



GOVERNO
REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

9 January 2014

H.E. Mr Philippe Couvreur
Registrar of the International Court of Justice
International Court of Justice
Peace Palace
Carnegieplein 2
2517 KJ The Hague

Sir,

In advance of the oral proceedings due to open on 20 January 2014, I enclose a set of documents to which the Democratic Republic of Timor-Leste and its Counsel intend to refer.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Joaquim A.M.L. da Fonseca".

Joaquim A.M.L. da Fonseca
Ambassador of Timor-Leste to the UK
Agent for Timor-Leste
Embassy of the República Democrática de Timor-Leste
4 Cavendish Square
London
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IN THE INTERNATIONAL COURT OF JUSTICE

BETWEEN:

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

Applicant

- and -

COMMONWEALTH OF AUSTRALIA

Respondent

**DOCUMENTS SUBMITTED TO THE
COURT ON 9 JANUARY 2014 IN ADVANCE
OF THE HEARING ON 20-22 JANUARY 2014**

DLA Piper UK LLP
3 Noble Street
London
EC2V 7EE



Australian Government
Australian Security
Intelligence Organisation

To the Occupier

This is to advise you that the premises at 5 Brockman Street, Narrabundah, ACT 2604, including any associated storage areas, are the subject of a search warrant issued pursuant to section 25 of the *Australian Security Intelligence Organisation Act 1979* on 2 December 2013 which is valid until 1 March 2014. The warrant authorises approved officers to enter and search the subject premises for the purpose of finding relevant records and other things, and to remove and retain for such time as is reasonable any records and other things so found, for the purposes of inspection and examination, and to make copies or transcripts.

The premises at 5 Brockman Street, Narrabundah, ACT 2604, including any associated storage areas, were the subject of a search conducted on 3 December 2013. As occupier of these premises, you may wish to contact ASIO on 1800 020 648.

Should you have a complaint regarding the manner in which the search was conducted, please contact the Office of the Inspector-General of Intelligence and Security (IGIS) on (02) 6271 5692 (ph); (02) 6271 5696 (fax); or info@igis.gov.au (email).



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Senator the Hon George Brandis QC
Attorney-General and Minister for the Arts
PO Box 6100
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Your reference

Our reference
GB/GB/3161557/837016
AUM/1205271357.2

By Hand and Email
attorney@ag.gov.au

Copy to:

Mr David Irvine
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Australian Security Intelligence Organisation
ASIO Central Office
GPO Box 2176
CANBERRA ACT 2601

By Hand and Fax
(02) 6257 4501

10 December 2013

Dear Attorney

**GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
EXECUTION OF ASIO SEARCH WARRANTS**

We act on behalf of the Government of the Democratic Republic of Timor-Leste (Government of Timor-Leste).

We refer to the search warrants executed by officers of the Australian Security Intelligence Organisation (ASIO) on or around 3 December 2013 at the premises of Mr Bernard Collaery and a former ASIS officer to search and seize documents, data and other property which belongs to the Government of Timor-Leste and/or which the Government of Timor-Leste has the right to protect under international law (Documents and Data).

For the reasons that follow, on behalf of the Government of Timor-Leste, we request that the Attorney-General's Department forthwith, and in any event by no later than 5 pm Thursday, 12 December 2013:

1. provide us with copies of the ASIO search warrants executed against the premises of both Mr Bernard Collaery and the former ASIS officer;
2. return the originals of all the Documents and Data seized from the premises of both Mr Bernard Collaery and the former ASIS officer together with a complete schedule of the seized Documents and Data; and

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3. confirm that it has destroyed beyond recovery any and all copies of the seized Documents and Data that have already been made.

Copies of ASIO Search Warrants

As to our first request, the ASIO search warrants apparently purport to authorise a search and seizure of materials at the premises of our client's legal representative (Mr Bernard Collaery) and key witness (the former ASIS officer) in arbitration proceedings currently on foot between the Government of Timor-Leste and the Government of the Commonwealth of Australia at The Hague.

Given this apparent targeting of our client's legal representative, and key witness, our client wishes to consider whether the Documents and Data removed from the subject premises were:

- (i) lawfully seized;
- (ii) Documents and Data to which our client is entitled to assert legal professional privilege; and
- (iii) Documents and Data our client has the right to protect under international law as a matter of State interest.

Accordingly, on behalf of our client, we request that your office urgently provide us with copies of the search warrants.

If it is asserted (as we understand it was asserted to the occupiers of the premises at the time of execution) that copies of the search warrants cannot be provided because the information contained therein pertains to matters of national security, we request that your office provide us with redacted copies of the search warrants.

In making this request, we make no concession that the warrants that purport to authorise what would otherwise be:

- (i) a trespass against the premises of our client's legal representative and its witness; and/or
- (ii) a trespass against our client's Documents and Data held at those premises;

could properly be subject to any claim of confidentiality from disclosure to our client, whether for national security or any other reason.

If you assert that those actions were authorised by the warrant that you apparently issued, it is for you and those who executed the warrants to produce that authority to our client.



Return of Documents

As to our requests two and three, as noted above, the Documents and Data seized under the search warrants will, in all likelihood, include documents that are subject to legal professional privilege. Moreover, the Documents and Data are likely to include material that the Government of Timor-Leste has the right to protect under international law as a matter of State interest.

Accordingly, we ask that you return the originals of all Documents and Data seized, together with a schedule of such material in order for our client to properly ascertain the nature of the Documents and Data seized.

We further ask that you destroy beyond recovery any copies of the Documents and Data that have already been made, pending the Government of Timor-Leste's agreement on the handling of the Documents and Data that it is entitled to protect.

If it is asserted that our client does not have a right of return to its Documents and Data (which we deny), we ask, as a minimum, that your office, forthwith (and in any event by the time outlined above, i.e., **5 pm Thursday, 12 December 2013**):

- (i) provide us with a schedule of the seized Documents and Data; and
- (ii) seal the seized Documents and Data (and provide a confirmation to us in relation to the same) pending an inspection of the material by us on behalf of our client to ascertain whether the Documents and Data are subject to legal professional privilege and/or include material that the Government of Timor-Leste has the right to protect under international law as a matter of State interest.

We look forward to hearing from you.

Yours sincerely

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Delamo, Caroline

From: Sekler, Irene <Irene.Sekler@ags.gov.au>
Sent: 13 December 2013 04:23
To: McDonald, Scott
Cc: Bajaj, Gitanjali
Subject: RE: Execution of ASIO search warrants matter [SEC=UNCLASSIFIED]

Dear Mr McDonald

We refer to our email to you yesterday (13 December 2013) of 4:44PM (set out below). We are instructed that our client requires more time to consider your request. We propose to respond as soon as we are able to do so next week.

Our client undertakes to take no steps now in relation to the seized materials pending an opportunity for you to consider our foreshadowed response.

Please don't hesitate to contact me in relation to the matter.

Yours sincerely
Irene Sekler

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AGS Canberra has moved to 4 National Circuit, Barton (known as '4NC').

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the Spam Act 2003, this email is authorised by AGS.

From: Sekler, Irene
Sent: Thursday, December 12, 2013 4:44 PM
To: 'scott.mcdonald@dlapiper.com'
Cc: 'gitanjali.bajaj@dlapiper.com'
Subject: Execution of ASIO search warrants matter [SEC=UNCLASSIFIED]

Dear Mr McDonald,

We act for the Commonwealth of Australia. We refer to your letter of 10 December 2013 to the Attorney-General, also copied to the Director-General of Security. Your letter requested a response by 5pm today (12 December 2013).

We are instructed that the Commonwealth anticipates it will be in a position to respond to your letter by 5pm 13 December 2013.

Please don't hesitate to contact me in relation to the matter.

Yours sincerely,
Irene Sekler

Irene Sekler

Senior Executive Lawyer

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Find out more about AGS at <http://www.ags.gov.au>

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Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the Spam Act 2003, this email is authorised by AGS.

Please note: AGS offices will be closed from COB 24 December 2013 until 2 January 2014. If you need advice or assistance during that time, please contact 0409 320 713 until 27 December, then 0407 464 028 until 2 January.

DLA PIPER AUSTRALIA

FILE NOTE

CLIENT : Government of the Democratic Republic of Timor-Leste (3161557)

MATTER : Strategy in relation to Timor Sea (837016)

DATE : 13 December 2013

REF & FILE NO : GB/GB/3161557/837016/AUM/1205316722.1

Call with Irene Sekler (IS) from AGS at 4:15 pm on 13 December 2013

I called IS in relation to the email on behalf of the Commonwealth received at 3.23 pm today.

I asked IS to clarify the sentence "*[o]ur client undertakes to take no steps now in relation to the seized materials pending an opportunity for you to consider our foreshadowed response*", in particular, what was meant by the Commonwealth taking "no steps".

IS clarified that this meant their side was putting its pens down and that the Commonwealth will not do anything to inspect the seized documents until we have their response.

I asked IS where and how the documents were being held - whether they had been sealed or put in a safe etc.

IS said that she did not know the exact state of the documents. All her instructions were that the Commonwealth had ceased to do anything with the documents. She said that they were physically located in the ASIO office in Canberra, but she appreciates that does not narrow it down or answer my query.

I asked IS whether we could be given a date as to when we could expect the response next week. IS stated that she had originally tried to get instructions in relation to an exact date but that did not prove possible, so it would be unwise for her to give me a confirmed date.

Called ended 4:25 pm.

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Our ref. 13209380

16 December 2013

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Dear Mr McDonald

Execution of ASIO search warrants

1. We act for the Commonwealth of Australia. We are instructed to respond to your letter of 10 December 2013 to the Attorney-General, also copied to the Director-General of Security.

The Seized Material

2. Your letter relates to intelligence collection warrants issued under s 25 of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) and executed last week at the offices of Mr Bernard Collaery and the premises of another person. Pursuant to the warrants, material was seized from both premises. Certain items have since been returned to the owners/occupiers. The remainder is held by the Australian Security Intelligence Organisation (ASIO). This material is referred to below as the Seized Material.

Your requests

3. Your client seeks the return of the Seized Material. The material was not seized from your client and your client has pointed to no legal entitlement which would warrant such return. ASIO considers that the Seized Material is likely to be relevant to the intelligence issues in respect of which it was seized. In the circumstances, our client does not agree to return the Seized Material to the occupiers of the premises or to deliver it to your office.
4. Your client seeks a schedule of the Seized Material. Such schedules were prepared in the form of property seizure records completed at the time of execution of the warrants. Copies of those property seizure records were provided for the occupiers of the premises. Your client may request copies from those occupiers (if it has not already done so). In view of your advice that the occupiers were your client's legal representative and a witness, they may be happy to provide those records to your office (again, if they have not already done so). In the circumstances the

Commonwealth will not separately provide you with a schedule of material seized from premises not occupied by your client.

5. Finally, your client seeks copies of the search warrants. The warrants were available to, and inspected by, persons present at the premises at the time of each search. Section 25 of the ASIO Act does not require that copies be provided and it is not ASIO's practice to do so. Again, your client is free to communicate with the occupiers of the premises regarding the warrants.

Next steps

6. Your letter suggests that your client wishes to consider its position in relation to legal professional privilege. No such claim has been made to date. The Commonwealth does not accept that such privilege is available in relation to the Seized Material.
7. Nonetheless, our client is prepared to take no steps now in relation to the Seized Material for a short period to enable your client to take action to enforce any relevant legal rights it believes it may have.
8. If your client wishes to make a claim in respect of any of the Seized Material, by no later than 5:30pm on Thursday 19 December 2013, provide us with:
 - a. details of the material over which each such a claim is made;
 - b. details of the basis for each such claim; and
 - c. any draft proposed application or pleading.
9. Failing this, our client will take such steps as it considers appropriate in relation to the Seized Material without further notice.
10. It would be inappropriate in the circumstances for any proceedings to be commenced on an ex parte basis.
11. We are instructed to advise that the Seized Material has not been, and will not be, inspected by any Commonwealth officers who are to be involved in the proceedings brought by your client in The Hague.
12. Please don't hesitate to contact the writer in relation to the matter.

Yours sincerely



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Your reference

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18 December 2013

By Email Only: irene.sekler@ags.gov.au

Dear Ms Sekler

**GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
EXECUTION OF ASIO SEARCH WARRANTS**

We refer to your letter dated 16 December 2013.

1. We note that your client refuses to provide us with copies of the search warrants.
2. We further note your refusal to provide this firm with copies of the property seizure records completed at the time of the execution of the warrants.
3. You have failed to address our requests for the return of the originals of all the Documents and Data seized and to confirm that your client has destroyed beyond recovery any and all copies of the seized Documents and Data that have already been made.
4. In these circumstances our client's Agent, Ambassador da Fonseca has, on 17 December 2013, submitted an application to the Registrar of the International Court of Justice for the initiation of proceedings against your client and made an urgent request that the Court indicate provisional measures to preserve its rights under international law, pending determination of the issues raised by the application.
5. Copies of both the Application initiating proceedings and the Request for the indication of provisional measures are enclosed, as a matter of professional courtesy.

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6. Please confirm that your client will continue to take no steps in relation to the Seized Material, pending the resolution of this matter by the International Court of Justice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott McDonald'.

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A handwritten signature in black ink, appearing to read 'Gitanjali Bajaj'.

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Our ref. 13209380

19 December 2013

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Dear Mr McDonald

Execution of ASIO search warrants

1. We refer to your letter of 18 December 2013 in which you provided, as a courtesy, a copy of documents submitted to the International Court of Justice on 17 December 2013.
2. We are instructed that the President of the International Court of Justice has since indicated that your client's request for the indication of provisional measures will be heard in the period 20-22 January 2014.
3. Our client is considering its position in relation to the Seized Material in light of the proceedings in the International Court of Justice and will take no steps in relation to the Seized Material whilst that consideration is taking place.
4. If your client proposes to make any claim under domestic law with respect to any of the Seized Material it should do so in the manner set out in paragraph 8 of our letter of 16 December 2013, but by no later than 5:30pm on Friday, 20 December 2013. You should not expect that our client will extend further opportunity to make any claim.
5. Please do not hesitate to contact the writer in relation to the matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Irene Sekler', written in a cursive style.

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Your reference

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21 December 2013

By Email Only: irene.sekler@ags.gov.au

Dear Ms Sekler

**GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
EXECUTION OF ASIO SEARCH WARRANTS**

We refer to your letter dated 19 December 2013.

1. It appears that you are advising us that if our client does not make a claim under domestic law for the material seized under the ASIO search warrants:
 - 1.1 in the manner set out by your client; and
 - 1.2 within the time set by your clientour client loses its entitlement to any such claim.
2. On 10 December 2013, we wrote requesting:
 - 2.1 copies of the ASIO search warrants, or, if more appropriate, redacted copies of the same;
 - 2.2 a schedule of the seized material;
 - 2.3 return of the originals of the seized material (or, at the very least, an opportunity to inspect the same); and
 - 2.4 a confirmation that all copies of the seized material are destroyed.
3. On 13 December 2013, by email, you asked for more time to respond to the request, albeit without giving a definite date.
4. On 16 December 2013, you responded essentially refusing to provide:
 - 4.1 copies of the search warrants;
 - 4.2 copies of the property seizure records; and
 - 4.3 the return of the originals and destruction of the copies of the seized material, instead stating, incorrectly, that our "*client has pointed to no legal entitlement which would warrant such return*".

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5. Your 16 December letter went on to outline (in paragraph 8) the manner in which our client should next proceed with its claim, so far as advising our client that if it "*wishes to make a claim in respect of the Seized Material, then by no later than 5:30pm on Thursday 19 December 2013, provide [you] with:*
- a. *details of the material over which each such claim is made;*
 - b. *details of the basis for each such claim; and*
 - c. *any draft proposed application or pleading."*
6. We responded on 18 December 2013 noting your client's refusal and providing you with copies of our client's Application to the International Court of Justice.
7. In your latest letter of 19 December 2013, you again appear to be advising our client how it should, and indeed can, run its claim. In particular, we note paragraph 4 of your letter in which you state:

"If your client proposes to make any claim under domestic law with respect to any of the Seized Material it should do so in the manner set out in paragraph 8 of our letter of 16 December 2013, but no later than 5:30pm on Friday, 20 December 2013. You should not expect that our client will extend further opportunity to make any claim." [our emphasis]

As to any claim under domestic law, our client reserves its rights. It is clear that our client has given your client the opportunity to return the seized material, or, at the very least, afford our client the opportunity to inspect it such that it can properly ascertain the nature of the material seized. Your client has refused to do so.

In the circumstances, our client has now initiated separate proceedings against your client in the International Court of Justice.

Please call us if you have any queries or wish to discuss.

Yours sincerely

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Our ref. 13209380

24 December 2013

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Dear Mr McDonald

Execution of ASIO search warrants

No steps to be taken in relation to the material seized from the premises of Mr Collaery

1. We refer to the request of the President of the International Court of Justice made on 18 December 2013 that the Commonwealth refrain from any act which might cause prejudice to the rights claimed by the Democratic Republic of Timor-Leste in the proceedings it has commenced before the International Court of Justice.
2. The Commonwealth will take no steps in relation to the material which is the subject of those proceedings, (namely, the material seized from Mr Collaery's premises on 3 December 2013) until the International Court of Justice has heard the request for provisional measures on 20-22 January 2014. Specifically, unless necessary to comply with the requirements of the International Court of Justice, the material seized from Mr Collaery's premises will not be accessed, used or inspected by ASIO prior to 22 January 2013. ASIO will also ensure that it is not communicated to, inspected or accessed by any other person prior to that time.
3. In addition, as we have previously noted, the material seized from Mr Collaery's premises has not been and will not be communicated in any way to any person conducting the Arbitration under the Timor Sea Treaty on behalf of the Commonwealth. The Attorney-General has given directions to ASIO and an undertaking to the Arbitral Tribunal to this effect.

Any domestic law claim in relation to the material seized from Mr Collaery's premises

4. We refer to your letter dated 21 December 2013. The material seized from Mr Collaery's premises was explicitly identified in the property seizure record provided to his staff for him. He was the appropriate recipient of that record as he, not the Government of Timor-Leste, was the occupier of the premises. Given his knowledge of both the property seizure record and his knowledge of contents of the

information held by him, he would be in a position to make informed judgments about the content of anything seized. The Government of Timor-Leste has therefore been well placed to obtain from its legal representatives information and advice to identify any claim it may have. You have not suggested any reason why your client has been unable to inform itself in this way. In the circumstances, our client rejects the complaint that it has not provided you with particular information or opportunities.

5. The Government of Timor-Leste has had ample opportunity to commence domestic proceedings to make any claims it wishes to make and has not done so despite 20 days having passed since the execution of the warrant on 3 December 2013. If it does intend to make any claim under domestic law it should do so well prior to 22 January 2014.

Material seized from the premises of the other person

6. Your client has had ample opportunity to make any claim it wished over material seized from the premises of the other person on 3 December 2013. Your client was asked to make any such claim by 5:30pm on 19 December 2013, extended to 5:30pm on 20 December 2013. As no claim has been made, our client will from 28 December 2013 take such steps as it considers appropriate in relation to materials seized from that person's premises (as was foreshadowed in our letter of 16 December 2013).
7. Please do not hesitate to contact the writer in relation to the matter.

Yours sincerely



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Your reference

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2 January 2014

By Email Only: irene.sekler@ags.gov.au

Dear Ms Sekler

**GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
EXECUTION OF ASIO SEARCH WARRANTS**

We refer to your letter dated 24 December 2013.

We note that your client's undertaking in paragraph 2 is expressed to last until the ICJ hearing on 20-22 January 2014. In accordance with the usual practice, however, the ICJ's Provisional Measures Order is likely to be issued not on 22 January but sometime thereafter. Accordingly, please confirm that the undertaking will remain in place at least until the ICJ Order is made.

We also note your repeated references to the assertion of our client's claims through the Australian courts. For the avoidance of doubt, we wish to make it clear that the claims of Timor-Leste against Australia, that are the subject of the proceedings instituted at the ICJ, are claims of Timor-Leste under international law. There is no requirement under international law that Timor-Leste, a sovereign State, first subject itself to Australian domestic processes before raising such claims at the international level.

As to any recourse that Timor-Leste may separately have to the Australian courts, your client has no legal right to impose an arbitrary time bar on our client.

Yours sincerely

PP
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