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7100-011830

Report of Findings

Investigation into the personal information handling practices of the Canada Border Services Agency (CBSA) in respect of the "Wanted by the CBSA" Program.

Report of Findings

File: 7100-011830

Complaint under the *Privacy Act* (the *Act*)

1. The Canadian Council for Refugees (CCR) alleged that the Canada Border Services Agency (CBSA) improperly disclosed the personal information of an individual (the "complainant") when it posted his personal information on its website as part of the "Wanted by the CBSA" Program (the "Program"), thus violating his rights under the *Privacy Act* (the *Act*).

2. The CCR submits that in July 2011, the CBSA posted on its website the names of thirty individuals who were the subjects of active, Canada-wide warrants for removal pursuant to the *Immigration and Refugee Protection Act* (*IRPA*).

3. The CCR further alleges that:

    i. Disclosure of the complainant's personal information through the Program is not a consistent use of that information;

    ii. The CBSA has failed to respect confidentiality provisions under the *IRPA*;

    iii. Federal Court files are not publicly available for the purposes of exclusion under subsection 69(2) of the *Privacy Act*;

    iv. There is a lack of proportionality in the extent of the invasion of privacy versus the public interest to be served in facilitating removal of these individuals; and

    v. The public labeling of the complainant as a "war criminal" is inaccurate, highly prejudicial, and damaging.

4. Our Office has understood and considered the CCR's concerns, not only as relating to the public disclosure of the complainant's personal information, but also as relating to disclosure under the Program as a whole.

5. Consequently, this report will address both the CCR's specific concerns regarding the complainant's circumstances, as well as issues affecting the Program more broadly.

Summary of Investigation

6. The investigation confirmed that, on July 21, 2011, the CBSA launched the Program by posting a list of thirty individuals described as "*accused of, or complicit in, war crimes or crimes against humanity*" on its website. The individuals were the subjects of active, Canada-wide warrants for arrest. The complainant was among this original group of thirty individuals.

7. The announcement of the creation of the list was made by the Minister of Public Safety, the Minister of Citizenship, Immigration and Multiculturalism, and the President of the CBSA. The announcement and accompanying press release encouraged the public to contact the CBSA or their local police force with information about violations of immigration law or suspicious cross-border activity. A press release announcing the launch of the Program headlined: *"Government will not tolerate war criminals in our communities".*

8. The CBSA submits that the purpose of the Program's website is to enlist the public's assistance in locating individuals wanted for removal from Canada. The CBSA seeks to draw the public's attention to the cases listed on the website by highlighting the seriousness of the activities that these individuals are or have been engaged in, whether in Canada or abroad. In doing so, the CBSA is also drawing the public's attention to the possible risk these individuals may pose and urges the public not to attempt to apprehend them directly.

9. The Program has since been expanded on two occasions. In August 2011, the list was expanded to include individuals who have failed to comply with the *IRPA and* have criminal convictions in Canada; and in January 2012, the list was expanded to include new categories of inadmissibility under the *IRPA* in order to fully represent the CBSA's priorities for removals, including individuals inadmissible on security grounds or organized criminality.

10. The CBSA makes reference to the grounds for inadmissibility in several ways within the Program, both in general terms and in reference to specific individuals on the list:

- The description of each individual contains a reference to the reason for his or her inadmissibility under the *IRPA*;

- The main page for the Program lists the various grounds of inadmissibility relevant to inclusion in the list;

- There have been references to specific grounds of inadmissibility in press releases related to the Program.

11. The introductory language on the CBSA website now differs from that recorded in the CCR's complaint to our Office, presumably as a result of the expansion of the list to include additional grounds of inadmissibility.

12. At the time of the CCR's complaint, the CBSA's website referred only to individuals who had been the subject of a determination related to war crimes. The heading for the Program read: *"Wanted by the CBSA – War Crimes"*.

13. Further, the CBSA provided the following introduction to the "Wanted by the CBSA" list:

> These individuals are the subject of an active Canada-wide warrant for removal because they are inadmissible to Canada. It has been determined that they violated human or international rights under the *Crimes Against Humanity and War Crimes Act* or under international law.

14. The CBSA's website currently reads as follows:

> The following individuals are the subject of an active Canada-wide arrest warrant, issued pursuant to the *Immigration and Refugee Protection Act*.
>
> By publicizing their identities, the CBSA is enlisting the help of the public in identifying these individuals and reporting any relevant information to the CBSA.

15. The CBSA provided the following general statement concerning how individuals are identified for addition to the Program's list:

> To date, an individual's inclusion on a warrant list has been the result of the person being subject to a Canada-wide warrant for his/her arrest.

The issuance of a warrant for removal must meet with the legislative criteria stipulated by IRPA. Part of the criteria for the inclusion of individuals was that other investigative options had been pursued and were unsuccessful. The rationale behind the creation of the "wanted list" is also to ensure that long outstanding removal orders are enforced in a timely manner.

16. In its current form, the Program's list includes the name, date of birth and photograph of individuals who are the subject of active Canada-wide warrants for removal for failure to comply with the *IRPA*. Where applicable, labels are also applied to the listings, such as "New", "Located Abroad", "Apprehended" or "Removed".

17. By clicking on an individual listing, one is linked to a more comprehensive listing that may contain the following items:

    - Name
    - Alias
    - Gender
    - Date of birth
    - Place of birth
    - Last known address
    - Identifying features
    - Description of why the individual is inadmissible

18. Older listings are archived, but remain accessible on the site.

19. The CBSA also periodically issues news releases on the program, including when additional names are added or when individuals on the list are apprehended or removed. The headlines for the news releases occasionally refer to the nature of the basis for the individual's inadmissibility.

20. The investigation confirmed that personal information about the complainant was first posted online by the CBSA on July 21, 2011 as part of the launch of the "Wanted by the CBSA" Program. Specifically, in addition to a photograph, the following personal information was posted and was still present when the CCR filed its complaint with our Office in December 2011:

    - Name
    - Alias
    - Gender

- Date of birth
- Place of birth
- Last known address
- Identifying features

21. It was confirmed that a news release was issued on July 28, 2011 when the complainant was taken into custody – the headline concerning the complainant's apprehension was as follows: *"Fifth suspected war criminal in custody"*.

22. The investigation confirmed that a news release was issued by the CBSA on March 26, 2012 when the complainant was removed from Canada. The article stated:

> [The complainant] was apprehended in the Ottawa area on July 27, 2011 as a result of a tip from the public. [The complainant] is inadmissible to Canada because he is suspected of being complicit in war crimes or crimes against humanity. He was removed from Canada on March 21.

23. Our investigation also confirmed the representations from the CCR that a profile for the complainant continued to be posted online as part of the CBSA's Program following his apprehension. His profile was listed under the website header "Found", and included the label "Apprehended" under his photograph.

24. We note that the print out of the complainant's profile provided by the CCR is not dated; however, the listing was last modified by the CBSA on August 22, 2011, which suggests that it was printed between this date and December 2011, when the CCR filed its complaint to our Office.

25. The investigation confirmed that a profile for the complainant continued to be posted on the CBSA's website in January 2012. The profile was listed under the "Archive" section of the site, and included the label "Apprehended" under his photograph.

26. There is no current listing for the complainant on the CBSA's website, or in the archived listings.

27. On March 14, 2012, our Office received notice pursuant to subsection 8(5) of the *Privacy Act* of the CBSA's intention to disclose the fact of the complainant's removal from Canada. As noted in paragraph 22, the complainant was removed on March 21, 2012 and the CBSA publicly announced the fact of his removal in a news release on March 26, 2012.

28. In subsequent representations received from the CBSA, it detailed the efforts undertaken to remove the complainant from Canada between 2007 and 2011. The CBSA highlighted that when the complainant's information was posted on the "Wanted by the CBSA" website, he was in Canada, and unbeknownst to the CBSA, had made a refugee claim under a false identity. According to the CBSA, this illustrates the importance of the Program in achieving compliance with the *IRPA*.

29. The CBSA highlighted that it is currently in the process of reviewing the timeframes for maintaining the information about apprehended and removed individuals on its website. Once an individual from the list has been removed from Canada, the Agency's practice is to remove his or her profile from the website within 30 days. The CBSA indicated that it intends to extend this practice to the apprehension status as well. It submits that, in September 2012, it removed the information of individuals whose status had been "apprehended" for more than 30 days. In doing so, the CBSA strives to establish a balance between, on the one hand, communicating to the public the effectiveness of the program as well as the value of the public's efforts to the Agency's investigations and, on the other hand, respecting the privacy rights of individuals.

Application

30. In making our determination, we considered sections 3, 6 and 8 of the *Privacy Act*.

31. Section 3 of the *Act* defines personal information as information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing: information relating to race, national or ethnic origin, colour, religion, age, marital status, education, medical, criminal or employment history, financial transactions, identifying numbers, fingerprints, blood type, personal opinions, etc.

32. Subsection 6(2) of the *Act* states that a government institution shall take all reasonable steps to ensure that personal information that is used for an administrative purpose by the institution is as accurate, up-to-date and complete as possible.

33. Under section 8 of the *Act* personal information can only be disclosed with an individual's consent – subsection 8(1) – or in accordance with one of the categories of permitted disclosures outlined in subsection 8(2) of the *Act*.

34. In the present case, we considered two categories of permitted disclosures, namely, paragraph 8(2)(a), which permits disclosure without consent if it is for a purpose for which the information was originally obtained or compiled, or for a use consistent with that purpose; and subparagraph 8(2)(m)(i), which permits disclosure if the public interest clearly outweighs any invasion of privacy that could result from the disclosure.

Analysis

35. The personal information disclosed by the CBSA under the Program, including the specific personal information relating to the complainant – name, alias, gender, date of birth, place of birth, last known address, and his photograph – is clearly personal information as defined by section 3 of the *Act*.

36. The disclosure of personal information under subsection 8(2) of the *Act* is addressed below in our analysis of each of the CCR's allegations. For ease of reference and clarity, we have addressed the allegations in the same order in which they appear in paragraph 3 of the present Report.

Allegation 1: Disclosure of the complainant's personal information through the Program is not a consistent use of that information

37. A consistent use may be defined as a use that has a reasonable and direct connection to the original purpose(s) for which the information was obtained or compiled. In this regard, a general test of whether a proposed use or disclosure is 'consistent' may be whether it would be reasonable for the individual who provided the information to expect that it would be used in the proposed manner.

38. Consistent uses are described in personal information banks (PIBs), which are descriptions of personal information held by federal government institutions. PIBs are listed in Info Source: Sources of Federal Government and Employee Information, which is published by the Treasury Board Secretariat (TBS).[1]

39. As required by subsection 9(4) of the *Act*, in those cases where a use is not included in the statement of consistent uses, the head of the government institution shall notify the Privacy Commissioner of the use for which the

[1] www.infosource.gc.ca

information was used or disclosed, and ensure that the use is included in the next statement of consistent uses set forth in the index.

40. The categories of personal information at issue in this complaint are described in the CBSA's PIB, *Immigration Warrant File* – CBSA PPU 026. The purpose of the bank is described as being to "aid Canada Border Services Agency (CBSA) in the apprehension of individuals with outstanding immigration warrants." The PIB includes information such as names, date of birth, country of birth, aliases, photos, and various other features that would enable the CBSA to identify an individual who is the subject of a warrant under the *IRPA*. The information in the bank pertains to permanent and temporary residents, and failed convention refugees wanted on outstanding immigration warrants.

41. The PIB outlines the limited conditions under which CBSA media relations officers are authorized to disclose certain personal information to the public:

- The disclosure must be necessary for the administration and enforcement of the *IRPA* and the detection, suppression and prevention of immigration offences; **and**

- The personal information disclosed must relate to:

    - warrants and arrests for examination;
    - admissibility hearings;
    - removal from Canada or a proceeding that could lead to the making of a removal order by an immigration officer; or removal orders (departure orders, deportation orders and exclusion orders) issued by Canada Border Services Agency (CBSA) officers, and their execution.

42. The CBSA is of the view that, by indicating to the public that absconding inadmissible individuals are being located, the CBSA is contributing to the "detection, suppression and prevention of immigration offences", as described in the 'consistent uses' portion of the PIB.

43. Further, the CBSA submits that it would be reasonable for the complainant to expect that this information could be used and disclosed by the CBSA in its attempts to determine his whereabouts and enforce the outstanding warrant for his arrest.

44. The CBSA's position is that any individual whose name and other personal information appear on the list is the subject of an enforceable removal order, which triggers one of the conditions outlined in the PIB. The CBSA argues that it only discloses this personal information when it is necessary to do so, that is when it has exhausted traditional investigative methods and turned up few or no leads. In this regard, the CBSA has indicated that it seeks the public's assistance through the Program "as an additional investigative tool to further its ability to enforce outstanding immigration warrants *in instances where other investigative efforts had yielded limited or no results.*"

45. Part of the mandate of the CBSA is to remove people who are inadmissible to Canada. Subsection 48(2) of the *IRPA* requires that an enforceable removal order be enforced *as soon as is reasonably practicable*. To this end, the investigation confirmed that the complainant was indeed the subject of an enforceable removal order due to his inadmissibility under the *IRPA* for one of the grounds of inadmissibility linked to the Program. The CBSA has also provided in its submissions details of the investigative efforts undertaken to locate the individual prior to his inclusion in the Program.

46. We are satisfied in this case that the CBSA's disclosure of the complainant's personal information in the context of the Program was *necessary* for the purpose of enforcing his removal order and that disclosure in this context was for a purpose sufficiently tied to the purpose for which the information was originally collected that the complainant could reasonably have anticipated such a disclosure of his personal information, thereby making the disclosure "consistent" within the meaning of paragraph 8(2)(a).

47. Based on the foregoing, this Office concludes that the disclosure of personal information through the Program in order to locate and identify wanted individuals for the purpose of removal from Canada is for a use that is consistent with the purpose for which the information was originally obtained or compiled.

48. Notwithstanding the above, we are not satisfied, however, that the CBSA is adequately limiting the amount of personal information disclosed under the Program. We are of the view that the CBSA has not established that it was demonstrably necessary to disclose all of the specific elements of personal information that were included in the complainant's profile for the purposes of locating and identifying him. For example, as of the date of the issuance of our Preliminary Report of Findings, we had not received justification for the inclusion of a full date of birth as necessary for this purpose.

Allegation 2: CBSA has failed to respect confidentiality provisions under the IRPA

49. The CCR submits that, according to subsection 8(2) of the *Privacy Act*, release of personal information is subject to any other Act of Parliament, and in this case, that the CBSA has failed to respect the confidentiality provisions under the *IRPA*.

50. While the *IRPA* does provide for confidentiality in the context of certain proceedings (see e.g. paragraph 166(c) concerning refugee proceedings), the disclosure in this case did not occur in the context of those proceedings. Furthermore, the *IRPA* does not contain over-arching confidentiality provisions that would limit the CBSA's authority to disclose personal information in the specific circumstances of this complaint.

51. Consequently, we are of the view that, while the *IRPA* provides for confidentiality in the context of specific proceedings, apart from such proceedings, the *IRPA* does not limit the CBSA's ability to disclose personal information in accordance with subsection 8(2) of the *Privacy Act* in the course of enforcing removal orders under the *IRPA*.

Allegation 3: Federal Court files are not publicly available for the purposes of exclusion under subsection 69(2) of the Privacy Act

52. In its complaint, the CCR explained that the complainant has sought recourse in the Federal Court and, therefore, some of his personal information appears in Federal Court files. The CCR argues that this does not constitute a waiver of privacy rights, nor does this qualify the information for exclusion under subsection 69(2) of the *Privacy Act*.

53. The CBSA has not relied upon subsection 69(2) of the *Act* as justification for its use and disclosure of personal information under the Program. We are of the view that this is, therefore, a non-issue in this case.

Allegation 4: There is a lack of proportionality in the extent of the invasion of privacy versus the public interest to be served in facilitating removal of these individuals

54. The CBSA is principally relying on paragraph 8(2)(a) (consistent use) of the *Privacy Act* in order to justify the disclosure of personal information under the

Program. It is therefore not required to engage in a balancing of interests similar to that required under paragraph 8(2)(m).

55. Nonetheless, further to paragraph 48 of this Report, the CBSA has a duty to ensure that any disclosure pursuant to paragraph 8(2)(a) of the *Act* is limited and proportionate.

Allegation 5: The public labeling of the complainant as a "war criminal" is inaccurate, highly prejudicial and damaging

56. The CCR has expressed concerns about the way in which the CBSA makes reference to the basis for inadmissibility of the wanted individuals. Specifically, the CCR not only questions the necessity and relevance of these references, but is also concerned about the potentially misleading nature of the information disclosed, on the basis that the average member of the public may not understand how the determination process under the *IRPA* functions and in what way a determination under that *Act* differs from a conviction in the criminal law context.

57. The CBSA makes reference to the reason for an individual's inadmissibility in several ways within the Program. The CBSA submits that it discloses information concerning the basis for an individual's inadmissibility under the Program in order to engage the public's attention by highlighting the seriousness of the matter. It submits that this same information should convey to the public the importance of not apprehending these individuals directly.

58. Our investigation analysed both the necessity and relevance of these references in the context of the Program.

59. We are of the view that some reference to an individual's basis for inadmissibility is necessary in order to provide context for the decision to include the individual in the Program. As individuals may be determined to be inadmissible to Canada on the basis of grounds of inadmissibility which vary significantly in levels of severity, providing some information concerning an individual's reason for inadmissibility provides a more complete portrait to the public of the individuals listed. If this information were too limited, members of the public consulting the list might be left to assume that all individuals on the list are inadmissible for equally serious reasons, or that the process for inclusion on the list was completely arbitrary.

60. Consequently, we are satisfied that identifying the grounds of inadmissibility is a reasonable part of the Program and is justifiable as part of the consistent use of the information as prescribed in the relevant PIB.

61. Notwithstanding the above, in order to ensure the accuracy and completeness of the information disclosed under the Program, the grounds for inadmissibility should appear in context.

62. At the time the complaint was made, the website referred only to individuals who were the subject of a determination related to "war crimes". Press releases promoting the Program also referred to individuals being accused of or complicit in committing war crimes and crimes against humanity. There was no distinction made between the manner in which these crimes are referenced in the determination process under the *IRPA* and conviction under criminal law.

63. The complainant in this case was determined to have been a prescribed senior official in the service of a government that, in the opinion of the Minister of Public Safety and Emergency Preparedness, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act* (paragraph 35(1)(b) of the *IRPA*).

64. Based on such a general reference to "war crimes", the public would likely not understand that inadmissibility on this ground could extend to individuals like the complainant. In addition, the website makes no mention of the differing applicable burdens of proof in the two processes. Thus, these references could potentially mislead the public to conclude that the individuals listed had been convicted of war crimes under a criminal law standard of proof.

65. Subsection 6(2) of the *Privacy Act* requires that a government institution take all reasonable steps to ensure that personal information used for an administrative purpose is as accurate, up-to-date and complete as possible.

66. In the context of the Program, this means that personal information on which decisions about an individual's apprehension and removal are made, including the basis for an individual's inadmissibility, is information used for an administrative purpose, and must therefore be as accurate, up-to-date and complete as possible.

67. It is therefore our view that earlier references to the label "war crimes" or "war criminals" were potentially misleading and not adequately justified by the CBSA. We are not satisfied in this case that the CBSA took reasonable steps to ensure

that the information disclosed in relation to the individuals listed under the Program in its early days, including in relation to the complainant, met the requirements of subsection 6(2) of the *Act*, particularly given the potentially severe consequences of such disclosure for the individuals listed in the Program.

Additional Comments

Ongoing disclosure of information post-apprehension

68. While not a specific concern raised by the CCR in its complaint, we have nonetheless decided to address a related issue, that is, the CBSA's disclosure of information post-apprehension. This involves: a) updating individual website listings to reflect apprehension and removal; b) archiving listings once individuals have been removed from Canada; and c) using media releases to publicize these events.

69. Our investigation established that the complainant's personal information was first posted online under the Program in July 2011, and continued to appear online for at least six months post-apprehension.

70. In its initial representations, the CBSA submitted that paragraph 8(2)(a) of the *Act* is the basis for which the complainant's personal information was disclosed as part of the Program. As noted previously in this Report, we are satisfied that the CBSA was authorized to disclose the complainant's personal information following its own determination that disclosure in the context of the Program was *necessary* for the purpose of enforcing his removal order. As such, we are of the view that such disclosure is within the scope of the consistent use provided for in the relevant PIB.

Apprehension Status

71. Following its initial representations, the CBSA advised that it sees no inconsistency in maintaining the information of apprehended individuals on the website for a period of time after apprehension to demonstrate to the public that the "Wanted by the CBSA" Program is effective, which in turn encourages further support and cooperation from the public in attempts to locate other individuals.

72. Additionally, from a program integrity perspective, the CBSA submits that actively drawing attention to the fact that the person concerned has been

apprehended by maintaining the posting for a period of time afterwards also ensures that the public does not continue searching for the individual. The CBSA submits that making the public aware that an individual has already been apprehended reduces the chance of the public falsely identifying someone they might otherwise think remained on the "Wanted by the CBSA" list.

73. As noted under paragraph 29 of this Report, the CBSA also highlighted that it has adopted a policy of removing individual profiles from the website within 30 days following an individual's removal from Canada. The CBSA has indicated its intention to extend this practice to "apprehensions" and to continue to review timeframes for the maintenance of personal information on the Program website. In September 2012, it removed the information of individuals whose status had been listed as "apprehended" for more than 30 days. In doing so, the CBSA submits that it strives to establish a balance between, on the one hand, communicating to the public the effectiveness of the program as well as the value of the public's efforts to the Agency's investigations and, on the other hand, respecting the privacy rights of individuals.

74. While we are satisfied that the CBSA's decision to leave listings on its website following the apprehension of individuals is a reasonable part of the Program and is justifiable as a consistent use of the information, it is our view that the PIB currently relied upon does not adequately reflect this as a consistent use of the information.

75. Furthermore, while the CBSA submits that it has reviewed its practices in relation to the timeframes for maintaining information about apprehended individuals, its earlier decision to leave the complainant's listing on its site following his apprehension for an extended period of time (at least six months), was not, in our view, consistent with the purpose for which the information was collected, or in line with the PIB on which the CBSA relies.

76. We would also highlight that, further to paragraph 48 of this Report, we are not satisfied that the CBSA is adequately limiting the amount of personal information disclosed under the Program when it maintains the information of apprehended individuals on the website for a period of time after apprehension. We are of the view that it is not demonstrably necessary to disclose, for example, an individual's full date of birth or identifying features once the individual has been apprehended and the purpose for which the information was disclosed under the Program has been fulfilled.

Removal Status

77. In subsequent representations, the CBSA further positioned that maintaining information regarding the removal status of individuals on its website for a period of time is in the public interest, and as such, its disclosure is in accordance with subparagraph 8(2)(m)(i) of the *Privacy Act*.

78. While the CBSA notified this Office in March 2012 of its intention to disclose to the public that the complainant had been removed from Canada pursuant to subparagraph 8(2)(m)(i) of the *Act*, we highlight that the notification received from the CBSA, while received in advance of the individual's removal, did not specify *how* the CBSA intended to disclose to the public the fact that the complainant had been removed from Canada (the notice made no reference to the CBSA's intention to update the Program website), and for *how long* it intended to make this information available to the public.

79. Consequently, we are not satisfied that the CBSA's notice was sufficiently explicit to constitute notice of the website disclosure or the ongoing disclosure of this information as required by subsection 8(5) of the *Act*.

80. In addition, and further to paragraphs 48 and 76 of this Report, we are not satisfied that the CBSA is adequately limiting the amount of personal information disclosed under the Program when it maintains the information of individuals that have been removed from Canada on the website for a period of time after removal. We are of the view that it is not demonstrably necessary to disclose, for example, an individual's date of birth or identifying features once the individual has been removed and the purpose for which the information was disclosed under the Program has been fulfilled.

Findings

81. Overall, we are satisfied that the purpose for the disclosure of personal information in relation to the Program, specifically, to obtain the public's assistance in locating and apprehending individuals, is in line with the administration and enforcement of the *IRPA* and as such, constitutes a consistent use in accordance with paragraph 8(2)(a) of the *Privacy Act*.

82. Accordingly, this aspect of the complaint is **not well-founded**.

83. However, in our opinion, earlier references to the label "war crimes" or "war criminals" were potentially misleading and not adequately justified by the CBSA, and we are not satisfied in this case that the CBSA took reasonable steps to ensure that the information disclosed in relation to the complainant met the requirements of subsection 6(2) of the *Act*.

84. Consequently, this aspect of the complaint is **well-founded**.

Recommendations

85. In a letter dated August 8, 2013, our Office provided a Preliminary Report of Findings to the CBSA pursuant to section 35 of the *Privacy Act*. This Report contained details of our investigation and the rationale for our conclusions, and offered the CBSA an opportunity to respond to and describe any actions it proposes to take in order to implement our recommendations.

86. The following recommendations were made to the CBSA in the Preliminary Report of Findings:

    i. While we accept that the disclosure in this instance constituted a consistent use of the complainant's personal information, and that the disclosure can be tied to the language of the current PIB, in the interest of greater transparency, our Office nevertheless recommends that the CBSA consider revising the relevant PIB or creating a new one to explicitly account for the Program and the consistent uses associated with the Program.

    ii. In addition, we recommend that the CBSA revisit the amount of personal information disclosed under the Program to ensure that it is necessary to fulfill the stated purpose, including: locating and identifying individuals for the purpose of removal from Canada; for public awareness and maintaining program integrity following the apprehension of individuals; or when the purpose for which the information was disclosed has been fulfilled (i.e. once an individual has been removed from Canada).

    iii. While the CBSA's terminology on its website has changed when referring to grounds for inadmissibility (e.g. it now distinguishes between determinations under the *IRPA* and conviction under criminal law), in order to enhance public understanding of the terms used, we

recommend that the CBSA, as a best practice, provide some explanation on its site regarding the distinction between the two processes in question.

iv. We recommend that the CBSA formalize its practice of removing profiles within 30 days of apprehension or removal and continue to review the timeframes for maintaining this information on its website with a view to respecting the privacy rights of all individuals whose personal information it collects, uses and discloses under the Program.

v. The CBSA should ensure that notifications to this Office under subsection 8(5) of the *Act* are sufficiently explicit and demonstrate how the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure.

87. In its response to our Office dated September 27, 2013, the CBSA accepted our recommendations in full. Specifically:

i. The CBSA submits that it will revise the relevant personal information bank to explicitly account for the Program and the consistent uses associated with the Program.

ii. The CBSA also agrees to revisit the amount of personal information disclosed under the Program or provide justification that has not been provided previously. While the date of birth has been used consistently and found to be effective by the CBSA and its law enforcement partners when seeking the public's assistance in locating an individual, moving forward, the CBSA submits that all personal information, except for the picture, name and status, will be removed when the individual is located or removed from Canada.

iii. The CBSA submits that it will provide an explanation on the website that will assist the public to understand the difference between a conviction under criminal law and a determination under the *IRPA*. The distinction will be made on the main page to provide the public with a better understanding of the immigration context, and the distinction between the two processes.

iv. The CBSA will work to better enforce the formalized practice of removing profiles from the website within 30 days of an individual's apprehension or removal.

v. The CBSA also accepts our recommendation regarding notifications under subsection 8(5) of the *Privacy Act* and agrees to specify in its letters how the public interest in disclosure clearly outweighs any invasion of privacy that could result from disclosure in a particular case. The CBSA also undertakes to indicate what information will be disclosed in the public interest, how the information will be disclosed (e.g., website, social media or press release), and the duration for which the information will be publicly available.

88. Further to our recommendation above regarding notices under subsection 8(5) of the *Act*, we also reminded the CBSA of its responsibilities, including:

- The discretion awarded to government institutions under the public interest provisions of the *Act* must be exercised on a case-by-case basis; a government institution must not presume that the public interest in disclosure will always outweigh the privacy interest(s) of the affected individual(s) for a particular category of disclosure;

- Any disclosure of personal information deemed by the Head of the institution to be in the public interest should consider the invasion of privacy test – the expectations of the individual, the sensitivity of the information, and the probability of injury;

- As required under subsection 8(5) of the *Act,* public interest disclosures must also be communicated to the Privacy Commissioner in writing prior to the disclosure where reasonably practicable.

Other

89. In our Preliminary Report of Findings, we also highlighted the following concerns to the CBSA:

i. We take this opportunity to highlight that we are deeply concerned by the CBSA's failure to conduct a Privacy Impact Assessment (PIA) in relation to the "Wanted by the CBSA" Program.

ii. A PIA is a formal process that helps determine whether initiatives involving the use of personal information raise privacy risks; it identifies

and describes these risks, and proposes solutions to eliminate or mitigate privacy risks to an acceptable level.

iii. At present, this is the most comprehensive process to evaluate the effects of a specific initiative on an individual's privacy, and represents a core component of an institution's privacy compliance framework.

iv. The consequences of poor privacy insight can have a profound impact on Canadians. The risks inherent in new or substantially modified programs need to be identified, assessed and resolved or mitigated to ensure that the government respects the privacy of individuals.

v. We remind the CBSA that Treasury Board Secretariat's (TBS) *Directive on Privacy Impact Assessment* applies to government institutions and provides direction to institutions with respect to the administration of PIAs.

vi. In line with paragraphs 6.3.14 and 6.3.15 of the *Directive*, institutions are responsible for ensuring that approved PIAs are submitted to TBS, and that they are simultaneously submitted to our Office.

vii. In our view, the CBSA's inattention to its obligations in this case poses serious privacy risks, particularly given the potentially severe consequences for the individuals listed in the Program. We expect that the CBSA and all federal entities undertake PIAs for particularly intrusive or privacy invasive programs or initiatives. PIAs are an important component of risk management and help to ensure that privacy issues of public concern are resolved or mitigated, ensure accountability for the use of personal information, and provide transparency to Canadians about how their personal information is treated when in the hands of government.

90. In its response to our Office, the CBSA submits that it has assessed the need to undertake a Privacy Impact Assessment and has determined that the Immigration Enforcement Program, under which the "Wanted by the CBSA" Program falls, would benefit from an assessment of this nature.

91. Given that the CBSA has accepted all of our recommendations in full, we are satisfied that no further action is required by our Office at this time. Nonetheless, we will follow-up with the department in six months to confirm its progress in implementing our recommendations.