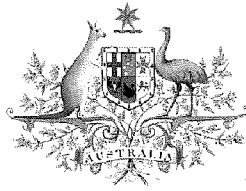


Appendix 4

**Minister for Immigration and Border Protection,
*Response to Order for Production of Documents—Vessels
en route to Australia, 17 June 2015***



Senator the Hon Michaelia Cash

ASSISTANT MINISTER FOR IMMIGRATION AND BORDER PROTECTION
MINISTER ASSISTING THE PRIME MINISTER FOR WOMEN
SENATOR FOR WESTERN AUSTRALIA

17 June 2015

Ms Rosemary Laing
Clerk of the Senate
Parliament House
Canberra ACT 2600

Dear Clerk

Order for Production of Documents – Vessels en route to Australia

I refer to your letter dated 16 June 2015, regarding the motion agreed to by the Senate in relation to the Tabling of Documents.

Please find enclosed the response provided by the Minister for Immigration and Border Protection, the Hon Peter Dutton MP.

Yours sincerely

Senator the Hon Michaelia Cash
Assistant Minister for Immigration and Border Protection
Minister Assisting the Prime Minister for Women
Senator the Western Australia

- cc. Senator the Hon George Brandis QC, Acting Leader of the Government in the Senate
Senator the Hon Mitch Fifield, Manager of Government Business in the Senate
Senator the Hon Penny Wong, Leader of the Opposition in the Senate
Senator Claire Moore, Manager of Opposition Business in the Senate
Senator Sarah Hanson-Young
Senator Jacqui Lambie
Senator Glenn Lazarus
Senator John Madigan
Senator Nick Xenophon
Senator Bob Day
Senator David Leyonhjelm
Senator Ricky Muir
Senator Zhenya Wang



**THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**

Dr Rosemary Laing
Clerk of the Senate
Parliament House
CANBERRA ACT 2600

Dear Dr Laing

I refer to the motion moved on 16 June 2015, in which Senator Hanson-Young moved that:

- (a) *There be laid on the table by the Assistant Minister for Immigration and Border Protection, by 3pm on 17 June 2015, all documents containing information pertaining to:*
- (i) *any money paid to anyone on board a vessel en route to Australia or New Zealand by any Customs, Immigration or other Commonwealth officer from September 2013 to date, and*
 - (ii) *the facilitation or authorisation of the payment of any money to anyone on board a vessel en route to Australia or New Zealand by any Customs, Immigration, ASIS or other Commonwealth officer from September 2013 to date, and in relation to any such payment, a document containing information pertaining to the details of the interception of the vessel, the amount of money paid, to whom and for what purpose; and*
- (b) *there be laid on the table by the Assistant Minister for Immigration and Border Protection, by 3pm on 17 June 2015, any documents produced by the Office of the Minister for Immigration and Border Protection, the Department of Immigration and Border Protection or the Australian Customs and Border Protection Service regarding:*
- (i) *the interception of a vessel en route to Australia or New Zealand in May 2015,*
 - (ii) *any orders to turn back or take back that vessel, its passengers or crew, and*
 - (iii) *any payments made to the vessel's captain, crew or passengers, and;*
 - (iv) *any payments made to the vessels captain, crew or passengers and any payments made in relation to the passage of the vessel, its passengers or crew.*

Regarding the 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 20,720 in the 2013 calendar year. The tragic reality of this escalation was the number of people known to have lost their lives at sea. People smuggling is known to have cost the lives of at least 1,203 people between August 2008 and December 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.

Conversely, only one people smuggling venture has reached Australian shores since mid-2014. Additionally, there have been no known deaths at sea since December 2013. The confidence of the Australian public in the integrity of Australia's migration programme and the security of our borders has been restored.

The financial cost associated with handling illegal maritime arrivals has decreased over this same period, with the success of Operation Sovereign Borders and its flow-on effects delivering more than half a billion dollars of savings in the 2015-16 Budget. Specifically, the release 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 reiterate that similar statements have also been made regarding the operational sensitivity of the information by the former Commander of the Joint Agency Taskforce, Lieutenant-General Campbell, and the current Commander, Major General Andrew Bottrell who recently stated before a Senate committee:

“Despite the results achieved under Operation Sovereign Borders to date, people smugglers continue to try to take advantage of vulnerable people by convincing them to get on boats for Australia. They use misinformation or distort available public information to encourage men, women and children to risk their lives at sea.... I intend to maintain the existing protocols established for the release of operational information, which are designed to balance the public's right to know, the safety of all personnel involved and the success of the mission. I do not intend to release details surrounding capacity or tactics relating to on-water operations but will release generic details on returns in monthly updates after they have been completed and when they are no longer operationally sensitive.”

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 resulted in a substantial and sustained reduction in maritime ventures and potential illegal immigrants attempting to reach Australia.

Yours sincerely

PETER DUTTON

17/6/15