TOP SECRET//CANADIAN EYES ONLY

SIRC REVIEW 2014-03

REVIEW OF CSIS'S USE OF METADATA

SUMMARY

- This review examined CSIS's collection and use of metadata, as well as the authorities and accountability structures that exist to guide metadata collection, use and retention. The review focused on two areas of metadata use in detail.

- The review examined first the use of metadata collected as part of the Service's communications intercepts to support the Service's larger data exploitation program. The Committee paid attention to early Service discussions on whether the standard warrant conditions allowed for the long-term retention and use of metadata. The Service eventually proposed changes to the wording of the warrant conditions to bring the warrant language and its metadata use and retention practices into better alignment. However, SIRC was given no indication that the Service was transparent with the Federal Court about its activities with respect to metadata. The Committee therefore recommended that the Service make the Court aware of the particulars of the Service's retention and use of metadata collected under warrant.

- The review also looked at the Service's information, Overall, the Committee noted that the Service is seeking ways to maximize the potential intelligence value but that it is also taking a cautious approach

- In the concluding section, the Committee committed to further reviews related to the Service's use of metadata and data exploitation tools on a more regular basis.

File No. 2800-190 (TD R544)

Table of Contents

1 INTRODUCTION

The use of metadata by intelligence agencies has received considerable scrutiny following Edward Snowden's revelations. In the United States, engagement on metadata and associated topics has implicated all levels of government, extending all the way to the Presidency. In Canada, the public and media reaction has been more muted. Nevertheless, there has been a marked upswing in interest on issues related to metadata, especially among Parliamentarians, advocacy groups and scholars.

Although much of the public discussion has focused on the National Security Agency (NSA) in the U.S. and the Communications Security Establishment (CSE) in Canada, metadata is also used by CSIS. This review marks the Committee's first focused examination into the scope of CSIS's collection and use of metadata, as well as the authorities and accountability structures that exist to guide metadata collection, use and retention. Specifically, the review examined two areas of metadata use in detail and limited its findings to those specific examples.

The review examined first the use of metadata collected as part of the Service's communications intercepts to support the Service's larger data exploitation program. The Committee paid attention to early Service discussions on whether the standard warrant conditions allowed for the long-term retention and use of metadata. The Service eventually proposed changes to the wording of the warrant conditions to bring the warrant language and its metadata use and retention practices into better alignment. However, SIRC was given no indication that the Service was transparent with the Federal Court about its activities with respect to metadata. The Committee therefore recommended that the Service make the Court aware of the particulars of the Service's retention and use of metadata collected under warrant.

The review also looked at the Service information Overall, the Committee noted that the Service is seeking ways to maximize the potential intelligence value of this type of operation, but that it is also taking a cautious approach Aside from legal considerations, SIRC examined and made a recommendation for CSIS to make an updated assessment to help guide the future direction

2 METHODOLOGY

"Metadata", is a relatively broad term that, simply put, refers to information about a communications "event" that does not include the actual content of the communication. In principle, for virtually every piece of transmitted data, there is an associated "metadata" component.[1] SIRC first had to define the scope of its review in such a way as to be both manageable and meaningful.

two specific uses were selected. First, SIRC examined the Service's use of metadata in the context of its larger data exploitation program

SIRC looked at the Service's activities with respect to

[1] For example, the metadata associated with an email would include such data points as the two email addresses and the date of the communication.

21. The Service's new definition is "Information collected via s.21 warrant that is associated with a communications event in order to identify, describe, manage or route that communication event or the means of its transmission, but excludes any information which could reveal the purport of the communications event, or the whole or any part of its content."

2.1 Review Activity and Criteria

In assessing CSIS's use of metadata in both case studies, SIRC was guided first and foremost, by whether the Service's collection, use and retention of metadata were carried out lawfully and appropriately.

SIRC also reviewed discussions between CSIS's legal services and the Federal Court of Canada, and examined warrants and the execution of warrant-powers in which metadata was collected.

The core review period for this study was April 1, 2010 to May 1, 2014,

3 CASE STUDY: THE USE OF METADATA

3.2 Retention and Metadata

3.3 Warrant Conditions

though warrants did not place any restrictions on the Service's ability to retain intercepted communications of targets, warrant required that any communication of a person other than the target(s), collected incidentally, presumably including the metadata, be destroyed. The DDO Directional Statement however, stipulated that incidentally-collected communications must be destroyed unless a determination is made that they "may assist" in the investigation of a threat to the security of Canada, in which case, they may be retained. concluded that "may assist" amounted to a low threshold for the retention of communications; accordingly, this threshold would be met by

Despite its initial position that "may assist" would permit retention of metadata, CSIS proposed changes to the wording

2011, CSIS informed the Federal Court the wording of

SIRC is of the view that if this wording was intended to reflect the Service's use of metadata collected under warrant, it should have been made more explicit.

Several months later, 2011 proceeding before the Federal Court[20], the matter of the wording change was raised. SIRC reviewed the transcript of this proceeding and acknowledges that the Service did make a reference to "metadata"

SIRC believes that

3.4 Transparency with the Federal Court

. In light of the Service's efforts to bring the language of the warrant conditions and its practices into alignment,

SIRC, on the other hand, is of the view that the Court has a general interest in how the Service uses the intelligence, including metadata, collected under the authority of a warrant. SIRC's view is informed by the fact that the Service's use of metadata in this context is distinct from how intercept communications are traditionally used to support investigations in a number of specific ways,

This all strongly suggests that metadata is deserving of specific mention in warrant applications as a specific "type of information" proposed to be obtained through the warrant power.

Section 21 (4) of the *CSIS Act* stipulates that "such terms and conditions as the judge considers advisable in the public interest" are among several matters

Page

is withheld pursuant to section

est retenue en vertu de l'article

of the Access to Information Act

de la Loi sur l'accès à l'information

4 CASE STUDY:

Page

is withheld pursuant to sections

est retenue en vertu des articles

of the Access to Information Act

de la Loi sur l'accès à l'information

Page

is withheld pursuant to sections

est retenue en vertu des articles

of the Access to Information Act

de la Loi sur l'accès à l'information

Page

is withheld pursuant to sections

est retenue en vertu des articles

of the Access to Information Act

de la Loi sur l'accès à l'information

SIRC recommends that further enhance feedback on the utility of and based on these findings, internal assessment be updated to help guide the future direction of this Program.

5 LOOKING FORWARD: DATA EXPLOITATION

Alongside the issues identified above, this review gave SIRC its first glimpse into the Service's activities with respect to data exploitation and data acquisition. As noted, data exploitation is a trend visible across all allied Services, one driven by the increasing use of technology.

The Committee intends to look more thoroughly at data exploitation and data acquisition in the next research cycle through the lens of Section 12 of the *CSIS Act*, which establishes the requirement to ensure collection is done 'to the extent that is strictly necessary".

ANNEX A – SUMMARY OF FINDINGS

ANNEX B – SUMMARY OF RECOMMENDATIONS

- SIRC recommended

- SIRC recommends that