



Public Safety  
Canada

Sécurité publique  
Canada

## BUILDING A SAFE AND RESILIENT CANADA



# Directions for Avoiding Complicity in Mistreatment by Foreign Entities 2019 Annual Report

September 4, 2019 to December 31, 2019

© Her Majesty the Queen in Right of Canada, 2020  
Cat. No.: PS1-20E-PDF  
ISSN: 2563-1500

Public Safety Canada 2019 Annual Report:

## **Directions for Avoiding Complicity in Mistreatment by Foreign Entities**

### **Introduction**

The *Avoiding Complicity in Mistreatment by Foreign Entities Act* (the Act) came into force on July 13, 2019. The Act authorizes, and sometimes requires, the Governor in Council to issue written directions to deputy heads regarding:

- the disclosure of information to any foreign entity that would result in a substantial risk of mistreatment of an individual;
- the making of requests for information to any foreign entity that would result in a substantial risk of mistreatment of an individual; and
- the use of information that is likely to have been obtained through the mistreatment of an individual by a foreign entity.

On September 4, 2019, the Governor in Council, on the recommendation of the Minister of Public Safety Canada (PS), pursuant to subsection 3(1) of the Act, issued the Order in Council *Directions for Avoiding Complicity in Mistreatment by Foreign Entities* (the Directions) to the Deputy Minister of PS. In accordance with subsection 7(1) of the Act, the Deputy Minister must provide an annual report on the implementation of the Directions during the previous calendar year to the Minister before March 1.

This report covers the period of September 4, 2019, when PS was first issued the Order in Council, to December 31, 2019, and represents the first time PS has submitted an annual report on this subject. PS portfolio agencies such as the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS) and the Canadian Border Services Agency (CBSA) were already subject to annual reporting on this matter under the previous 2017 Ministerial Direction, which was replaced by the Directions in September 2019. The report provides information on changes to internal policies and procedures to support the implementation of the Directions, the number of substantial risk cases, and restrictions to any arrangements due to concerns of mistreatment.

### **Information Sharing Practices**

#### **Background**

PS was created in 2003 to ensure coordination across all federal departments and agencies responsible for national security and the safety of Canadians. The department's mandate is to keep Canadians safe from a range of risks such as natural disasters, crime and terrorism in order to build a safe and resilient Canada. In order to fulfill its mandate, PS relies on access to a wide

variety of information. Given that PS has no investigatory mandate, it depends on information obtained from domestic partners and, on occasion, foreign entities.

PS has conducted a preliminary assessment to determine which areas are implicated and has determined that the Passenger Protect Program (PPP) shares information with foreign entities. Most operational programs at PS are not implicated by the Directions as they do not make decisions regarding whether to exchange information with foreign entities. However, officials will continue to evaluate whether other program areas of the Department would also be implicated by the Directions. The results of this evaluation will be noted in the next annual report.

The PPP is an air passenger security program that carries out the provisions in the *Secure Air Travel Act* (SATA) and is administered by PS and Transport Canada (TC). The PPP allows for the Minister of Public Safety, or his/her delegate, to list individuals on the *Secure Air Travel Act* List (SATA List) if there are reasonable grounds to suspect they will engage or attempt to engage in an act that would threaten transportation security, or travel by air for the purpose of committing an act of terrorism. The Minister may direct an air carrier to follow certain directions regarding SATA listed individuals, in particular, the denial of transportation to a person, or the screening of a person before they enter a sterile area of an airport or board an aircraft. To support the Minister's role, PS exchanges information with domestic partners and foreign entities relevant to the administrative decisions required under SATA.

### **Mistreatment Risk Assessment**

It is a fundamental duty of PS to be a responsible steward of the information in its control. As PS is primarily a consumer of information, it relies on numerous partnerships, both with domestic partners and foreign entities, relative to the request, disclosure, and use of information required to meet its mandate. PS therefore engages in risk assessments regarding such partnerships, which consider the parallel legal framework for domestic partners who may exchange information with foreign entities, as well as assessments of its own network of partnerships with foreign entities. PS assesses that the foreign entities with which it exchanges information present a low risk with respect to mistreatment.

PS portfolio agencies relative to the Act are the RCMP, CSIS, and CBSA. These partners exchange information with foreign entities according to their respective mandates. Therefore, information exchanged with these domestic partners could potentially be implicated in the substantial risk of mistreatment by foreign entities. However, these domestic partners have been the subject of Ministerial Directions related to mistreatment since 2011 and therefore have built in tried and tested mechanisms for the implementation of the Directions. Further, these domestic partners exchange information with the PPP that includes an attestation that the information has been obtained without substantial risk of mistreatment by a foreign entity. The PPP will not use information that is not accompanied by this attestation.

Global Affairs Canada (GAC), which is also subject to the Directions, conducts human rights reporting and country risk assessments relative to the potential risk of mistreatment by foreign entities. These human rights reports and assessments, as well as others prepared by domestic partners, are widely used within government, including PS, to assess the risks of information sharing with foreign entities.

## **Implementation Measures**

### **Updating Policies and Procedures Relative to the Directions**

To ensure compliance with the Act, and a consistent application of the Directions, PS has, and is continuing to develop, mechanisms within the department to:

- assess the risk of mistreatment by foreign entities as a result of the disclosure of, request for, and use of information;
- determine whether the risk of mistreatment by foreign entities can be mitigated;
- ensure matters are referred to the Deputy Minister for determination and decision when officials are unable to determine whether the risk can be mitigated or when determination is needed relative to the use of information (in exceptional circumstances); and
- ensure that documentation and reporting mechanisms are in place.

PS is developing mechanisms to ensure that the Deputy Minister fulfills his obligations under the Act and Directions. These will include tools to assess and mitigate risks, processes for referral and determination, and procedures for documenting and reporting. Meanwhile, the PPP has updated its practices and procedures relative to the Directions. This includes ensuring that disclaimers and significant caveats continue to accompany information exchanged with foreign entities, as well as updated standard operating procedures regarding the assessment of information exchanges and use. Further, under the PPP, PS officials make recommendations to the Minister based only on information that has been identified as having been vetted by the originating partner against the Directions.

PS stores, retains and disposes information in accordance with its operational policies that are based upon Treasury Board policies, the *Privacy Act*, and the *Library and Archives of Canada Act*. These information sharing and management practices ensure the integrity of PS's information holdings. This integrity allows PS to appropriately evaluate the potential risk of mistreatment in its information holdings, as charged by the Directions.

### **Community Coordination**

PS chairs the Information Sharing Coordination Group (ISCG), an interdepartmental forum for supporting collaboration and information sharing between departments and agencies subject to the Directions. The ISCG was developed in March 2018 and ensures that the implementation of MDs is consistent across all implicated federal departments and agencies.

## **Activity Report: September 4, 2019 to December 31, 2019**

### **Cases of substantial risk**

Cases of Substantial risk for the period of September 4, 2019 to December 31, 2019:

Type of case:	Disclosure of information	Request for information	Use of information
Number of cases requiring Deputy Minister Determination:	0	0	0

### **Restriction of arrangements**

PS had 0 cases of restrictions being applied to any arrangement due to concerns related to mistreatment for the period of September 4, 2019 to December 31, 2019.