

Australian government cites 'chilling effect' on cabinet in bid to block release of papers in Timor-Leste spy case

Attorney general's lawyers say they should not have to provide the documents, including briefing for prime minister, because it is not in public interest

Christopher Knaus - *The Guardian* – 30 September 2020

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Government lawyers have invoked cabinet confidence in an attempt to stop Bernard Collaery and his team from viewing a briefing to the prime minister relevant to the [Timor-Leste](#) spying case.

Collaery, a barrister and former ACT attorney general, has been charged over his role in exposing details of a [2004 Australian intelligence operation](#) to bug the Timor-Leste government during commercial negotiations to carve up oil and gas resources in the Timor Sea.

It is alleged that Collaery, while representing intelligence whistleblower Witness K, illegally shared protected information about the operation

Collaery faces jail time if found guilty. The case, still in its pre-trial stages, continues to wind its way through the ACT supreme court.

Protesters gathered outside the court on Wednesday in support of Collaery and Witness K. They were singing and brandishing placards praising the pair as whistleblowers and heroes.

Inside, an argument was heard over Collaery's attempt to obtain five documents – all briefings to departmental secretaries and ministers – from the Australian government. Little detail was given in open court about the nature of the internal government briefings Collaery is seeking including when they were written.

One of the documents is a briefing to the prime minister ahead of a meeting of the powerful national security committee of cabinet.

Another was a briefing prepared for the head of the attorney general's department ahead of a meeting of a group of other departmental secretaries involved in national security, known as the secretaries committee on national security

Lawyers acting for the attorney general, Christian Porter, argued they should be immune from providing the documents because it was not in the public interest for them to be produced. Producing the documents would breach cabinet confidence and compromise future deliberations, the government argued.

Anna Mitchelmore SC said handing over the documents would have a “particularly chilling effect” on cabinet deliberations, given the nature of the case and the fact that future cabinet deliberations may take place on related issues.

The government's public interest immunity claim put Collaery and his team in a difficult position, the court heard. It requires them to demonstrate the documents are highly relevant to the case without having ever seen them.

But Collaery's barrister, Christopher Ward SC, said the documents were clearly removed from cabinet deliberations and were needed for the proper administration of justice. "They are a very long way removed ... from the deliberations of cabinet," he said.

Some were merely background briefings for departmental secretaries ahead of meetings with other departmental secretaries, Ward argued.

The fact that similar issues were later discussed in cabinet meetings did not mean the briefings suddenly revealed cabinet deliberations.

"Nothing that is sought is a declaration that does directly reveal cabinet deliberations," Collaery's barrister said. "Not one of these documents are cabinet documents in the classic sense of the word."

Ward said parts of the documents could be redacted, if necessary, and urged justice David Mossop to view the briefings himself.

Part of the proceedings were closed to the public to allow Ward to further argue his case. Mossop reserved his decision.