



Public Safety    Sécurité publique  
Canada            Canada

Deputy Minister    Sous-ministre

Ottawa, Canada  
K1A 0P8

**SECRET//CEO**

DATE:

File No.: NS 6210 / PS-028724

**MEMORANDUM FOR THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**REQUEST FOR APPROVAL FOR CLASSES OF CANADIAN DATASETS  
UNDER S. 11 OF THE CSIS ACT**

(Signature required)

**ISSUE**

The Canadian Security Intelligence Service (CSIS) is seeking your approval for classes of Canadian datasets that may be collected under s. 11 of the *CSIS Act*.

**BACKGROUND**

Part IV of *An Act Respecting National Security Matters, 2017*, which entered into force on July 13, 2019, modified the *CSIS Act* to provide a framework for the Service to collect, retain, and analyze datasets that contain non-threat-related information. Datasets are collections of digital information with a common subject matter that may contain personal information on individuals. They are intended for use in CSIS's data analytics program. CSIS may only collect predominantly Canadian datasets if they fall within approved classes. They have 90 days from collection to evaluate a dataset and must apply to the Federal Court for authorization to retain it before the end of this period.

Your role under this new legal framework is 1) to determine classes of datasets that the Service may collect, 2) to designate employees who may apply for judicial authorization from the Federal Court to retain Canadian datasets, and 3) to approve such applications. Classes of Canadian datasets must be determined at least once every year.

Your determination of the classes will be transmitted to the Intelligence Commissioner pursuant to the *Intelligence Commissioner Act*, who will review the

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conclusions on the basis of which the classes were determined. He will then approve them if he deems them to be reasonable.

### **CURRENT STATUS**

The Director has written to you (**TAB A**) to request your approval of the proposed classes of Canadian datasets. CSIS's proposal includes [REDACTED] CSIS's rationale for each class are included in **TAB B**. CSIS has also included a visual representation of how the safeguards in the regime will be implemented, with examples of information that could not be collected. A record of decision containing your conclusions and reasons is attached as **TAB C**. The information provided by CSIS, along with your Ministerial Direction on Intelligence Priorities for 2019-2021 and a copy of this briefing note, will be sent to the IC as the record on which your decision was made, under cover of the letter at **TAB D**.

### **CONSIDERATIONS**

As this is the first time that you are determining these classes, there is uncertainty in how the IC and Federal Court will interpret the statute. Since this is a novel process, PS and CSIS will work together to ensure that applications for retention meet the standards set out in the new provisions of the *CSIS Act*. We expect that the first year will be a learning process informed by feedback from the IC, and the Federal Court.

[REDACTED]

However, the classes are only the first step in a process with increasing safeguards. CSIS will only collect datasets that they believe are relevant to their duties and functions under sections 12 through 16 of the *CSIS Act*. Once collected, designated CSIS employees will evaluate each dataset to ensure it falls into one of the approved classes (if it is a predominantly Canadian dataset). In order for a Canadian dataset to be retained, CSIS will have to apply to the Federal Court within 90 days, subject to your approval. CSIS has outlined how the reasonableness test and the classes interact to provide a meaningful control on types of information that can be collected.

CSIS has submitted operational justifications and scenarios for the proposed classes, and [REDACTED] This justification will also be provided to the Intelligence Commissioner to support his determination of the reasonableness of your authorization.

In advance of the entry into force of the dataset regime, CSIS has completed the process of destroying [REDACTED]

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**RECOMMENDATION**

It is recommended that you sign the Record of Decision for the [redacted] dataset classes in **TAB C**, and that you sign the letter to the IC in **TAB D**.

Upon signature, this docket should be returned to NSPD, who will make a copy of the signed classes and send the package to the IC.

Should you require additional information, or wish to be briefed in person on this matter, please do not hesitate to contact me or Craig Oldham, Acting Senior Assistant Deputy Minister, National and Cyber Security, at 613-949-6553.

Gina Wilson

Enclosures: (4)

Prepared by: [redacted]

Canadian Security  
Intelligence Service



Director - Directeur

Service canadien du  
renseignement de sécurité

CCM # 33581  
SECRET//CEO  
For Information

JUL 29 2019

MEMORANDUM TO THE MINISTER

CLASSES OF CANADIAN DATASETS

**SUMMARY**

- The *CSIS Act* requires that you determine, at least once every year, classes of Canadian datasets.
- Your determination of the classes is the initial step of the dataset scheme, intended to provide a broad first layer of political accountability to Canadians regarding the types of information CSIS will collect as Canadian datasets under the framework. Further robust safeguards apply to the evaluation, retention and use of datasets.
- At this time, the Service is proposing [REDACTED]

**BACKGROUND:**

The *Canadian Security Intelligence Service (CSIS) Act* establishes a framework for the collection, retention, and use of datasets by the Service to support the performance of its duties and functions under sections 12 to 16 of the *CSIS Act*. As defined in section 2 of the *CSIS Act*, a dataset is a collection of information stored as an electronic record and characterized by a common subject matter. The datasets framework in the *CSIS Act* applies to every dataset that contains personal information (as defined in section 3 of the *Privacy Act*), that does not directly and immediately relate to activities that represent a threat to the security of Canada. The framework sets out three types of datasets: Canadian, foreign and publicly available. A Canadian dataset is defined in the *CSIS Act* as a dataset that predominantly relates to individuals within Canada or Canadians, which includes Canadian citizens, permanent residents or corporations incorporated or continued under the laws of Canada or a province.

Pursuant to section 11.03(1) of the *Act*, the Service requires your determination of the initial classes of Canadian datasets. Under section 11.03(3), you must also notify the Intelligence Commissioner of your determination for the purposes of the Intelligence Commissioner's review and approval under the *Intelligence Commissioner Act*. CSIS proposes that you determine [REDACTED]

## DISCUSSION:

### *Rationale*

Data analytics is a key investigative tool for the Service, providing CSIS with the capacity to make connections and identify trends that is not otherwise possible through traditional methods of investigation. The Service collects datasets – including Canadian datasets –

Section 11.05 of the *CSIS Act* provides that CSIS may collect Canadian datasets if it is satisfied that the dataset is relevant to the performance of its duties and functions under sections 12 to 16, and reasonably believes that the dataset belongs to a class of Canadian datasets for which you have authorized collection. It is important to note that, at the time of collection, a CSIS employee may collect a dataset only if the employee *reasonably believes* it is publicly available, foreign, or belongs to an approved class of Canadian datasets, as set out in 11.05(2). This also ensures that where the publicly available character of a dataset pertaining to Canadians, or where the preponderance of Canadian and foreign data in a mixed dataset, cannot be reasonably established at the time of collection, the higher standard applies such that the dataset may be collected only where there is an approved class.

As set out in 11.03(1), at least once every year, you shall, by order, determine classes of Canadian datasets for which collection by CSIS is authorized. The *CSIS Act* establishes that you may determine that a class of Canadian datasets is authorized if you conclude that the 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.

### *Classes of datasets and other safeguards*

The determination of the classes is the initial step of the dataset scheme, intended to provide a broad first layer of political accountability to Canadians with regard to the types of Canadian information CSIS will collect under the framework. Further additional safeguards apply during the evaluation period and for retention and use of Canadian datasets. It is important to note that, as the classes provide an initial safeguard at the time of collection by a CSIS employee, they must provide clear direction to employees. At the same time, they must be relatively broad, given that the precise nature of the information contained within a dataset may not be known in detail at the time of collection, and the collector must be able to make an on-the-spot determination of whether the class applies.

The Service may only collect a dataset if it is satisfied that the dataset is relevant to the performance of its duties and functions under section 12 to 16, as set out in 11.05(1). For Canadian datasets, 11.05(2) further limits the collection of relevant datasets to those that belong to an approved class. The relevancy test must be separate and distinct from the establishment of the classes themselves; both distinct thresholds must be met separately, prior to the collection of a Canadian dataset by the Service. Once a dataset is collected, additional requirements for the Service to examine and assess datasets apply.

After collection, a designated employee must confirm that a collected Canadian dataset belongs to an approved class as part of the Evaluation Period, as set out in 11.07(2). If an employee confirms, upon examination of the datasets, that it does not belong to an approved class, the *CSIS Act* requires that the Service either destroy the dataset without delay, or make a request to you for the determination of a new class, with the required review by the Intelligence Commissioner. If a request for a new class is made,

the Service must suspend the evaluation of the dataset until such a class is approved by the Intelligence Commissioner. If a new class is not authorized, the dataset must be destroyed without delay.

During the Evaluation Period, any operational use of the dataset is prohibited and access is limited to designated employees. Additional safeguards also apply to the Canadian datasets including the requirement to delete personal information that is not relevant to the Service's performance of its duties and functions and that may be deleted without affecting the integrity of the dataset. A designated employee must also delete any information relating to the physical or mental health of an individual in which there is a reasonable expectation of privacy and any information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries.

CSIS must apply to the Federal Court for judicial authorization to retain a Canadian dataset. To authorize retention, the Court must be satisfied that the dataset is 'likely to assist' the Service in the performance of its duties and functions under sections 12, 12.1 and 16 of the *CSIS Act*. Following the authorization to retain, Canadian datasets must be segregated from operational holdings and can only be queried or exploited by designated employees and only when strictly necessary for sections 12, 12.1 or where required for section 16. These same thresholds also apply to the retention of results in operational holdings from those queries/exploitations. The Act also sets out record-keeping and audit requirements in 11.24(3) and provides for robust review by the new National Security and Intelligence Review Agency (NSIRA).

Overall, while the classes provide an important first safeguard for the collection of Canadian datasets, there are numerous protections built into the framework for CSIS to use non-threat related Canadian information to support its duties and functions.

#### *Reasonableness test*

In determining the classes of datasets the Service needs to collect to fulfill its national security mandate, the Service reviewed its operational requirements and considered what kinds of datasets would support the Service's performance of its duties and functions moving forward.

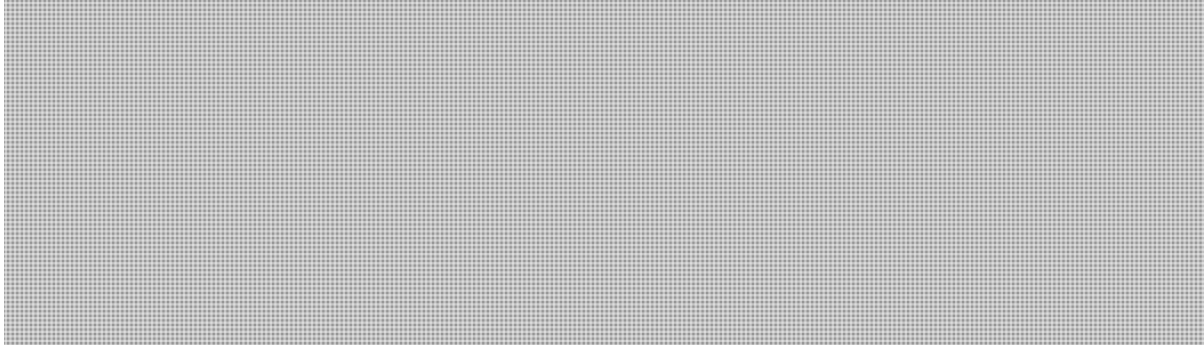
[REDACTED] the Service has identified [REDACTED]

As stated above, you may determine that a class of Canadian datasets is authorized to be collected if you conclude that the 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. The Intelligence Commissioner will review your conclusions to determine if they are reasonable.

Further to a briefing to your office by the Service on July 19, 2019, this Memorandum has been updated to provide you with additional context below concerning the interaction of classes and relevancy test for the collection of a Canadian dataset.

The Service, in its enclosed submission, explains why it is reasonable to conclude that the querying or exploitation of datasets [REDACTED] classes could lead to results that are relevant to CSIS' duties and functions. This includes clear examples illustrating how the analysis of [REDACTED] datasets can produce results relevant to the conduct of the Service's mandate:


I would like to reiterate that, in determining whether a dataset can be collected, the Service first applies the relevancy test, as set out in s.11.05(1), and then, for Canadian datasets, applies the limit of the classes. Every Canadian dataset collected by the Service must meet both criteria. In essence, this means the types of datasets that can be collected become:



Enclosed, for your reference, is a diagram illustrating the application of both the relevancy test, and the limit of the classes of Canadian datasets.

Attached, for your signature, are records of decision regarding this request to determine the proposed classes of datasets. The Service's submission represents our initial approach to the new requirement for classes; submissions in future years will be refined, as required, as operational requirements evolve.

As always, please do not hesitate to contact me should you require further information.



David Vigneault

cc. Deputy Minister, Public Safety Canada

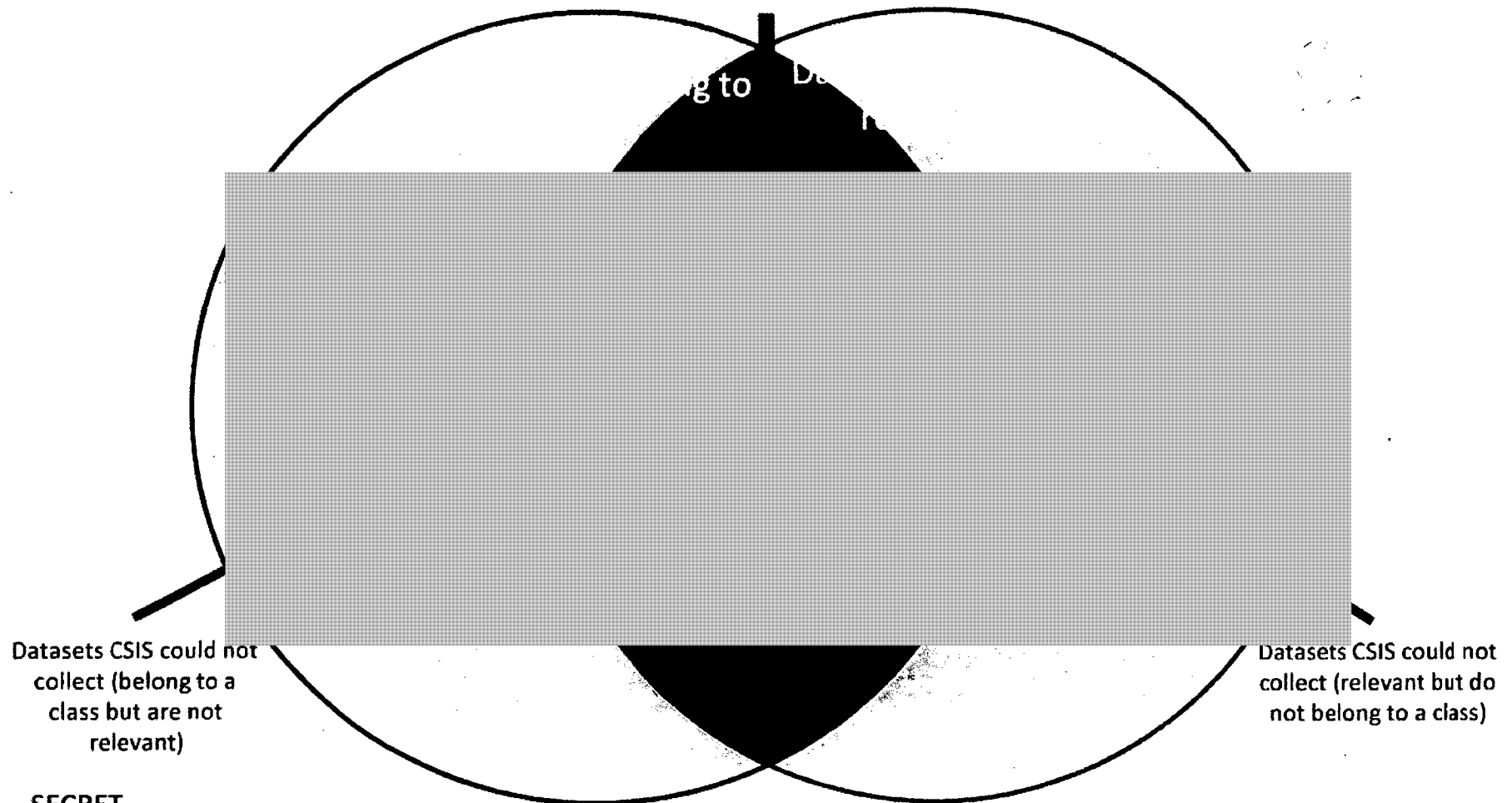
Enclosures (2)

This document constitutes a record which may be subject to mandatory exemption under the *Access to Information Act* or the *Privacy Act*. The information or intelligence may also be protected by the provisions of the *Canada Evidence Act*. The information or intelligence must not be disclosed or used as evidence without prior consultation with the Canadian Security Intelligence Service.

# Interaction of Proposed Classes & Application of Relevancy

In order to collect a Canadian dataset, CSIS must ensure it belongs to a class **and** is relevant to its duties and functions

*Datasets that CSIS could collect*



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## **THE PROPOSED CLASSES OF DATASETS: OVERVIEW**

Sections 11.05(1) and 11.05(2)(b) of the *Canadian Security Intelligence Service Act* (the *CSIS Act*) provide that CSIS may collect a Canadian dataset if it is satisfied that the dataset is relevant to the performance of its duties and functions under sections 12 to 16 of the *CSIS Act*, and reasonably believes that the dataset belongs to a class of Canadian datasets for which the Minister of Public Safety and Emergency Preparedness (the Minister) has authorized collection.

Section 11.03(1) of the *CSIS Act* sets out that at least once every year, the Minister shall determine classes of Canadian datasets for which collection by CSIS is authorized. Section 11.03(2) sets out the criteria for the determination of the classes - the Minister may determine that a class of Canadian datasets is authorized to be collected if the Minister concludes that the 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 of the *CSIS Act*.

Determining that a Canadian dataset falls within an approved class is an essential legal prerequisite to the collection of a Canadian dataset. Service employees would be authorized to collect Canadian datasets where they belong to an approved class and meet the separate relevancy test set out in 11.05(1). Subject to 11.05(2), the requirement that an employee reasonably believes that a dataset belongs to an approved class prior to its collection applies to the collection of any Canadian dataset as well as datasets where either a) the publicly available character of a dataset pertaining to Canadians, or b) the preponderance of Canadian and foreign data in a mixed dataset, cannot be reasonably established at the time of collection.

This document comprises the CSIS submission which sets out and recommends the Minister approve each proposed class. It includes a description of the class, rationale regarding why the querying and exploitation of datasets within each class could lead to results relevant to the performance of the Service's duties and functions set out under sections 12, 12.1 and 16 of the *CSIS Act*, and provides scenarios of operational use to support this rationale. The CSIS submission is followed by a record of decision for the Minister's determination of each class.

The proposed classes of Canadian datasets are:



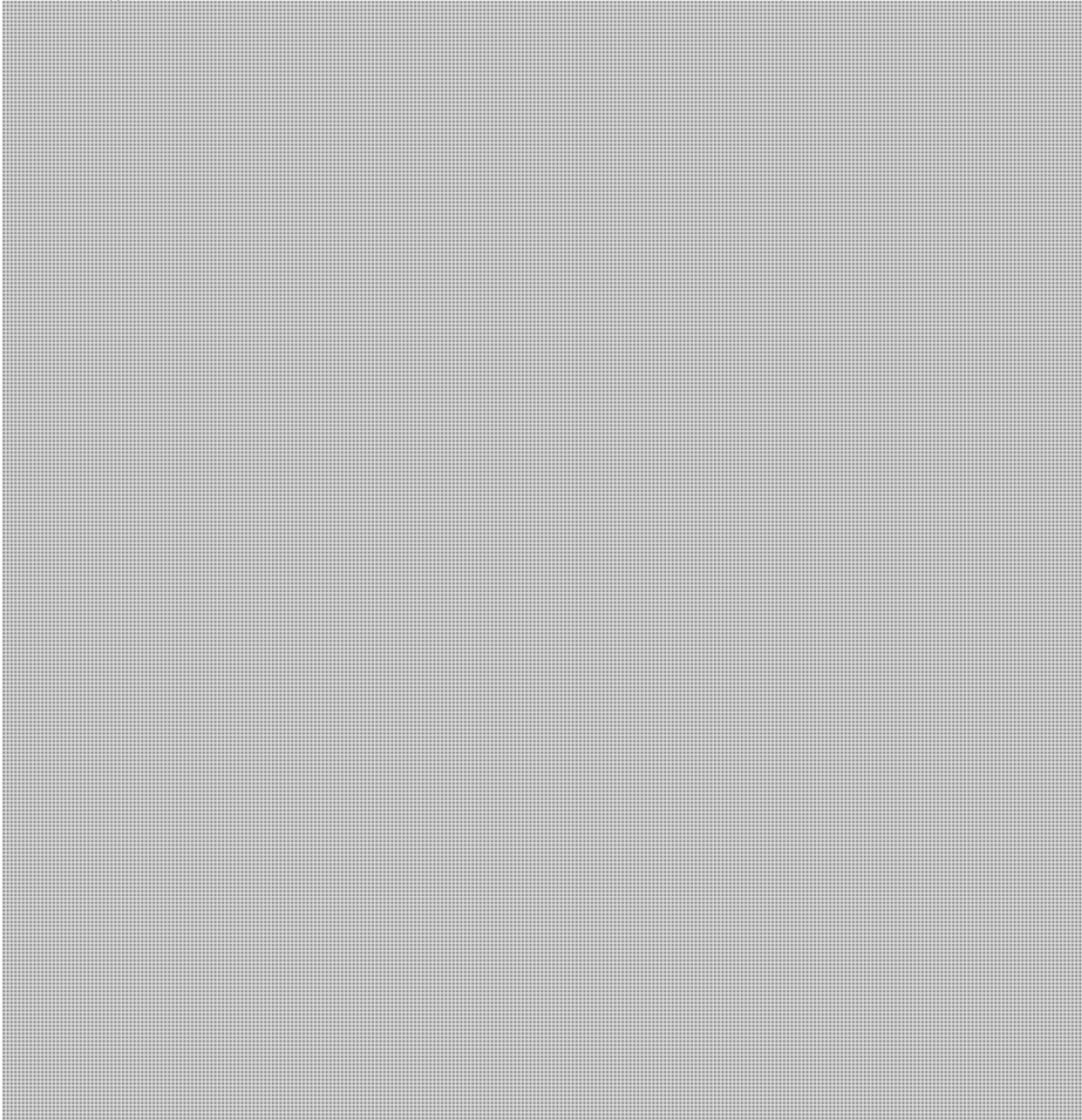
**Pages 10 to / à 26  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**of the Access to Information  
de la Loi sur l'accès à l'information**

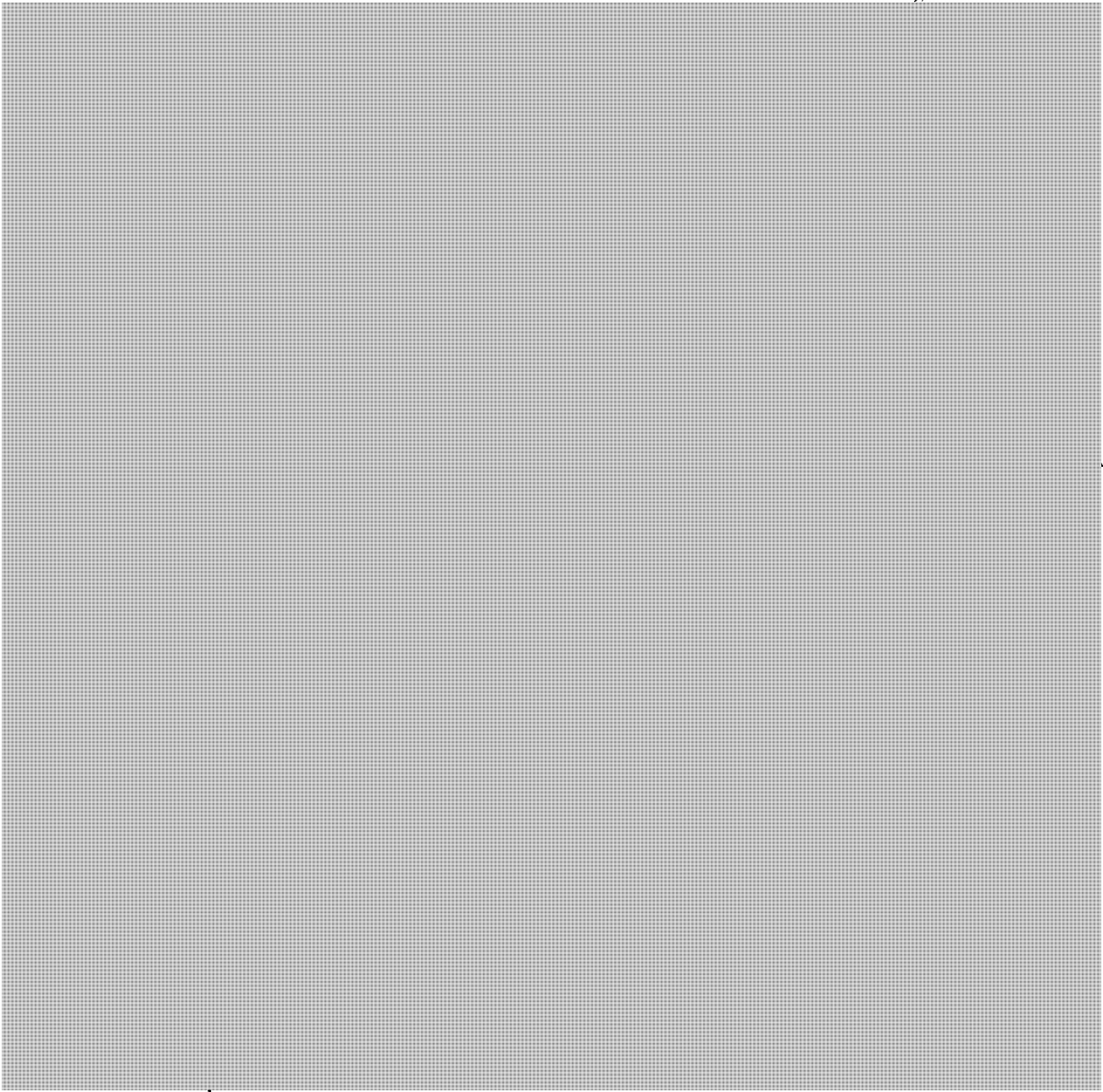
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**CONCLUSIONS ON CLASSES OF CANADIAN DATASETS**

Pursuant to section 11.03 of the *CSIS Act*, I determine by this order the following classes of datasets, for the duration of one (1) year starting on the date of signature, for which collection by the Service is authorized:



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In accordance with section 11.03(3), the Intelligence Commissioner shall be notified of my determination for the purposes of the Commissioner's review and approval under section 16 of the *Intelligence Commissioner Act*.

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Minister of Public Safety and Emergency Preparedness

Minister  
of Public Safety  
and Emergency Preparedness



Ministre  
de la Sécurité publique  
et de la Protection civile

Ottawa, Canada K1A 0P8

**SECRET** (with attachment)

The Honourable Jean-Pierre Plouffe, C.D.  
Intelligence Commissioner  
D'Arcy McGee Building  
90 Sparks Street  
Ottawa, Ontario J3V 5J5

Dear Mr. Plouffe,

Pursuant to subsection 11.03(3) of the *CSIS Act*, I am notifying you of the classes of Canadian datasets for which I have determined that collection is authorized.

You will find attached a detailed description of the classes, as well as all of the information that I was provided in order to arrive at this decision, for your review and approval.

Ralph Goodale, P.C., M.P.

Enclosure: (1)