



RCMP 2023 Annual Report

Directions for Avoiding Complicity in Mistreatment by Foreign Entities

January 1, 2023 – December 31, 2023



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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, 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, 2023, to December 31, 2023. 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.

Background

Information sharing with domestic and foreign entities 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.

The RCMP is committed to ensuring that the information it exchanges with foreign entities does not involve, or result in, mistreatment. This is of the utmost importance to the RCMP since avoiding complicity in mistreatment is a core Canadian value, and any information tainted by mistreatment (or allegations of

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mistreatment) cannot generally be used as evidence in Canadian courts. For information to be used in criminal prosecutions, it 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*, the RCMP is required to consider the risk of mistreatment before requesting, disclosing or using information from a foreign entity. In cases where a substantial risk of mistreatment exists, the exchange must be referred to the RCMP's Foreign Information Risk Advisory Committee (FIRAC).

The FIRAC establishes a systematic approach to the review of information exchanges 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 can be 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 designated "official" (either an Assistant Commissioner or Executive Director) for decision and added to the investigative file. Should a situation arise in which the official is unable to 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 official will provide the ROD to the appropriate Deputy Commissioner for furtherance to the Commissioner for decision.

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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 an information exchange, 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, Democratic Institutions and Intergovernmental Affairs, the National Security and Intelligence Review Agency (NSIRA), the National Security and Intelligence Committee of Parliamentarians (NSICOP), and the Civilian Review and Complaints Commission (CRCC) 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 remains in the final stages of developing its strengthened national policies to provide oversight and guidance to better support the consistent application of the Directions. To this end, the updated policies will provide guidelines to its users on roles and responsibilities specific to foreign information exchanges, as well as, the triggers and thresholds that engage the FIRAC process. Once finalized, the new national policies 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, and on-going consultations with other federal government departments and agencies who are also subject to the Directions.

FIRAC Coordination Unit: Strategic Guidance, Awareness and Training

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.

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The RCMP ensures to update and create new supporting material to help personnel interpret and apply the obligations imposed by the *Act*, including a FIRAC Quick Reference Guide and the FIRAC Terms of Reference. The FIRAC Coordination Unit has led awareness sessions, including training provided to analysts and Liaison Officers (LOs) deploying abroad. The FIRAC membership in 2023 has remained unchanged after doubling last year, which contributed to strengthened deliberations and recommendations, as well as, increased awareness across the RCMP.

The RCMP operationalized a foundational course titled *Avoiding Complicity in Mistreatment by Foreign Entities* in 2022, which is accessible to all personnel via the online training platform AGORA, to date there are 630 RCMP personnel who have successfully completed this course.

Law Enforcement Assessments

Since 2022, the Law Enforcement Assessment Group (LEAG) has reported into the International Special Services. The LEAG is responsible for analyzing foreign countries and their law enforcement entities against the criteria set out in the *Act* in order to identify issues or conditions that may lead to mistreatment. This evaluation of risk for mistreatment is purposed to inform the level of risk posed within the context of information sharing with specific foreign entities.

The foreign entity profiles provide RCMP personnel with information related to the risk levels associated to specific foreign entities and contributes to the assessment of substantial risk of mistreatment related to a particular case. The foreign entity profiles for the top five countries featured in FIRAC requests annually are updated regularly. Other profiles are updated as required. The LEAG will also meet 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.

In addition, the LEAG contributed to the Public Safety-led Information Sharing Coordination Group, which is responsible for supporting co-operation efforts and information-sharing practices amongst the security and intelligence community.

Activity Report – January 1, 2023 to December 31, 2023

During the 2023 reporting period, the RCMP did not experience any significant operational impacts 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.

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Between January 1, 2023 and December 31, 2023, there were 43 information exchanges presented to the FIRAC. There were no instances where the “officials” were unable to determine if the risks of mistreatment could be sufficiently mitigated and that required a referral to the Commissioner in accordance with the Directions.

RCMP Areas of Focus in 2024

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 remains committed to establishing a compliance process, finalizing the FIRAC policy and enhancing awareness on the RCMP’s obligations under the *Act*.

Meetings between FIRAC and LEAG will be held to advance strategic level issues, enhance process and procedures, and prioritize joint work.

Conclusion

The RCMP will continue to leverage existing mechanisms such as the Public Safety-led Information Sharing Coordination Group in its efforts to reinforce policies and procedures with respect to the implementation of the Directions. The RCMP will continue to raise awareness and deliver training to personnel across the country in order to ensure compliance with the *Act* and adherence to Canadian values.