

## **Appendix 4**

### **Correspondence with Senator Vanstone and DIMIA over requests for case file and other information**

## SUMMARY OF CASE FILE AND RELATED INFORMATION REQUESTED FROM DIMIA

Date of request	Information requested
23 September 2003, public hearing	Case files involving Mr Karim KISRWANI and a registered migration agent such as Marion Le
16 September 2003, correspondence	Case files for cases supported by the 'top ten' sponsors in each group (parliamentarian and individual/ community organisation)
15 October 2003, correspondence	Notebooks recording telephone conversations kept by Mr Peter Knobel and other DLOs serving in Mr Ruddock's office
29 October 2003, correspondence	Case histories of the 17 cases referred to in Mr Ruddock's letter to Ms Gillard of 16 June 2003. (Cases in which Mr KISRWANI was suspected to have made representations on behalf of a ministerial intervention applicant)
11 November 2003, correspondence	Case histories of cases other than the East Timorese cases where Mr Ruddock used the intervention power during his last week as immigration minister
11 November 2003, correspondence	Case histories of cases where Mr Ruddock intervened after requesting a full submission on a scheduled case
17 November 2003, public hearing	Repeat request for case histories where Mr Ruddock requested a full submission on a scheduled case
18 November 2003, public hearing	Information on the cases of Ibrahim Sammaki and Bedweny Hbeiche
11 February 2004, correspondence	Case files of four cases where Mr Ruddock intervened after representations by Mr Fahmi Hussain



AUSTRALIAN SENATE

## SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

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27 October 2003

Senator the Hon Amanda Vanstone  
Minister for Immigration and Multicultural  
and Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Senator Vanstone

On behalf of the Senate Select Committee on Ministerial Discretion in Migration Matters I congratulate you on your recent appointment as Minister for Immigration and Multicultural and Indigenous Affairs. As you are no doubt aware, the Senate established this Select Committee to inquire and report on the use, operation and appropriateness of the Ministerial discretion powers under sections 351 and 417 of the *Migration Act 1958*. As the new Minister for Immigration in whom these powers are vested, the Committee invites you to express your views on their use and operation.

In particular, the Committee seeks answers to the following questions:

- What are your intentions with regard to exercising the discretionary powers under sections 351 and 417 of the *Migration Act 1958*?
- In light of the recent controversy, do you intend conducting an independent inquiry into past use of the powers?
- Do you intend instituting new processes and/or guidelines for departmental officials on the use of the powers?
- Do you intend to conduct a broader examination of the appropriateness of these powers in the Act in light of evidence presented to this Committee to date?

I hope that you will take this opportunity to state your views for the record and indicate what approach you will take in your personal use of these powers.

Yours sincerely



Joseph Ludwig  
Chair



**DEPARTMENT OF IMMIGRATION AND MULTICULTURAL  
AND INDIGENOUS AFFAIRS**

**Deputy Secretary**

Senator Joe Ludwig  
Chair  
Select Committee on Ministerial Discretion  
in Migration Matters  
Parliament House  
CANBERRA ACT 2600



Dear Senator Ludwig

**Inquiry into Ministerial Discretion in Migration matters**

Thank you for your letter of 28 October 2003, advising me of the Committee's intention to table a report by the end of February 2004 and seeking this Department's continuing cooperation in providing information to assist the Committee's inquiry.

The Department is continuing to assign considerable resources to responding to the Committee's requests for information in as thorough a manner as possible. I note that in separate correspondence the Secretariat has outlined its understanding of the questions still to be answered, and has asked the Department to provide those by noon on 12/11/03. This includes all the questions taken on notice at the hearing on 23/9, as well as a number of written questions on notice submitted to the Department.

I have enclosed the answers to those questions submitted prior to the public hearing on 23 September i.e. the remaining question taken on notice at the public hearing on 5 September as well as the 2 questions emailed to Andrew Endrey on 16 September (now referred to as set O). We are also working to provide answers to the remaining questions, including another group of questions submitted on 29 October, by 12 November as requested. However, if there is any indication that we will not be able to meet this deadline for any of the questions we will advise the Secretariat as soon as possible.

You also refer to your particular interest in your "request for documentation demonstrating (the) Department's processes in handling ministerial intervention requests made at the public hearing on 23/9/03". While this is one of the questions included in the group to be answered by 12 November, I understand that you are keen to have some indication of the Department's views on this as soon as possible.



I have considered the request carefully, but must advise that the provision of personal files presents considerable difficulties.

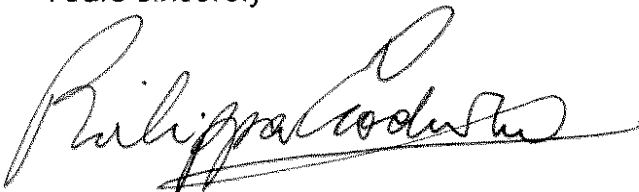
First, there are significant workload implications. The Department has examined the resource implications of providing case files in all cases where Mr Kisrwan and Ms Le made requests for intervention, as you requested at the public hearing on 23 September, 2003. Once the files have been obtained, it is estimated that it would take in the order of 120 person days to prepare the files for the Committee's perusal. This estimate is based on a total of 75 cases, averaging 2 files per case (approximately 150 files) and 150 folios (or pages) per file. We estimate that each file will require 6 hours work for identification of, and consultation in relation to, any privacy and other potential public interest immunity or legal issues, file preparation copying and file management.

Secondly, apart from the workload implications, the Department has some broader concerns about the provision of files. I have not been able to identify any precedent for a request of this nature. The files relate to individuals who are not themselves the subject of the Inquiry. As with all visa applicants the subjects of the files were assured that the personal details they provided to the Department in relation to their applications would not be used or disclosed except for certain purposes, which do not include the purpose now proposed. There is a point of principle as to whether it is fair to breach the legitimate expectation of the individual concerned about how their personal information would be dealt with by the Department.

In view of the very significant workload and other issues that this request raises, I do not believe the provision of the individual case files is appropriate. However, I recognise that the Committee is keen to fully understand the department's processes in handling ministerial intervention requests and has sought the Department's co-operation in the provision of case studies. To assist the Committee, the Department is proposing to construct a series of case studies taken from a sample of actual files. The case studies would be anonymous - that is, they would not name the individual applicant(s) or anyone else referred to in the file - but would trace, folio by folio, the processing of the case to the point of Ministerial intervention. So that the Committee can see what such a case study would look like, we are proposing to provide 2 or 3 case studies to the Secretariat as soon as possible.

I assure you that the Department is continuing to make every effort to provide information that will most usefully assist the Committee. Should you wish to do so, I would be pleased to discuss any of these matters with you and/or the Secretariat. I can be contacted on 62642522.

Yours sincerely



Philippa Godwin

31 October 2003

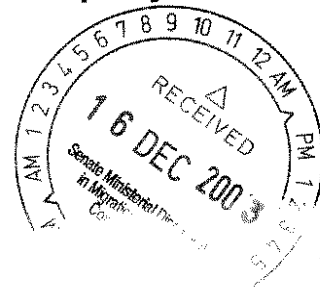


**Australian Government**

**Department of Immigration and Multicultural and Indigenous Affairs**

**Deputy Secretary**

Senator Joe Ludwig  
Chair  
Select Committee on Ministerial Discretion in  
Migration Matters  
Parliament House  
CANBERRA 2600



Dear Senator Ludwig

I am writing further to our meeting at Parliament House on 27 November 2003 with regard to this Department's continuing cooperation in providing information to assist the Committee's Inquiry into Ministerial Discretion in Migration Matters.

2. At that meeting you advised revised requirements in relation to a number of questions. Mr Storer and I agreed that the Department would conduct a scoping exercise in respect of the case information requested by the Committee to ascertain timeframes, resource demands, and other considerations involved in responding to the request.
3. Despite this further refinement of the Committee's requirements, there remain around 130 cases requested. In respect of each of these cases you have asked for either the complete file or for detailed case chronologies with some documents. We have assessed it would require an average of one person day of work per case to prepare the material the Committee has requested. For the current DIMIA team of five officers, on the most conservative estimate the task would take around 5 weeks to complete. Adding to this timeframe elapsed time for gathering together the files from their current locations, public holidays and staff absences on leave over the Christmas/New Year period, as well as legal and clearance processes, we estimate that it would take 8 to 10 weeks for the information to be ready for presenting to the Committee.
4. A substantial amount of work therefore would still be required to supply even this reduced amount of material. In addition, the nature of the requests for this information raises a number of concerns. I am advised that the requests are unprecedented, and have implications going well beyond this particular Inquiry. They raise, in particular, privacy concerns, given that the files and/or case chronologies the Committee has requested relate to individuals who are not themselves the subject of the Inquiry.
5. We have therefore consulted the Minister's office. In view of the considerable workload implications and unprecedented nature of the request, the Minister, Senator

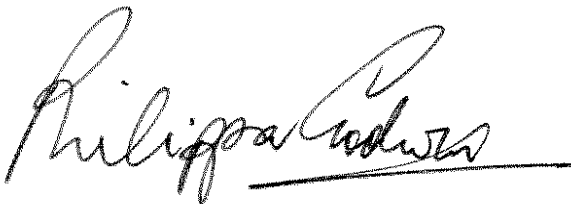
Vanstone has not authorised the Department to provide such a broad ranging and significant amount of personal material.

6. You have indicated that you are looking for information which would assist the Committee to understand the way in which a case moves through the process leading up to a decision by the Minister to intervene under s351 or s417. In order to assist the Committee, the Minister has agreed that the Department provide to the Committee 10 – 12 case studies. The case studies would be randomly selected, and would be based on the information you have sought in relation to Q.T4, but would not include any material which would identify the person whose file it is.

7. Based on the estimated timeframes outlined above, we would expect to be able to have these case studies prepared for forwarding to the Committee by Friday 19 December.

8. If it would assist the Committee, I would be pleased to discuss any of these matters with you or the Secretariat. I can be contacted on (02) 6264 2522.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Philippa Godwin', written over a horizontal line.

Philippa Godwin

12 December 2003



Australian Government

Department of Immigration and Multicultural and Indigenous Affairs



Senator Joe Ludwig  
Chair  
Select Committee on Ministerial Discretion in  
Migration Matters  
Parliament House  
CANBERRA 2600

Dear Senator Ludwig

Please find enclosed 14 case studies provided in the format advised in Ms Godwin's letter of 12 December 2003.

2. Also enclosed are responses to Questions on Notice:

- **U** - Intervention requests by Mr Fahmi Hussain;
- **V** - Individuals about whom further information was requested at the Public Hearing of 18 November 2003;
- **W** - Representational Allowance to return hospitality;
- and to Questions on Notice taken at the 17 and 18 November 2003 hearings.

3. In the course of preparing a response to **V** above we have been advised by our Special Counsel (AGS) that in regard to detailed information on Mr HBEICHE and Mr SAMMAKI we would need to seek their permission to release such information to your Committee.

4. We are therefore in the process of contacting these two individuals to gain their permission. Once permission is received we will forward the information.

Yours sincerely

Des Storer  
First Assistant Secretary  
Parliamentary and Legal Division

14 January 2004



Sen the Hon Amanda Vanstone

Minister for Immigration and Multicultural  
and Indigenous Affairs

Minister Assisting the Prime Minister for Reconciliation



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2-3 JAN 2004

Senator Joe Ludwig  
Chair  
Select Committee on Ministerial Discretion in  
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Parliament House  
CANBERRA ACT 2600

Dear Senator Ludwig 

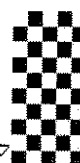
I have been informed that your Committee has been seeking to obtain copies of the notebooks maintained by the Departmental Liaison Officers (DLOs) who worked in my predecessor's office and currently work in my office, that contain records of some of the phone calls made to the Minister's office over past years.

I am concerned at the broad nature of the request, which I am advised is unprecedented. In my own experience I cannot recall the Senate making such a request. It has implications going well beyond this particular inquiry.

In considering your request, it may be helpful if I outline what is actually recorded in the notebooks. I am advised that, just as occurred in my predecessor's office, there are hundreds of phone calls made to my office each week. These phone calls from the public, Members of Parliament and electorate offices, are extremely diverse, covering a myriad of topics across all areas of the portfolio. Many callers seek information, others seek advice, others might phone to offer views or criticism. The majority of the phone calls coming into the office are handled by the DLOs. Comparatively, only a few are phone calls related to requests for Ministerial intervention.

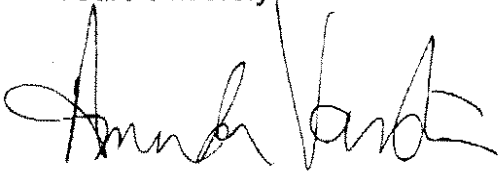
In responding to phone calls, DLOs may be able to deal with the queries 'on the spot' without making any record. On other occasions, where some follow up is necessary, the phone number may be recorded in the notebooks as an aide memoire, but in many cases they do not provide details about the context of the calls, or information, even on the subject matter of the calls. Without such contextual information, the notebooks would not in my view be helpful to your Committee and could in fact give quite misleading impressions.

Further, given that the vast majority of calls received and noted by DLOs in the notebooks have not been about Ministerial intervention issues, but instead have related to people whose affairs are right outside the scope of the inquiry, it is therefore completely inappropriate to pass on this information in this fashion. In addition, even in matters that may touch on Ministerial intervention, I do not believe it is consistent with normal privacy principles to pass on information in relation to specific individuals without first seeking their approval.



For these reasons, I have decided to not accede to your request to obtain the notebooks. If, however, the Committee has a particular point or question that may be clarified by checking whether there is a specific entry in the notebooks, I could facilitate the checking of such a specific request.

Yours sincerely



AMANDA VANSTONE



AUSTRALIAN SENATE

## SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

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11 February 2004

Senator the Hon Amanda Vanstone  
Minister for Immigration and Multicultural  
and Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Senator Vanstone

I am writing on behalf of the Committee in response to your letter of 23 January 2004 regarding the Committee's request for copies of the notebooks of Departmental Liaison Officers who worked in your predecessor's office and who work currently in your office. I am also writing in relation to a letter of 12 December 2003 from Ms Godwin, Deputy Secretary in DIMIA, regarding the Committee's attempts to obtain case files relating to its inquiry. A copy of Ms Godwin's letter is attached.

In your letter you cite the 'broad' and supposed 'unprecedented' nature of the request, the lack of contextual material in the notebooks which could lead to misleading impressions and privacy concerns as grounds for refusing to provide the notebooks to the Committee. Ms Godwin cites similar grounds in her letter before stating that you have not authorised the department to provide the Committee with case files. Ms Godwin also refers to workload implications as a further ground for not providing this information.

In the first instance, you would be aware that the Committee has the general power, delegated by the Senate, to order the production of documents for the purposes of the

Committee's inquiry. There are no limitations in law to this power, nor are there any other constraints relevant to the Committee's purpose in requesting the above information.

With respect to the grounds you and the department cite, it is important that I draw your attention to the following general principles and points:

- As you would know, it is common for committees to require large amounts of documents and information for the purposes of their inquiries, not least because the terms of reference for those inquiries are broadly defined. This is the case in relation to the Committee's inquiry.
- There are numerous precedents of committees asking for documents similar to DLO notebooks that relate to the records of office transactions. The Senate itself has on several occasions required the production of file notes, diary entries, notes of conversations, minutes of meetings and so on, and such documents have been provided.
- It is for the Committee to determine whether any information before it is helpful for the purposes of the inquiry. Equally, it would be open to the Committee to request additional 'contextual' information if this were needed to clarify any matter.
- In relation to the issue of privacy for third parties who you and the department say are not in themselves the subject of this inquiry, it is up to the Committee in the first instance to determine what is and is not relevant to its inquiry. Secondly, neither the Senate nor its committee are bound by privacy legislation or privacy principles, but may choose to respect them in practice (a point I return to below). I should also note that this issue was raised during the Senate Legal and Constitutional Affairs Committee's inquiry into Australia's refugee and humanitarian determination processes. The *Sanctuary Under Review* report found that:

Although the Committee agrees that certain papers, including medical records of individuals should be protected on the grounds of privacy, it nonetheless notes that Parliamentary privilege can override such considerations.

- As for the workload implications Ms Godwin cites, the Committee notes that it has already made significant concessions to accommodate these concerns. In so doing the Deputy Chair, Senator Santoro, and I met with Ms Godwin and another senior departmental officer to refine the Committee's request and attempt to address the department's concerns. At that meeting, I indicated that the Committee would also consider requests from the department to omit certain categories of sensitive information.

It is important that I explain the reasons for the Committee's request for this information. You would no doubt be aware of the allegations aired in parliament and the media last year about a number of individual cases involving use of the ministerial discretion powers. Without examining the actual case files of certain individuals to understand all the circumstances leading to a ministerial intervention, the Committee will be in no way

able to allay the doubt and suspicion that has arisen about the way these powers may have been used. The same applies to the records of ministerial office transactions with other parties.

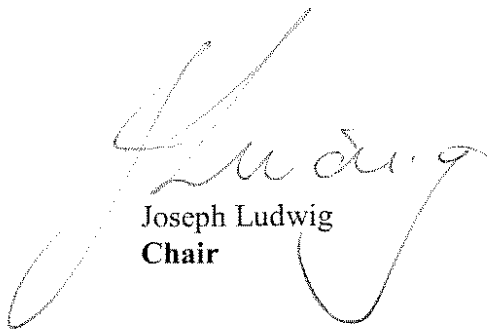
In short, the Committee considers that the information it has requested is essential if it is to address fully the issues referred to it by the Senate, particularly those that relate to the operation of discretionary powers available under sections 351 and 417 of the Migration Act and the criteria and other considerations applied where those powers have been exercised.

In view of the above, I am writing to you directly to request that you reconsider your decision in relation to providing the Committee with the DLO notebooks and case files. A list of the case files that the Committee requests is attached. Taking into account the department's advice on the time estimated to prepare the documents, the Committee would hope to receive the information by no later than 19 March 2004.

In making this request, the Committee recognises that these documents may contain sensitive personal information that is not directly relevant to its inquiry and it does not wish to intrude unduly on the private affairs of individuals. The Committee has agreed that it will not consider anything in the documents that is not relevant to the inquiry and will ensure that any such material is not disclosed.

I would be grateful if you would address the Committee's request as a matter of urgency. I am happy to discuss it with you if required.

Yours sincerely



Joseph Ludwig  
**Chair**

# **SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

## **Case file information requested from DIMIA**

The following represents the case file information the Committee has requested the department provide to the inquiry. It is organised by category or the date on which the information was requested and reproduces the original question where relevant.

### **Question on notice from 23 September 2003 (Chair, pp.42-45): Files where Karim Kirsyani and Marion Le made representations.**

Will the Department provide case files for the Committee to examine that clearly demonstrate the correspondence and other associated processes including the contents of the orange briefing folders provided to the Minister? It would be particularly useful to obtain files involving both a registered migration agent and a non-agent, such as Karim Kirsyani and Marion Le.

It would be helpful to see examples of:

- Cases assessed by the department as not meeting the public interest guidelines and placed on a schedule
- Cases assessed as meeting the guidelines, including the submission prepared for the Minister; and
- Cases not initially referred by the department to the Minister but where the Minister has requested a submission.

### **S2. Case histories of the 17 cases referred to in Mr Ruddock's letter to Ms Gillard**

With reference to the letter from the Minister Ruddock to the Shadow Minister for Immigration and Aboriginal and Indigenous Affairs, 16 June 2003, please provide by reference to DIMIA file numbers only:

- (i) the RRT/MRT outcome in relation to each file;
- (ii) the outcome of the Minister's consideration pursuant to s.351 or s.417, and the date of the Minister's decision;
- (iii) an indication of whether the case at any stage was assessed by DIMIA officers as falling outside the Minister's Guidelines;
- (iv) the date of such assessment;
- (v) the date on which each case was first referred to the Minister's office, and an indication of whether at that stage the case was a scheduled case (assessed outside the Guidelines) or a full submission
- (vi) the date on which the file was the subject of a submission (other than on the schedule) to the Minister's office;

- (vii) details of the requests by the Minister's office for a submission in relation to any of the files, as referred to in the letter, including the date, and any documentary record, of such request;
- (viii) details of the date(s) and nature of the contact with Mr. KISRWANI referred to in the letter; and
- (ix) copies of any correspondence or other documentation evidencing such contact.

#### **T4. Cases other than East Timorese cases where Minister Ruddock intervened in October 2003**

At the Legal and Constitutional Committee estimates hearing on 4 November 2003 the department provided figures for Mr Ruddock's use of the s351 and s417 powers from 1 to 6 October 2003 as 65 and 138 respectively. From these figures can you identify how many cases are East Timorese. For those which are not East Timorese can you provide an outline of the case history, including:

- (i) nationality of the applicant
- (ii) a timeline of the application process including processing of the ministerial intervention request subsequent to the review tribunal decision
- (iii) details of decisions made by departmental officials and review tribunals
- (iv) whether the case was assessed by the department as meeting the guidelines for ministerial intervention or placed on a schedule as outside the guidelines
- (v) details of any communication from the Minister or his office regarding the case
- (vi) names of any persons who made representations on behalf of the applicant

The Committee also requests case files where representations have been made by one of the following:

- Mr Karim KISRWANI
- Gateway Pharmaceuticals
- Mr Ross Cameron
- Mr Tony Abbott
- K C Partners

#### **T5. Cases where the Minister requested a full submission on a scheduled case.**

Can the department provide a list of the 105 cases where the Minister requested a full submission on a scheduled case, indicating which of those cases received ministerial intervention? For those cases where the Minister intervened after requesting a submission, can the department provide a brief case history covering the points in T3?

## **O1. Case files for top ten sponsors in each group**

In addition to the approval rates for the top ten sponsors in each group, can the Department provide the dates on which approval was granted? Can the Department provide the files for these cases?

### **Question on notice from public hearing on 17 November 2003 (Senator Wong, p.12): Cases where the Minister has requested a full submission on a scheduled case.**

In respect of the files you have identified where the department has assessed them as being outside the ministerial guidelines and the minister has requested a full submission nonetheless, I am going to ask you to provide the following information: the RRT and MRT outcome in relation to each file; the outcome of the minister's consideration pursuant to section 351 or section 417 and the date of that decision; the date of the initial assessment of the file as falling outside the ministerial guidelines; the date on which the full submission was requested; details of any persons making representations on behalf of the applicant...In respect of the last issue, can you also provide the date on which the third party representations were made.

### **Individuals about whom further information was requested at public hearing on 18 November 2003**

Ibrahim SAMMAKI – requested clarification of the steps leading to ministerial intervention in this case (Chair, Hansard pp.76-80)

Bedweny HBEICHE – requested further information on the steps leading to ministerial intervention (Chair, Senator Wong, Hansard pp.80-90, pp.96-97)

## **U. Questions about Mr Fahmi Hussain**

In its answers of 14 January 2004, the department reported that former Minister Ruddock intervened in four cases involving representations by Mr Fahmi Hussain, granting three visas under s351 and 1 visa under s417.

Please provide the case files for those four cases.



**Sen the Hon Amanda Vanstone**

Minister for Immigration and Multicultural  
and Indigenous Affairs

Minister Assisting the Prime Minister for Reconciliation



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2 March 2004

Senator Joe Ludwig  
Chair  
Select Committee on Ministerial Discretion in  
Migration Matters  
Parliament House  
CANBERRA ACT 2600



Dear Senator Ludwig *Joe,*

Thank you for your letter of 11 Feb regarding the request by your committee for access to the notebooks of Departmental Liaison Officers and case files.

First, I recognise the importance to the Committee of having access to a broad range of information in relation to the operation of the Ministerial intervention powers. It has been my intention throughout your inquiry that my department provide whatever assistance it reasonably can to the Committee. To this end, the Department has devoted considerable resources to appearing at three public hearings of the Committee and providing a very significant amount of statistical information and explanatory material, including responses to more than 140 questions put to the Department.

While I am anxious that my Department co-operate fully with the Committee in the provision of information, requests to provide the notebooks kept by DLOs and a large number of case files present me with very real concerns. I set out those concerns in relation to the notebooks in my letter to you of 23 January 2004, and Ms Godwin set out the concerns in relation to the case files in her letter of 12 December.

You have asked that I reconsider these decisions. It is important that you understand that I am not intent on refusing to provide the Committee with information, but I do not believe that it is appropriate to provide it in the way that it has been sought. In particular, I remain concerned that you are seeking such a broad ranging and significant amount of personal information in relation to individuals who are not themselves the subject of your inquiry. Your letter does not address the concerns that I raised and still hold about the unprecedented, broad ranging and open ended request for information.

However, I remain committed to co-operating with the Committee in its inquiry and I reiterate the offer made in my letter of 23 January. If the Committee has specific questions that may be clarified by reference to the notebooks or other documents that the Department holds, I could facilitate the checking of such a specific request.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Amanda Vanstone". The signature is written in dark ink and is positioned above the printed name.

AMANDA VANSTONE

**Sen the Hon Amanda Vanstone**

Minister for Immigration and Multicultural  
and Indigenous Affairs

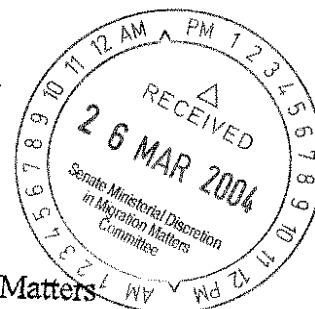
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Senator Joseph Ludwig

Chair

Senate Select Committee on Ministerial Discretion in Migration Matters

Parliament House

CANBERRA ACT 2600

Dear Senator Ludwig *Joe*

Thank you for your letter of 27 October 2003 regarding the Senate Select Committee on Ministerial Discretion.

As you would recall, there was a significant level of interaction and correspondence between my Office and my Department and your Committee in the latter part of last year. Unfortunately, in that context, a specific response to your letter of 27 October was overlooked.

In my view, it was not appropriate then and nor is it now, for me to comment or speculate on the issues under ongoing consideration by your Committee.

I await with interest the outcomes of the Committee's deliberations on the matter.

Yours sincerely

*Amanda Vanstone*  
AMANDA VANSTONE

