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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 [...] (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. The Foreign Dataset was deemed to be collected by CSIS on [...]. On [...], the Director received a request from CSIS to issue an authorization for its retention. The Director issued the authorization (Authorization) on July 15, 2024.
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. Consequently, I approve the Authorization to retain the Foreign Dataset pursuant to paragraph 20(2)(a) 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 that contains personal information. While this information 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*. Under this section, CSIS must take reasonable measures to delete any information relating to mental or physical

health subject to a reasonable expectation of privacy and to remove any information relating 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. The record is therefore composed of:
  - a) Memorandum to the Director from CSIS, dated [...], requesting that the Director issue an authorization to retain the Foreign Dataset, with appendices (CSIS Memorandum);
  - b) Designation of the Director by the Minister pursuant to section 11.16(1) of the *CSIS Act*, dated September 11, 2019;
  - c) Ministerial Direction to CSIS on the Government of Canada's Intelligence Priorities for 2021-2023;
  - d) Intelligence Requirements Charts pursuant to the 2023-2025 Canadian Intelligence Priorities and Outcomes; and
  - e) Documentation confirming the request was submitted to the Director within the statutory time frame.

### III. STANDARD OF REVIEW

14. 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.

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

16. 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.

17. 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*.

18. A review of the *IC* and *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.

19. 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

20. 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 ensure the deletion of information relating to the physical or mental health of an individual and the removal of Canadian-related information from the dataset.

##### A. Are the Director's conclusions reasonable?

- i. The dataset is a foreign dataset*

21. 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*).
22. The Director relies on the CSIS Memorandum and the evaluation of the Foreign Dataset carried out by CSIS employees to conclude that it meets the definition of a foreign dataset. In

particular, he relies on two facts to justify his conclusion. First, he references CSIS' assessment about the nature of the information in the Foreign Dataset. The information consists of personal information relating to persons living in a foreign state.

23. Second, although the Foreign Dataset contains one type of information that had the potential to be identified as Canadian-related, the Director relies on CSIS' assessment that all information of this type was foreign-related.
24. The evaluation process used by designated CSIS employees is included below and in Annex A. Based on the description of that process, I find the Director's reliance on the results of the evaluation justified. Further, I find that the Director is justified in relying on the nature of the information in the Foreign Dataset to conclude that it predominantly relates to non-Canadians and persons not in Canada. Indeed, the nature of the information makes it possible to confirm that it does not relate to persons in Canada, and to reasonably conclude that information about Canadian citizens – if any exists – would be relatively minimal. As a result, 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.
25. Nevertheless, I want to caution the Director about extrapolating information provided by CSIS when making his conclusions. The CSIS Memorandum states that "Service evaluators assessed that the dataset contains information about only [...]." The Director seems to have relied on this statement in writing that "Service designated evaluators determined that all of the data records relate to [...]." The Director's statement is not supported by the facts. The information in the Foreign Dataset relates to [...], but CSIS does not state or provide support for concluding with certainty that **[none of the information may be Canadian-related]**.
26. I comprehend how the Director could have understood CSIS' assertion relating to "only foreign data subject" as meaning that there were no records relating to Canadians. Indeed, CSIS' assertion could have been drafted more clearly. Nevertheless, even without CSIS' assertion, the nature of the information in the Foreign Dataset does not allow for the categorical conclusion there are no data-records relating to Canadians.



27. I do not think this unsupported statement is detrimental to the reasonableness of the Director's conclusions. In this instance, his conclusions offer sufficient additional information to show that the Director understood that the Foreign Dataset predominantly relates to non-Canadians and persons not in Canada. Nevertheless, unsupported or incorrect assertions can affect the reasonableness of a conclusion.

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

28. The record before me does not include an explanation of the "likely to assist" threshold. I note that the Office of the Intelligence Commissioner received two additional authorizations for the retention of a foreign dataset on the same day as the one subject to this decision. The records for those authorizations include an explanation prepared for the Director of the "likely to assist" threshold. While a standalone explanation of a legal threshold is not a requirement, its absence in this particular case raises two concerns.

29. First, my role as Intelligence Commissioner is to review the Director's conclusions based on the information provided in the record. I cannot rely on information contained in an unrelated record. Second, CSIS should ensure the consistency of records supporting authorizations of the same nature. That is not to say that records should include the identical documentation. Indeed, a record must be tailored to the facts at the heart of an authorization and should account for the factors that could affect the Director's reasoning. However, when three authorizations are issued by the Director on the same day and subsequently provided to the Intelligence Commissioner for review, the absence of general information in one record may raise concerns. In cases where the absence is intentional, a rationale may be appropriate. I return to this issue in my remarks.

30. The Director justifies the usefulness of the Foreign Dataset by first explaining how [...] activities relate to the Government of Canada's Intelligence Priorities for 2021-2023. [...].

31. In addition, [...].

32. The Director addresses the fact that new Intelligence Priorities for 2023-2025 were recently approved and that the record references Intelligence Priorities for 2021-2023. The Director states that he has examined the new Intelligence Priorities and found that his conclusions remain valid; while structured differently the relevant priorities are still present.
33. 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: [...].
34. While 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, the context in which it was collected and the nature of the information in the dataset make 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 but maintain that the method of collection should be explained in more detail. I return to this issue in my remarks.
35. 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*

36. Pursuant to subsection 11.1(1) of the *CSIS Act*, CSIS has two continuing obligations in respect of a foreign dataset. First, it must take reasonable measures to delete any information in which there is a reasonable expectation of privacy that relates to the physical or mental health of an individual. Second, it must take reasonable measures to ensure that any

information from the dataset that by its nature or attributes relates to a Canadian or a person in Canada is removed.

37. 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.
38. In Decision 2200-A-2024-04, I commented on the impact of the recent legislative changes 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)
39. CSIS assessed that the dataset was structured with [...]. CSIS conducted an assessment of [...] taking into consideration the nature of the dataset to determine if any information related to the physical or mental health of an individual was present. [...], CSIS concluded that it is highly unlikely that the records would contain physical or mental health information subject to a reasonable expectation of privacy. [...].
40. Pursuant to its obligations under subsection 11.07(6) of the *CSIS Act*, the designated CSIS employees also conducted a review of the 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.

41. 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 also acknowledges the continuing nature of CSIS' obligations to delete such information should any be identified in the future.
42. 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)
43. As defined in section 11.01 of the *CSIS Act*, a “Canadian” in respect of a foreign dataset means a Canadian citizen, a permanent resident, or a corporation incorporated or continued under the laws of Canada or of a province.
44. To satisfy its obligation, CSIS identified [...] information that could relate to a Canadian or a person in Canada. CSIS searched [...] using Canadian-related terms and indicators. These searches produced results that the designated CSIS employees assessed as false positives following a manual review. Consequently, CSIS concluded that there is no information related to a Canadian or a person in Canada in the Foreign Dataset.
45. In his conclusion, the Director confirms that he is satisfied that CSIS complied with its obligations under paragraph 11.1(1)(c). He again acknowledges the continuing nature of CSIS' obligations to remove information related to a Canadian or a person in Canada should any be identified in the future.
46. 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 that it will continue to do so – is reasonable.

*iv. The update provisions are reasonable*

47. 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. Nevertheless, paragraph 11.17(2)(b) of the *CSIS Act* requires that an authorization to retain a foreign dataset specify the manner in which CSIS may update it. Update provisions therefore form 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.
48. The Director approved two types of updates – both are not substantial. Type 1 updates would be administrative in nature and intended to ensure the integrity and completeness of the Foreign Dataset. These would include, for example, correcting typographical errors. Pursuant to Type 1 updates, CSIS would only be permitted to add new data if it pertains to [...] and originates from the same type of source as the Foreign Dataset itself. Type 2 updates would allow CSIS to update the dataset using [...]. Type 2 updates would be permitted only if [...].
49. In his conclusions, the Director explains that the nature of the update provisions means that these updates would likely assist CSIS in its duties and functions based on the same rationale for the retention of the Foreign Dataset. He acknowledges that updates are subject to the criteria outlined above and that datasets falling outside of these criteria will require a new request for authorization.
50. In my view, the Director's conclusions show his understanding of the update provisions. He considered that they would only allow for new information that is the same type as the existing information already in the Foreign Dataset. As a result, any new information would

meet the “likely to assist” threshold and would not alter the nature of the dataset. As a result, I find the Director’s conclusions with respect to the update provisions reasonable.

## V. REMARKS

51. I would like to make the following two remarks which do not alter my findings regarding the reasonableness of the Director’s conclusions.

### A. Importance of the method of collection

52. The record includes a description of how CSIS collected the Foreign Dataset. I am of the view that additional details about the collection should have been included. In particular, additional details should have been provided as to why CSIS had reasonable grounds to believe the dataset was foreign, [...] to obtain the Foreign Dataset. [...]. There is also no information on [...].

53. Although there is nothing in the record that suggests the Foreign Dataset was unlawfully collected, I do not believe that the description of how it was collected paints a complete picture.

54. The purpose of having a complete picture is to provide the Director and the Intelligence Commissioner with sufficient information to be satisfied that the Foreign Dataset was lawfully collected. Lawful collection means that the legislative requirements have been met (i.e. reasonable grounds to believe the dataset is a foreign dataset), but also that CSIS proceeded in a manner that respects the limits dictated by legislation and the *Canadian Charter of Rights and Freedoms*.

55. The legislation does not specifically require the Director to conclude that the method of collection of a foreign dataset is lawful. Indeed, CSIS does not require a pre-approval – for example in the form of a warrant from the Federal Court – to carry out all of its activities. Rather, CSIS has the obligation to carry out its activities in accordance with the limits set out in legislation, its internal policies, and any relevant judicial decisions.

56. Nevertheless, the Director and the Intelligence Commissioner both play an oversight role with respect to certain CSIS activities. The legislative framework sets out the specific elements that they both have to consider in fulfilling this role: the Director determines whether the statutory requirements have been met, and the Intelligence Commissioner determines whether the Director's conclusions are reasonable. However, to consider the specific elements in carrying out their roles, the Director and the Intelligence Commissioner's oversight function may require them to consider related elements – for example the lawfulness of the collection. Indeed, if the Director did not believe that a dataset was lawfully collected, it would be contrary to his oversight function to approve the dataset's retention, even if he was satisfied that the legislative requirements set out at subsection 11.17(1) of the *CSIS Act* were met.
57. This rationale is similar to a remark I made in Decision 2200-A-2024-01 with respect to the Justification Framework, where I noted that the Minister could consider elements related to the specific legislative requirements in deciding whether to authorize the classes of otherwise unlawful acts, namely how the Justification Framework would be applied. In that case, I noted that the Minister may not want to authorize classes if he is not confident that, once the classes are approved by the Intelligence Commissioner, the Justification Framework would be applied in a way that respects the rule of law.
58. Indeed, to effectively fulfill their oversight roles in a national security context, the Director's and the Intelligence Commissioner's oversight function cannot be carried out within a siloed perspective.

## **B. Potential non-compliance incident**

59. The CSIS memorandum explains [...]. The memorandum also states that the employees responsible for the collection “did not query or exploit the dataset while in its possession.”
60. The record does not explain [...]. It is therefore unclear from the information provided whether [a specific act] constituted a query as defined by the *CSIS Act*, namely a “specific search or series of specific searches, with respect to a person or entity, that is performed on

one or more collections of information for the purpose of obtaining intelligence.” It was, however, clearly a specific search with respect to [...].

61. This incident is concerning to me for two reasons. First, [...]. I note that the record refers [...]. I acknowledge that there may be an explanation as to why [the specific act was undertaken]. However, the *CSIS Act* only allows designated employees to access a dataset in order to evaluate it, and a foreign dataset can only be queried following the Director’s authorization and the Intelligence Commissioner’s approval. I am concerned that the incident was overlooked because [...].
62. My second concern is that there is nothing in the record – in the Director’s letter, his conclusions or the CSIS Memorandum – that flags the actions as a potential compliance issue.
63. If additional information can address my concerns, this should be provided to me and the Interim Director. If, upon further analysis, CSIS assesses [the specific act] constituted a non-compliance incident, the appropriate measures should be taken, and the Interim Director and I should be informed of these.

## VI. CONCLUSIONS

64. Pursuant to section 17 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.
65. Therefore, pursuant to paragraph 20(2)(a) of the *IC Act*, I approve the Director’s authorization to retain the Foreign Dataset.
66. The amendments to the *CSIS Act* increased the maximum period of an authorization to retain a foreign dataset from five to 10 years. The Director authorized the retention of the Foreign Dataset for a five-year period. As a result, pursuant to subsection 11.17(3) of the *CSIS Act*, this authorization expires five years from the day of my approval.



67. 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