Government of Canada Public Responses to Recommendations of NSIRA Dataset Regime Review 2021

Recommendations	Related Finding(s)	Government Response	Explanation
Recommendation 1: NSIRA recommends that in the next judicial authorization application for a Canadian dataset CSIS put its current position on the application of the dataset regime before the Court, including any use of the information prior to the decision to retain under the dataset regime.	**Finding 1**: NSIRA finds that CSIS's current application of the dataset regime is inconsistent with the statutory framework. **Finding 2**: NSIRA finds that CSIS's current approach to dataset information collection under section 12 risks the creation of a parallel collection mechanism, one that weakens section 12's statutory thresholds and at the same time lacks the external oversight regime intended to protect personal information under the dataset regime. **Finding 3**: NSIRA finds that CSIS failed to fully apprise the Court on their interpretation and application of the dataset regime. CSIS should have sought clarification from the Court as to its views on the precise conduct permissible prior to invocating the dataset regime.	Partially agree with Recommendation 1	CSIS agrees with NSIRA's recommendation to put its position on the application of the dataset regime (s. 11.01 – 11.25) before the Federal Court. In fact, CSIS has put its position before the Federal Court on several occasions. CSIS disagrees that its application of the dataset regime is inconsistent with legal authorities, as set out in Finding 1. CSIS collects information that relates to a threat to the security of Canada under its s. 12 collection authority per the *CSIS Act*. Under its s. 11.01 to 11.25 collection authority, CSIS also collects information that is not directly and immediately related to a threat to the security of Canada, but is relevant to its duties and functions. As such, CSIS disagrees with Finding 2 that this weakens s. 12's statutory thresholds. CSIS disagrees that it failed to fully apprise the Court as stated in Finding 3. The Federal Court of Appeal has previously held that CSIS is entitled to receive legal advice in confidence and that it is not required to disclose this legal advice to the Federal Court.

Recommendation 2: NSIRA recommends that CSIS immediately destroy any record containing names retained pursuant to the exigent circumstances queries as they do not meet the strictly necessary threshold.	**Finding 4**: NSIRA finds that when conducting queries in exigent circumstances, CSIS retained information that did not meet the section 12 strictly necessary threshold.	Disagree with Recommendation 2	CSIS disagrees with Finding 4 that information collected in the referenced incident was not strictly necessary to retain for the purpose of investigating threats to the security of Canada. CSIS maintains that its application of the 'strictly necessary' standard in this case was consistent with the *CSIS Act* and internal CSIS policies. NSIRA's interpretation of 'strictly necessary' is overly narrow such that it would unreasonably impede CSIS' ability to meet its mandates.
Recommendation 3: NSIRA recommends that Parliament legislates a time limitation for the authorization of a foreign dataset by the Minister or Minister's designate.	**Finding 5**: NSIRA finds that the lack of explicit time limits in section 11.17 of the dataset provisions governing foreign datasets has resulted in datasets being retained for multiple years pending a decision by the Minister or Minister's designate (the CSIS Director).	Not Applicable	This recommendation is directed at Parliament. However, CSIS would like to clarify that the majority of the outstanding foreign datasets referenced in Finding 5 have been either destroyed or put before the Intelligence Commissioner. The remaining two applications will be actioned within the coming months. CSIS acknowledges that these delays have affected its implementation of the regime. CSIS continues to seek efficiencies in the application of this complex regime including incorporating Federal Court decisions, Ministerial Direction, and Intelligence Commissioner recommendations into its datasets policies and best practices.
Recommendation 4: NSIRA recommends that CSIS meaningfully analyze and document any possible reasonable expectation of privacy when evaluating publicly available datasets.	**Finding 6:** NSIRA finds that CSIS runs the risk of collecting information that is publicly available but for which there may be a reasonable expectation of privacy.	Agree with Recommendation 4	CSIS is not in possession of any publicly available datasets containing hacked, stolen or leaked information; all of which are dataset sources that may carry a reasonable expectation of privacy. When acquiring publicly available datasets, the acquisitions team researches and analyzes the dataset through a privacy lens. To ensure this step is not missed, the dataset evaluation template prompts the designated employees performing evaluations to assess the source of the information to ensure there is no reasonable expectation of privacy.

Recommendation 5: NSIRA recommends that CSIS develop: a) Guidelines regarding the implementation of section 6 of *the Interim Direction* [redacted] that also include consideration of how the Direction's retention rule is to be reconciled with the 90 day evaluation period in the dataset regime; and b) A policy governing the handling of transitory information.	**Finding 7:** NSIRA finds that CSIS's policies governing the collection and retention of Canadian and foreign datasets do not align with its current interpretation of the dataset regime. **Finding 8:** NSIRA finds that CSIS does not have a policy governing the handling of transitory information. In addition, the existing *Interim Direction* [redacted] does not provide employees with sufficient instruction, which may result in CSIS retaining information that would otherwise be subject to the dataset regime.	Agree with Recommendation 5	CSIS recently performed a thorough review of its policies governing the framework of data collection and retention under the dataset regime. Based on that review policies are being updated to address Findings 7 and 8.
Recommendation 6: NSIRA recommends that CSIS cease to create duplicates of the information reported in the operational system.	**Finding 9:** NSIRA finds that CSIS information management practices are responsible for multiple compliance incidents and currently create duplicates of datasets within CSIS's systems.	Disagree with Recommendation 6	Duplication of information is a requirement of CSIS's information management policy under its Charakoui II obligations. CSIS is required to maintain copies of data in order to reproduce findings when legally compelled to do so. CSIS also creates back ups of the information collected to ensure business continuity in cases of human error or disaster recovery. Back up copies of data, either to support legal processes or in the event of technical failure, remains a core principle of data quality management practices. CSIS welcomes guidance from NSIRA to establish systems to improve these management practices.

Recommendation 7: NSIRA recommends that CSIS immediately destroy Canadian and foreign dataset information that is not strictly necessary to retain. This information no longer falls within the legal 90 day evaluation period and retaining it pursuant to the dataset regime is no longer a possibility.	**Finding 10:** NSIRA finds that, as of August 2023, CSIS did not comply with the dataset provisions in the *CSIS Act* because it retained Canadian information extracted from foreign datasets, and foreign information amounting to a dataset.	Agree with Recommendation 7	CSIS acknowledges that the retention of some records found by NSIRA is contrary to the intent of the dataset framework, as described in Finding 10. While these records were retained to meet a corporate record keeping obligation, they were not retained to meet any operational or investigative purpose. CSIS has destroyed the records in question. CSIS disagrees with NSIRA's implied assessment in Findings 10 and 11 that all the datasets in question were s. 11.01 datasets. They will nonetheless be destroyed as they no longer serve operational utility.
	Finding 11: NSIRA finds that CSIS did not comply with the dataset provisions in the *CSIS Act* because it retained Canadian information and referenced it as recently as 2022. This information should have been destroyed upon coming into force of the *NSA 2017*, in July, 2019.		

Recommendation 8: NSIRA recommends that CSIS conduct an exhaustive scan of its operational and corporate repositories to identify and destroy any non-compliant information.	**Finding 12:** NSIRA finds that CSIS has not exhaustively scanned all of its systems to identify information that is subject to the dataset regime so that it may be processed in a compliant manner.	Disagree with Recommendation 8	CSIS agrees with the spirit of NSIRA's recommendation; however, absent a central repository, an exhaustive search of all the data in all repositories collected since CSIS' inception is not feasible. Extensive efforts were made to locate datasets collected by CSIS before the coming into force of the dataset regime. Any datasets located were assessed, applications to retain were made and where appropriate, datasets were destroyed. Since 2019, CSIS has and will periodically continue to verify its key holdings to revalidate the authority under which datasets are collected and retained. Any instances of potential non-compliance are reported and addressed. CSIS maintains that its application of the regime is consistent with the law.
Recommendation 9: NSIRA recommends that CSIS develop and deliver scenario-based workshops to train operational personnel on CSIS's current application of the dataset regime so that they can engage subject matter experts as necessary.	**Finding 13:** NSIRA finds that the training required to become a designated employee to evaluate, query, and exploit s. 11.01 datasets offers clear information on collection and retention requirements. **Finding 14:** NSIRA finds that CSIS operational personnel, including those predominantly dealing with bulk information collection, have not received adequate training allowing them to identify when collected information may fall within the dataset regime.	Agree with Recommendation 9	The robust training CSIS provides to its employees continues to evolve, as referenced in Finding 13. The training provided to operational personnel in relation to the dataset regime is revised continuously and is being updated to include scenario-based elements, which addresses Finding 14. Further to the training provided, operational personnel have access to subject matter experts regarding collection authorities when they have questions.

Recommendation 10: NSIRA recommends that CSIS prioritize resourcing the technical unit responsible for the evaluation, query and exploitation of Canadian and foreign datasets.	**Finding 15:** NSIRA finds that CSIS has not prioritized resourcing the technical unit responsible for the evaluation, query and exploitation of Canadian and foreign datasets.	Agree with Recommendation 10	CSIS agrees with the recommendation and recognizes more technicians are needed to meet the evaluation deadline set out in s. 11.07 of the *CSIS Act*. CSIS is exploring multiple solutions to advance compliant evaluation, query and exploitation of regime datasets. Increases to human and technical capacity is subject to the availability of funding.
Recommendation 11: NSIRA recommends that CSIS prioritize the improvement of current technical systems or development of new systems, equipped to support compliant bulk data use.	**Finding 16:** NSIRA finds that CSIS has not devoted sufficient resources to improving the current technical systems or developing new ones that are equipped to support bulk data use.	Agree with Recommendation 11	CSIS has identified and prioritised several opportunities for investment in technology to improve the compliant evaluation, query and exploitation of regime datasets. These opportunities are subject to the availability of funding and resources.
Recommendation 12: NSIRA recommends that CSIS immediately destroy the case study dataset it collected pursuant to section 12 as it does not meet the statutory thresholds. This information no longer falls within the legal 90 day evaluation period and retaining it pursuant to the dataset regime is no longer a possibility.	**Finding 17:** NSIRA finds that CSIS collected information in relation to activities that could not on reasonable grounds be suspected to have constituted a threat to the security of Canada and the collection, analysis and retention of which was not strictly necessary.	Disagree with Recommendation 12	CSIS disagrees that the dataset in question was improperly collected and/or retained. This dataset is strictly necessary to CSIS' ability to fulfill its mandate of investigating threats to Canada's national security. NSIRA's interpretation of 'strictly necessary' is overly narrow such that it would unreasonably impede CSIS' ability to meet its mandates.
Recommendation 13: NSIRA recommends that CSIS share the full unredacted copy of this report with the Federal Court.		Partially Agree with Recommendation 13	CSIS will share the full classified report, redacted for solicitor-client privilege, with designated judges at the Federal Court of Canada.