

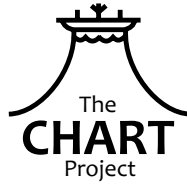


Submission No 56

## **Inquiry into Australia's Relationship with Timor-Leste**

**Name:** Mr John Waddingham

**Organisation:** Clearing House for Archival Records on Timor Inc.



Submission to

**Joint Committee on Foreign Affairs, Defence and Trade**

Reference:

**Australia's relationship with Timor-Leste**

Relevant Terms of Reference:

People to people links  
Cultural, educational and scientific relations and exchanges

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04 April 2013

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## Summary

East Timor and Australia now share a many-faceted relationship at government and community levels. That relationship arises directly out of the traumatic years of the Indonesian military occupation, 1975-1999.

Access to historical archives of shared and abiding interest to Australians and East Timorese is the particular focus of this submission.

The submission makes recommendations in two areas:

**A. *The right to the truth through access to archives:*** Six recommendations aimed at increasing access to important records held by the National Archives of Australia and reducing apparent roadblocks to such access.

**B. *Australia - Timor-Leste archival relationships:*** Five recommendations for a low-key development of relationships between appropriate Australian institutions and NGOs and emerging Timorese archival institutions with the view to strengthening the latter over the longer-term.

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## About CHART

Clearing House for Archival Records on Timor (CHART) Inc. is a Victorian-based not-for-profit charitable association created to promote the preservation of, and long-term access to, archival materials about the East Timor issue for the period 1974-1999.

CHART's principal focus is privately-held Australian archival materials, but it also has interests in materials held by public institutions.

CHART is committed to facilitating universal access to these materials, including ease of access by East Timorese students, researchers and educators.

CHART personnel are Australians with long-term knowledge of Australia's East Timor history and well-developed, active links inside Timor-Leste. CHART enjoys the endorsement of its work through the patronage of three historical Timorese political leaders, Jose Ramos-Horta, Xanana Gusmao and Mari Alkatiri.

More information on CHART can be found at Appendix 1.

## Introduction

Australia and East Timor, by the very nature of their close geographical proximity, will always be in a 'relationship'.

In one lifetime, the peoples of our two countries have been closely connected during two periods of profound trauma in Timor - the Japanese occupation of World War II and the Indonesian military occupation of 1975-1999.

In the first, East Timor lost many human lives - partly because of the Australian military presence there. Australians have long recognised that we owed a debt to Timor for the support

that some Timorese gave Australian soldiers.

In the second, East Timor lost many more lives as a result of Indonesian military operations. Here the relationship between our two peoples is more complex. Official Australian policy from 1975-1998/99 broadly favoured the Indonesian annexation and it can be credibly argued that Government actions (or inaction) in that time effectively supported the Indonesian military. Outside government circles, however, there was a persistent community undercurrent of opposition to official policy on Timor.

This undercurrent ran through many sections of Australian society, including academia, trade unions, non-government aid, development and human rights organisations, the churches and the Australian parliament itself and came to a dramatic peak in 1999. The enormous goodwill broadly felt by Australians towards newly independent East Timor, engendered in the occupation years, persists to this day and finds expression in a multitude of individual and organisational engagements with the East Timorese.

The focus of this submission is the archival record of the 1974-1999 period and its importance to both Australians and East Timorese for what it records and reveals about the relationship between our two peoples. This submission makes recommendations to ensure the archival record is preserved, is accessible and easily available to the peoples of both countries.

## **A. Right to the truth / Access to Archives**

In United Nations and other international forums in the past few years, there has emerged an increasing emphasis on what is called 'the right to the truth'.<sup>1</sup> This focus has arisen from the experience of truth commissions in many countries after periods of gross violations of human rights.

In the words of UN Secretary-General Ban Ki-moon: "The right to the truth is both an individual and a collective right. Each victim has the right to know the truth about violations against them, but the truth also has to be told more widely as a safeguard to prevent violations from happening again."<sup>2</sup>

Archives are a key element in the 'right to the truth'. As one UN document puts it: "(Archives) have an intrinsic value directly related to the exercise of victims' rights, the work of the courts and non-judicial mechanisms for establishing the facts, the preservation of memory and history" and "(a)rchives also enable every nation to exercise its right to an undistorted written record, and the right of each people to know the truth about its past."<sup>3</sup>

In the strictest sense, the 'right to the truth' described in UN documents may not be directly applicable to Australian-held records about gross violations of human rights in Timor during the Indonesian military occupation. But the underlying sentiment of the right to truth about that period continues to reverberate in the Australian and East Timorese communities.

Australia and East Timor now have a many-faceted relationship at government and community levels. That relationship is rooted in a shared but not always happy history. The Australian community has a continuing right to know the detail of the inner workings of government policy

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<sup>1</sup> See links to foundation UN documents at: <http://www.un.org/en/events/righttotruthday/documents.shtml> [Accessed 04 April 2013]

<sup>2</sup> <http://www.un.org/en/events/righttotruthday/index.shtml> [Accessed 04 April 2013]

<sup>3</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/5/7](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/5/7) (pp.11-12) [Accessed 04 April 2013]

on East Timor during the occupation years. The East Timorese community has a continuing right to know what information Australia has which may help it construct its record of the traumatic 1974-1999 period.

In this section of the submission, a series of recommendations are made to enhance Australian and Timorese access to official Australian historical records about East Timor and to reduce the current barriers to such access.

## **Recommendations**

### **1. All post-1974 'Open Period' Timor records in the custody of National Archives of Australia (NAA) be subject to a special program to examine them for expedited release to public access.**

This recommendation is drawn from the example of the 1998 accelerated release by the Howard Government of 1974-1976 Timor-related commonwealth records on the grounds of 'compelling public interest'. Then Foreign Minister Downer Alexander Downer stated the hope that such release and publication of the materials would reveal 'the truth about Australian official thinking and action' on the Timor issue.<sup>4</sup>

Since then, many more records have been listed in NAA custody but have not yet been examined to determine whether they are available for access.

Example: A search of one series (Series A1838) of files created by the Department of Foreign Affairs (DFAT) between 1974 and 1985 shows 137 out of 449 folders have yet to be examined for access. These folders cover important topics like the UN Committee of 24, refugees, Australian and international humanitarian aid, Fretilin and pro-Fretilin activities in Australia, political prisoners and human rights, seabed boundary matters and the 'missing' journalists.

Under current procedures, these files will not be examined for access until a researcher requests access. Given the time lag between application for access and a decision on access (see Recommendation 4 below), many of the files may not be accessible for some years.

### **2. Any records relating to East Timor still held by the Government agencies and which, under the Archives Act 1983 should now be in the custody of the NAA, be transferred to NAA without further delay.**

Section 27 of the Archives Act (1983) requires Commonwealth agencies to transfer a record to NAA 'as soon as practicable after (it) ceases to be a current record and, in any event, within 15 years of the record coming into existence'.

The number of Timor records not yet transferred to NAA is unknown, but the following example of some records from Australia's Embassy in Jakarta suggests this may be an issue of substance.

NAA's RecordSearch facility shows that many of several file sequences in Series A10463 only cover the years up to 1977. Assuming these file sequences were continued by the Embassy, one might expect the sequences to cover the period up to 1985 (the present 'open period' year). NAA has confirmed (March 2013) that it holds no further records in these sequences and has sought

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<sup>4</sup> *Documents on Australian Foreign Policy: Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Wendy Way (Ed.), Department of Foreign Affairs and Trade / Melbourne University Press. 2000. Page v.

information from the controlling agency (DFAT).<sup>5</sup>

While Section 29 of the Archives Act specifies a range of records which may not automatically pass to NAA (generally material from intelligence agencies), the particular records mentioned in this example fall outside this sphere. The fact that some sequences are already in NAA custody means subsequent extant sequences should be automatically transferred.

### **3. Current procedures for examining Timor records for public access be critically examined with the view to streamlining and/or speeding up the process.**

Anecdotal evidence suggests the time taken to decide on the access status of any given Timor-related folder is inordinately long.

Example: CHART examined five folders at NAA, Canberra in February 2013. Each of the folders was now in the 'open period' but when last examined, the latter part of each folder was not. In order to see the latter material now in the open period, CHART was advised by NAA that the files would have to be re-examined by the creating agency and this examination was likely to take more than the statutory 90 days.

While the reason for such delays may be explained partly by staff time/resource allocations at agency level, public scrutiny of the file examination procedures may provide a basis for critical assessment of and changes to them.

### **4. Current Department of Foreign Affairs (DFAT) decisions to withhold files or sections of files be subject to close ministerial or government-level scrutiny - with particular attention being paid to whether the Department's decisions are overly cautious and/or unnecessarily restrictive.**

Many Timor items originating from DFAT have restrictions placed on access. The majority are partially restricted (formally: 'open with exception') on the grounds of sections 33(1)(a) and 33(1)(b) of the Archives Act (1983).

Restrictions under 33(1)(a) are the most common - material being withheld under the broad reason that release "would damage Australia's security, defence or international relations".

Now that East Timor is no longer a significant issue between Australia and Indonesia and that Indonesia has moved from military autocracy to more open democracy, it seems very difficult to sustain the argument that release of non-intelligence-related Australian knowledge of Timor matters from 25-30+ years ago can be any threat to Australia's current security or international relations.

Restrictions under 33(1)(b) are frequent, though less common - material being withheld because it "would breach a confidence shared by a foreign government..."

The problem with application of this reason is that many folders now available for public access *do* contain information (presumably) provided 'in confidence' by Indonesian government and military sources. What is unclear to any researcher is why some and not other such items are precluded from public access.

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<sup>5</sup> See more detail on this example at Appendix 2

One researcher seeking particular DFAT files for 1978/79 has speculated that the real reason for denial of access is to conceal the Department's knowledge of crimes against humanity in East Timor during the Indonesian military occupation.<sup>6</sup>

An expert commentator on Freedom of Information and 'open government' reforms in general has recently characterised DFAT as 'displaying a knee-jerk resort to secrecy' suggesting an 'excessive caution in...guarding the information vault'.<sup>7</sup>

Whatever the root causes of DFAT's restrictive approach, there is sufficient cause for a full review of DFAT's decision-making processes on Timor files.

Note: While procedures do exist to challenge such decisions, the process can be time-consuming and potentially costly for all parties.

**5. Government departments, except in the most extreme of circumstances, desist from seeking Attorney-General 'public interest certificates' to deny applicants before the Administrative Appeals Tribunal (AAT) the right to see the reasons why access to records is being denied.**

Prominent East Timor studies researcher, Assoc. Prof. Clinton Fernandes, lodged an appeal before the AAT to review a DFAT decision to deny him access to certain Jakarta Embassy documents from 1978-1979. In preparation for the appeal process, DFAT sought and received from the Attorney-General a public interest certificate allowing DFAT to keep secret the reasons why it was denying access.

Such an action effectively negates the ability of an applicant to challenge the reasons for restrictions and, as such, is a denial of natural justice.

There may well be reasons, at times, for the use of such certificates but they should only be used in the most extreme of circumstances. Given what is already known in the public arena about the subject matter of the particular folders (famine in East Timor), it is doubtful that these folders should remain secret, let alone require any AAT appeal for access.

**6. The JFADC inquire into reports that Australian military personnel in East Timor in 1999 collected and removed to Australia documentary materials found in Dili and elsewhere - with the view to determining the volume and subject matter of the materials and the prospects for returning such materials to the custody of the government of Timor-Leste.**

CHART has received several anecdotal reports on the collection of documents by military personnel in Dili during the early days of the Australian-led INTERFET presence in Timor in late 1999. It is believed these documents may include evidence of the connections between the Indonesian military and the East Timorese militia responsible for the carnage and destruction in Timor in the immediate post-ballot period. The materials were allegedly removed to Australia.

Indonesian administration documentary materials abandoned in Dili in 1999 were (as at 2009)

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<sup>6</sup> See <http://www.abc.net.au/pm/content/2012/s3460618.htm> [Accessed 04 April 2013]

<sup>7</sup> *A DFAT FOI case study- in excessive caution*, Peter Timmins, 09 March 2011. See: <http://foi-privacy.blogspot.com.au/2011/03/dfat-foi-case-study-in-excessive.html> [Accessed 04 April 2013]

being held by Timor-Leste's National Archive. Non-government organisations in Timor-Leste also hold documentary materials from the Indonesia period. Such materials may enhance East Timorese records of that tumultuous time in their history. If similar materials were removed to Australia in 1999, the East Timorese administration ought be offered the opportunity to inspect the materials with a view to seeking their repatriation to Timor-Leste.

## **B. Australia-East Timor archival relationships**

Australia places great value in its national, state, cultural, educational and community institutions which preserve and provide access to the original documentary materials which underlie its knowledge of its past and present.

Timor-Leste is a new, poor nation which, in the face of urgent fundamental priorities for its people, will struggle for decades to establish institutions which can protect its own historical heritage for future generations.

Australia, as a near neighbour with comparatively abundant economic and human resources, is better-placed than any other to cooperate with Timor-Leste to enhance prospects for the development of sustainable archival institutions in Timor. This could be done at very little cost to Australia in financial terms.

### **East Timorese archival institutions**

There are several existing or planned archives-related institutions emerging in Timor-Leste. They include:

#### ***Arquivo Nacional***

Holds some records of previous Portuguese and Indonesian administrations and expected to preserve permanent records of successive administrations of independent Timor-Leste.

#### ***National Library***

Still in planning stages, but includes preservation of and public access to archival materials in its planned structures.

#### ***Timorese Resistance Archive and Museum***

A well-developed and resourced institution dedicated to collecting and preserving records of the Timorese armed and civilian resistance to the Indonesian occupation.

#### ***Commission for Reception, Truth and Reconciliation (CAVR)***

A 'post-CAVR' secretariat is responsible for securing the archives of Timor-Leste's historic truth commission, 2002-2005. Expected to transform into an Institute of Memory pending passage of legislation before the Timor-Leste parliament.

#### ***Centro Audiovisual Max Stahl Timor-Leste (CAMSTL)***

Archive of historical and contemporary audiovisual materials established by internationally-known British film-maker, Max Stahl.

#### ***Living Memory Project***

A project to record and preserve experiences of East Timorese political prisoners of the Indonesian occupation period. Founded by internationally-known journalist and author on Timor, Jill Jolliffe.



These institutions are in various stages of development; most are struggling in the most basic areas of finance, governance, training and expertise. Individually and collectively, these institutions could benefit from a sustained contact with related Australian institutions and others with Timor archival interests.

## **Recommendations**

### **7. The Australian government support the development of contact between National Archives of Australia (NAA) and Timor-Leste's Arquivo Nacional with a view to determining over time whether there are concrete ways in which NAA might lend assistance to the development of that Timorese institution.**

Contacts between NAA and Timor-Leste's emerging National Archive have, to date, been few. CHART is aware that in the 1999-2001 period NAA, along with the Northern Territory Archives Service, provided East Timor with a substantial volume of precious archival storage materials.<sup>8</sup>

In more recent years, the former Director-General of NAA, Ross Gibb, several times met the head of Timor's Arquivo Nacional, Pedro Fernandes (now deceased) at international archives conferences.<sup>9</sup>

Low-level but consistent contact between the two institutions has the potential to build the confidence of the Timorese management in its many tasks. Likely areas of cooperation could include development of archives legislation, archives procedures in general and associated training. Another possible area for the future might include access to digital copies of Timor-related Australian archives held by NAA.

### **8. The Australian Government materially support current initiatives of national institutions like the National Film and Sound Archive and the National Library of Australia to contribute to Timor-Leste's archival holdings and development.**

The National Film and Sound Archive (NFSA) holds a significant volume of historical material - including rare materials from the Indonesian occupation years. Foreign Minister Bob Carr recently handed to the Timor-Leste government a joint NFSA/DFAT compilation of NFSA's Timor holdings.<sup>10</sup> The institution is understood to be committed, over the long term, to making copies of relevant materials available for direct access in Timor-Leste.<sup>11</sup>

The National Library of Australia holds significant volumes of Timor-related archival materials from individuals and non-government organisations. Small elements of such materials have been digitised for online access and are hence also accessible to East Timorese. Such initiatives are encouraging and CHART hopes they will expand. Through its well-established Indonesian Acquisitions Program, the National Library is also collecting Indonesian-published materials about East Timor which will be eventually donated to an appropriate institution in Timor-Leste.

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<sup>8</sup> See report of beginning of this assistance at page 6 of:  
[http://artsandmuseums.nt.gov.au/\\_\\_data/assets/pdf\\_file/0004/14476/21\\_RecordsTerritory.pdf](http://artsandmuseums.nt.gov.au/__data/assets/pdf_file/0004/14476/21_RecordsTerritory.pdf) (page 6) [Accessed 04 April 2013]

<sup>9</sup> Personal communication from Pedro Fernandes, July 2009.

<sup>10</sup> See: <http://nfsa.gov.au/about/media/releases/2012/12/14/nfsa-provides-insight-timor-leste-history/> [Accessed 04 April 2013]

<sup>11</sup> Ongoing personal communications with NFSA staff, 2011-present.

**9. The Australian government and national institutions mentioned above coordinate with or include Australian non-government initiatives with similar aims in their relationship-building programs in Timor.**

Australia's official aid program recognises the importance of working with and through international and Timorese non-government organisations.<sup>12</sup> Some Australian non-government cultural and educational entities are already developing relationships with East Timorese counterparts.

Examples:

- CHART is committed to developing relationships with East Timorese archival institutions interested to hold and provide access to digital and other materials created in Australia.
- Victoria University and University of Melbourne, through joint activities and the work of individual staff, are seeking ways to support development of university library systems and museums in Timor.
- Libraries for Timor Leste is an Australian-based NGO seeking to support library development in Dili and regional East Timor.

An example of the way in which national institutions might interact with Australian NGOs can be found in CHART's current negotiations with NFSA on joint projects to document in detail the content of key NFSA holdings. The ultimate aim of the projects is to make copies available to Timorese through their own emerging institutions.

The potential advantage to national institutions working with Australian NGOs is being able to draw on the established relationships and detailed Timor knowledge held by the latter.

**10. Relationship-building with emerging Timor-Leste archival institutions be developed in a low-key way over a sustained period. Any assistance offered by Australia should be considered with great care and should avoid quick-fix, resource-rich technological solutions which may be unsustainable in Timor's economic and human resources environment.**

Australia's official development assistance agency, AusAID, states in its strategic plan for Timor-Leste:

*It takes time to build institutional capacity. Too often donors fall back on simplistic models of change which revolve around the use of international expertise. Capacity building is a long-term endeavour, demanding a range of approaches—few of which are purely technical.*<sup>13</sup>

This general statement is wholly applicable in the case of current emerging archival institutions in Timor-Leste. In CHART's view, the 'range of approaches' should begin with visiting Timor and Timorese institutions to gain an appreciation of their state of development and the political, social and physical environment in which they must operate.

Such visits could include establishing, if desired at the Timor end, a mechanism for ongoing communications on matters of potential assistance and cooperation - though language differences between our countries are a significant barrier to email/telephone contact.

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<sup>12</sup> Australia–Timor-Leste Country Strategy, 2009 to 2014, AusAID, page 6. See: <http://www.ausaid.gov.au/Publications/Documents/timor-country-strategy.pdf> [Accessed 04 April 2013]

<sup>13</sup> Ibid, page 5.

CHART recommends the early development of relationships beyond first meetings in the following ways:

1. Very small-scale programs of cooperation in specific areas for confidence-building between Australian and Timor-Leste institutions
2. Establishment in Timor-Leste of a qualified, language-capable communications/link person between Australian and East Timorese institutions - either through the Australian Embassy or independently.

CHART believes strongly that 'relationship building' is the key to long-term success for any Australian assistance to East Timor's archival institutions. Such a strategy is more likely to be sustainable and effective, not to mention of relatively low financial cost to Australia.

### **11. Australian institutions consider establishing programs to copy key Timor-related archival materials for direct access in Timor-Leste.**

Australian archival institutions and libraries between them hold large volumes of Timor-related archival material of direct interest to current and future generations of East Timorese students, researchers and educators.

Much of these materials are in paper manuscript form and are accessible only through visiting the institution in Australia. Even though some materials are now available online through digitisation programs, poor internet performance in Timor-Leste is a barrier to access by East Timorese there.

This disadvantage for East Timorese to access records of their own history could be overcome in time by Australian institutions making copies of their holdings available to East Timorese through Timor-Leste's own archives or libraries.

Such copying programs could be done over an extended period and therefore at relatively modest annual costs to the institutions. A necessary precursor to such programs would be establishing agreements with relevant bodies in Timor-Leste to house and provide access to the copies.

[END]

## **Appendix 1**

### **Background: Clearing House for Archival Records on Timor (CHART) Inc.**

#### **Origins**

CHART was established in Melbourne by John Waddingham and Pat Walsh in 2000. After operating informally for a decade CHART became an incorporated association in the State of Victoria in 2011.

#### **Aims**

1. Locate, promote and assist in the long-term preservation of, and access to, archival materials on all aspects of the East Timor issue, with a primary focus on Australian-held private and non-government records, 1974-1999.
2. Encourage Australian institutional and other support for archival institutional development in East Timor - including providing copies of relevant Australian-held archival records.

The full *Statement of Purposes* which details the principal activities under these aims can be found on CHART's website at: <http://timorarchives.wordpress.com/chart/statement-of-purposes/>

#### **Patrons**

Excellencies Xanana Gusmao, Jose Ramos-Horta and Mari Alkatiri.

#### **Board of Management**

Bill Armstrong AO (Chair)  
Susanna Barnes  
Patrick Walsh AM  
Associate Professor Michael Leach  
Cecily Gilbert

#### **Archivist & Manager**

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#### **Further information**

See CHART website: <http://timorarchives.wordpress.com/>

[End]

## Appendix 2

### Detail on application for access to items in NAA Series A10463

This appendix provides the substantive details of a formal application by CHART archivist John Waddingham to National Archives of Australia to access particular records in NAA custody.

#### Application 25 February 2013 [Text as follows]

*Reference: NAA1000028606*

#### *Research topic:*

Seeking access to specific items currently listed on RecordSearch as 'Open with exception' (OWE reason: some material in closed period when last examined by NAA). In most or all cases, the 'closed period' for these items has now lapsed.

#### *Item information is as follows:*

[SeriesNo : Control Symbol : BARCODE : Title]

A1838 : 3038/4/1 PART 2 : 1505738 : East Timor - Economic developments - General

A1838 : 3038/10/1/5 PART 2 : 1508298 : East Timor - Senate Select committee and JFAD committee

A1838 : 3038/10/10/2 PART 2 : 1505958 : Portuguese Timor - Visits to Australia of Governors, officials and citizens

A1838 : 3038/10/13 : 1505994 : Portuguese Timor relations with Australia - Miscellaneous correspondence from Australian representative

A10756 : LC209 PART 1 : 11455931 : East Timor [Submission No. 1865 refers]

#### NAA Response 25 February 2013 [Text as follows; highlight added]

Thank you for your application for access to records held by the National Archives of Australia.

As you know, the National Archives is responsible for making Commonwealth records available for public access in accordance with the provisions of the Archives Act 1983. Before a decision is made to release records, they must be examined to identify and withhold exempt information (information of continuing sensitivity as set out at Section 33 of the Act). The records you have requested need to undergo this examination process.

For some records, including those you have requested, the Archives seeks expert advice from the government agency that created or now controls the records as part of the examination process. This necessary consultation can result in considerable delays before our decision is finalised.

The Archives will notify you of a decision as quickly as possible but in this instance it may take longer than the statutory 90 days. If we are unable to notify a decision within 90 days, there is an avenue of appeal open to you as the attached fact sheet sets out. However, please be assured that we will continue to process your application and will notify you of a decision when examination is completed unless you notify us that you no longer require the records.

Your copies of the access applications are attached. We will contact you when a decision has been made.

[END]