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Office of
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Commissioner

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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 23, 2024

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I. OVERVIEW

1. This is a decision reviewing the conclusions of the Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs (Minister) in relation to the determination of a class of Canadian datasets made pursuant to the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23 (*CSIS Act*).
2. One of the most fundamental responsibilities of a government is to ensure the security of its citizens (*Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 1). The Canadian Security Intelligence Service (CSIS or the Service) contributes to this responsibility. To do so, CSIS investigates threats and reports on them to the Government of Canada. When investigating suspected threats to the security of Canada, CSIS has the lawful authority to collect and use large volumes of electronic data that are related to those threats.
3. Since the coming into force of a legislative amendment to the *CSIS Act* in 2019, CSIS also has the lawful authority collect and use electronic data that are not related to a suspected threat, even if the non threat-related records relate to Canadians and non-Canadians within Canada. This is referred to as the “dataset regime”. The collection and use of Canadian datasets are subject to obtaining the required authorizations. A Canadian dataset can only be collected if it falls within a category of an “approved class” authorized by the Minister and subsequently approved by the Intelligence Commissioner. Once collected, the information in the dataset can only be retained and used by CSIS after obtaining judicial authorization from the Federal Court of Canada.
4. On April 19, 2024, the Director of CSIS sought the Minister’s determination for the renewal of a class of Canadian datasets referred to as Class 2023-1. I approved this class in June 2023 – Decision 2200-A-2023-03 (Decision 2023-03).
5. On April 26, 2024, pursuant to subsection 11.03(1) of the *CSIS Act*, the Minister determined, by order, Class 2023-1, for which collection is authorized (the Authorization).

6. On April 29, 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 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.
8. Consequently, pursuant to paragraph 20(1)(a) of the *IC Act*, I approve the ministerial Authorization of Class 2023-1.

II. CONTEXT

9. 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 personal information, as defined in section 3 of the *Privacy Act*, RSC, 1985, c P-21, that is not directly and immediately related to activities that represent a threat to the security of Canada, but that is nevertheless relevant to the performance of its duties and functions under sections 12 to 16 (s 11.05, *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.
10. A dataset is defined by the *CSIS Act* as a “collection of information stored as an electronic record and characterized by a common subject matter” (s 2, *CSIS Act*). 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 – relates to Canadians, individuals in Canada, or Canadian companies (s 11.07(1)(b), *CSIS Act*). The query (a specific search in relation to a person or entity) and exploitation (computational analysis) of Canadian datasets enable CSIS to make connections or identify patterns and trends that would not otherwise be apparent using traditional investigative techniques.

11. In previous decisions relating to classes of Canadian datasets, I have set out the process that must be followed and the accountability mechanisms found in the dataset regime that must be met prior to CSIS collecting, retaining and using Canadian datasets. In summary, the Minister must determine the classes of Canadian datasets and the classes must subsequently be approved by the Intelligence Commissioner. CSIS may then collect a Canadian dataset when satisfied that it falls within the 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.
12. 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. Once judicial authorization is granted, designated CSIS employees can query or exploit the Canadian dataset – and retain the results – for purposes of sections 12 (investigation of threats) and 12.1 (measures to reduce threats) to the extent that it is strictly necessary, and for purposes of section 16 (collection of information concerning foreign persons and states in Canada) if required to assist the Minister of National Defence or the Minister of Foreign affairs.
13. Therefore, when the Minister determines classes of Canadian datasets, it is the initial step that can lead to CSIS retaining large amounts of non threat-related information related to Canadians and persons in Canada. The Intelligence Commissioner's review ensures that this step is undertaken in a manner that takes into account the privacy interests of Canadians and persons in Canada.
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 April 26, 2024;
 - b) Memorandum from the Deputy Minister of Public Safety Canada to the Minister dated April 26, 2024;
 - c) Memorandum from the Director of CSIS to the Minister dated April 19, 2024;

- d) The Application dated April 12, 2024, including five annexes:
 - i) [...] pursuant to the 2023—2025 Canadian Intelligence Priorities and Outcomes, dated October 23, 2023;
 - ii) Examples of datasets that would be included and excluded from the proposed class;
 - iii) Measures and authorities that protect the privacy rights of Canadians;
 - iv) Ministerial Directions to CSIS; and
 - v) Copies of relevant operational CSIS policies.
- e) Copies of relevant Intelligence Commissioner decisions (Decision 2200-A-2023-01 and Decision 2023-03).

III. STANDARD OF REVIEW

- 15. Pursuant to section 12 of the *IC Act*, the Intelligence Commissioner conducts a quasi-judicial review of the Minister's conclusions on the basis of which a ministerial authorization – in this case a determination of a class of Canadian dataset – is made to decide whether they are reasonable.
- 16. The Intelligence Commissioner's jurisprudence establishes that the reasonableness standard, as applied to judicial reviews of administrative action, applies to my review.
- 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 (*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, 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, 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*.
19. A review of the *IC Act* and the *CSIS Act*, as well as legislative debates, show 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.
20. 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*).

IV. ANALYSIS

21. On April 19, 2024, the Director of CSIS submitted a written application to the Minister seeking the renewal of the class of Canadian datasets referred to as Class 2023-1 (Application). Relying on the Application, the Memorandum from the Deputy Minister and considering last year's Decision 2023-03, the Minister issued the Authorization.

22. The proposed class in the Authorization sets out three criteria that define the class and must therefore be met prior to collecting any datasets. I note that these same criteria defined the class in last year's authorization:
- a) The Service reasonably believes that the dataset is [...]
 - b) [...]
 - c) [...]
23. As established by the jurisprudence of the Intelligence Commissioner and reiterated recently in Decision 2200-A-2024-01, past approval by the Intelligence Commissioner does not entail that the same activities – or class in this matter – will automatically be approved again. Every ministerial authorization is distinct and is reviewed on its own record. A number of considerations could have changed between authorizations. Further, where appropriate, new applications should include updated examples.
24. The record before me contains minor differences as compared to last year's record. There are new examples of what constitutes [...] and the Authorization expressly prohibits the collection of biometric information – a result of a remark I made in Decision 2023-03 to emphasize [...] did not open the door to collecting biometric information. The record also includes the new versions of the Government of Canada's intelligence requirements and intelligence priorities, and CSIS has updated some examples provided in the rationale and with respect to the application of the relevancy threshold.
25. The record explains that information included in the datasets could be used by CSIS to [...] relevant to CSIS' duties and functions. It 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 and 16; as well as the compliance and privacy safeguards in place.

26. Pursuant to section 16 of the *IC Act*, I must review whether the conclusions of the Minister made under subsection 11.03(2) of the *CSIS Act* and on the basis of which a class of Canadian datasets is determined under subsection 11.03(1) of the *CSIS Act* are reasonable.

A. Are the Minister's conclusions reasonable?

27. The scheme of the *CSIS Act* in relation to Canadian datasets works in steps, each with an increasingly elevated legal threshold. The first is the determination of a class (could lead to results that are relevant); the second is collection by CSIS (satisfied that the dataset is relevant); the third is the retention that must be authorized by a designated judge of the Federal Court (likely to assist); and the last step is querying or exploitation and ingesting the result into CSIS operational databases (for sections 12 and 12.1 – strictly necessary; for section 16 – required to assist). The context and additional details gathered at each step, when sufficient, allow CSIS to proceed to the collection, retention and use of the dataset. However, satisfying the threshold at the first step does not mean CSIS will meet the threshold to be able to retain a query a Canadian dataset. This important step will be assumed by a designated judge pursuant to section 11.13 of the *CSIS Act*.

28. To determine a class of Canadian datasets – the first step – 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 as set out in sections 12, 12.1 and 16 of the *CSIS Act* (s 11.03(2), *CSIS Act*).

i. The application of the “could lead to results that are relevant” threshold

29. While the *CSIS Act* does not define the term “relevant”, [...]. According to the policy, [...].

30. As indicated in my June 2023 Decision 2023-03, the relevance threshold in law is not high. Indeed, I find CSIS' definition to be a reasonable interpretation of the threshold.

31. In the context of determining a class of Canadian datasets, the relevance threshold is applicable to CSIS' duties and functions set out under sections 12, 12.1 and 16 of the *CSIS Act*. That means that the subject matter of the datasets that could fall within the proposed class should exhibit a nexus to those duties and functions and show how it may assist CSIS. To make that conclusion, CSIS must provide the Minister with compelling and specific information in that regard.
32. In my view, the Minister has been provided with these facts, which mirror those provided in last year's record. In his conclusions, based on the CSIS Application, the Minister describes that the main purpose of querying or exploiting a dataset that would fall within the proposed class [...] Given that the datasets in the class must [...] the Minister's assertion is reasonable that datasets within the proposed class [...].
33. The Minister also explains [...] would be relevant to CSIS' duties and functions under sections 12, 12.1 and 16. Indeed, one of three criteria defining the proposed class is that a dataset must relate [...]. [...] is derived from the 2023–25 *Government's Intelligence Requirements* and the Cabinet-approved 2023–25 Government of Canada Intelligence Priorities. The Intelligence Requirements and Intelligence Priorities serve as the foundation for the Ministerial Directive to the Canadian Security Intelligence Service on the Government of Canada Intelligence Priorities, which in turn guides CSIS in the performance of its duties. [...] are therefore directly linked to CSIS' performance of its duties and functions.
34. I note that while the *Government's Intelligence Requirement* may be amended, CSIS confirmed that the [...] falling within the scope of Class 2023-1 will not be modified. I will return to this in my remarks later.
35. Further, with respect to the second criterion, given the mandate of [...] it is logical that they would hold or collect information that is also relevant to CSIS' mandate. In his reasons, the Minister explains that the nature of the source of the information – those [...] in the fulfillment of its mandate under sections 12, 12.1 and 16.

36. The Minister's rationale with respect to the threshold rests on the belief that information in the datasets related to [...] While the Minister does not use the term "relevant" anywhere in his reasons – which would have been preferable – the Minister states that datasets in the proposed class "could assist" CSIS in advancing investigations. His conclusions make it clear that he was satisfied that the threshold "could lead to results that are relevant" was met. He considered the nexus between CSIS' duties on the one hand, and [...] of the datasets on the other.
37. I find that the Minister is justified in concluding 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. His reasoning is supported by a rational chain of analysis and his conclusions, relying on the three criteria defining the proposed class of datasets, are logical and supported by examples provided in the record.
38. However, my reasonableness review does not stop there. As indicated in my previous decision on the determination of a class of Canadian datasets (Decision 2023-03), my role as Intelligence Commissioner requires that I take into account the legal and factual context in determining whether the Minister's conclusions are reasonable:

The criterion set out in subsection 11.03(2) is clear: whether "querying or exploitation of any dataset in the class could lead to results that are relevant to the performance of the Service's duties and functions set out under sections 12, 12.1 and 16."

However, evaluating the Minister's conclusions with respect to the above criterion is not a mechanical exercise. The factual and legal constraints that relate to the conclusions guide my review.

More specifically, determining classes of Canadian datasets is the initial step that can eventually lead to CSIS retaining information on Canadians and persons in Canada that is not threat-related. Its impact on privacy interests of Canadians and persons in Canada have the potential to be enormous and egregious. It is crucial to ensure that this broad power is exercised responsibly. My gatekeeper role therefore means that I must conduct my reasonableness review and evaluate the Minister's conclusions relating to the criteria set out in subsection 11.03(2) keeping in mind the role of the Intelligence Commissioner and the impact of the

decision on privacy interests of Canadians and persons in Canada. This will ensure that classes of Canadian datasets are not broader than what is prescribed and intended by the legislation. (paras 40–42)

39. Therefore, even if a proposed class of Canadian datasets satisfies the threshold that it could lead to results that are relevant to the Service’s duties and functions, it does not entail that the Minister’s conclusions are reasonable.

40. To be reasonable, the Minister’s conclusions must reflect the purpose of the dataset regime, namely allowing CSIS to collect and retain non threat-related information, while ensuring that this authority is exercised in a reasonable manner. To that effect, the Minister must establish clear boundaries to delineate the classes of datasets to strike a reasonable balance between acquiring information that is useful on the one hand, and interfering with privacy interests of Canadians and persons in Canada on the other. Given that datasets falling within the proposed class would include Canadian-related information, the Minister’s conclusions must include significant considerations regarding the protection of personal information of Canadians and persons in Canada and articulate the measures in place to protect it.

ii. Balancing the objectives of broadness and specificity

41. The Minister delineated the class with the three criteria the dataset must satisfy [...].

42. As indicated in my June 2023 decision, when evaluating whether a class is unreasonably broad, what matters is the cumulative effect of the criteria defining it. I am satisfied that while each criterion of the class, on its own, is broad, they contain internal limits that lead to useful specificity. Indeed, the dataset originates [...].

43. Also, the cumulative effect of the criteria defining the class allows the Minister and myself not only to understand the information that could be collected but also the information that would not be included in datasets falling within the proposed class. The examples provide the Minister with compelling and illustrative facts demonstrating how the datasets are relevant to

CSIS' duties and functions. They are also coherent with the title of the class and description. The class specifically excludes biometric information such as fingerprints and DNA.

44. In the Memorandum to the Minister, the Deputy Minister of Public Safety Canada explains that there was an inconsistency in last year's ministerial authorization. In that authorization, the Minister set out the class at the beginning of the authorization as "[d]atasets [...]." Further in the authorization, in explaining how the class was limited, the Minister explained that "[t]he proposed class is limited to [...]" thereby requiring CSIS not to retain information that is unlikely to be of use in [...] further to its lawful investigations." (emphasis added)
45. The Deputy Minister's memorandum explains that the inconsistency in last year's authorization was not understood as narrowing the class solely to [...]. In this year's ministerial Authorization, the inconsistency has been resolved and the Minister no longer states that the proposed class "is limited to" [...]. Rather, the Minister states that the "proposed class must include [...]" (emphasis added). Thus, the proposed class authorizes CSIS to collect datasets that are not solely limited to, but that must include, [...]. I appreciate and commend CSIS and the Deputy Minister for clearly raising and clarifying this issue for the Minister as well as for myself. Explaining the rationale for making changes in written applications contributes to transparency and builds confidence between CSIS, the Minister and the Intelligence Commissioner, which is necessary for an effective oversight process.
46. The Minister's conclusions further develop that datasets falling within the proposed class would not be limited solely to [...]. He indicates that these datasets may also include other information that the Service reasonably believes [...]. Such information may include [...] (emphasis added)
47. I am of the view that the Minister's conclusion that the proposed class would allow for the collection of Canadian datasets that may contain "other information" does not render it unreasonably broad. Datasets, as defined by the *CSIS Act*, can contain large volumes of information. Further, CSIS will likely not have control over what information has been included in a dataset it has not itself created. As a result, collecting datasets that solely

contain [...] would be too restrictive and potentially counterproductive. Indeed, it would mean that if the dataset included information that was not [...], the dataset could not be collected. For example, [...] would not meet the criteria.

48. However, to ensure a proper balance between the objective of broadness and specificity, I want to be clear about the limits on what constitutes “other information”. I am not imposing a new limit. I am setting out the limits that necessarily flow from the Minister’s conclusions.
49. The Minister includes “other information” as information that is distinct from [...]. The [...] criterion – as opposed to the other two criteria – allows for the collection of information containing privacy interests of Canadians and persons in Canada. “Other information” cannot widen that criterion. The logical outcome of the Minister’s conclusions entails that “other information” cannot widen that criterion. The logical outcome of the Minister’s conclusions entails that “other information” cannot include information in which Canadians have a reasonable expectation of privacy. Indeed, the Minister’s conclusions delineating the class would be meaningless if datasets containing “other information” in which Canadians have a reasonable expectation of privacy could be collected as long as at least some [...] was also included. The [...] criterion does not open the door for other information in which Canadians have privacy interests to be collected.
50. Therefore, the datasets that could fall within the proposed class do not have to solely contain [...]. However, any “other information” as defined by the record cannot include information in which Canadians or persons in Canada have a reasonable expectation of privacy. Otherwise, CSIS would have to consider whether a new class should be determined by the Minister.
51. Considering the above, I find that the Minister has reasonably defined the class. The class is delineated in such a way as to allow for the collection of datasets that could be relevant while keeping the limits of the class very specific.

iii. *Protecting the Privacy Rights of Canadians and non-Canadians within Canada*

52. Even though the Minister, at this initial step, determines the class, as I mentioned previously, this step can lead to large volumes of Canadian-related information being collected and retained. For this reason, a key issue to which the Minister should turn his mind is whether the appropriate safeguards are in place to protect Canadian privacy interests.
53. The record includes a document titled *Measures and Authorities Related to Canadian Datasets Collected under the Dataset Regime that Protect the Privacy Rights of Canadians* which was slightly modified from a similar document in last year's record. The document provides information and an explanation about the legislation as well as policy and procedural steps taken to protect the privacy rights of Canadians and persons in Canada. Only employees designated by the Director may evaluate, query, or exploit Canadian datasets (s 11.06, *CSIS Act*). Prior to their designation, the employees must successfully complete a mandatory training program which explains CSIS' mechanisms and obligations to protect personal information retained in the datasets.
54. In addition, CSIS included Ministerial Directions and relevant portions of their operational policies and guidelines governing the collection, retention and use of section 11 datasets. These documents provide assistance in identifying the types of datasets collected by CSIS and their associated requirements and considerations. It also provides direction to employees on the collection, retention, querying and exploitation of the datasets. They explain why only designated CSIS employees can evaluate and use Canadian datasets, namely to limit access to them and to ensure that employees who do access them follow the appropriate procedures. This speaks to protecting privacy interests. CSIS updates and refines these policies on a regular basis, and where needed, develops new or complimentary policy instruments. All these documents are extremely helpful in my review of Minister's conclusions. I note, however, that reference to specific provisions of the policies in the written material would be helpful in future authorizations.
55. 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 non threat-related Canadian information, 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. I am of the view that the Minister sufficiently turned his mind to the issue and that the facts justified being satisfied that the policy framework in place established safeguards in relation to privacy interests of Canadians and persons in Canada. The document outlining the measures and authorities is informative and although the Minister could have developed his thoughts more thoroughly in his own conclusions, he was justified in relying on the document.

56. In light of all of the above, I am satisfied that the Minister’s conclusions made under subsection 11.03(2) of the *CSIS Act* are reasonable. His conclusions provide sufficient reasons on how the proposed class could lead to results that are relevant to the performance of CSIS’ duties and functions. Further, although he defined the proposed class broadly to allow for the collection of datasets that could be useful, the criteria are nevertheless targeted to limit the scope of the class. I am satisfied that designated CSIS employees should be able to understand the limits of the proposed class. Finally, I am of the view that the Minister’s conclusions sufficiently considered the measures in place to protect privacy interests of Canadians and persons in Canada.

V. REMARKS

57. I would like to make three additional remarks to assist in the consideration and drafting of future of ministerial authorizations, which do not alter my findings regarding the reasonableness of the Minister’s conclusions.

A. Collecting and retaining datasets under other *CSIS Act* provisions

58. The dataset regime was developed in response to the decision *X (Re)*, 2016 FC 1105, also known as the *Associated Data* decision. In that decision, when I was a designated judge at the Federal Court, I found that CSIS did not have the legislative authority to retain associated data (third party information and metadata for which the content has been destroyed) from information collected pursuant to a warrant where that associated data was unrelated to

threats to the security of Canada and of no use to an investigation, prosecution, national defence, or international affairs.

59. Although the collection itself may have been legal – in that case, pursuant to a warrant – the collection was capturing information that was not directly related to a threat. CSIS did not have the requisite authority to retain that information as its retention was not “strictly necessary”, as required by section 12 of the *CSIS Act*.
60. The dataset regime now provides a tool for CSIS to legally collect and retain personal information that is not directly and immediately related to a threat, but that could nevertheless be useful. Since the establishment of the dataset regime with the adoption of *National Security Act, 2017*, SC 2019, c 13, CSIS has submitted and received authorization to retain six foreign datasets and two Canadian datasets. [...].
61. The record, and in particular the CSIS policies, clearly state that CSIS collects and retains datasets outside of the section 11 dataset regime. For example, the record states that CSIS can collect and retain a dataset that is strictly necessary to investigate a threat to the security of Canada, pursuant to its section 12 mandate. Indeed, the record indicates that section 11 of the *CSIS Act* is used as a last resort: a dataset will be collected or retained under the section 11 regime only if it cannot be collected or retained under another legislative provision.
62. The application of the dataset regime, and the collection and retention of datasets in general, therefore depends on its proper application by CSIS employees – much as is the case with other powers set out in the *CSIS Act*. This highlights the importance of training for employees to ensure that they understand under what authority a dataset should be collected.
63. More importantly, it also highlights the need for CSIS to ensure it correctly understands and applies its authorities in relation to datasets – such as the “strictly necessary” threshold pursuant to section 12 – as there is no oversight for the collection and retention of datasets outside the section 11 dataset regime. The Intelligence Commissioner’s oversight role is limited to the section 11 dataset regime. The nature of datasets – the fact that they can

contain vast amounts of information, that different types of information may be intertwined (for example Canadian/foreign, related/not related to a threat) may add complexity when determining whether, or which, legal authority exists for collecting or retaining the dataset.

B. Access to Cabinet Confidences

64. In last year's Decision 2023-03, I made a remark concerning access to Cabinet confidences. While I recognized that I am not statutorily entitled to Cabinet confidences, I explained that providing documents covered by this privilege, even in redacted form, should be considered in future applications. I would gain a better understanding of the record as it relates to CSIS' operational activities. Moreover, if the Minister relied on privileged documents to grant the authorization, it would be helpful – and in some cases necessary – to have access to them in order to determine whether the Minister's conclusions were reasonable.
65. In the Memorandum to the Minister dated April 26, 2024, the Deputy Minister of Public Safety Canada indicates that the department will explore the possibility of providing documents subject to Cabinet confidences to the Intelligence Commissioner in the future. Indeed, as noted, the Government has recently provided access to Cabinet confidences in several recent, high profile public inquiries.
66. I welcome this initiative. Providing documents to the Intelligence Commissioner does not render them publicly available. Further, providing access to Cabinet confidences in multiple public inquiries shows that such disclosure can be done in the interest of national security oversight and review. Should the legislative review of the *National Security Act, 2017* be undertaken, I encourage Parliament to consider allowing Cabinet confidences to be provided to the Intelligence Commissioner to facilitate effective oversight.

C. Upcoming modifications of the Ministerial Directive – Priorities for 2021–23

67. CSIS has provided an [...] in relation to the class of Canadian datasets determined by the Minister. [...] is derived from the 2023–25 Government's Intelligence Requirements and the Cabinet-approved 2023–25 Government of Canada Intelligence Priorities. However, the

2021–23 Ministerial Directive to CSIS has yet to be replaced and remains in effect until a new one is issued.

68. CSIS expects that the Minister will issue the updated directive imminently based on the new intelligence priorities approved by Cabinet for 2023–25. The Deputy Minister's Memorandum to the Minister indicates that the fact that the Ministerial Directive is not in effect for the current intelligence priorities should not impact the Minister's determination nor the Intelligence Commissioner's approval, as the intelligence priorities and the intelligence requirements are similar to their previous iterations.
69. This assertion forms part of the factual context that informed my decision. The intelligence requirements, priorities and the Ministerial Directive were central to the reasonableness of the Minister's conclusions by demonstrating how datasets in the proposed class could be relevant to CSIS' duties and functions. Given that a new Ministerial Directive will guide how CSIS conducts its operations and therefore applies the approved class, a copy should be forwarded to my office to be appended to this original record. Any changes in the updated Ministerial Directive that could have been relevant to my decision should be made clear.

VI. CONCLUSIONS

70. 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 2023-1 are reasonable.
71. I therefore approve the ministerial Authorization of Class 2023-1 dated April 26, 2024, pursuant to paragraph 20(1)(a) of the *IC Act*.
72. As indicated by the Minister, and pursuant to section 11.03 of the *CSIS Act*, this Authorization 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.

May 23, 2024

(Original signed)

The Honourable Simon Noël, K.C.
Intelligence Commissioner