

Attachment A



The Hon Scott Morrison MP
Minister for Immigration and Border Protection

File Ref:

Chair
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2600

Dear Chair

I refer to the motion moved on 14 November 2013, in which Senator Hanson-Young moved that:

- (a) *the following documents relating to any 'on water operations' that occurred between 7 September 2013 and 14 November 2013 be laid on the table by the Minister representing the Minister for Immigration and Border Protection, by noon on 18 November 2013:*

Any report or briefing to, or email or other correspondence between the Minister or the Minister's office and the Department of Immigration and Border Protection or the Detection, Interception and Transfer Task Group and related agencies which includes information related to any or all of the following:

- (i) *the chronology of events,*
- (ii) *'illegal maritime arrivals' (unauthorised arrivals),*
- (iii) *Suspected Irregular Entry Vessels (SIEVs) intercepted at sea,*
- (iv) *distress calls to and response time by the Australian Maritime Safety Authority,*
- (v) *where the SIEV was detected,*
- (vi) *nationality of passengers,*
- (vii) *safety-of-life-at-sea incidents,*
- (viii) *SIEV turn backs,*
- (ix) *SIEV tow backs,*
- (x) *number of people suspected to be on board the SIEVs,*
- (xi) *the number of children suspected to be on board the SIEVs, and*
- (xii) *how many people, if any, were subject to 'on water transfers';*

- (b) *no later than 24 hours after an event relating to 'on water operations' the following documents be laid on the table by the Minister representing the Minister for Immigration and Border Protection:*

Any report or briefing to, or email or other correspondence between the Minister or the Minister's office and the Department of Immigration and Border Protection or the Detection, Interception and Transfer Task Group and related agencies which includes information related to any or all of the following information:

- (i) *the chronology of events,*
- (ii) *'illegal maritime arrivals' (unauthorised arrivals),*
- (iii) *Suspected Irregular Entry Vessels (SIEVs) intercepted at sea,*
- (iv) *distress calls to and response time by the Australian Maritime Safety Authority,*
- (v) *where the SIEV was detected,*
- (vi) *nationality of passengers,*
- (vii) *safety-of-life-at-sea incidents,*
- (viii) *SIEV turn backs,*
- (ix) *SIEV tow backs,*
- (x) *number of people suspected to be on board the SIEVs,*
- (xi) *the number of children suspected to be on board the SIEVs, and*

- (xii) *how many people, if any, were subject to 'on water transfers'; and*
(c) *if the Senate is not sitting within the 24 hours after the event relating to 'on water operations' then the documents are to be presented to the President under standing order 166 on the next working day."*

In answer, to assist the Senate, the Government is prepared to offer Opposition and Australian Greens Senators a confidential briefing delivered by Lieutenant-General Angus Campbell, Commander Operation Sovereign Borders.

I further attach to this letter the following documents, which contain all Operation Sovereign Borders information released to date:

- Transcripts of Operation Sovereign Borders press conferences on 23 September 2013, 30 September 2013, 4 October 2013, 11 October 2013, 18 October 2013, 25 October 2013, 1 November 2013, 8 November 2013 and 15 November 2013;
- Media Statements dated 18 October 2013, 21 October 2013, 23 October 2013, 25 October 2013, 29 October 2013, 9 November 2013 and 13 November 2013; and
- Weekly Operational Updates commencing 30 September 2013.

Regarding the other documents for which the notice of motion calls, I submit that such documents should be withheld from the Senate on the following grounds of Public Interest Immunity:

- material the disclosure of which could reasonably be expected to cause damage to national security, defence, or international relations, including disclosure of documents or information obtained in confidence from other governments;
- material relating to law enforcement or protection of public safety which would, or could reasonably be expected to:
 - prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance;
 - endanger the life or physical safety of any person;
 - disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

Reasons

The magnitude of the irregular maritime people smuggling problem and the related social and economic damage provides context to this public interest immunity claim. Between the years 2008 and 2013, Australia saw dramatic increases in maritime people smuggling. Annual arrivals rose from 161 illegal maritime arrivals in the 2008 calendar year to a total, as of Friday 15 November 2013, of 20,188 in the 2013 calendar year. The tragic reality of this escalation is the rising number of people known to have lost their lives at sea. People smuggling is known to have cost the lives of at least 1,199 people between August 2008 and November 2013. Of these, 1,194 people have lost their lives since October 2009. Those fortunate enough to survive these tragedies at sea face enduring trauma. Many survivors cope with ongoing and significant physical injury.

The escalation in maritime people smuggling is characterised by increasing activity of criminal networks seeking to exploit the desire for migration to Australia. This has undermined the confidence of the Australian public in the integrity of Australia's migration programme and the security of our borders.

The financial cost associated with handling illegal maritime arrivals has also increased over the relevant period, rising from \$113m in 2008/9 to an estimate of nearly \$3bn in the present financial

year. This represents an increasing burden on the Australian government and a significant strain on the agencies involved.

Specifically, the disclosure of the documents requested relate to operational matters which should not be disclosed for the following reasons of public interest:

- they would, or could reasonably be expected to, cause damage to national security, defence, or international relations, including disclosure of documents or information obtained in confidence from other governments; and
- they contain material relating to law enforcement or the protection of public safety which would, or could reasonably be expected to:
 - prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance;
 - endanger the life or physical safety of any person.
 - disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;
 - prejudice the maintenance or enforcement of lawful methods for the protection of public safety; or

Specifically, the requested documents may:

- Disclose information which reveals the location, capacity, patrol and tactical routines relevant to Australian Defence Force and Customs and Border Protection vessels and aviation assets. The release of this information:
 - Would undermine the tactical advantage of civil maritime surveillance assets over people smugglers, who may use this information to avoid or trigger detection, or to precipitate a search and rescue response. People smugglers have shown a high level of sophistication when it comes to forward planning and the use of entry corridors when initiating and conducting people smuggling and other serious criminal activities. The provision of information such as that contained in the documents requested will further enhance the knowledge of people smugglers in this context;
 - Would undermine the Commonwealth of Australia's ability to protect vulnerable Illegal Maritime Arrivals from the practices of people smugglers and other serious criminal activities.
 - Would undermine more generally the effectiveness of Border Protection Command assets which seek to maintain maritime security awareness more generally, and in response to a broad range of maritime security threats including the security of oil and gas platforms and the illegal exploitation of natural resources.
- Enable an exploitation of confidential methodology and processes used by Australian Defence Force and Australian Customs and Border Protection vessels and assets. Information about the arrival of ventures, in breach of communications protocols established by Commander JATF, including the timing of arrival, the composition of passengers including ethnicity, sex and age may be used by people smugglers to:
 - Provide 'proof of arrival' and the basis for release of payment for people smuggling ventures;

- Provide a basis for further positive marketing by people smugglers of illegal transport arrangements
- Undermine communications strategies aimed at clarifying current policy arrangements for irregular maritime arrivals;
- Impact upon Australia's relations with foreign States. Australia relies heavily on the ability and motivation of neighbouring sovereign States to contribute and cooperate in respect of search and rescue and/or safety of life at sea activities. The confidentiality of communications and information between the Commonwealth and the sovereign States is essential to the candid and collaborative liaison between the respective government agencies that undertake such activities. Such confidentiality could not be maintained where the protection of material recording such communications could not be assured. In addition, information relating to the handling of ventures and IMAs would cause serious damage to international relations between Australia and regional partners including Indonesia and Papua New Guinea in that it:
 - Undermines the further development of international agreement and cooperation;
 - Undermines the working relationship between operational agencies in relation to safety of life at sea;
 - Further increases the tactical advantage of people smugglers and consequently increases the risk to the wellbeing of IMAs.

I note that similar statements have also been made regarding the operational sensitivity of the information by the Commander of the Joint Agency Taskforce, Lieutenant-General Campbell, as well as by the former Chief of the Defence Force (retired) Angus Huston who stated in relation to the matter:

"there is a great advantage to have a high level of operational security which means you are not going to be transmitting frequently on what activities you are up to at that particular moment in time."

Accordingly the Government does not believe it is in the public interest to release information that may compromise current and future operations under Operation Sovereign Borders that has so far resulted in a more than 75% reduction in illegal arrivals by boat, since the commencement of the operation.

Yours sincerely

The Hon Scott Morrison MP
Minister for Immigration and Border Protection

(✓) November 2013

Received by me pursuant to standing order 166
authorising the presentation of documents to the
President when the Senate is not sitting.
Publication of the document is authorised.

12.06

The President.....18 November 2013



The Hon Scott Morrison MP
Minister for Immigration and Border Protection



File Ref:

Chair
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2600

Dear Chair

I refer to the motion moved on 02 December 2013, in which Senator's Hanson-Young and Carr moved that:

(a) Notes:

- i. *the failure of the Minister representing the Minister for Immigration and Border Protection (Senator Cash) to comply with the order of the Senate of 14 November 2013 be tabled by noon on 18 November 2013; and*
- ii. *that tabling publically available information such as transcripts and operational updates is a failure to comply with the order, and that tabling of other publically available information would still represent a failure to comply with this order;*

(b) Orders the Minister representing the Minister for Immigration and Border Protection (Senator Cash) to comply with the order by 5pm Wednesday 4 December 2013,

(c) Does not accept the claims of public interest immunity made by the Minister in respect of the documents ordered by the Senate to be tabled, or the grounds for making these claims.

In answer, to assist the Senate, the Government tabled a substantial amount of Operation Sovereign Borders (OSB) related material on 18 November 2013. In addition to this material, the Government has offered to provide the Opposition and Australian Greens Senators and Members a confidential briefing delivered by Lieutenant-General Angus Campbell, Commander Operation Sovereign Borders. To date, the Shadow Minister for Immigration and Border Protection has received this briefing; however, no member of the Greens has accepted, despite the offer remaining open.

The Government has complied with this order and can not be held responsible for parties not wishing to receive additional information. The Greens attempting to choose the form that information is delivered in does not constitute a failure to comply on the part of the Government.

All Operation Sovereign Borders information up to and including 3 December 2013 has been released, including transcripts of Operation Sovereign Borders press conferences, media statements relating to OSB matters, weekly operational updates and FOI requests.

Regarding the other documents for which the notice of motion calls, I submit that such documents should be withheld from the Senate on the following grounds of Public Interest Immunity:

- material the disclosure of which could reasonably be expected to cause damage to national security, defence, or international relations, including disclosure of documents or information obtained in confidence from other governments;
- material relating to law enforcement or protection of public safety which would, or could reasonably be expected to:
 - prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance;
 - endanger the life or physical safety of any person;
 - disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

Reasons

The magnitude of the irregular maritime people smuggling problem and the related social and economic damage provides context to this public interest immunity claim. Between the years 2008 and 2013, Australia saw dramatic increases in maritime people smuggling. Annual arrivals rose from 161 illegal maritime arrivals in the 2008 calendar year to a total, as of Friday 15 November 2013, of 20,188 in the 2013 calendar year. The tragic reality of this escalation is the rising number of people known to have lost their lives at sea. People smuggling is known to have cost the lives of at least 1,199 people between August 2008 and November 2013. Of these, 1,194 people have lost their lives since October 2009. Those fortunate enough to survive these tragedies at sea face enduring trauma. Many survivors cope with ongoing and significant physical injury.

The escalation in maritime people smuggling is characterised by increasing activity of criminal networks seeking to exploit the desire for migration to Australia. This has undermined the confidence of the Australian public in the integrity of Australia's migration programme and the security of our borders.

The financial cost associated with handling illegal maritime arrivals has also increased over the relevant period, rising from \$113m in 2008/9 to an estimate of nearly \$3bn in the present financial year. This represents an increasing burden on the Australian government and a significant strain on the agencies involved.

Specifically, the disclosure of the documents requested relate to operational matters which should not be disclosed for the following reasons of public interest:

- they would, or could reasonably be expected to, cause damage to national security, defence, or international relations, including disclosure of documents or information obtained in confidence from other governments; and
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 - prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance;
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 - disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;

- prejudice the maintenance or enforcement of lawful methods for the protection of public safety; or

Specifically, the requested documents may:

- Disclose information which reveals the location, capacity, patrol and tactical routines relevant to Australian Defence Force and Customs and Border Protection vessels and aviation assets. The release of this information:
 - Would undermine the tactical advantage of civil maritime surveillance assets over people smugglers, who may use this information to avoid or trigger detection, or to precipitate a search and rescue response. People smugglers have shown a high level of sophistication when it comes to forward planning and the use of entry corridors when initiating and conducting people smuggling and other serious criminal activities. The provision of information such as that contained in the documents requested will further enhance the knowledge of people smugglers in this context;
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 - Undermines the further development of international agreement and cooperation;
 - Undermines the working relationship between operational agencies in relation to safety of life at sea;

- o Further increases the tactical advantage of people smugglers and consequently increases the risk to the wellbeing of IMAs.

I reiterate that similar statements have also been made regarding the operational sensitivity of the information by the Commander of the Joint Agency Taskforce, Lieutenant-General Campbell, as well as by the former Chief of the Defence Force (retired) Angus Houston who stated in relation to the matter:

"there is a great advantage to have a high level of operational security which means you are not going to be transmitting frequently on what activities you are up to at that particular moment in time."

Accordingly, the Government does not believe it is in the public interest to release information that may compromise current and future operations under Operation Sovereign Borders that has so far resulted in a more than 85% reduction in illegal arrivals by boat, since the commencement of the operation.

Yours sincerely

The Hon Scott Morrison MP
Minister for Immigration and Border Protection
04 December 2013