



Treasury Board of Canada
Secrétariat

Secrétariat du Conseil du Trésor
du Canada

Canada

Operational Standard for the Security of Information Act

Published: Mar 17, 2003

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Published by Treasury Board of Canada, Secretariat
90 Elgin, Ottawa, Ontario, K1A 0R5, Canada

Catalogue Number: BT39-21/2003E-PDF
ISBN: 978-0-660-09874-6

This document is available on the Government of Canada website, Canada.ca

This document is available in alternative formats upon request.

Aussi offert en français sous le titre : Norme opérationnelle de la Loi sur la protection de l'information

Operational Standard for the Security of Information Act

1. Effective date

March 17, 2003

2. Preamble

On December 24, 2001, amendments to the *Official Secrets Act*, as adopted by Parliament became law. The Act was renamed the [Security of Information Act \(SOIA\)](#). The revised Act, among other things, modernizes the espionage provisions and introduces new concepts, such as "**special operational information**" and "**persons permanently bound to secrecy.**"

In general terms, "special operational information," which is defined in section 8 of the Act, describes the most operationally sensitive government information, which the government is taking measures to safeguard. The unauthorized disclosure of such information would cause obvious damage to the Government of Canada.

The following are examples of this type of information:

- Past and current confidential sources of information, intelligence, or assistance to the Government of Canada.
- Places, persons, groups, or entities who were, are, or are intended to be targets of covert collection efforts by government.
- The identity of any person engaged in such covert collection activities.
- Military operational plans for armed conflicts.
- The means used by government to protect information, including encryption and any vulnerabilities.
- Similar information to the above that relates to or is received from foreign entities or terrorist groups.

Another new concept is that of "persons permanently bound to secrecy." These are persons held to a higher level of accountability for certain unauthorized disclosures. While all persons may be subject to the provisions of section 4 of the *Security of Information Act* (dealing with unauthorized disclosure generally), there are now specific provisions dealing with the unauthorized disclosure of "special operational information" by "persons permanently bound to secrecy."

Unauthorized disclosure of this type of information by these persons will be subject to sanction

- a. whether the information is true or not;
- b. whenever the information was obtained by the persons, e.g. before being designated or after having left the position that triggered the persons to be "permanently bound to secrecy"; and
- c. however the persons obtained the information.

The above applies to such persons even after they have changed positions, left government service, or finished a contract.

Persons may become part of this special regime in two ways:

- a. **Automatically:** as current or former members or employees (including former members or employees as of December 24, 2001) of particular departments set out in the schedule to the Act (such as the Canadian Security Intelligence Service, the Communications Security Establishment, and certain branches of the Royal Canadian Mounted Police); or
- b. **Selectively:** if a deputy head is of the opinion that, by reason of a person's office, position, duties, contract or arrangement, the person had, has, or will have authorized access to "special operational information" **and** it is in the interest of national security to permanently bind that person to secrecy, this person may be notified that he or she has been so designated. Designation should not be the norm. It should generally only apply to those with an **intimate knowledge** of "special operational information."

A person need only be "permanently bound to secrecy" once during their lifetime, either through employment in a scheduled department or by designation.

The purpose of this operational standard is to provide administrative procedures for

- i. departments that are listed in the schedule to the Act, (referred to as scheduled departments, see section 3 of this Standard); and
- ii. the designation by notice of employees in non-scheduled departments and of persons and government contractors in scheduled and non-scheduled departments. (See section 4 of this Standard.)

Departments shall consult with the Treasury Board of Canada Secretariat if there is a requirement to amend the schedule.

This standard addresses also selection criteria to help identify persons who may be designated by notice. In addition, the standard emphasizes the importance that security awareness and briefings act as a preventative measure to encourage persons to safeguard "special operational information."

The SOIA creates specific offences for "persons permanently bound to secrecy." However, all employees, members and government contractors have responsibilities to safeguard sensitive information under the [Government Security Policy](#).

3. Scheduled Departments

A. Current or former members or employees

All current or former members or employees of [scheduled departments](#) are "permanently bound to secrecy" by virtue of their employment. Scheduled departments should include in the letter of offer of employment a statement that the individual will be "permanently bound to secrecy" or otherwise ensure that incoming members and employees are advised. Scheduled departments are to maintain documentary proof of the employment status of current or former members or employees.

The form entitled "Record of a Person in a Scheduled Department or Agency Under the *Security of Information Act* (SOIA)" (TBS/SCT 330-316, see appendix A), shall be completed for each person.

The scheduled departments are listed below:

- Canadian Security Intelligence Service
- Communications Security Establishment
- National Research Council Canada - Communications Branch
- Office of the Communications Security Establishment Commissioner
- Office of the Inspector General of the Canadian Security Intelligence Service
- Royal Canadian Mounted Police - Criminal Intelligence Program
- Royal Canadian Mounted Police - Protective Operations Program
- Royal Canadian Mounted Police - Security Service
- Royal Canadian Mounted Police - Technical Operations Program
- Security Intelligence Review Committee

Departments should submit written recommendations to the Treasury Board of Canada Secretariat in order to request amendments be made to the Schedule to the *Act*.

B. Recording procedures

(1) Current and former members or employees

Scheduled departments should proceed by forwarding the data to the Canadian Security Intelligence Service, as follows:

- a. new entrants - at the time the person commences employment in a scheduled department or area;
- b. current members or employees - at the time of the updating of the person's security clearance, if the person has not already been entered into the Canadian Security Intelligence Service central registry; or
- c. departing members or employees - as part of the departmental security exit process, if the person has not already been entered into the Canadian Security Intelligence Service central registry.

Scheduled departments shall, for each person, forward the data on the form entitled "Record of a Person in a Scheduled Department or Agency Under the *Security of Information Act* (SOIA)" (TBS/SCT 330-316) to the central registry of the Administrative Information Holdings, IHD, of the Canadian Security Intelligence Service (CSIS). The originally signed copy of this form shall also be forwarded to CSIS.

Scheduled departments should place a copy of form TBS/SCT 330-316 on the person's security screening file.

Scheduled departments need neither collect nor forward data to the central registry at the Canadian Security Intelligence Service on former members or employees.

(2) Other persons working in scheduled departments

Non-members and non-employees working in scheduled departments are **not** automatically "persons permanently bound to secrecy." If such persons need to be "permanently bound to secrecy," then the process identified in section 4 applies.

4. Designation by Notice of Selected Individuals

Subsection 10(1) of the Act provides that persons, who are **neither** members **nor** employees of scheduled departments, may be designated, by notice in writing, to the effect that they are "permanently bound to secrecy" because, by reason of their office, position, duties, contract or arrangement, the persons had, have, or will have authorized access to "special operational information" **and** it is in the interest of national security to permanently bind those persons to secrecy.

By way of guidance, designation **will not normally be required** for the vast majority of persons,

- who may be provided with some "special operational information" as part of the intelligence they receive from departments; and/or
- who are aware of particular aspects of such information; and/or
- who may **from time to time** give support and assistance to scheduled departments.

However, those persons who have **intimate knowledge** of "special operational information" should be designated. To assist the Departmental Security Officers in determining whether a person has intimate knowledge of "special operational information" and

whether to recommend to the deputy head that a person should be designated, criteria and examples are provided. Circumstances may exist where the person would not necessarily hold a security clearance and nevertheless have intimate knowledge.

Even where the deputy head **is not** of the opinion that a person had, has, or will have intimate knowledge of "special operational information" to the extent expressed in the criteria and examples, the deputy head may consider it appropriate to designate the person in the interest of national security because of the particulars of the "special operational information" that the person had, has, or will have access to.

(a) Government contractors

The deputy head of Public Works and Government Services Canada (PWGSC) may designate contractors as "persons permanently bound to secrecy", when PWGSC is the contracting authority. Contractors operating under PWGSC contracts may be designated by another deputy head, where that deputy head has been authorized for this purpose by the Minister of Public Works and Government Services.

Contractors for whom PWGSC is **not** the contracting authority may be designated as "persons permanently bound to secrecy" by the deputy head of the department that awards the contract.

(b) Secondments, attachments, and working agreements with the Government of Canada

Persons seconded, attached, or under a working agreement with a department may be designated by the deputy head of the **host** department, unless they are already "persons permanently bound to secrecy." Departments should ensure that secondment, attachment, or working agreement documentation indicates that the person may need to be "permanently bound to secrecy."

After the designation process has been completed, the host department shall provide the person's **home** department with copies of the "Recommendation to Designate" form, the "Notice of Designation" form, the "Notice of Designation" letter and, if it has been used in the process, the "Affidavit of Service" form. This documentation should also be retained within the home department's personnel security screening file.

(c) Exceptional Cases

The [Act at section 8\(2\)\(e\)](#) deals with those exceptional cases where it may be difficult to identify a relevant deputy head. It is recommended, therefore, that the Departmental Security Officer contact their departmental Legal Services when presented with such cases.

A) Criteria

The Departmental Security Officer should consider the following in determining whether to recommend that a person be a "person permanently bound to secrecy".

The criteria and examples are **only** guidelines and are not exclusive.

- a.
 - o Did, does or will the person's duties require close and regular access to "special operational information"?
 - o Did, does or will the person's formal duties involve the provision of regular assistance to activities involving "special operational information"?
 - o Did, does or will the person's workplace or official working arrangement necessarily imply the acquisition of intimate knowledge of "special operational information"?
 - o Was, is or will the person be in a situation where intimate knowledge of "special operational information" is provided over time?
 - o Is the information previously obtained by an individual in the course of his or her duties still viewed to be of a highly sensitive nature, requiring that he or she be notified.

and

- b.
 - o Are there factors in the interest of national security that will make it necessary to designate the person?
 - o In addition to the Manager's recommendation, the Departmental Security Officer may conduct a review of the person's security screening file, as part of his or her analysis.

B) Examples of persons who may need to be designated, if they meet the above listed criteria

- Persons in departments and certain government contractors, who **work with** "special operational information" on a **regular** basis. (e.g. analyze, write reports, review, and/or make recommendations). Such persons may include ministerial staff and policy and program analysts.
- Departments may include in arrangements and agreements with organizations outside of the Government of Canada (e.g. police forces, provincial and municipal governments, and private sector organizations) that their employees may be designated as "persons permanently bound to secrecy" as a result of their activities involving "special operational information."
- Government contractors and others who **provide specific project support** to activities that involve "special operational information." Such persons would
 1. work **within** a department listed in the schedule and other departments where they would be working

- "along side" members or employees, such that they would acquire **intimate knowledge** of "special operational information"; or
 - 2. be in a position, normally a senior position, within a private sector organization where, **over time**, these persons would gain **intimate knowledge** of "special operational information."
- Foreign exchange officials who are working on a regular basis with "special operational information" as part of their official duties may be designated.
- The Treasury Board of Canada Secretariat may issue technical documentation to provide additional guidance.

C) Persons who cannot be designated by notice

The following persons **are not to be** designated as "persons permanently bound to secrecy":

1. the Governor General
2. the lieutenant governor of a province
3. Ministers of the Crown.
4. a judge receiving a salary under the [Judges Act](#); and
5. a military judge within the meaning of subsection 2(1) of the [National Defence Act](#).

Questions related to the designation of other Governor-in-Council appointees (e.g. deputy ministers, associate deputy ministers, heads of agencies or crown corporations) should be directed to the Director of Security Operations, Privy Council Office.

D) Procedures for designation by notice

- Departmental Security Officers should consider the above, including the criteria and examples, before recommending to the deputy head that a person should be designated. **Special care must be taken to ensure that the designation is warranted because of the permanent nature of the designation.**
- Departments may include in agreements or arrangements with organizations outside of the Government of Canada (e.g. police forces, provincial departments, municipalities, and private sector organizations) that their employees may be designated as "persons permanently bound to secrecy," as a result of their activities involving "special operational information."
- Before a designation by notice of a foreign exchange official working in Canada may take place, the home government department of the foreign exchange official shall be advised in writing. Such arrangements should form part of any future working agreement between the two country's government departments.
- Managers should use the above as a guide in their criteria for selection of a person to be "permanently bound to secrecy." Under exceptional circumstances (e.g. the manager has been posted overseas), the Departmental Security Officer shall complete the manager's portion of the form.
- Departmental Security Officers shall review the selection made by the manager, and if the DSO concurs that the designation is warranted, they are to recommend to the deputy head that the person be "permanently bound to secrecy".
- The deputy head shall consider **individually** each form entitled "Recommendation to Designate "Persons Permanently Bound to Secrecy" Under the *Security of Information Act* (SOIA)," TBS/SCT 330-317A (see appendix B). This form includes the details on each person, as specified in subsection 10.(2) of the Act.
- The deputy head, if in agreement with the contents of the "Recommendation to Designate" form, may sign the form "Notice of Designation " Persons Permanently Bound to Secrecy," Under Section 10 of the *Security of Information Act* (SOIA)," TBS/SCT 330-317B (see appendix C). **Deputy heads shall personally exercise the authority to designate.**
- As soon as possible after the deputy head has signed form TBS/SCT 330-317B and thereby designated a person, the Departmental Security Official shall ensure that the person is briefed in a face-to-face meeting. The consequences of being a "person permanently bound to secrecy" and his or her security obligations under the [Government Security Policy](#) shall be explained. The form "Notice of Designation," TBS/SCT 330-317B, and the letter "Notice of Designation," TBS/SCT 330-317C (see appendix D), shall be read and signed by the designated person during this face-to-face meeting.
- Should the designated person decline to sign either the "Notice of Designation" form or the letter, the Departmental Security Official shall complete the form entitled "Affidavit of Service - *Security of Information Act* (SOIA)," TBS/SCT 330-318E (see appendix E). The deputy head shall be advised of all cases where a person declines to sign and the "Affidavit of Service" form has been completed.
- Departmental security staff shall ensure that the data contained on form TBS/SCT 330-317A is transmitted to CSIS. The **originally signed copies** of all the required forms and letter shall be forwarded to CSIS once the face-to-face meeting with the designated person has been concluded.
- The following documents are to be forwarded to the central registry of the Administrative Information Holdings, IHD, of the Canadian Security Intelligence Service for long-term retention and storage:
 - a. form "Recommendation to Designate "Persons Permanently Bound to Secrecy" Under the *Security of Information Act* (SOIA)," (TBS/SCT 330-317A) ;
 - b. form "Notice of Designation " Person Permanently Bound to Secrecy" Under Section 10 of the *Security of Information Act* (SOIA)," (TBS/SCT 330-317B) ;
 - c. letter " Notice of Designation - "Persons Permanently Bound to Secrecy" (TBS/SCT 330-317C) ; and
 - d. if required because the person being designated has declined to sign the form and/or the letter, the form " Affidavit of Service - *Security of Information Act*," (TBS/SCT 330-318E) shall be forwarded as well.

A Departmental Security Officer may recommend in writing to another Departmental Security Officer that a person from that other department should be designated.

Where a person is designated by the deputy head of the **host** department, the person's **home** department shall be informed and provided by the host department after the briefing, with copies of the following documents: "Recommendation to Designate" (TBS/SCT 330-317A), "Notice of Designation" (TBS/SCT 330-317B), "Notice of Designation" (TBS/SCT 330-317C) and, if used because the person declined to sign, "Affidavit of Service" (TBS/SCT 330-318). Another copy of this documentation shall be retained on the person's personnel security screening file or, in the absence of a personnel security screening file, the personnel file at the person's home department.

E) Former members and employees

In these cases, departments should be guided by the procedures outlined in sections [4 A](#)) and [4 B](#)) of this Standard. Each case should be assessed individually to determine whether designation is in the interest of national security.

When a decision is made to recommend to the deputy head that a former member or employee should be designated, the procedures specified in paragraph D) above, which include the face-to-face meeting and briefing of the designated former member or employee shall be followed.

F) Treasury Board of Canada Secretariat assistance for designations

Departmental Security Officers are encouraged to consult with the Treasury Board of Canada Secretariat for guidance and assistance. ([See section 10](#))

5. Security Screening Requirements

- a. "Persons permanently bound to secrecy" do not obtain a higher security clearance level by reason of their designation, nor do they gain unlimited, special access to safeguarded information. **The need-to-know principle remains.**
- b. While it is preferable that a person has a security clearance, it is not a requirement for a person to be "permanently bound to secrecy."
- c. The Departmental Security Officer may review the security screening file of a person who is to be "permanently bound to secrecy."

The Canadian Security Intelligence Service shall, on behalf of the Government of Canada, record and store in the central registry of the Security Screening Branch, the information and documentation that it receives on all persons who are "persons permanently bound to secrecy."

- d. When a person is "permanently bound to secrecy" under the Act, **it is a good security practice**, as it is the case of all persons holding a security clearance, to conduct update and exit interviews as part of the security screening cycle. The following apply therefore to both of those groups of persons.
- e. Departmental Security Officers in scheduled and non-scheduled departments should ensure that subject interviews are conducted with all persons that have undergone a renewal of their security screening at the Level III (TOP SECRET) in accordance with section 10.5(b) of the [Government Security Policy](#). As it is also the case for TOP SECRET renewals, where CONFIDENTIAL or SECRET level security screenings have been renewed, the "[Security Screening Certificate and Briefing Form](#)," TBS/SCT 330-47, shall be completed as confirmation that the person has been reminded of their security obligations.
- f. Departmental Security Officers, in the case of government contractors working on contracts issued by their department, are to ensure that subject interviews and the "[Security Screening Certificate and Briefing Form](#)," TBS/SCT 330-47, are or have been completed.
- g. **When a person "permanently bound to secrecy" stops working with a department, he or she is required to undergo an exit interview conducted by a security official or an appropriate security exit procedure, both of which shall include a formal sign off of the form [TBS/SCT 330-47](#).**
- h. Individuals shall be reminded of their ongoing obligations under the Act and the consequences of any violations.

6. Security Awareness Program

The Security Awareness Program is an ideal method through which the security responsibilities of persons, including those who have been "permanently bound to secrecy", should be reinforced. Scheduled departments and departments with designated employees must conduct a security awareness program as required under section 10.5 of the [Government Security Policy](#). Security awareness messages may be disseminated by means of briefing sessions, videos, reading material, posters, and pop-up images on the computer screens.

7. Sanctions

Breaches of security that fall within the offence provisions of the Act are extremely serious. Departmental Security Officers shall ensure that the deputy head is advised of such incidents as soon as possible. Security access privileges to classified information and/or to secure premises may be suspended by the appropriate official until administrative, disciplinary and/or criminal processes have come to an end. The end result of these investigations or prosecutions may be taken into consideration by the appropriate official in determining whether to restore, or limit, the security access privileges or whether to revoke or alter the security clearance.

Departmental Security Officers may refer to section 10.15 of the [Government Security Policy](#) for examples of the reporting procedures. It should be noted that prosecutions involving "special operational information" shall not commence without the consent of the Attorney General of Canada.

Departments are to conduct damage assessments for breaches of security regarding "special operational information." They are to make recommendations based on the lessons learned from their investigation of those breaches. Such recommendations are to be shared with the Treasury Board of Canada Secretariat, so in turn the benefits may be shared with other departments, as per section 10.15 of the [Government Security Policy](#).

8. Review

The Treasury Board of Canada Secretariat, in consultation with other departments, shall review this standard after two years to assess its effectiveness.

9. References

- [Government Security Policy](#), February 2002
- [Policy on the Management of Government Information Holdings](#)
- [National Archives of Canada Act](#), 1987
- [Privacy Act](#), 1983
- [Security of Information Act](#), Dec. 2001

10. Enquiries

Enquiries concerning this standard should be directed to the Departmental Security Officer in each department. For interpretation of the standard, the Departmental Security Officer should contact the [Security and Identity Management Division](#).

11. Glossary

Arrangement

a formal or informal employment agreement between a department and one or more parties.

Attachment

includes personnel on temporary or permanent assignment to a department.

Department

any current or former department, division, branch, or office of the Government of Canada. ([SOIA](#), subsection 8(1))

Designation by notice

the process whereby a person in a non-scheduled department, or a non-member or non-employee in a "scheduled department", is "permanently bound to secrecy" pursuant to subsection 10(1) of the [SOIA](#).

Former members or employees

this includes individuals who were members or employees of the departments listed in the schedule prior to December 24, 2001.

Government contractor

a person who has entered into a contract or arrangement with the Government of Canada and includes an employee of the person, a subcontractor of the person, and an employee of the subcontractor. ([SOIA](#), subsection 8(1))

Home department

the department to which the member or employee belongs.

Host department

the department to which a member or employee has been seconded, attached, or at which the member or employee is working under an agreement.

Member

a member of the Royal Canadian Mounted Police or of the Canadian Armed Forces.

Scheduled department

any current or former department, division, branch, or office of the Government of Canada that has or had a mandate that is primarily related to security and intelligence matters, which is listed in the schedule to the Act. ([SOIA](#), section 9)

Special operational information

defined in section 8 of the SOIA, "means information that the Government of Canada is taking measures to safeguard that reveals, or from which may be inferred

- a. the identity of a person, agency, group, body or entity that is or is intended to be, has been approached to be, or has offered or agreed to be, a confidential source of information, intelligence or assistance to the Government of Canada;
- b. the nature or content of plans of the Government of Canada for military operations in respect of a potential, immediate or present armed conflict;
- c. the means that the Government of Canada used, uses or intends to use, or is capable of using, to covertly collect or obtain, or to decipher, assess, analyze, process, handle, report, communicate or otherwise deal with information or intelligence, including any vulnerabilities or limitations of those means;
- d. whether a place, person, agency, group, body or entity was, is or is intended to be the object of a covert investigation, or a covert collection of information or intelligence, by the Government of Canada;
- e. the identity of any person who is, has been or is intended to be covertly engaged in an information- or intelligence-

- collection activity or program of the Government of Canada that is covert in nature;
- f. the means that the Government of Canada used, uses or intends to use, or is capable of using, to protect or exploit any information or intelligence referred to in any of paragraphs (a) to (e), including, but not limited to, encryption and cryptographic systems, and any vulnerabilities or limitations of those means; or
- g. information or intelligence similar in nature to information or intelligence referred to in any of paragraphs (a) to (f) that is in relation to, or received from, a foreign entity or terrorist group." ([SOIA](#), subsection 8(1))

12. Data Flow Diagram for SOIA Information Gathering and Exchange

[Text version: Diagram for SOIA Information gathering and Exchange](#)

[Data Flow Diagram for SOIA Information Gathering and Exchange - Display full size graphic](#)

Data Flow Diagram for SOIA Information Gathering and Exchange

| Forms and Letter | Manager | DSO | Deputy Head | Person Permanently Bound to Secrecy |
|---|---------|------|-------------|-------------------------------------|
| Record of a Person in a Scheduled Department or Agency Under the SOIA, TBS/SCT 330-316. | | x, y | | |
| Recommendation to Designate "Persons Permanently Bound to Secrecy" Under the SOIA, TBS/SCT 330-317 A. | x, y | x, y | | |
| Notice of Designation "Persons Permanently Bound to Secrecy" Under Section 10 of the SOIA, TBS/SCT 330-317 B. | | X | y | y |
| Notice of Designation "Persons Permanently Bound to Secrecy," TBS/SCT 330-317 C. | | x, y | | y |
| Affidavit of Service - <i>Security of Information Act</i> , TBS/SCT 330-318. | | x, y | | |

Legend: x - Completes details; y - Signs forms

13. Forms and Letter

Forms and Letter

Appendix A

Form:

Record of a Person in a Scheduled Department or Agency Under the *Security of Information Act* (SOIA, TBS/SCT 330-316)

Appendix B

Form:

Recommendation to Designate "Persons Permanently Bound to Secrecy" Under the *Security of Information Act* (SOIA, TBS/SCT 330-317A)

Appendix C

Form:

Notice of Designation "Persons Permanently Bound to Secrecy" Under Section 10 of the *Security of Information Act* (SOIA, TBS/SCT 330-317B)

Appendix D

Letter:

Notice of Designation - "Persons Permanently Bound to Secrecy" (TBS/SCT 330-317C)

Appendix E

Form:

Affidavit of Service - *Security of Information Act* (TBS/SCT 330-318)

