuing the authorization falls within the types of decisions that can be made under the caretaker convention.

56. As a quasi-judicial decision maker, my role is not to consider whether the caretaker convention has been respected or not; as a convention, it is not enforced judicially. However, given that the decisions of the Intelligence Commissioner are an important source of information by which the public can become aware of ministerial authorizations, I am of the view that it is important to note the issue in this decision.

57. Without commenting specifically on the present file in any way, I would encourage future ministerial conclusions made during caretaker periods to address the interaction with the caretaker convention, in particular where new or novel authorities are sought. I am of the view that this would strengthen transparency and ministerial accountability.

58. With regard to the "reversibility" of an authorization, I acknowledge that a minister may have means at their disposal to limit or proscribe its effect. However, I note for the sake of clarity that an authorization with respect to classes of Canadian datasets is only valid once approved by the Intelligence Commissioner and that this approval cannot be cancelled or rescinded by a minister.

B. Updating of CSIS operational policies

59. The record indicates that following the legislative amendments of June 2024, CSIS is in the process of developing an updated operational framework. As referenced in CSIS' Memorandum and reflected in the Minister's Authorization, the updated operational policies are to be provided to Public Safety as well as myself, with confirmation being given to Public Safety that I have received them.

60. As I have remarked in a previous decision regarding the determination of classes of acts or omissions that would otherwise constitute offences (CSIS-2024-01), guidance for designated CSIS employees, for example provided through operational policies and training, is imperative. Up-to-date policies have an important role to play in providing designated

employees with the necessary guidance and to ensure that statutory requirements and privacy protections are properly operationalized.

61. Keeping in mind that the most recent class was approved prior to legislative amendments, my review of the record shows that some documents were not updated as required by CSIS operational policy. For example, the operational policy annex relating to the approved Canadian dataset class ([...]) is labelled as having last been reviewed in August 2023, despite the annex stating it is to be reviewed and updated every year. The guidance should reflect the most recently approved class, even if the class is renewed.

62. In his conclusions the Minister relies on CSIS' operational policies and guidelines to affirm that he has "confidence" that privacy protection measures are sufficient and will be respected. Further, the Minister "expect[s] CSIS to continue reviewing its protections implemented in its policy suite, compliance controls, and related training". I similarly endorse the Minister's position and add that, as an accountability mechanism, operational policies relating to approved classes of Canadian datasets provided to designated CSIS employees should always reflect the most current ministerial authorization.

C. Solicitor-client privilege

63. CSIS has a continuing statutory obligation to take reasonable measures to ensure that any information that is subject to solicitor-client privilege is deleted from a Canadian dataset (s 11.1(1), *CSIS Act*). The Minister acknowledges this obligation and it is restated in the operational policies included in the record. Nevertheless, the record contains ambiguous references with respect to the process followed by designated employees to identify and delete this information, in particular with regard to how many employees may potentially see the privileged information. The evaluation procedure described in the document outlining the measures to protect privacy indicates that a data analyst evaluating a dataset would report their findings to the "policy and decision-makers involved in the submission process for guidance and prioritization", and that identified data elements are manually reviewed. It also indicates that "a process and code are developed to search and extract these data elements as directed by policy and decision-makers to result in a minimized dataset."

64. Looking ahead to the updating of operational policies, I would encourage CSIS to ensure that the process to identify and delete information that is subject to solicitor-client privilege explicitly reflects the importance of the privilege as a principle of fundamental justice and that whenever it must be pierced, the privilege is impaired in as minimal a way as possible. I note that I have made a similar remark in relation to an authorization issued for activities carried out by the Communications Security Establishment (Decision CSE-2022-05).

65. This principle has been recently reiterated by the Federal Court in *Canadian Security Intelligence Service Act (CA) (Re),* 2024 FC 1689, where the Court addressed the issue of how CSIS handles incidentally intercepted communications potentially subject to legal privilege. It emphasized that CSIS must ensure that the fewest number of personnel have access to the content (paras 136 and 139). While the Court addressed the authority of CSIS to retain solicitor-client communications intercepted, retained and isolated in the course of executing warrants granted pursuant to sections 16 and 21 of the *CSIS Act*, the principle that the fewest number of personnel possible have access to the information applies equally to CSIS' continuing obligation to ensure that any information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries is deleted from a Canadian dataset.

VI. CONCLUSIONS

66. Based on my review of the record, I am satisfied that the Minister's conclusions made under section 11.03 of the *CSIS Act* with regard to the determination of a class of Canadian datasets referred to as Class 2023-01 are reasonable.

67. I therefore approve the Authorization of Class 2023-01 dated April 25, 2025, pursuant to paragraph 20(1)(a) of the *IC Act*.

68. As indicated by the Minister, and pursuant to section 11.03 of the *CSIS Act*, this Authorization expires two years from the day of my approval.

69. 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.

May 14, 2025

(Original signed)

The Honourable Simon Noël, K.C.
Intelligence Commissioner