



Australian Government
Department of Immigration and Border Protection

SECRETARY

14 January 2014

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

Sent via email legcon.sen@aph.gov.au

Dear Chair

I refer to the letter from the Committee Secretary dated 12 December 2013 regarding an inquiry by the Committee into a claim of public interest immunity (PII) raised over documents tabled by the Assistant Minister for Immigration and Border Protection on 4 December 2013. I understand a letter was also sent from the Committee Secretary to Mr Michael Pezzullo, CEO Australian Customs and Border Protection Service on 12 December 2013 similarly inviting a submission on the following terms of reference for report by 21 February 2014:

A claim of public interest immunity raised over documents tabled by the Assistant Minister for Immigration and Border Protection on 4 December 2013 in response to an order for production of documents and other documents tabled by the same Minister in relation to other orders for production of documents concerning immigration policy, with particular reference to:

(a) the specific matters of public interest immunity being claimed by the Minister for Immigration and Border Protection; and

(b) the authority of the Senate to determine the application of claims of public interest immunity.

In response to the Committee's invitation to provide a submission addressing the terms of reference by 14 January 2014, I make the following submission on behalf of the Immigration and Border Protection portfolio, including the Australian Customs and Border Protection Service and the Joint Agency Taskforce, Operation Sovereign Borders.

people our business

I am advised that in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters, PII can be claimed on 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;
- 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.

I understand that Minister Morrison provided a more detailed discussion of the basis on which PII was claimed on the specific documents in question in his letters of 18 November 2013 and 4 December 2013, which were tabled by the Assistant Minister for Immigration and Border Protection on 4 December 2013. I do not propose to re-canvass the Minister's reasoning again; however, for the Committee's information I provide a copy of the Minister's original correspondence at **Attachment A**.

The Commander of the Joint Agency Taskforce, Operation Sovereign Borders (OSB), Lieutenant General Angus Campbell has outlined a general approach to public messaging, which is supported by the Government, for the release of official information related to OSB. This approach is designed to balance the public's right to know with the safety of all involved.

The following points have been made by General Campbell in the OSB weekly briefings and is consistent with the principle of non-disclosure of material that would, or could reasonably be expected to, endanger the life or physical safety of any person. I am advised by General Campbell that people smugglers use information about vessel arrivals to:

- market ventures to prospective passengers, and to maintain the momentum of their businesses. They use official announcements of vessel interceptions to persuade people that the way to Australia remains open;
- claim credit for any intercepted vessel, to bolster their reputation and gain market share; and
- trigger the release of final payments from their clients.

In addition to prejudice to law enforcement and investigative mechanisms, the public release of information about interception locations undermines the tactical advantage that our surveillance and response assets have over people smugglers. In some cases, this has led people smugglers to make ill-informed judgements about venture planning, including the selection of the crew, route and vessels to undertake the journey. These judgements have a tendency to place people's lives at considerable risk. The official release of information about the nationality, gender, age and circumstances of passengers on board vessels is also used by people smugglers. For example, this information can assist people smugglers to determine with greater certainty which ventures have arrived as well as assist them in their efforts to market their services.

People smugglers use information about on-water procedures to instruct crew and passengers on how to limit the effectiveness of such procedures, for example, by disrupting lawful boardings, or destroying information that might otherwise be useful in a prosecution. In some cases this has led people to sabotage their own vessel. Public acknowledgement of our techniques and procedures has the very real potential to place responders, as well as passengers and crew, in danger.

The second question posed is one which sits outside the responsibilities of this portfolio. I am advised that the Committee has not sought a submission from the Attorney-General's Department on this matter.

Yours sincerely

Martin Bowles PSM