

SECURITY INTELLIGENCE REVIEW COMMITTEE

TOP SECRET – CANADIAN EYES ONLY SIRC STUDY 2015-08 CSIS'S RELATIONSHIP AND EXCHANGES WITH CBSA

SUMMARY

- The objective of this baseline review was to understand the nature of CSIS's interactions with CBSA, and to identify issues or areas for SIRC to examine in the context of future reviews.
- SIRC examined the frameworks that govern information exchanges between CSIS and CBSA, specifically the Share to Protect (StP) initiative designed to resolve some of the challenges
- SIRC also looked at the relationship between the two organizations through the lens of some of the larger-scale programs and initiatives, focusing on the more routine forms of cooperation and exchanges managed by a dedicated unit within CSIS.
- Although a recent framework MoU between CBSA and CSIS has been completed, the accompanying annexes are still at a nascent stage of development.

SIRC recommends that CSIS work closely with CBSA to expedite the finalization of the annexes underpinning the 2015 MoU.

- SIRC found the policies and procedures in place for the programs that were reviewed to be sound.
- SIRC found that having a unit dedicated to managing the bulk of requests to CBSA is of benefit to CSIS both in terms of quality control and managing the relationship.

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1 INTRODUCTION

The Canada Border Services Agency (CBSA) was created in 2003 to address security concerns that arose after the 9-11 attacks. Its creation was intended to strengthen Canada's security by bringing together those elements of the former Canada Customs and Revenue Agency, Canada Food Inspection Agency, and Citizenship and Immigration Canada which were responsible for the movement of goods and people in and out of Canada.¹ CBSA currently administers more than 90 acts and regulations, with the much of its activity falling under the authority of the *Customs Act* and the *Immigration and Refugee Protection Act*.² Given CBSA's national security responsibilities to intercept travelers and goods posing a threat to Canada, CBSA has been one of CSIS's most important domestic partners.

This review marked SIRC's first focused look into CSIS's relationship with CBSA. SIRC examined the frameworks that govern information exchanges between CSIS and CBSA, specifically the Share to Protect (StP) initiative designed to resolve some of the challenges

SIRC also examined a letter of agreement governing CBSA's disclosure of information. SIRC then looked at the relationship between the two organizations through the lens of some of the larger-scale programs and initiatives, focusing on the more routine forms of cooperation and exchanges managed by a dedicated unit within CSIS.

Overall, SIRC found that the policies and processes in place for the programs it reviewed were sound and there is benefit to CSIS in having a unit dedicated to facilitating information exchanges and managing the CBSA relationship.

¹ Bill C-26: *Canada Border Security Agency Act*.

² www.cbsa.gc.ca Accessed December 4, 2015.

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2. METHODOLOGY

The objective of this baseline review was to understand the nature of CSIS's interactions with the CBSA, and to identify issues or areas for SIRC to examine in the context of future reviews. SIRC looked at this relationship through CSIS's lens only; as a result, it was not able to pursue its examination of the relationship from the perspective of the partner agency.

The core review period for this study was January 1, 2013 to December 31, 2014, although information falling outside of this period was examined to make a full assessment, particularly with regard to ongoing information sharing initiatives.

2.1 Review Activity and Criteria

SIRC set out to assess CSIS's relationship with the CBSA. To this end, SIRC reviewed corporate documents, operational reporting associated with a pilot case in an information sharing initiative. SIRC focused on select collaborative programs, as well as the information sharing policies and procedures that are in place.

Furthermore, SIRC met with CSIS representatives to gain an understanding of some of the major points of interaction between the two organizations, and to discuss joint initiatives and ongoing challenges. The discussions included meetings with representatives

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3. INFORMATION SHARING FRAMEWORKS

CSIS and CBSA work together closely, particularly with regard to border screening, advice on matters related to immigration, and threats to national security. Cooperation between CSIS and CBSA takes place through a number of specific initiatives, some directly related to CBSA's security mandate – ensuring that individuals entering Canada do not pose a threat – and others related to CSIS's mandate to investigate threats to the security of Canada.

Both CSIS's and CBSA's mandates allow for broad information sharing. Over the past few years, however, collaboration between CSIS and CBSA has become more formalized and complex. A 2011 inter-departmental study, undertaken by CSIS, CIC and CBSA, recommended that the outdated 2002 Memorandum of Understanding (MoU), which predated CBSA's creation, be updated to reflect more current practices.³ The study pointed out that there was nothing in place "relating to principles governing retention, use and disclosure of information" and that a broader MoU on cooperation would provide "a stronger basis for partnership arrangements."⁴ As a result, an overarching framework MoU was negotiated and signed by the two organizations in the spring of 2015.

Although the framework MoU has been completed, the accompanying annexes are still at a nascent stage of development. CSIS anticipates that these annexes will cover the following specific areas:

As these annexes have not yet been negotiated and finalized, it is premature for SIRC to comment on the impact of the new overarching MoU. **SIRC recommends that CSIS work closely with CBSA to expedite the finalization of the annexes underpinning the 2015 MoU.** As a result of the ongoing nature of the MoU process, SIRC chose to focus on two other mechanisms of CSIS-CBSA information sharing and cooperation - the Share to Protect Initiative and a letter of understanding between the two organizations governing the sharing of personal information.

3.1 Share to Protect Initiative

As stated earlier, there are no legal restrictions on the ability for CSIS and CBSA to share information with each other; however, there are instances where CSIS believes that disclosing information must be carefully managed. Share to Protect (StP) is a new

³ *Effective Screening and Information Sharing Processes*, Final Report 2011, p. 26.

⁴ *Effective Screening and Information Sharing Processes*, Final Report 2011, p. 12.

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information sharing initiative currently being negotiated with CBSA. SIRC examined this initiative from the perspective of both its development and its management.

3.1.1 Challenges to Information Sharing

CSIS's challenges with sharing intelligence with CBSA are similar to those noted in SIRC's 2010 *Intelligence to Evidence* review. Disclosing secret intelligence to law enforcement is fraught with difficulty given the need to protect certain secret intelligence from disclosure in open legal proceedings. Moreover, the disclosure of secret intelligence to enforcement agencies carries risks for both parties: when CSIS secret information is used in criminal proceedings, it will generally have to be disclosed. If disclosing that intelligence compromises the integrity of CSIS investigations or its tradecraft, the Crown may opt to terminate the proceeding.

In building a case for immigration or detention hearings, CBSA may want to use CSIS intelligence. If CSIS wishes to protect its classified information, it may either apply s. 86 of *IRPA* for non-disclosure or request CBSA to withdraw that information, potentially resulting in the case not going forward. According to an inter-departmental report on information sharing in the context of *IRPA*, "intense and growing judicial scrutiny has had a chilling effect on the willingness to use classified information in support of

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CSIS and CBSA therefore looked to develop a model in which CSIS intelligence could be shared with CBSA, who would then be able to pursue its own case under its mandate, and at the same time ensure that CSIS intelligence would be protected from disclosure in any potential legal proceedings. One Vision, the approach designed with the RCMP to enable parallel and separate investigations, and to protect CSIS sources and techniques by minimizing the potential of disclosure before the courts, was used as a model.

3.1.2 The Share to Protect Model

The two fundamental information sharing principles of the StP initiative are early engagement and "less is more".⁷ The StP process is meant to CSIS deems there is a serious national security concern that should be brought to CBSA's attention for follow-up or action. In such cases, early and informal dialogue will take place at the management level between the respective HQs to determine if CBSA is interested in pursuing the case. If so, appropriate formal disclosures would follow that

⁶ *Effective Screening and Information Sharing Processes*, Final Report 2011, p. 13-14.

⁷ CBSA-CSIS Joint Senior Management Team Meeting, Sept. 9, 2013 Presentation by

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would allow CBSA to launch its own investigation. The ultimate goal is for CBSA to obtain enough information required to support its legal or immigration processes, without having to rely on CSIS-originated information.

Two pilot cases were selected by CSIS to go forward under the StP model;

There was no documentation drawn up at the conclusion of the StP pilot cases, and when SIRC followed up about the lessons learned from them, CSIS relied upon corporate memory for answers. During the review process, **SIRC found that despite engagement on the StP initiative, there was no clear center of responsibility managing the process within CSIS.** However, as of January 2016, _____ has taken the lead on the initiative, which may result in more formal management and guidance.

3.2 Letter of Agreement

The second aspect of CSIS-CBSA information sharing SIRC reviewed focused on a November 2013 letter of agreement between CSIS and CBSA that governs the disclosure of _____

_____ ¹¹ This letter was negotiated in the context of a larger process whereby CBSA, acting as Canada's representative, was entering into a new agreement with the European Union (EU) on the sharing and use of the _____. Before the EU agreement could be signed, certain conditions had to be met by those who would gain access to the _____ information from CBSA. Two conditions were of particular interest to SIRC. The first is related to disclosure and the second to oversight.

¹¹ This information may include:

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According to the letter of agreement, CBSA may only disclose case-by-case basis "in support of an active CSIS investigation."

information on a

If

searches are done, they should be tied to a threat

A second condition to sharing the information is that the recipient must be subject to "oversight by an independent public authority." The letter of agreement makes reference to SIRC and the Office of the Privacy Commissioner (OPC) as bodies who serve this function. SIRC was not informed of this agreement. **In the future, SIRC requests to be made aware of instances when CSIS's collaborative endeavors or information sharing practices rely upon SIRC as a mechanism of accountability.**

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4. THE UNIT

The volume of exchanges of information between CSIS and CBSA during the review period suggests a high level of cooperation between both organizations on several fronts.¹⁷ These exchanges occur at several points,

Yet, a large proportion of these exchanges are centrally managed through a dedicated unit

The primary role is to contribute to Canada's border security through enhanced cooperation with CBSA and other agencies or departments with related concerns.

The is responsible for three programs that facilitate exchanges of information with CBSA:

SIRC examined these three programs more closely to gain insight into the CSIS-CBSA relationship, but also to better understand how CSIS leverages CBSA information in pursuit of its own intelligence collection mandate. SIRC also assessed each individual program's internal policies and procedures.

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¹⁷ During the core review period

exchanges in the operational database.

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In general, **SIRC found the policies and procedures in place for the three programs that were reviewed to be sound. In addition, SIRC found that having a unit dedicated to managing the bulk of requests to CBSA is of benefit to CSIS both in terms of quality control and managing the relationship.**

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5. CONCLUSION

CSIS's relationship with CBSA is an important one, with each organization providing the other with important operational information and assistance. SIRC will continue to examine different facets of this relationship in the course of its ongoing reviews. Moving forward, SIRC will also continue to monitor how CSIS leverages information received from other government agencies and departments, particularly in light of the recent enactment of the *Security of Canada Information Sharing Act*.

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