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Additional observations from the Honourable Simon Noël K.C, Intelligence Commissioner, to the Standing Committee on Public Safety on Public Safety and National Security on Bill C-22

During my appearance before the Committee on May 7, 2026, I was asked to submit any comments on possible amendments. I submit the following for the Committee's consideration.

1. Consider adding restrictions to the validity period and oversight of extensions of ministerial orders – subsections 7(10) and (11) of the *Supporting Authorized Access to Information Act*

The validity period of ministerial orders under Bill C-22 raises a question about the effectiveness of oversight.

A ministerial order must specify the duration it would be in effect (s 7(1)). In the current Bill, there is no duration limit to this initial validity period. Moreover, the Minister may extend the validity period of an order (s 11(1)). However, the Bill does not provide a duration limit to the extension period nor a limit on the number of times the validity period of an order can be extended. While an electronic service provider would have an opportunity to make submissions to the Minister regarding an extension of the validity period of an order, the extension would not be subject to the Intelligence Commissioner's review and approval.

As a result, a ministerial order initially approved by the Intelligence Commissioner could be extended indefinitely without additional oversight, even where circumstances material to the Minister's original order have since changed.

Under my existing jurisdiction, maximum initial validity periods for ministerial authorizations are specified in statute and renewals require approval by the Intelligence Commissioner. This reflects a broader principle: state action that is potentially intrusive, and that is not publicly disclosed, requires periodic independent reassessment of its justification.

The Committee may want to consider whether the Bill should add restrictions to the validity period and oversight of extensions of ministerial orders.

2. Consider requiring the Minister to take into account reasonable alternatives to an order at subsection 7(3) of the *Supporting Authorized Access to Information Act*

During my testimony, I raised the possible addition of proportionality elements to the factors the Minister must consider.

The factors the Minister must consider when making an order (s 7(3)) are the same as the factors the Governor in Council must consider when making a regulation (s 5(3)). However, contrary to a regulation, a ministerial order will be confidential. This distinction matters because a decision to proceed confidentially should require justification.

Based on the enumerated factors set out at subsection 7(3), it is not evident that the Minister must consider whether it is justified to proceed pursuant to a ministerial order – and therefore a confidential process – rather than a regulation. Similarly, it is not evident that the Minister must take into account whether there are reasonable alternatives to a confidential order. Considering reasonable alternatives is an important element in a proportionality analysis.

Given that the Intelligence Commissioner’s review is limited to the Minister’s conclusions made under subsection 7(3), the Committee may want to consider explicitly adding a factor requiring the Minister to take into account reasonable alternatives to an order. Such a factor would make the Intelligence Commissioner’s review more robust because it would require the Minister to justify proceeding with a confidential process.

3. Consider providing clarity to subsection 7(3) of the *Supporting Authorized Access to Information Act*

The Committee could consider amending subsection 7(3) to specify that the Minister must consider the factors in deciding whether or not to make an order (for example, wording such as: “In deciding whether to make an order, the Minister must take into account the following factors”).

Subsection 7(3) currently states the following:

<u>In making the order</u> , the Minister must take into account the following factors: [...]	<u>Au moment de prendre l’arrêté</u> , le ministre tient compte des facteurs suivants : [...]
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The Bill’s intent is for the Intelligence Commissioner to review the conclusions “on the basis of which an order was made under subsection 7(1)” (s 43). However, as currently drafted, subsection 7(3) – and the factors to consider – could be interpreted as applying only to determining the content of an order, not to the actual decision to make one. The added specificity would make it clear that the Intelligence Commissioner’s oversight of a ministerial order includes not only the content of the order but also the Minister’s decision to proceed by way of a confidential process.