



2022 Annual Report

Directions for Avoiding Complicity in Mistreatment by Foreign Entities

January 1, 2022 – December 31, 2022



*RCMP 2022 Annual Report - Directions for Avoiding Complicity in
Mistreatment by Foreign Entities*

Cat.No - PS61-47E-PDF

ISSN 2817-5220

© His Majesty the King in Right of Canada, as represented by the Royal Canadian Mounted Police,
2023.

RCMP 2022 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 the Governor in Council to issue written directions to deputy heads regarding:

1. The disclosure of information to any foreign entity that would result in a substantial risk of mistreatment of an individual;
2. The making of requests to any foreign entity for information that would result in a substantial risk of mistreatment of an individual; and,
3. 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, pursuant to subsection 3(1) of the Act, the Governor in Council, on the recommendation of the Minister of Public Safety Canada (PS), issued the Order in Council Directions for Avoiding Complicity in Mistreatment by Foreign Entities (the Directions) to the Commissioner of the RCMP. In accordance with subsection 7(1) of the Act, the Commissioner must provide an annual report on the implementation of the Directions during the previous calendar year to the Minister before March 1.

This report details the RCMP's implementation of the *2019 Directions* from January 1, 2022, to December 31, 2022. Included is an overview of the RCMP's information sharing practices, efforts to update entity risk assessment reports, and internal training with respect to the *2019 Directions* and the Foreign Information Risk Advisory Committee (FIRAC) process.

As a result of an internal review of the FIRAC process in 2021, updates to the framework and the implementation of Act at the RCMP were introduced in late 2021, early 2022. These updates were brought to fruition through the course of 2022.

Background

Information sharing with domestic and international law enforcement and security agencies is essential for the successful execution of the RCMP's broad mandate. Information exchanges can range from straightforward requests to confirm whether an individual has a criminal record, to urgent notifications that a suspect may be posing a threat to themselves or others. Successful information sharing can also support criminal prosecution and/or disruption.

RCMP 2022 Annual Report - Directions for Avoiding Complicity in Mistreatment by Foreign Entities

The RCMP is committed to ensuring that the information it exchanges with international law enforcement and security agencies, including, requests, disclosures, as well as the information it uses to fulfill its mandate, does not involve, or result in, mistreatment. This is important to the RCMP for two reasons. First, avoiding complicity in mistreatment is a core Canadian value, and second because information tainted by mistreatment (or allegations of mistreatment) cannot generally be used as evidence in Canadian courts. To be useful in criminal prosecutions, information must be handled and obtained in accordance with Canadian law, including the *Canadian Charter of Rights and Freedoms* and the *Privacy Act*. Information obtained through mistreatment is contrary to these principles, and using it as evidence would be damaging not only to the investigation, but also to the reputation of the RCMP and the Government of Canada.

Information Sharing Practices

In accordance with the 2019 Directions, all RCMP investigative and analytical units are required to consider the risk of mistreatment before requesting, disclosing or using information from a foreign partner. In cases where a substantial risk of mistreatment exists, the exchange must be referred to the RCMP's FIRAC.

The FIRAC establishes a systematic approach to the review of information exchanges (i.e., seeking to disclose, request, or use information) where there is a substantial risk of mistreatment. In line with the Act and Directions, FIRAC examines the operational context of each request, the application of risk-mitigation strategies, the strength of assurances, and makes recommendations as to whether the risk has been sufficiently mitigated, to the responsible Assistant Commissioner or Executive Director.

When a case is presented to the FIRAC, the Committee focuses on the following key issues:

- Is there a substantial risk of mistreatment if information is exchanged or is it likely information received was derived from mistreatment?
- What are the proposed measures to mitigate the risk, and their likelihood of success (e.g., diplomatic assurances)?
- Will moving forward (or not) with the exchange of information pose a threat to Canada's national security or other interests? If so, how real are the threats?

FIRAC's recommendation(s) are made by one of the co-Chairs, upon advice of the Committee, with dissenting opinions captured in the record of decision (ROD). The ROD is provided to the appropriate "official" being the Assistant Commissioner or Executive Director for decision and added to the investigative file. Should a situation arise in which the Assistant Commissioner or Executive Director is unable to

RCMP 2022 Annual Report - Directions for Avoiding Complicity in Mistreatment by Foreign Entities

determine whether the risk can be mitigated, or where the use of information likely obtained from mistreatment is necessary to prevent the loss of life or significant personal injury, the responsible Assistant Commissioner or Executive Director will provide the ROD to the appropriate Deputy Commissioner for furtherance to the Commissioner for decision.

As per the Directions, when matters are referred to the Commissioner for decision, the Commissioner must document the basis for the decision and appropriate measures taken to mitigate the risk (e.g. caveats, assurances, measures). If the Commissioner approves a disclosure, it must be accompanied by the RCMP's characterization of the information's accuracy and reliability.

The Commissioner must then inform the Minister of Public Safety and Emergency Preparedness, the National Security and Intelligence Review Agency, the National Security and Intelligence Committee of Parliamentarians, and the Civilian Review and Complaints Commission for the RCMP of any determinations, as well as disclose any information considered in making the decision.

Implementation of the Directions

Developing National Policies

The RCMP continues to be in the final stages of publishing its strengthened national policy to better support the consistent application of the Directions across all of the RCMP's program areas. To this end, the updated policy will clarify roles and responsibilities, as well as the triggers and thresholds that engage the FIRAC process. Once finalized, the new national policy and information about training will be published on the RCMP's internal website. An awareness campaign, including formal communications will also be carried out.

The RCMP's approach to the Directions is expected to evolve through continued engagement with internal stakeholders, further to reviews conducted by external review bodies, as well as through continued consultations with other federal government departments and agencies that are also subject to the Directions.

FIRAC Coordination Unit: Strategic Guidance, Awareness and Training

A 2021 internal review of the RCMP's implementation of the *Act* and existing framework revealed the need to improve administrative support to the FIRAC. The FIRAC Coordination Unit was stood up with dedicated

RCMP 2022 Annual Report - Directions for Avoiding Complicity in Mistreatment by Foreign Entities

staff to form the policy center in support of the RCMP's implementation of the *Act* and related directions, including compliance. The FIRAC Coordination Unit provides guidance and support on the application of the legislation to operational personnel and the Committee; oversees record keeping of FIRAC meetings; identifies strategic level issues related to process; shares outcomes with the Law Enforcement Assessment Group (LEAG) to inform risk on an ongoing basis; and, engages with external federal partners to share and incorporate best practices.

The RCMP has created supporting material for users of FIRAC, including a document providing guidance on the use of standing authorities. The FIRAC Coordination Unit has led various awareness sessions detailing the RCMP's obligations to the *Act* and Directions, including training provided to analysts and Liaison Officers deploying abroad. The FIRAC membership doubled in 2022 with Director General representation from a wide array of program areas involved in foreign information exchanges. This has led to strengthened deliberations and recommendations, as well as increased awareness across the RCMP. The impact of these changes have increased compliance to ACMFEA across the RCMP.

In the spring, the RCMP operationalized a foundational course titled *Avoiding Complicity in Mistreatment by Foreign Entities* accessible to all personnel from the online training platform AGORA. In 2022, there were 413 RCMP personnel who successfully completed this course.

Law Enforcement Assessments

The LEAG is responsible for analyzing foreign law enforcement entities against the criteria set out in ACMFEA and identifying issues or conditions that may lead to mistreatment. It was created to facilitate the systematic and consistent review of foreign countries and their law enforcement entities, according to a number of criteria risk factors, in order to evaluate the risk for mistreatment and inform the level of risk posed within the context of information sharing with specific foreign entities. The risk profile guides operational personnel to determine whether conditions exist to present the information exchange to the FIRAC.

In 2022, responsibility for LEAG was moved to the RCMP's international program where information and resources can be better leveraged to coordinate RCMP foreign entity profiles. In 2022, the international program received dedicated funding and successfully staffed two full-time research analysts, responsible for developing a set of unified foreign entity profiles. New profile templates were streamlined to address data points determined to be more in line with FIRAC needs, such as recent operational engagements with the foreign entity, legal instruments for cooperation, and strategic considerations including recent events, corruption issues and political changes. The foreign entity profiles for the top 5 countries featured in FIRAC

RCMP 2022 Annual Report - Directions for Avoiding Complicity in Mistreatment by Foreign Entities

requests annually are now considered as 'evergreen' and updated regularly. Other profiles are updated on an ad hoc basis as needed. In addition, LEAG contributed to the Public Safety-led Information Sharing Coordination Group (ISCG), which is responsible for supporting co-operation efforts and information-sharing practices amongst the security and intelligence community.

Activity Report – January 1, 2022 to December 31, 2022

During the 2022 reporting period, the RCMP did not experience any significant operational impact as a result of the Directions. Significant impact is defined as instances where the substantial risk could not be mitigated, and the RCMP was unable to disclose information that could have prevented injury or loss of life, or where a domestic operation failed because the RCMP was unable to proceed with an information exchange or use.

Between January 1, 2022 and December 31, 2022, there were 42 cases presented to the FIRAC. There were no RCMP information exchanges that generated a substantial risk of mistreatment which could not be sufficiently mitigated and that required a referral to the Commissioner in accordance with the Directions.

RCMP Areas of Focus in 2023

Building on work to improve its internal procedures, the RCMP will examine how best to monitor the outcome of exchanges, which is critical to the RCMP's ongoing assessment of risk. Additionally, the RCMP will engage in compliance activities with operational units.

The RCMP is continuing to hold quarterly meetings between FIRAC and LEAG, to address strategic level issues, gaps in process and procedures, and prioritize joint work. The LEAG will also meet as required should a FIRAC decision trigger the need for a profile to be reassessed, or should a change in the political or diplomatic landscape require a profile to be updated.

Conclusion

The RCMP will continue to leverage existing mechanisms such as the PS-led ISCG in its efforts to strengthen policies and procedures with respect to the implementation of the Directions. The RCMP will continue its efforts to raise awareness and deliver training to personnel across the country to ensure compliance with the Act.