
From: [DPMC] ①
Sent: Sunday, 29 June 2014 10:46 p.m.
To: (SEA) ①
Cc: (PRD); PRESS SEC MFA ①
Subject: RE: MALAYSIA POINTS: REVISED: FINAL

For tomorrow morning, first thing, can we please clarify that under the terms of the Vienna Convention, the expectation is that if immunity is invoked, the person will be charged in his home state with the same charges that he would have faced had he been prosecuted in the country he was posted. Important that we get this one right.

Will have to update TPs accordingly for post-Cab points.

Many thanks all,



From: (i) (KLU)
Sent: Sunday, 29 June 2014 11:18 p.m.
To: (i) (SEA)
Subject: Re: Dip immunity case: KLU inquiries

Can't reach (i) by phone right now (may be on way back from Thailand - so I'll try later). I know, for example, that he asked CDF's office, although prob w/o naming the man himself, and therefore got no acknowledgement of them knowing about the case at that stage. Have you got anything from Malaysia HC? Do you want me to refresh my enquiry to (i) late on a Sunday night? What time is Cabinet tomorrow?



----- Original Message -----

From: (i) (SEA)
Sent: Sunday, June 29, 2014 11:06 PM
To: (i) (KLU)
Subject: Re: Dip immunity case: KLU inquiries

Thanks (i), are you able to phone (i) for more detail please? "Discreet inquiries" is nowhere near enough to satisfy PMO and MFA. I thought you had said (i) had made inquiries quite active ones. This is what is required asap please.

V late now and I've spent much of my Sun evening on the phone with (i), so I don't think we need to talk, but thanks for getting back to me so quickly.



----- Original Message -----

From: (i) (KLU)
Sent: Sunday, June 29, 2014 10:59 PM
To: (i) (SEA); (i) (KLU)
Cc: (i) (KLU)
Subject: Re: Dip immunity case: KLU inquiries

Hi (i)

As discussed, I am not aware of (i) having any conversations early on. While (i) has been making discrete enquiries since May, none of his contacts were aware of the case (suggesting it had been kept to a very small group before my enquiry to MFA on Thursday).

I'm conscious it's very late for you, but please call me if you want to discuss this evening.

From: (i) (KLU)
Sent: Sunday, 29 June 2014 11:33 p.m.
To: (i) (SEA)
Subject: Fw: Dip immunity case: KLU inquiries

You will now have (i) email (altho he's texted to say he's not in a position to take calls).

Did you try to call me? I was talking to (i) and failed to switch lines. (i) confirms he was not tasked to make a direct approach in May and did not do so. However, he wanted me to remind you that on his recommendation Minister Coleman would have been briefed (via (i) and (i) before coming up for FPDA.

(i) question remains whether you need me to renew my enquiry to ~~Wisma Putra~~ late on a Sunday night or can work through Malaysia HC?

(i)

----- Original Message -----

From: (i) (KLU)
Sent: Sunday, June 29, 2014 11:18 PM
To: (i) (SEA)
Subject: Re: Dip immunity case: KLU inquiries

Can't reach (i) by phone right now (may be on way back from Thailand - so I'll try later). I know, for example, that

(2)

(i) enquiry to (i) ultra late on a Sunday night? What time is Cabinet tomorrow?

(i)

From: (KLU)
Sent: Sunday, 29 June 2014 11:38 p.m.
To: (SEA)
Cc: (KLU); (KLU)
Subject: Re: SEEMAIL: Dip immunity case: KLU inquiries

Thanks (1). As far as possible, could you please email to all here name/position/date of those to whom you made 'casual inquiries'? I believe PMO is looking for detail on our action/enquiries as well as outcomes of those enquiries.

Thanks,

(1)
----- Or
From: (@nzdf.mil.nz)
Sent: Sunday, June 29, 2014 11:13 PM
To: (SEA)
Cc: (KLU); (KLU); (KLU)
Subject: SEEMAIL: Dip immunity case: KLU inquiries

*** [SEEMAIL] This message may contain classified information *** Hi (1). Sorry but only just received your email in Thai. My info to date is what I said to (1) a week back which is that (2)

Failing short of formally asking the (2) and I'm not certain how to manage such a request I was led to believe that MFA in Mal were seeking an update from MAF.

Sorry but that's all I can add at this stage.

Cheers

(1)

----- Original Message -----

From: (SEA) (1)
Sent: Sunday, June 29, 2014 05:31 PM
To: (1) (@nzdf.mil.nz)
Subject: Fw: Dip immunity case: KLU inquiries

----- Original Message -----

From: [DPMC] (i)
Sent: Monday, 30 June 2014 7:07 a.m.
To: (PRD); (SEA); (i)
(PRD)
Cc: (i) PRESS SEC MFA, P/SEC MFA
Subject: RE: MALAYSIA POINTS: REVISED: FINAL

Thanks (i)

Once (i) has come in, can we please add a point explaining this to the background of the briefing points.

Cheers

(i) DPMC

From: (i) (PRD)
Sent: Monday, 30 June 2014 5:50 a.m.
To: (i) [DPMC]; (i) (SEA);
Cc: PRESS SEC MFA, P/SEC MFA (i)
Subject: Re: MALAYSIA POINTS: REVISED: FINAL

(i)

The Vienna Convention on Diplomatic Relations states that "the immunity of a diplomatic agent from the jurisdiction of the receiving state (i.e. New Zealand) does not exempt him from the jurisdiction of the sending state (ie Malaysia)."

That does not mean that the authorities would have the ability to prosecute- it would depend on what extra territorial jurisdiction Malaysia has, the terms of his employment etc (i) may be able to comment on the post's advice on this.

Suggest:

"It is our expectation that this person will be held to account in his own country."

(i)

From: (1) (DŠ AAG)
Sent: Monday, 30 June 2014 7:26 a.m.
To: (1) (SEA)
Subject: Re: MALAYSIA POINTS: REVISED: FINAL

Yeah, I've been listening to that line on the news too and wondering...

From: (1) (SEA)
Sent: Monday, June 30, 2014 07:24 AM
To: (1) DPMC (1) (PRD);
(1) MEDIA (1) (PRD);
Cc: PRESS SEC MFA (DS AAG); PISEC MFA (1) (SEA)
Subject: Re: MALAYSIA POINTS: REVISED: FINAL

Just to square the circle, I see (1) is happy with our original wording.

Radio NZ news quoting MFAT at 7am saying if the sending govt doesn't bring the man to justice MFAT "will take further action".

(1) PRESS SEC MFA (1) (2)
we may need to ask RNZ to explain its reporting and if necessary correct for further bulletins, inc the longer piece thgat will air on Morning Report this hour. We don't want that line to set the tone for post-Cabinet press conf. (5)
(1)

From: (i) (SEA)
Sent: Monday, 30 June 2014 7:36 a.m.
To: (KLU); (i) @nzdf.mil.nz'
Cc: (i) (KLU); (i) (KLU)
Subject: Re: SEEMAIL: Dip immunity case: KLU inquiries

Thanks both and just to acknowledge. Will be back in touch.

(i)

----- Original Message -----

From: (i) (KLU)
Sent: Sunday, June 29, 2014 11:37 PM
To: (i) @nzdf.mil.nz' (i) (SEA)
Cc: (KLU); (KLU)
Subject: Re: SEEMAIL: Dip immunity case: KLU inquiries

Thanks. (i). As far as possible, could you please email to all here name/position/date of those to whom you made 'casual inquiries'? I believe PMO is looking for detail on our action/enquiries as well as outcomes of those enquiries.

Thanks,

(i)

----- Original Message -----

From: (i) @nzdf.mil.nz]
Sent: Sunday, June 29, 2014 11:13 PM
To: (SEA)
Cc: (i) (KLU); (i) (KLU); (KLU)
Subject: SEEMAIL: Dip immunity case: KLU inquiries

*** [SEEMAIL] This message may contain classified information *** Hi (i) Sorry but only just received your email in Thai. My info to date is what I said to (i) a week back which is that

(2)

Failing short of formally asking the (2) - and I'm not certain how to manage such a request I was led to believe that MFA in Mal were seeking an update from MAF.

Sorry but that's all I can add at this stage.

Cheers

(i)

From: (i) (DS AAG)
Sent: Monday, 30 June 2014 8:15 a.m.
To: (i) (SEA); (i) (PRD); (i) (PRD); (i) (ESD)
Cc: (i) (SEA); (i) (DS AAG Office)
Subject: Re: MALAYSIA POINTS: REVISED: FINAL

Can we please all meet briefly in my breakout room about 9.15 to discuss the handling of this today, especially vis-a-vis PM post-cab press conference. (i) been in touch and I'd like us to gather to make sure we have all bases covered.

Feel free to bring anyone else who is involved.

(i) can you ring around folk in case they are not reading emails at moment. Ta

From: (i) [DPMC]
Sent: Monday, June 30, 2014 07:47 AM
To: (i) (SEA); (i) (PRD); (i) (PRD); (i) (ESD)
Cc: PRESS SEC MFA (i); P/SEC MFA (i) (DS AAG); (i) (SEA)
Subject: RE: MALAYSIA POINTS: REVISED: FINAL

(i) et al

For the PM's post-press cab points, can we also please update the briefing points/background on the following points:

- What exactly the Vienna Convention means in terms of the obligations/requirements of the sending country in a case such as this.
- Reconfirm the exact terms of the Suppression Order in terms of the publication of the nationality question.
- Who exactly was brought into the loop and when.

Happy to discuss.

Thanks,

(i) DPMC

From: (i) (SEA)
Sent: Monday, 30 June 2014 7:24 a.m.
To: (i) [DPMC]; (i) (PRD); (i) (PRD);
Cc: PRESS SEC MFA; P/SEC MFA (i) (DS AAG); (i) (SEA)
Subject: Re: MALAYSIA POINTS: REVISED: FINAL

Just to square the circle, I see (1) is happy with our original wording.

Radio NZ news quoting MFAT at 7am saying if the sending govt doesn't bring the man to justice MFAT "will take further action".

- Anyone know where this comes from? We have been v careful to say the man is now in Mlysia's jurisdiction and, while we are liaising closely, we don't interfere. As I mentioned in discussion with (1) last night I also think it's very imp't to avoid creating any impression we lack faith in the Mlysn justice system. Its foreign ministry is v focused on this and I believe

(2)

PRESS SEC
MFA (1)

(1) we may need to ask RNZ to explain its reporting and if necessary correct for further bulletins, inc the longer piece thgat will air on Morning Report this hour. We don't want that line to set the tone for post-Cabinet press conf. Perhaps an added Q+A line: 'what more can our Govt do?'

(1)

From: (1) [DPMC]
Sent: Monday, June 30, 2014 07:07 AM
To: (1) (PRD); (1) (SEA); (1) (PRD)
Cc: P/SEC MFA ; PRESS SEC MFA
Subject: RE: MALAYSIA POINTS: REVISED:

Thanks (1)

Once (1) has come in, can we please add a point explaining this to the background of the briefing points.

Cheers

(1) DPMC

From: (i) (ESD)
Sent: Monday, 30 June 2014 9:19 a.m.
To: PRESS SEC MFA (i)
Subject: FW: 12 May post cabinet briefing
Attachments: 12 May post cabinet briefing.docx

FYI.

The Post cabinet briefing on the Monday morning (following the weekend in question) had talking points provided on the diplomat.

Regards,

(i) (i)

From: (i) (ESD)
Sent: Monday, 30 June 2014 9:08 a.m.
To: (i) (ESD)
Subject: FW: 12 May post cabinet briefing

From: (i) (ESD)
Sent: Monday, 12 May 2014 12:32 p.m.
To: (i) (DPMC)
Cc: (ESD); (i) (ESD)
Subject: 12 May post cabinet briefing

(i) Hi (i),

Please see attached Post Cabinet Briefing points.

Give me a call if you need to discuss.

Cheers

(i)

Executive Services Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

"The information contained in this email message is intended only for the addressee and is not necessarily the official view or communication of the Ministry. It may be legally privileged. If you are not the intended

From: (i) (ESD)
Sent: Monday, 30 June 2014 9:30 a.m.
To: (i) (OFS); (i) (ESD); (i) (ESD)
Subject: FW: MFAT response

Hi all – see below qn.

To discuss.

Thanks

(i)

From: (i) [newstalkzb.co.nz]
Sent: Monday, 30 June 2014 9:26 a.m.
To: (i) (ESD)
Subject: RE: MFAT response

Thanks (i). Is MFAT able to confirm the man was from a high commission?
Regards,

(i)

| Political Reporter | Newstalk ZB

A: Press Gallery, Parliament Buildings, 1 Museum Street, Wellington



From: (i) (ESD)
Sent: Monday, 30 June 2014 9:11 a.m.
To: (i) @newstalkzb.co.nz
Subject: MFAT response

Hi (i)

As discussed, please attribute the following to a spokesperson for the Ministry of Foreign Affairs and Trade if required.

- In this case there was a serious allegation, and New Zealand sought a waiver of diplomatic immunity so that the matter could be dealt with by the New Zealand courts.
- The request for a waiver of immunity was declined by the individual's home country. He was immediately removed from New Zealand by his home Government.
- The New Zealand Government expects diplomats to respect New Zealand laws. However, under the Vienna Convention there is global recognition that diplomats are entitled to immunity from arrest and detention.

- New Zealand expects that the individual will face an investigation in his home country and we are monitoring the situation.
- Serious crimes committed by diplomats in New Zealand are rare.

Kind regards

①

Executive Services Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

②

From: MEDIA
Sent: Monday, 30 June 2014 10:03 a.m.
To: (DS AAG); (SEA); (OFS); (PRD); (PRD); (SEA); (ESD)
Subject: FW: Draft PR - NZ expects diplomat to face justice

Please see below request for checking.

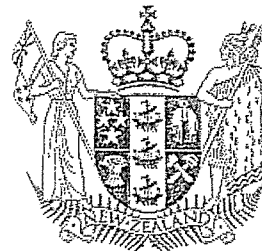
Many thanks



From: PRESS SEC MFA (1)
Sent: Monday, 30 June 2014 10:00 a.m.
To: MEDIA
Subject: Draft PR - NZ expects diplomat to face justice

Can you guys check this over your way please. Esp ref to Malaysia.

Hon Murray McCully



Minister of Foreign Affairs

30 June 2014

Media Statement

NZ expects diplomat to face justice

Foreign Minister Murray McCully says the New Zealand Government did all it could to ensure a Malaysian diplomat faced trial in New Zealand after being accused of an attack on a young woman.

"New Zealand expects all diplomats in our country to abide by our laws and we make this very clear to all foreign missions operating in New Zealand," Mr McCully says.

"On this occasion a foreign diplomat has been accused of a very serious crime.

"Our strong preference was that he face justice in New Zealand and the Ministry of Foreign Affairs and Trade formally requested that his right diplomatic immunity be waived.

"This was declined and the individual returned to Malaysia where an investigation is being carried out by the relevant authorities.

"While our preference was for the accused to face trial in New Zealand, we have seen nothing to suggest the matter is being swept under the carpet.

"The Ministry is monitoring this investigation closely and we have reinforced our expectation that this issue needs to be treated with the utmost seriousness.

"The Government is very sorry for the situation the victim of this crime finds herself in and we will continue to work with agencies in New Zealand and Malaysia to ensure her rights as the victim of a crime are upheld," Mr McCully said.

Media contact: ① PRESS SEC MTA

① Press Secretary | Office of Hon Murray McCully

6.1 Executive Wing Beehive | Parliament Buildings | Wellington 6160 | New Zealand

From: (i) (SEA)
Sent: Monday, 30 June 2014 10:04 a.m.
To: (i) (ESD)
Cc: (i) (SEA); (i) (PRD); (i) (OFS)
Subject: Diplomatic immunity case: "What further measures can MFAT take?"

(i) , as discussed with (i) , and further to the Radio NZ line on the above, here are some draft points for your wrap-up. The second point is drafted as MFAT response, but I've bracketed for the answer the PM might want to give.

- The High Commission in the other country's capital will continue to liaise closely with authorities there on the investigation into this case;
- If MFAT [we're?] is not satisfied it [we?] will be making further representations.

(i)

From: (i) (SEA)
Sent: Monday, 30 June 2014 10:08 a.m.
To: MEDIA; (i) (DS AAG); (i) (PRD); (SEA); (i) (ESD) (OFS);
Subject: RE: Draft PR - NZ expects diplomat to face justice

Thanks (i) best you liaise closely with (i) as we have just met to discuss.

We have not named Malaysia as the man's home country, and we are taking advice from Crown Law whether the PM could do so if asked directly by the media.

(i) One small drafting point:

"Our strong preference was that he face justice in New Zealand and the Ministry of Foreign Affairs and Trade formally requested that his right to diplomatic immunity be waived.

(i)

From: MEDIA
Sent: Monday, 30 June 2014 10:03 a.m.
To: (i) (DS AAG); (i) (SEA); (i) (SEA); (i) (OFS);
(PRD); (PRD); (ESD)
Subject: FW: Draft PR - NZ expects diplomat to face justice

Please see below request for checking.

(i) Many thanks

From: PRESS SEC MRA
Sent: Monday, 30 June 2014 10:00 a.m.
To: MEDIA
Subject: Draft PR - NZ expects diplomat to face justice

Can you guys check this over your way please. Esp ref to Malaysia.

From: (1) (SEA)
Sent: Monday, 30 June 2014 10:25 a.m.
To: (1) (DS AAG)
Subject: FW: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

(5)

From: (1) [DPMC]
Sent: Monday, 30 June 2014 10:09 a.m.
To: (1) (SEA); (1) (PRD); (1) (PRD);
(ESD)
Cc: PRESS SEC MFA, P/SEC MFA (1) (SEA); (1) (DS AAG); (1)
Subject: RE: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

All

Ok – Interest is running hot on this in the media, so PMO have asked that we cover off answer/brief the PM on following points, in the updated briefing we are working on:

- Are we able to refer to the fact that this person was a Defence Attache, and therefore could also face potential charges under military jurisdiction.
- Reiterated that we need clarification as to what the rules are under the Vienna Convention in terms of expectations that the person will be charged in their home jurisdiction.
- A line on whether the person could be extradited to NZ, notwithstanding that he was subject to diplomatic immunity.
- A line on why this was dealt with at officials' level, and why it has not been elevated to Ministerial/PM's level in terms of engagement with the Malaysians.

Deadline for all of this is noon please.

Also, can someone please get back to me asap on the earlier question about the suppression order (what jurisdiction was it issued under? Is it publicly accessible? If so, where?)

Cheers

(1) DPMC

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From: (1) (SEA)
Sent: Monday, 30 June 2014 10:33 a.m.
To: (1) (OFS)
Subject: FW: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

(6)

From: [DPMC]
Sent: Monday, 30 June 2014 10:09 a.m.
To: (SEA); (PRD); (1) (PRD); (ESD)
Cc: P/SEC MFA; (1) (DS AAG); (1) (SEA)
Subject: RE: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

All

Ok – Interest is running hot on this in the media, so PMO have asked that we cover off answer/brief the PM on following points, in the updated briefing we are working on:

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12/27

From: MEDIA
Sent: Monday, 30 June 2014 10:44 a.m.
To: PRESS SEC MFA ①
Subject: FW: Draft PR - NZ expects diplomat to face justice

Fyi – here's some initial feedback. Also there is typo in first para. ①

From: ① (SEA)
Sent: Monday, 30 June 2014 10:08 a.m.
To: MEDIA; ① (DS AAG); ① (SEA); ① (OFS); ① (PRD);
(PRD); ① (ESD)
Subject: RE: Draft PR - NZ expects diplomat to face justice

Thanks ①, best you liaise closely with: ①, as we have just met to discuss.

We have not named Malaysia as the man's home country, and we are taking advice from Crown Law whether the PM could do so if asked directly by the media.

One small drafting point:

"Our strong preference was that he face justice in New Zealand and the Ministry of Foreign Affairs and Trade formally requested that his right to diplomatic immunity be waived.

①

From: MEDIA
Sent: Monday, 30 June 2014 10:03 a.m.
To: (PRD); ① (DS AAG); ① (SEA); ① (SEA); ① (OFS);
(PRD); ① (ESD)
Subject: FW: Draft PR - NZ expects diplomat to face justice

Please see below request for checking.

Many thanks

①

From: ① PRESS SEC MFA
Sent: Monday, 30 June 2014 10:00 a.m.
To: MEDIA
Subject: Draft PR - NZ expects diplomat to face justice

Can you guys check this over your way please. Esp ref to Malaysia.

From: ① (ESD)
Sent: Monday, 30 June 2014 10:52 a.m.
To: ① (OFS)
Cc: ① (OFS)
Subject: FW: suppression orders etc

Hi ①,

④ + ⑥

Could you call the person below from Police Prosecutions – he may agree to send it directly to Crown Law if you can provide him with the contact.

①
Police Prosecution Service | New Zealand Police
PNHQ, 180 Molesworth Street, Thorndon, PO Box 3017, Wellington 6140, www.police.govt.nz

Safer Communities Together

Thanks

①

From: ① NZ POLICE
Sent: Monday, 30 June 2014 10:38 a.m.
To: ① (ESD)
Subject: RE: suppression orders etc

Hi ① - here are the two relevant contacts in our prosecutions team:



① | Police Prosecution Service | New Zealand Police
PNHQ, 180 Molesworth Street, Thorndon, PO Box 3017, Wellington 6140, www.police.govt.nz

Safer Communities Together

①
Police Prosecution Service | New Zealand Police
PNHQ, 180 Molesworth Street, Thorndon, DX SX11149/PO Box 3017, Wellington 6140, www.police.govt.nz

Safer Communities Together

As soon as diplomatic immunity was declared, police had no legal grounds to proceed with prosecution. New Zealand authorities also had no legal grounds to prevent x leaving/departing the country.

Many thanks

①

Executive Services Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

①

From: (i) (PRD)
Sent: Monday, 30 June 2014 11:04 a.m.
To: (SEA); (i) (DS AAG)
Cc: (i) (ESD)
Subject: Fw: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

(i)
I wasn't aware of the suppression order and it might be helpful if someone rang (i) or (i) at DPS to ask them to check facts with CIB. It's a question for pplice not MFAT. Phone numbers are above my desk in a blue/white card holder.

There's nothing in the convention about sending state prosecuting under its own jurisdiction - just Article 41 re respecting the law but the convention is based on the principle of reciprocity.

Re escalating to ministerial/PM level. Our minister's office was alerted on the saturday and malaysian HC alerted her minister.

(i)

From: (i) [DPMC]
Sent: Monday, June 30, 2014 10:08 AM
To: (i) (SEA); (i); (PRD); (i) (PRD); (i) (ESD)
Cc: PRESS SEC MFA (i); PLSEC MFA (i) (DS AAG); (i) (SEA)
Subject: RE: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

All

Ok – Interest is running hot on this in the media, so PMO have asked that we cover off answer/brief the PM on following points, in the updated briefing we are working on:

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Also, can someone please get back to me asap on the earlier question about the suppression order (what jurisdiction was it issued under? Is it publicly accessible? If so, where?)

Cheers

① DPMC

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8

8

From: (i) (OFS)
Sent: Monday, 30 June 2014 11:06 a.m.
To: '@crownlaw.govt.nz'
Cc: (i) (OFS); (i) (SEA); (i) (ESD); (i)
(ESD); (ESD)
Subject: RE: Name suppression

(6)

Hi,

6

Give me a call if you want to discuss.

Kind regards,

1

Strategy and Governance Group
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

1

195 Lambton Quay, Private Bag 18901
Wellington 5045
New Zealand

www.mfat.govt.nz | www.nzembassy.com | www.aid.govt.nz | www.safetravel.govt.nz



NEW ZEALAND
FOREIGN AFFAIRS & TRADE



C

From:

① (OFS)

Sent:

Monday, 30 June 2014 11:09 a.m.

To:

① (SEA)

Subject:

RE: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

⑥

From: (i) (ESD)
Sent: Monday, 30 June 2014 11:19 a.m.
To: (i) (OFS); (i) (PRD)
Cc: (ESD); (i) (ESD)
Subject: FW: MFAT statement

Please see below follow up from (i) . It's likely PM will be asked this also.

From: (i) [redacted]@mediaworks.co.nz
Sent: Monday, 30 June 2014 11:14 a.m.
To: (i) (ESD)
Subject: RE: MFAT statement

Great thanks (i)

Can you please tell me if MFAT had anything to do with the man (i) name suppression eg. requested or contributed to the request for suppression?

Thank you

(i)

From: (i) (ESD)
Sent: Monday, 30 June 2014 10:57 a.m.
To: (i) @mediaworks.co.nz
Subject: MFAT statement

(i) Hi (i) Here (i) our statement.

Please attribute the following to a spokesperson for the Ministry of Foreign Affairs and Trade if required.

- In this case there was a serious allegation, and New Zealand sought a waiver of diplomatic immunity so that the matter could be dealt with by the New Zealand courts.
- The request for a waiver of immunity was declined by the individual (i) home country. He was immediately removed from New Zealand by his home Government.
- The New Zealand Government expects diplomats to respect New Zealand laws. However, under the Vienna Convention there is global recognition that diplomats are entitled to immunity from arrest and detention.
- New Zealand expects that the individual will face an investigation in his home country and we are monitoring the situation.
- Serious crimes committed by diplomats in New Zealand are rare.

Kind regards

(i)

From: (i) (SEA)
Sent: Monday, 30 June 2014 11:22 a.m.
To: (i) '@police.govt.nz'
Cc: (i) '@police.govt.nz'; (i) (SEA); (i) (PRD)
Subject: Diplomatic Immunity issue: Name suppression-

Importance: High

Dear (i)
Further to my phone message, (i) recommended I talk with you to get chapter and verse on the question of name suppression of the Malaysian DA at the centre of the current media coverage. I have been asked to get advice to the Prime Minister's Office before 11.45am, hence the red flag.

Specifically, could you please clarify for me:

- Who asked for name suppression and when? As I understand it, Judge Davidson granted it, with NZ Police making no objection.
- Did the defendant appear only before the Judge? I have seen reference to an appearance before a JP, but query whether there would have been time to do both before the Vienna Convention was invoked on Saturday morning.

Thanks. I am on (i) or (i). Note that (i) is off sick today, hence I am POC.

(i)

, South and South East Asia | Ministry of Foreign Affairs & Trade

(i)

195 Lambton Quay, Private Bag 18901
Wellington 5045, New Zealand

www.mfat.govt.nz



See the 'NZ Inc' Strategy for ASEAN: <http://www.mfat.govt.nz/NZ-Inc/8-NZ-Inc-ASEAN/index.php>
And for India: <http://www.mfat.govt.nz/NZ-Inc/5-Opening-doors-to-India/index.php>

From: MEDIA
Sent: Monday, 30 June 2014 11:28 a.m.
To: (ESD)
Cc: (OFS)
Subject: FW: RNZ questions

Draft responses in blue for checking before going back to (1) . Cheers

From: (1) PRESS SEC MFA
Sent: Monday, 30 June 2014 11:01 a.m.
To: MEDIA
Subject: FW: RNZ questions

Hi team – can I please get some draft responses to these ones?

(1) | Press Secretary | Office of Hon Murray McCully

From: (1) @radionz.co.nz
Sent: Monday, 30 June 2014 10:59 a.m.
To: (1) PRESS SEC MFA
Subject: RNZ questions

Hi (1) PRESS SEC MFA

Further to our conversation would it be possible to answer the following questions?

1. What action is MFAT taking in relation to the diplomat?
New Zealand expects that the individual will face an investigation in his home country and we are monitoring the situation.
2. Are any efforts underway to bring him back to NZ? If so, what? No
3. Will New Zealand consider declaring him persona non grata in an attempt to get him returned to NZ? No
4. I understand that if the man loses his job, diplomatic immunity is lost. Has the man lost his job? What sanctions has he faced back in Malaysia? It's too early to say. We understand an investigation is under way.

Thanks for your time and your help with this matter. If you have any questions please feel free to give me a call on

(1)

Kind Regards,

(1)

Journalist
Radio NZ.

From: (1) (PRD)
Sent: Monday, 30 June 2014 11:28 a.m.
To: (1) (ESD); (1) (OFS)
Cc: (ESD); (1) (ESD)
Subject: Re: MFAT statement :

No we didn't - it's a question for police which (1) is dealing with as we speak

(1)

From: (ESD)
Sent: Monday, June 30, 2014 11:18 AM
To: (1) (OFS); (1) (PRD)
Cc: (1) (ESD); (ESD)
Subject: FW: MFAT statement

Please see below follow up from (1). It's likely PM will be asked this also.

From: (1) @mediaworks.co.nz
Sent: Monday, 30 June 2014 11:14 a.m.
To: (1) (ESD)
Subject: RE: MFAT statement

Great thanks . (1)

Can you please tell me if MFAT had anything to do with the man~~ing~~ name suppression eg. requested or contributed to the request for suppression?

Thank you

(1)

From: (1) (OFS)
Sent: Monday, 30 June 2014 11:30 a.m.
To: (1) @crownlaw.govt.nz
Cc: (1) (OFS); (1) (SEA); (1) (ESD);
(1) (ESD); (1) (ESD)
Subject: RE: Name suppression
Importance: High

(6)

From: (1) (OFS)
Sent: Monday, 30 June 2014 11:06 a.m.
To:
Cc: (1) (OFS); (1) (SEA); (1) (ESD); (1) (ESD);
(1) (ESD)
Subject: RE: Name suppression

(6)

From: (OFS)
Sent: Monday, 30 June 2014 10:32 a.m.
To:
Cc: (1) (OFS); (1) (SEA); (1) (ESD); (1) (ESD); (1)
(ESD)
Subject: Name suppression
Importance: High

(6)

6

From: MEDIA
Sent: Monday, 30 June 2014 11:39 a.m.
To: (SEA); (SEA) (PRD); (PRD)
Subject: FW: RNZ questions

① PRESS SEC MFA

Please see below qn from re calling in Ambassador/HC?

From: ① PRESS SEC MFA
Sent: Monday, 30 June 2014 11:37 a.m.
To: MEDIA
Subject: RE: RNZ questions

On this also need a response to - have we called in the Ambassador/HC?

① | Press Secretary | Office of Hon Murray McCully

From: ① PRESS SEC MFA
Sent: Monday, 30 June 2014 11:01 a.m.
To: 'MEDIA'
Subject: FW: RNZ questions

Hi team – can I please get some draft responses to these ones?

① | Press Secretary | Office of Hon Murray McCully

From: ① @radionz.co.nz]
Sent: Monday, 30 June 2014 10:59 a.m.
To: ① PRESS SEC MFA
Subject: RNZ questions

Hi ① PRESS SEC MFA

Further to our conversation would it be possible to answer the following questions?

1. What action is MFAT taking in relation to the diplomat?
2. Are any efforts underway to bring him back to NZ? If so, what?
3. Will New Zealand consider declaring him persona non grata in an attempt to get him returned to NZ?
4. I understand that if the man loses his job, diplomatic immunity is lost. Has the man lost his job? What sanctions has he faced back in Malaysia?

Thanks for your time and your help with this matter. If you have any questions please feel free to give me a call on

①

Kind Regards,

①

Journalist
Radio NZ.

From: (i) (SEA)
Sent: Monday, 30 June 2014 11:41 a.m.
To: (i) (PRD)
Subject: RE: Seemail RE: Malaysian staff member: police case

Brilliant, thanks.

From: (i) (PRD)
Sent: Monday, 30 June 2014 11:39 a.m.
To: (i) (SEA)
Subject: Fw: Seemail RE: Malaysian staff member: police case

Got it

From: (i) @police.govt.nz]
Sent: Friday, June 27, 2014 01:22 PM
To: (i) @police.govt.nz>; (i) (PRD)
Cc: (i) @police.govt.nz>; @Police.Govt.NZ>
Subject: Seemail RE: Malaysian staff member: police case

Afternoon,

I have spoken with (i) and (i)

The situation is as follows;

In chambers on 30 May 2014 (i) issued a Warrant to Arrest as sought by Police following advice from Crown Law. The matter remains a live prosecution and should the accused return to NZ the prosecution will continue.



(i) also continued interim name suppression of the accused which prevents any reference to the accused by name only. It does not cover his occupation or nationality. There is nothing in the court documentation that prevents discussion on either. This is the advice I understand (i) is providing to MFAT comms. (i) also mentions that the media are aware of the accuseds nationality and diplomatic status.

With reference to the TPN referred to in (i) email regarding the NZ Police 'considering' sealing all documentation pertaining to this matter. As the prosecution is still active the only order that may assist with this is the interim name suppression which I note Police did not oppose. The court has not made any order sealing documentation.

I hope this clarifies the situation somewhat. If you would like to discuss further please come back to me.

Thanks



 **P**
 **E** @police.govt.nz
 Wellington Central Police Station | PO Box 693
 SX11220 Wellington DX Sort | Wellington

www.police.govt.nz

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NZ Police on [YouTube](#)

From:  NZ POLICE
Sent: Friday, 27 June 2014 12:15
To:  (PRD)
Cc:  NZ POLICE
Subject: FW: Malaysian staff member: police case
Importance: High



Good afternoon 


I have asked  to investigate the exact position of this matter surrounding the court process. My understanding is that the MHC employee obtained and still has name suppression and therefore there needs to be very careful consideration by any person or organisation releasing information that may identify him.

I have included  in on this email and he will advise us both on what he has learnt. He will also discuss this with our legal section.

Kind regards






From:  NZ POLICE
Sent: Friday, 27 June 2014 12:08
To:  NZ POLICE
Subject: Fwd: Malaysian staff member: police case

Can you assist  with this I didn't have any involvement past liaising over the weekend.

Sent from my iPhone

Begin forwarded message:

From:  (PRD)
Date: 27 June 2014 9:36:46 am NZST
To:  @police.govt.nz>
Subject: Malaysian staff member: police case

Good morning 

We have been fielding many phone calls from the Malaysian High Commissioner having been alerted, by MFAT, of the likelihood of some media questions.

②

Many thanks

Protocol Division
Ministry of Foreign Affairs and Trade

From: (i) (OFS)
Sent: Monday, 30 June 2014 11:43 a.m.
To: (i) (SEA)
Cc: (i) (OFS)
Subject: RE: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

(6)

From: (i) (OFS)
Sent: Monday, 30 June 2014 11:58 a.m.
To: MEDIA
Subject: RE: One further point

Have made some suggestions in blue

From: MEDIA
Sent: Monday, 30 June 2014 11:47 a.m.
To: (i) (OFS)
Subject: FW: One further point

To discuss

From: (i) PRESS SEC MFA
Sent: Monday, 30 June 2014 11:44 a.m.
To: MEDIA
Subject: FW: One further point

Sorry more from RNZ.

(i) | Press Secretary | Office of Hon Murray McCully

From: (i) @radionz.co.nz]
Sent: Monday, 30 June 2014 11:37 a.m.
To: (i) PRESS SEC MFA
Subject: One further point

Hi (i) PRESS SEC MFA

Sorry to trouble you again, I just have a couple of things to add.

1. Do suppression orders issued by a District Court apply to a diplomat under the rules of the Vienna Convention?

The suppression order is a separate issue to the question of immunity. The Vienna Convention has no bearing on it.

2. The following passages are taken from Mfat web page on diplomats : <http://mfat.govt.nz/Treaties-and-International-Law/08-Diplomatic-Privileges-and-Immunities/index.php>

The privileges and immunities granted to diplomats are not meant to benefit individuals personally, but to ensure that diplomatic personnel are able to perform their duties with freedom, independence and security without interference from the host government.

Although diplomats are generally immune from the criminal, civil and administrative jurisdiction of the host country's courts, they are still under a duty to respect the host country's laws and remain subject to their home country's jurisdiction. A diplomat's home government can decide to waive immunity where a diplomat has committed an offence, or may decide to take its own actions against the offender. In addition, the Vienna Convention provides for specific measures that can be taken by both the home and host governments in cases where diplomatic privileges and immunity have been misused or abused.

2a. It would appear on the face of it that the diplomat concerned has benefited personally from the decision to grant diplomatic immunity² there is nothing to suggest that he was in the woman's home to undertake his official duties. If that is the case, why was the diplomat granted immunity?

It is not a matter of 'granting' immunity. Immunity applies by virtue of diplomatic status. It is not contingent on whether or not the person was undertaking official duties at the time in question. The home government could choose to waive the immunity as requested, but chose not to.

2b. Does MFAT think that diplomatic immunity has been "misused and abused" in this case? If so, what "specific measures" is Mfat taking in relation to this case?

[use other lines re what we're doing and fact that we're satisfied a process is being followed in the home country]

Kind Regards,

①

Senior Journalist
Radio New Zealand

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From: P/SEC MFA
Sent: Monday, 30 June 2014 12:01 p.m.
To: P/SEC MFA
Subject: FW: =??Q?Malaysian_Military_Attach=E9=3A__Police_investigation?=
Attachments: Scan Data from WLNRP171

Here's the last thing I have – I was travelling at the time so hadn't processed it I don't think.

From: (PRD)
Sent: Thursday, May 22, 2014 4:29 PM
To: (KLU); (KLU)
Cc: (SEA); (PRD); P/SEC MFA (SEA); (DS AAG);
(ESD); (ESD); (GM SGG); (OFS);
(KLU)
Subject: =??Q?Malaysian_Military_Attach=E9=3A__Police_investigation?=
①

①

Police charge against Muhammad Rizalman Bin Ismail : Burglary and Assault with Intent to Commit Rape

We have managed to resolve this case with the enforced departure, today, of Mr Ismail and his family, destination Kuala Lumpur. Attached is the TPN received earlier today from the Malaysian High Commission, in response to our TPN seeking a waiver of Mr Ismail's personal immunity.

Summary of today's actions:

- I have sent the Malaysian TPN to the head of the Crime Squad at Police headquarters who has been closely involved with the case since Saturday 10 May.
- The message to Police noted:
 - the decision by the Malaysian authorities to i) to decline our request for a waiver of immunity; and ii) to repatriate Mr Ismail and family at the earliest opportunity;
 - the request by the High Commission for the documents relating to the case to be sealed and confirming that this is a matter for Police to consider;
 - that we understand no prosecution will proceed in New Zealand (this was requested by the head of the Crime Squad)
 - acknowledged the emotional impact on the victim and her rightful expectation that Mr Ismail should be accountable under NZ Law – and the complication of his immunity from criminal prosecution in New Zealand and the fact that the Malaysian have declined to waive that immunity. I have added that although he is leaving NZ without facing the charges brought against him, he is accountable to the Malaysian authorities (his military bosses as well as the Malaysian foreign minister who has taken a considerable interest in this case). See comment below in this regard.
- We arranged airport facilitation for the Military Adviser to enable him to accompany the Ismail family from Wellington to Auckland and through to the primary point to ensure they boarded the international flight for KL.
- Confirmed with the High Commission that the TPN had been sent to Police and facilitation arranged. (In fact the Malaysians rang in a panic saying Immigration NZ had stopped the party at Auckland airport. It

From: (i) (SEA)
Sent: Monday, 30 June 2014 12:04 p.m.
To: (i) (ESD); (i) (OFS)
Subject: RE: post cab briefing.

Thanks (i), see my suggested changes. Sorry, but finally heard from NZ Police. The 'name suppression order' was approved at first court appearance, on 10 May before a JP, then renewed in Chambers by Judge Davidson on 30 May, after Ismail had left the country.

(i)

From: (i) @police.govt.nz]
Sent: Friday, June 27, 2014 01:22 PM
To: (i) @police.govt.nz>; (i) (PRD)
Cc: (i) @police.govt.nz>; @Police.Govt.NZ>;
Subject: Seemail RE: Malaysian staff member: police case

Afternoon,

I have spoken with (i) and (i)

The situation is as follows;

In chambers on 30 May 2014 (i) issued a Warrant to Arrest as sought by Police following advice from Crown Law. The matter remains a live prosecution and should the accused return to NZ the prosecution will continue.

(i) also continued interim name suppression of the accused which prevents any reference to the accused by name only. It does not cover his occupation or nationality. There is nothing in the court documentation that prevents discussion on either. This is the advice I understand (i) is providing to MFAT comms. (i) also mentions that the media are aware of the accused's nationality and diplomatic status.

With reference to the TPN referred to in (i) email regarding the NZ Police 'considering' sealing all documentation pertaining to this matter. As the prosecution is still active the only order that may assist with this is the interim name suppression which I note Police did not oppose. The court has not made any order sealing documentation.

I hope this clarifies the situation somewhat. If you would like to discuss further please come back to me.

Thanks



P
E

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SX11220 Wellington DX Sort | Wellington

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From: (1) (ESD)
Sent: Monday, 30 June 2014 11:29 a.m.
To: (1) (SEA)
Subject: post cab briefing

Hi. (1)

Here is my first cut at this material... (5)

(1)

Monday 30 June 2014

Post Cabinet Briefing

Talking Points Malaysia Diplomat

- This morning the Ministry of Foreign Affairs and Trade contacted the Crown Law Office to seek a legal opinion related to the scope of the court order suppressing details of a foreign diplomat who recently claimed immunity from criminal charges.
- The Crown Law opinion will assess what the government can publicly say about this case [deleted content] under the suppression order, and in particular if we can identify his home country. The name suppression was granted at the Wellington District Court the day after his arrest.
- As you are aware we asked the diplomat's government to waive his right to immunity so he could face charges but this was declined and he immediately departed New Zealand.
- We continue to closely follow the situation and liaise with Malaysian authorities, who assure us the individual is under investigation in his home nation. If we are not satisfied we will make further representations.
- Foreign Minister Murray McCully will also look for opportunities to raise this matter with his counterpart in coming weeks.

Question and Answers

What exactly the Vienna Convention means in terms of the obligations/requirements of the sending country in a case such as this?

Under the Vienna Convention there is no additional obligation on the host country [to do what? This is unclear to me]. However New Zealand's position is clear that it expects a further investigation of this individual. We have been assured this is under way, but it is too early to determine what the outcome of that process will be.

Can you extradite the individual?

Given that the individual has claimed diplomat immunity this is unlikely. Our expectation is the host government will take steps to investigate the individual. New Zealand's position is that it wishes to see appropriate accountability. We will continue to monitor the situation.

Can you reconfirm the exact terms of the Suppression Order in terms of the publication of the nationality question?

The individual was granted name suppression. Mfat has approached the Crown Law Office to assess if identifying the individual's host nation or his role is a breach of name suppression.

Why did the police place charges if he had immunity?

The Police arrested him and he appeared in court the next day before the host government claimed immunity. At that point the police applied for a stay of proceedings. Those proceedings effectively remain live and could be reactivated should the individual return to New Zealand.

Is it fair to the victim?

This has been an ordeal for the victim. Our preference would have been to see the accused face justice in New Zealand. This is why we sought a waiver.

What can we do in these situations?

We would always ask for diplomatic immunity to be waived when a case is serious. If this is declined the person involved would have to be removed from New Zealand or face being determined as persona non grata.

However the High Commission quickly agreed the individual should leave New Zealand. The case is under investigation in his own country. In this case we have yet to be advised how that will take place but we will continue to liaise closely on its outcome.

Background – not for publication

- Wellington Police arrested a male in Brooklyn on the night of Friday 9 May. Charges were laid of burglary and assault with intent to rape after he followed a 21 year old woman and assaulted her in her home.
- The arrested individual was the military attaché at the Malaysian High Commission - a member of the military administrative and technical staff.
- At the time of the arrest neither the attaché nor his senior colleagues at the High Commission understood that he had diplomatic immunity. It was incorrectly assumed by them that because he was a member of the admin/tech staff, he was not eligible for diplomatic status.

- It was subsequently confirmed by Protocol Division, the following morning that he was in fact entitled to immunity and inviolability and therefore should not have been arrested, detained or charged.
- As a result, Police sought from the court a stay of proceedings and withdrew the terms and conditions of bail.
- Following usual practice in serious cases such as this one MFAT, in discussion with Police, sent a formal diplomatic Note to the Malaysian High Commission on 10 May seeking a waiver of the attaché's immunity to allow court proceedings to take place. The Note is attached.
- Two meetings were held at MFAT with the High Commissioner and senior staff, the two police detectives handling the case and a member of Protocol division.
- At the first meeting available options were discussed including a waiver of immunity by the Malaysians. Other points:
 - It was made very clear that it was not an option for the attaché to remain in NZ. If waiver was refused we would consult the Minister about declaring the Attaché Persona Non Grata;
 - Police and the High Commission observed that psychiatric factors could be involved;
 - the High Commissioner requested more detailed evidence and information about the incident as sought by her foreign Minister and Military Chief of Staff
 - Police advised the High Commissioner about the rights of the victim.
- At the second meeting on 19 May, a summary was presented to the High Commissioner of the interview with the victim. The High Commissioner conceded the seriousness of the charges and confirmed that the decision had been made in Kuala Lumpur to repatriate the family as soon as possible.
- The High Commissioner asked Police if the documents referring to the case could be sealed. The process for doing this was to be followed up by Police.
- On 21st May, MFAT received the attached diplomatic Note from the Malaysians declining the request for a waiver of immunity and confirming the decision to repatriate the attaché and his family. The family departed NZ 22 May.

Protocol Division

25 June

From: (U) (OFS)
Sent: Monday, 30 June 2014 12:05 p.m.
To: (f) (SEA)
Cc: (f) (OFS); MEDIA
Subject: RE: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO
Importance: High

(6)

From: (i) (SEA)
Sent: Monday, 30 June 2014 12:05 p.m.
To:
Cc: (i) @police.govt.nz
Subject: RE: Diplomatic Immunity issue: Name suppression

Thanks (i) have spoken with (i)

From: (i) @Police.Govt.NZ]
Sent: Monday, 30 June 2014 12:00 p.m.
To: (i) (SEA); (i)
Subject: Diplomatic Immunity issue: Name suppression

(i) (i)
FYI

Regards

(i)
Response and Operations, Police National Headquarters
NZ Police National Headquarters | 180 Molesworth Street | PO Box 3017 | Wellington 6011 | New Zealand
(i) @police.govt.nz

From: (i) NZ POLICE
Sent: Monday, 30 June 2014 11:56
To: (i) (SEA)
Cc: (i) (SEA); (i) (PRD)
Subject: Re: Diplomatic Immunity issue: Name suppression

(i)
Tied up in management meetings but you can contact the matter.

(i) (Wgtn Area) who is currently managing

(i)
Sent from my iPhone

On 30/06/2014, at 11:21 am, (i) (SEA)" wrote:

Dear (i)
Further to my phone message (i) I recommended I talk with you to get chapter and verse on the question of name suppression of the Malaysian DA at the centre of the current media coverage. I have been asked to get advice to the Prime Minister's Office before 11.45am, hence the red flag.

Specifically, could you please clarify for me:

- Who asked for name suppression and when? As I understand it, [redacted] granted it, with NZ Police making no objection.
- Did the defendant appear only before the Judge? I have seen reference to an appearance before a JP, but query whether there would have been time to do both before the Vienna Convention was invoked on Saturday morning.

Thanks. I am on [redacted] or [redacted] Note that [redacted] is off sick today, hence I am POC.

[redacted]

South and South East Asia | Ministry of Foreign Affairs & Trade

195 Lambton Quay, Private Bag 18901
Wellington 5045, New Zealand

www.mfat.govt.nz

See the 'NZ Inc' Strategy for ASEAN: <http://www.mfat.govt.nz/NZ-Inc/8-NZ-Inc-ASEAN/index.php>
And for India: <http://www.mfat.govt.nz/NZ-Inc/5-Opening-doors-to-India/index.php>

From: (i) (SEA)
Sent: Monday, 30 June 2014 12:09 p.m.
To: (i) (OFS); (i) (ESD)
Cc: (i) (OFS); MEDIA; (i) (PRD)
Subject: RE: MALAYSIA POINTS: REVISED: REQUEST FOR MORE INFO

NZ Police ; (i) , has revised his advice of last week: he just told me the name suppression order prevents publication of any information that could identify the individual. That could conceivably include nationality and of course position at that particular HC. I imagine the media have had similar advice from their lawyers, which is why none has yet named Malaysia. Until we get definitive advice from CL I would recommend we counsel the PM to say nothing that would refer to the country or role.

From: (1) (SEA)
Sent: Monday, 30 June 2014 12:23 p.m.
To: (1) (ESD); (1) (DS AAG); (1) (PRD);
(1) (PRD); (1) (OFS)
Subject: RE: Post Cab Malaysia

Just bolding a question from me that you need to remove. I have suggested an answer to my own question! I think we should also refer to him as "a" military attaché, as he was an admin assistant, not the full brass.

(1)

From: (1) (ESD)
Sent: Monday, 30 June 2014 12:16 p.m.
To: (1) (SEA); (1) (DS AAG); (1) (PRD); (1) (PRD); (1) (OFS)
Subject: Post Cab Malaysia

Hi,

Can everyone have a quick and final look and post cab media brief for PM please. (1) is seeking it urgently but a final glance over would be good.

Monday 30 June 2014

Post Cabinet Briefing

Talking Points Malaysia Diplomat

- This morning the Ministry of Foreign Affairs and Trade contacted the Crown Law Office to seek a legal opinion related to the scope of the court order suppressing details of a foreign diplomat who recently claimed immunity from criminal charges.
- The Crown Law opinion will assess what the government can publicly say about this case under the suppression order, and in particular if we can identify his home country. The name suppression was granted at the Wellington District Court the day after his arrest.
- As you are aware we asked the diplomat's government to waive his right to immunity so he could face charges but this was declined and he immediately departed New Zealand.
- We continue to closely follow the situation and liaise with Malaysian authorities, who assure us the individual is under investigation in his home nation. If we are not satisfied we will make further representations.
- Foreign Minister Murray McCully will also look for opportunities to raise this matter with his counterpart in coming weeks.

Question and Answers

What exactly the Vienna Convention means in terms of the obligations/requirements of the sending country in a case such as this?

Under the Vienna Convention there is no additional obligation on the host country [to do what? This is unclear to me] to take the issue further. However New Zealand's position is clear that it expects a further investigation of this individual. We have been assured this is under way, but it is too early to determine what the outcome of that process will be.

Can you extradite the individual?

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The individual was granted name suppression. Mfat has approached the Crown Law Office to assess if identifying the individual's host nation or his role is a breach of name suppression.

Why did the police place charges if he had immunity?

The Police arrested him and he appeared in court the next day before the host government claimed immunity. At that point the police applied for a stay of proceedings. Those proceedings effectively remain live and could be reactivated should the individual return to New Zealand.

Is it fair to the victim?

This has been an ordeal for the victim. Our preference would have been to see the accused face justice in New Zealand. This is why we sought a waiver.

What can we do in these situations?

We would always ask for diplomatic immunity to be waived when a case is serious. If this is declined the person involved would have to be removed from New Zealand or face being determined as persona non grata.

However the High Commission quickly agreed the individual should leave New Zealand. The case is under investigation in his own country. In this case we have yet to be advised how that will take place but we will continue to liaise closely on its outcome.

Background – not for publication

- Wellington Police arrested a male in Brooklyn on the night of Friday 9 May. Charges were laid of burglary and assault with intent to rape after he followed a 21 year old woman and assaulted her in her home.
- The arrested individual was a military attaché at the Malaysian High Commission - a member of the military administrative and technical staff.
- At the time of the arrest neither the attaché nor his senior colleagues at the High Commission understood that he had diplomatic immunity. It was incorrectly assumed by them that because he was a member of the admin/tech staff, he was not eligible for diplomatic status.

- It was subsequently confirmed by Protocol Division, the following morning that he was in fact entitled to immunity and inviolability and therefore should not have been arrested, detained or charged.
- As a result, Police sought from the court a stay of proceedings and withdrew the terms and conditions of bail.
- Following usual practice in serious cases such as this one MFAT, in discussion with Police, sent a formal diplomatic Note to the Malaysian High Commission on 10 May seeking a waiver of the attachés immunity to allow court proceedings to take place. The Note is attached.
- Two meetings were held at MFAT with the High Commissioner and senior staff, the two police detectives handling the case and a member of Protocol division.
- At the first meeting available options were discussed including a waiver of immunity by the Malaysians. Other points:
 - It was made very clear that it was not an option for the attaché to remain in NZ. If waiver was refused we would consult the Minister about declaring the Attaché Persona Non Grata;
 - Police and the High Commission observed that psychiatric factors could be involved;
 - the High Commissioner requested more detailed evidence and information about the incident as sought by her foreign Minister and Military Chief of Staff
 - Police advised the High Commissioner about the rights of the victim.
- At the second meeting on 19 May, a summary was presented to the High Commissioner of the interview with the victim. The High Commissioner conceded the seriousness of the charges and confirmed that the decision had been made in Kuala Lumpur to repatriate the family as soon as possible.
- The High Commissioner asked Police if the documents referring to the case could be sealed. The process for doing this was to be followed up by Police.
- On 21st May, MFAT received the attached diplomatic Note from the Malaysians declining the request for a waiver of immunity and confirming the decision to repatriate the attaché and his family. The family departed NZ 22 May.

From: (i) DS AAG
Sent: Monday, 30 June 2014 12:27 p.m.
To: (i) (ESD); (SEA); (i) (PRD);
(i) (PRD); (i) (OFS)
Subject: RE: Post Cab Malaysia

We need to remove the reference to Malaysia in the 4th point, if these are public talking points. Still reading rest.

Given that the individual has claimed diplomat immunity this is unlikely. Our expectation is the host government will take steps to investigate the individual. New Zealand's position is that it wishes to see appropriate accountability. We will continue to monitor the situation.

Can you reconfirm the exact terms of the Suppression Order in terms of the publication of the nationality question?

The individual was granted name suppression. Mfat has approached the Crown Law Office to assess if identifying the individual's host nation or his role is a breach of name suppression.

Why did the police place charges if he had immunity?

The Police arrested him and he appeared in court the next day before the host government claimed immunity. At that point the police applied for a stay of proceedings. Those proceedings effectively remain live and could be reactivated should the individual return to New Zealand.

Is it fair to the victim?

This has been an ordeal for the victim. Our preference would have been to see the accused face justice in New Zealand. This is why we sought a waiver.

What can we do in these situations?

We would always ask for diplomatic immunity to be waived when a case is serious. If this is declined the person involved would have to be removed from New Zealand or face being determined as persona non grata. However the High Commission quickly agreed the individual should leave New Zealand. The case is under investigation in his own country. In this case we have yet to be advised how that will take place but we will continue to liaise closely on its outcome.

What are we doing to ensure the home country follows a rigorous process to investigate this case?

Our High Commission has liaised closely with authorities, who assure us this is being taken seriously and is under investigation. If we are not satisfied we can make further representations. Mr McCully will also raise this with his counterpart foreign minister at the next opportunity.

Will we call in the High Commissioner of the country concerned?

MFAT has been in close contact on this issue with the High Commissioner, who is fully aware of the seriousness with which we view this matter.

Our own High Commission in the country concerned has also been in close contact with the authorities there, and will continue to liaise closely with them.

Background – not for publication

- Wellington Police arrested a male in Brooklyn on the night of Friday 9 May. Charges were laid of burglary and assault with intent to rape after he followed a 21 year old woman and assaulted her in her home.
- The arrested individual was the military attaché at the Malaysian High Commission - a member of the military administrative and technical staff.
- At the time of the arrest neither the attaché nor his senior colleagues at the High Commission understood that he had diplomatic immunity. It was incorrectly assumed by them that because he was a member of the admin/tech staff, he was not eligible for diplomatic status.

- It was subsequently confirmed by Protocol Division, the following morning that he was in fact entitled to immunity and inviolability and therefore should not have been arrested, detained or charged.
- As a result, Police sought from the court a stay of proceedings and withdrew the terms and conditions of bail.
- Following usual practice in serious cases such as this one MFAT, in discussion with Police, sent a formal diplomatic Note to the Malaysian High Commission on 10 May seeking a waiver of the attaché's immunity to allow court proceedings to take place. The Note is attached.
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 - Police and the High Commission observed that psychiatric factors could be involved;
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 - Police advised the High Commissioner about the rights of the victim.
- At the second meeting on 19 May, a summary was presented to the High Commissioner of the interview with the victim. The High Commissioner conceded the seriousness of the charges and confirmed that the decision had been made in Kuala Lumpur to repatriate the family as soon as possible.
- The High Commissioner asked Police if the documents referring to the case could be sealed. The process for doing this was to be followed up by Police.
- On 21st May, MFAT received the attached diplomatic Note from the Malaysians declining the request for a waiver of immunity and confirming the decision to repatriate the attaché and his family. The family departed NZ 22 May.

From: (1) (SEA)
Sent: Monday, 30 June 2014 12:28 p.m.
To: P/SEC MFA
Subject: FW: Conversation with Malaysian High Commissioner: Media Request re Diplomatic Incident

P/SEC MFA

as requested. Sorry, but fielding several calls at once, hence the delay, as the relevant PRD colleagues are both absent today. The below meeting was on my instruction on Wednesday. (1) is on leave at the moment, returning tomorrow. I have also followed up directly with the DA (who is currently out of the country) asking whom he has talked with in the Malaysian military, what they have told him and made clear we want him to liaise very closely with them to reinforce our expectations of a rigorous process.

From: (1) (KLU)
Sent: Thursday, 26 June 2014 3:32 p.m.
To: (SEA); (PRD); (ESD)
Cc: (1) (GM SGG); (1) (SEA); (1) (KLU); (ESD); (ESD); MEDIA; (PRD); (1) (ESD); (1) (KLU); (1) (KLU); (DS AAG)
Subject: RE: Conversation with Malaysian High Commissioner: Media Request re Diplomatic Incident

Kia ora,

I met late yesterday afternoon with Malaysia (3) (3) had already spoken with (3) that afternoon. (3)

I said that I had come to provide a heads up that this case would likely be in the public domain in New Zealand this weekend, noting that the Herald on Sunday had approached Police to request an interview, and that the Police would instead be responding with a press release, outlining the likely content detailed in red below. I noted that when the request to waive diplomatic immunity had been declined, we understood that this meant the man involved would not face justice under the New Zealand system, but that he would be dealt with under the Malaysian system. The victim would have the rightful desire/expectation that he would face justice. It was not New Zealand's place to intervene in Malaysia's processes in any way, but we would be interested in information about follow up action taken.

(2)

②

I noted that it would not be NZ's place to state/explain Malaysia's follow up actions, but that we would nevertheless be interested in hearing when information was available. ③

②

②

①

New Zealand High Commission Kuala Lumpur | Te Aka Aorere

From: P/SEC MFA
Sent: Monday, 30 June 2014 12:30 p.m.
To: P/SEC MFA
Subject: Malaysia

Contact with the office

P/SEC MFA

On Saturday 10 May ① was phoned by ① about the arrest of the diplomat. She sent you a message noting that the Malaysians had not invoked diplomatic immunity yet (as at the time they didn't realise he had immunity); that we would be seeking a waiver of immunity in Kuala Lumpur through the normal process; and that if the waiver wasn't granted the Malaysians would be able to remove the diplomat from New Zealand. It also noted that media lines would be prepared.

Later that day the office was sent a copy of the TPN seeking the waiver to note that the process was underway.

P/SEC MFA

On Thursday 22 May ① was copied into a message noting the decision by the Malaysian authorities to decline the waiver request and repatriate the attaché and his family. This wasn't sent to you (it was during the journey back from Guyana).

From:

Sent:

To:

Cc:

Subject:

①

@crownlaw.govt.nz

Monday, 30 June 2014 12:30 p.m.

①

(OFS)

①

@crownlaw.govt.nz

RE: Name suppression

⑥

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12

Vertical line on the right side of the page.

From:
Sent:
To:
Subject:

P/SEC MFA

Monday, 30 June 2014 12:31 p.m.

P/SEC MFA; PRESS SEC MFA; SPS MFA
Timeline of events

Friday 9 May:

- Wellington Police arrested a male in Brooklyn on the night of Friday 9 May.
- Charges laid of burglary and assault with intent to rape after he followed

At the time of the arrest neither the attaché nor his senior colleagues at the High Commission understood that he had diplomatic immunity. It was incorrectly assumed by them that because he was a member of the admin/tech staff, he was not eligible for diplomatic status.

Saturday 10 May

- Protocol Division confirm that he was in fact entitled to immunity and inviolability and therefore should not have been arrested, detained or charged.
- As a result, Police sought from the court a stay of proceedings and withdrew the terms and conditions of bail.
- MFAT, in discussion with Police, send TPN to the Malaysian High Commission seeking a waiver of the attachés immunity to allow court proceedings to take place. (I believe NZ post in KLU were also asked to press for a waiver)
- Protocol Division send update to ① - forwarded to Minister (see below)

On Saturday 10 May ① was phoned by ① about the arrest of the diplomat. She sent you a message noting that the Malaysians had not invoked diplomatic immunity yet (as at the time they didn't realise he had immunity); that we would be seeking a waiver of immunity in Kuala Lumpur through the normal process; and that if the waiver wasn't granted the Malaysians would be able to remove the diplomat from New Zealand. It also noted that media lines would be prepared.

Later that day the office was sent a copy of the TPN seeking the waiver to note that the process was underway.

Monday 12 May

- Meeting with Police, MFAT, CIV, High Commissioner. HC sought more details.
- Police advised the High Commissioner about the rights of the victim. Police want to interview victim to get more details
- Malaysian HC agrees for assailant to undergo psychiatric assessment.
- During this meeting, it was made very clear that it was not an option for the attaché to remain in NZ. If waiver was refused we would consult Minister about declaring the Attaché Personà Non Grata;

Monday 19 May

- Police report on interview with victim.
- Psychiatric assessment not undertaken as no appointments available with specialist (1-month delay)
- The High Commissioner conceded the seriousness of the charges and confirmed that the decision had been made in Kuala Lumpur to repatriate the family as soon as possible.

Wednesday 21 May

- MFAT receive TPN from Malaysians declining request for immunity, and confirming the decision to repatriate attaché and family.