

"The review will focus on two areas. First, informal communication with the Malaysian High Commission left open the possibility of a different course of action to that expected by the New Zealand government. Second, the Minister was not sufficiently informed of events.

"Pending the outcome of the review process the Ministry is taking immediate steps to ensure a situation like this will not occur in the future," said Mr Allen.

Ends

"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 recipient you must not use, disclose, copy or distribute this message or the information in it as this may be unlawful. If you have received this message in error, please email or telephone the sender immediately."

From: Press Sec MFA
Sent: Wednesday, 2 July 2014 1:35 p.m.
To: ① [DPMC]
Subject: Media Points Wednesday lunchtime

Media Points Wednesday lunchtime

- MFAT CEO John Allen met with the Foreign Minister this morning. Mr Allen apologised for shortcomings in the advice presented to the government by the Ministry.
- The Ministry will conduct a review of the policy and procedures in handling such matters.
- Foreign Minister McCully spoke with his Malaysian counterpart, Minister Anifah last night and they had a productive conversation.
- Minister Anifah has made very clear his commitment to ensuring Malaysia conducts a rigorous investigation into the allegations.
- I am reassured by the confirmation from the Foreign Minister of the seriousness with which Malaysia is approaching this matter.
- Our High Commissioner is in close contact with both the Minister and his senior officials about the process being followed.
- As this person was a member of the High Commission's defence staff, he comes under the jurisdiction of the Malaysian military authorities.

If asked:

Was a deal done by MFAT with Malaysia to get the Malaysian Defence Attache out of the country quickly and quietly?

As the exchange of formal diplomatic notes released last night makes clear, New Zealand's request for Malaysia to waive diplomatic immunity was unambiguous.

What was the ambiguity in the MFAT communications with the Malaysians?

The formal communication was absolutely unambiguous in seeking the lifting of immunity. However, as Minister McCully said officials engaged in informal communications over a complex case, in a manner which caused confusion for the Malaysians.

When did you become aware of the ambiguity?

When Minister McCully briefed me on it last (Tuesday) night.

When did the Foreign Minister become aware of the ambiguity?

Tuesday evening.

How was the ambiguity uncovered? Why only now?

Following indications that the Malaysians had a different perspective on what had occurred, MFAT examined more closely the details of its engagement with Malaysian officials and realised that its informal communication had left scope for confusion.

Can we see the correspondence referred to?

I understand MFAT has already received OIA requests from several media representatives for relevant documents. These will be processed in the normal way.

What is the complexity in the case?

I am unable to be more forthcoming on the matter at this stage. However, I can say that the Malaysian side are acting in good faith.

Has the Foreign Ministry mishandled this?

Mfat CEO John Allen met with the Foreign Minister this morning. Mr Allen apologised for shortcomings in the advice presented to the government by the Ministry.

☐ **Will we ask for the man to be extradited back to New Zealand to face trial here?**

We are confident that the Malaysians are pursuing a rigorous and full process. We will be keeping in close touch with them. I understand the New Zealand Police will cooperate fully with the Malaysian enquiry.

High

Importance: High

Office of Hon Murray McCully, Minister of Foreign Affairs
Parliament Buildings | Wellington | New Zealand

From: MEDIA ✓
Sent: Wednesday, 2 July 2014 4:10 p.m.
To: PRESS SEC MFA (1) [DPMC]
DPMC (1)
Cc: (1) (ESD); (1) (ESD); (1) (ESD); (1)
(CEO Office)
Subject: FW: Draft statement from District re diplomat

Hi. (1)

(1) has seen this and is comfortable. Police would like to send it out within the hour.

Give me a call if you want to discuss.

Thanks

(1)

From: (1) @police.govt.nz
Sent: Wednesday, 2 July 2014 3:41 p.m.
To: MEDIA
Subject: FW: Draft statement from District re diplomat

Heads up that Wgtn District plan to issue the below statement shortly in response to extradition queries. Contact is

(1)

To be attributed to

(1)

Police are continuing to support the victim in this case. There are currently two charges before the court, for burglary and assault with intent to rape, and there are warrants to arrest in relation to both those charges.

Police are continuing to work with MFAT and the Malaysian authorities to consider all options which would achieve the best outcome for the victim and for justice.

This includes pursuing extradition and Police will work with Crown Law to establish the legal foundation for this.

Given the complexities of this case, this process will take some time to work through and we will keep the victim updated regularly as things are progressed.

As the charges are still currently before the court, and there is potential that the circumstances of the offending could be played out under a range of jurisdictions, it is not appropriate for any comment to be made publicly about the circumstances of the offences.

ENDS

2

From: (i) (PRD)
Sent: Wednesday, 2 July 2014 5:29 p.m.
To: (i) (ESD); (i) (OFS); (i) (GM SGG)
Cc: MEDIA; ESD; (i) (HRG); (i) (CEO Office); (i) (ESD); (i) (ESD);
Subject: RE: Media request

I agree

From: (i) (ESD)
Sent: Wednesday, 2 July 2014 5:23 p.m.
To: (i) (PRD); (i) (OFS); (i) (GM SGG)
Cc: MEDIA; ESD; (i) (HRG); (i) (CEO Office); (i) (ESD); (i) (ESD);
Subject: RE: Media request

Having discussed with (i) how about:

(7)

If we agree this line, we would then discuss with Min's office.

(i)

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



From: MEDIA
Sent: Wednesday, 2 July 2014 4:11 p.m.
To: ESD
Cc: (i)
Subject: FW: Media request

Hi ①

Do you think it would be possible to get this done by Friday? It would be good to get some of these requests dealt with earlier if possible – this may be one we can do that with.

①

From: ① @heraldonsunday.co.nz
Sent: Wednesday, 2 July 2014 3:34 p.m.
To: MEDIA
Subject: Media request

Hi ①

Thanks for your time just now. I wanted to request some information from you in relation to New Zealand diplomats, and/or their families, who have invoked diplomatic immunity while facing criminal charges in an overseas jurisdiction.

My question is:

- How many NZ diplomats, and/or their families or other Embassy employees, have invoked diplomatic immunity after facing criminal charges in an overseas jurisdiction in the past five years?
- Can you provide details of the nature of the criminal offence, the country in which it took place, and the year it took place?

I have tried to keep the focus of this request sufficiently specific and narrow to allow you to respond to my query by Friday at 3pm.

It will provide very useful information to the NZ public to better understand the nature of diplomatic immunity and the frequency or otherwise with which it is invoked.

Kind regards

①
Herald on Sunday

①

From: P/SEC MFA
Sent: Wednesday, 2 July 2014 5:34 p.m.
To: (CEO); (CEO Office); (DS AAG);
(GM SGG); (PRD); (SEA);
(KLU); (KLU); (KLU)
Cc: PRESS SEC MFA
Subject: MFA-Minister Anifah Phone Call

I would appreciate it if this information could be held tightly for now, and not forwarded beyond this distribution or to outside agencies.

ACTION

I would appreciate if KLU could please touch base with the Malaysians as soon as possible on the following :

- Likely time of release of Anifah statement (so that ours can follow afterwards).
- Likely content of Anifah statement

REPORT

Minister McCully spoke to Minister Anifah this evening.

Minister Anifah had just emerged from a cabinet meeting.

Minister Anifah said the decision

Minister Anifah intends to put out a press statement in Kuala Lumpur this evening. MFA wants to mirror this with his own statement shortly after.

Anifah has asked if

Office of Hon Murray McCully, Minister of Foreign Affairs
Parliament Buildings | Wellington | New Zealand

From:
Sent:
To:
Subject:

PRESS SEC MFA ①

Wednesday, 2 July 2014 6:18 p.m.

① @nzherald.co.nz

Recent instances when diplomatic immunity has been cited relating to criminal charges

Dear ①

Minister asked me to pass this on. Below is a list of recent instances when diplomatic immunity has been cited relating to criminal charges. We aren't able to name the nationality in most cases However, one of the instances was reported in the public domain so we have released the nationality.

①

① List of instances

Jan 2010

Diplomat's son accused of reckless driving (removed from New Zealand)

Nov 2010

Australian Naval Officer pleaded guilty to charges of possession of objectionable material after Australian Government waived his immunity

2011

Head of Mission faced drunk driving charges, did not rely on immunity and was convicted. He resigned his post.

February 2012

MFAT sought a waiver of immunity for a diplomat's son facing charges of assault. The man returned home.

January 2013

① A diplomat complained to MFAT that his immunity had been violated because he was asked to undergo a breath test.

March 2013

MFAT sought a waiver of immunity of diplomat for assault. The diplomat returned home.

September 2013

An embassy was asked to waive immunity over a domestic violence issue. Country withdrew the diplomat.

①

| Office of Hon Murray McCully

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

From:
Sent:
To:
Cc:
Subject:

P/SEC MFA
Wednesday, 2 July 2014 6:46 p.m.
(DS AAG)
PRESS SEC MFA
Follow up from phone call

(SEA); (PRD)

①

Thanks for the phone call just now. Just a few points I've now got some feedback on:

- 1) Okay to bring ① into the loop
- 2) We will want points for the PM, but as we don't yet know when the statements will be released, may be good to hold off until we know the situation. Points would need to come to our office first.
- 3) We will engage with Police office, and then after that will give you the okay to get in touch with ①
Will be in touch later this evening.

①

①

Office of Hon Murray McCully, Minister of Foreign Affairs
Parliament Buildings | Wellington | New Zealand

①

From: P/SEC MFA ①
Sent: Wednesday, 2 July 2014 7:05 p.m.
To: MFA; McCully1
Cc: PRESS SEC + P/SEC MFA ①
Subject: Minister Anifah- ① Conversation.

Minister,
I've told you most of this over the phone, but here is ① readout of his conversation with Minister Anifah
(which happened after your own conversation).

①

REPORT FROM ①

Minister Anifah phoned me to follow up on his conversation with the Minister.

②

ENDS

From: (i) (KLU)
Sent: Wednesday, 2 July 2014 9:46 p.m.
To: AAG; (i) (CEO); (i) (CEO Office); (i) (DS)
(i) (GM SGG); (i) (PRD); (i) (SEA);
(i) (KLU); (KLU)
Subject: RE: MFA-Minister Anifah Phone Call
Importance: High

Press release has just gone up on Malaysia MFA website:

http://www.kln.gov.my/web/guest/home?p_p_id=101_INSTANCE_Yt06&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=5&101_INSTANCE_Yt06_struts_action=%2Fasset_publisher%2Fview_content&101_INSTANCE_Yt06_urlTitle=press-statement-by-the-ministry-of-foreign-affairs-%3A-former-malaysian-defence-staff-assistant-to-be-sent-back-to-new-zealand-to-assist-investigation-2-july-2014&101_INSTANCE_Yt06_type=content&redirect=%2Fweb%2Fguest%2Fhome

PRESS STATEMENT BY THE MINISTRY OF FOREIGN AFFAIRS : FORMER MALAYSIAN DEFENCE STAFF ASSISTANT TO BE SENT BACK TO NEW ZEALAND TO ASSIST INVESTIGATION, 2 JULY 2014

FORMER MALAYSIAN DEFENCE STAFF ASSISTANT TO BE SENT BACK TO NEW ZEALAND TO ASSIST INVESTIGATION

The Government of Malaysia has decided to send back to New Zealand, Second Warrant Officer Muhammad Rizalman Ismail, former Defence Staff Assistant at the High Commission of Malaysia in Wellington, to assist in the investigation for the charges of burglary and assault with intent to commit rape. Mr. Muhammad Rizalman will be accompanied by a Senior Military Officer from the Ministry of Defence.

This decision was conveyed by YB Dato' Sri Anifah Aman, Minister of Foreign Affairs to his counterpart, the Hon. Murray McCully, Minister for Foreign Affairs of New Zealand this afternoon.

The Malaysian Government is of the view that this decision will provide an opportunity for Mr. Muhammad Rizalman to cooperate fully and assist the New Zealand authorities in the on-going investigations on the allegations made against him. In this regard, the legal principle that one is considered innocent until proven guilty should apply to Mr. Muhammad Rizalman. The Government of Malaysia will provide legal assistance to Mr. Muhammad Rizalman if necessary.

Malaysia has complete faith in the New Zealand legal system and has full confidence that Mr. Muhammad Rizalman will be given fair treatment with dignity as provided under the law.

The Government of Malaysia's decision is a clear testament of the excellent bilateral relations between Malaysia and New Zealand.

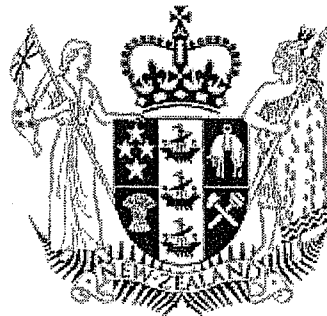
PUTRAJAYA
2 July 2014
On 7/2/14

From: P/SEC MFA ①
Sent: Wednesday, 2 July 2014 9:53 p.m.
To: ① (KLU); ① (KLU); ① (KLU); ① (SEA); S ① (DS AAG); ① (ESD); ① (PRD); ① (CEO); ① [DPMC]
Cc: P/SEC & PRESS SEC MFA
Subject: FW: PR: Murray McCully - Malaysia will return accused to New Zealand

Just released to media.
①

Hon Murray McCully

Minister of Foreign Affairs



2 July 2014

Media Statement

Malaysia will return accused to New Zealand

Foreign Affairs Minister Murray McCully has welcomed the announcement from Malaysian Foreign Minister Anifah that the official accused of an attack on a young woman in Wellington will be returned to New Zealand.

"Earlier this evening I spoke with Minister Anifah and he advised me that the Malaysian authorities will be returning the official in question to New Zealand to assist with our investigation," Mr McCully says.

"I want to convey my thanks to the Malaysian Government for this very welcome development which underlines the good faith and integrity with which they have approached this issue.

"There was never any intention by either Government to let this matter rest, and regardless of whether the process took place in Malaysia or New Zealand there was a strong commitment to seeing justice done. The Malaysian authorities have offered their assistance with the on-going investigation and I welcome their continued involvement.

"It must be noted that the accused has the right to be presumed innocent until proven guilty and deserves the right to a fair trial.

"The young woman involved has been through a great deal and the way this matter has been handled has only added to her suffering. I hope she, and her family, will welcome news that the

accused will return to New Zealand so the matter can be fully investigated as was always the Government's intention.

This is now a matter for the Police and the Courts and I will not be commenting further," Mr McCully says.

Media contact:

① PRESS SEC MFA

From: (1) (KLU)
Sent: Wednesday, 2 July 2014 10:05 p.m.
To: (1) (DS AAG); (1) (PRD); (1) P/SEC MFA
(SEA); (1) (CEO); (1) GM SGG
Subject: RE: Malaysian official : possible return to NZ

Thanks (1) i. Understood completely. (2) on. I will let our main point of contact (1) know that we will want to discuss this tomorrow.

(5)
Let's talk tomorrow.

(1)
PS (1) is about to hit send on our (now largely historical) report of this morning's meeting with Malaysian officials.

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

From: (1) (DS AAG)
Sent: Wednesday, 2 July 2014 5:48 p.m.
To: (1) (PRD); (1) (KLU); P/SEC MFA (SEA); (1) (CEO); (1) (GM SGG)
Subject: RE: Malaysian official : possible return to NZ

(1)
Further to our conversation just now,

(2)
But you are Malaysians know tonight that we are working through the issues and expect to be able to provide them with further information in the morning.

We look forward to your thoughts on the broader issues we need to consider, to help inform the further work we do in the morning. In formulating that, I ask that you please keep in mind the need for MFAT to respect and not seek to influence New Zealand police or judicial processes.

Cheers

(1)

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

From: (1) (PRD)
Sent: Wednesday, 2 July 2014 8:44 p.m.
To: (1) (KLU); P/SEC MFA (SEA); (1) (CEO); (1) (DS AAG)
Subject: Malaysian official : possible return to NZ

Hi there,

As requested by Minister's office I asked

① to explain what is likely to happen if the Malaysian official were to return to New Zealand.

His advice is below- please note the point about time of arrival which will have a bearing on whether or not he can appear before a court the same day he arrives.

From: ① @Police.Govt.NZ
Sent: Wednesday, 2 July 2014 8:29 p.m.
To: ① (PRD)
Cc: ① NZ POLICE
Subject: Re: Malaysian Query

① Good evening ①

⑤ The normal course of events sees the suspect arrested at the airport on the outstanding arrest warrant. If possible it is advisable to ensure NZ Police are aware of the flight details to ensure we can have the suspect met and brought before a Court immediately.

The Court is independent from Police and the Crown and will make the decision on whether the suspect is granted bail or remanded in custody until the trial. In my experience the fact that the suspect has voluntarily returned is taken into account when the decision on bail is reached.

If bail is granted there will be conditions such as the forfeiture of passport till the case is heard and perhaps a clause requiring him to reside at a specific address and perhaps regularly report to Police. A date will also be set for the trial.

① I hope that this assists in explaining the normal procedure. Please feel free to contact me should I be able to assist further.

Regards.

①

Sent from my iPhone

On 2/07/2014, at 7:44 pm, ① (PRD)

Dear ①

As discussed by phone I would be grateful for information from a Police perspective about what would be likely to happen if the Malaysian official accused of various crimes against a young woman were to return to New Zealand to assist the police with their enquiries and his immunity was waived by the Malaysian Government.

I recognise that you may only be able to speculate in some respects because the court would take some of the decisions.

Can you please respond in writing this evening?

Thanks very much,

①

From: ① (ESD)
Sent: Wednesday, 2 July 2014 10:21 p.m.
To: P/SEC MFA + PRESS SEC MFA
Cc: ① (DS AAG); ① (SEA)
Attachments: TP-PM-Wednesday.docx

Evening,

We've prepared some media talking points for PMO. This has been sighted by both ① and ①

① and ① please take a look. Can you also confirm you will forward to ① please?

Regards,

①

Draft talking points for the Prime Minister

- The New Zealand government has been advised that Malaysia will return to New Zealand the official accused of an attack on a young woman.
- New Zealand was advised of this decision on Wednesday evening following a phone call between our Foreign Minister, Murray McCully, and his Malaysian counterpart, Minister Anifah.
- The government of New Zealand welcomes the decision and appreciates the cooperation of the government of Malaysia and its further offer of assistance with the ongoing investigation.
- New Zealand believes this decision underscores the good faith and integrity of New Zealand's bilateral relationship with Malaysia.
- There was never any intention by either government to let this matter rest and both nations have a strong commitment to achieving some form of justice for the woman involved.
- This decision is effectively a decision by the Malaysian government to waive the diplomatic immunity of the individual concerned.
- It must be noted that the accused has the right to be presumed innocent until proven guilty and deserves the right to a fair trial. The individual is returning to assist the police with their investigation.
- There is a process to be followed by both Police and Justice officials and it remains important for the proper and due process be allowed to follow its course.
- I think it has been made clear by the Minister and the Ministry of Foreign Affairs that there have been shortcomings with how this matter has been handled and the quality of advice presented to me. However, there has remained intent by all parties to provide a form of justice.
- I am pleased that we have reached the point where a legal process can be followed in New Zealand and the official held to account for a serious crime he allegedly committed here.
- It has been a distressing time for the woman at the centre of this incident. I hope this outcome goes some way towards helping her feel her rights are being supported by the government.

Question answers

When will he be returned?

I am not in a position to disclose that information nor has the date of return been finalised. A proper process will be followed for the return of the individual and from this point important that a fair criminal investigation and justice process be allowed to follow it

Will he be arrested immediately on his return?

Ultimately decisions about these steps will rest with the New Zealand Police and the criminal justice system.

When did you find out this was taking place?

I was advised late on Wednesday evening. This was after our Foreign Minister had spoken with his counterpart and as the Malaysian Foreign Minister issued a media release.

Who has changed their position here, the New Zealand or the Malaysian government?

I think both governments are very conscious about the importance of allowing the opportunity for a form of justice for the victim and both governments had expressed their intent to achieve it.

As you will be aware, there has been some conflicting advice about the sequence of events which allowed the individual to return to Malaysia. However I believe an appropriate outcome has now been reached.

Background

The decision to return the individual was conveyed by the Malaysian Foreign Minister to Minister McCully by phone on Wednesday evening. ^② and Foreign Minister Anifah issued a media release making the announcement at approximately 9.40pm NZ time. Minister McCully issued a statement shortly after.

In its statement Malaysia stated it has complete faith in the New Zealand legal system and has full confidence that Mr. Muhammad Rizalman will be given fair treatment with dignity as provided under the law. They indicated Mr Rizalman will be accompanied by a senior Defence Force official. The Malaysian statement says the return was "to assist in the investigation for the charges of burglary and assault with intent to commit rape."

From:

Sent:

To:

(1) (DS AAG)
Wednesday, 2 July 2014 10:24 p.m.
(1) (CEO); (1) (GM SGG); (1) (SEA);
(1) (SEA); MEDIA; (1) (ESD); (1) (ESD);
(1) (ESD); (1) (ESD); (1) (CEO Office);
(PRD); (1) (OFS); (1) (OFS)
Subject: Malaysian Diplomat: Developments Evening of 2 July (up until 10.30pm)
Attachments: RE: MFA-Minister Anifah Phone Call; FW: PR: Murray McCully - Malaysia will return
accused to New Zealand; RE: Malaysian official : possible return to NZ; Untitled

Team

There were some significant developments this evening, much of which occurring with only a limited number of people in the loop, due to high sensitivity and Ministerial direction. This email attempts to draw the developments together, so that those of us working on various aspects all have the information we need.

The main development is that Minister Anifah phoned Minister McCully to advise that the Malaysian official would be returned to New Zealand to face trial here, (2) Minister Anifah issued a press statement to this effect around 9.45pm our time and Minister McCully has also issued a statement. Both statements are attached (first two attachments). The email from KL with the Malaysian statement has at the bottom the report of the Ministerial conversation.

Minister Anifah had a follow up conversation with (1) in which he provided further information, including that while it would not be made public at this point (and so we should not either)

(2) some commentary from the head of the Diplomatic Protection Squad this evening a (1) was able to obtain (2) that he will likely be detained on arrival but that it could well be possible, depending on his arrival time, for him to be taken directly to court where the court could make a decision on bail. After discussion with (1) and the Minister's Office (2)

(1) is going to send us an email overnight with thoughts (2)
Our email exchange with (1) is attached.

We have also provided updated media points for the PM (attached), though by direction these have gone to the Minister's Office in draft rather than directly to the PM.

(1) : We should probably get relevant folk together relatively early in the morning to make sure we are all on the same page on next steps (from this and our follow through actions from today) and that we have our relative priorities and resources clear.

Thanks everyone for your parts in an intensive day's work.

(1)

From: PRESS SEC MFA
Sent: Thursday, 3 July 2014 8:53 a.m.
To: MFA;
Cc: P/SEC MFA; P/SEC MFA
Subject: FW: Diplomatic Immunity Case: High Commissioner's Meeting with Malaysian MoFA and MinDef

Minister,

Below is a report from Kuala Lumpur, on their meeting with Malaysian officials yesterday morning. The meeting was largely about the Board of Inquiry process and how Malaysia would approach the case. Obviously that meeting has now been superseded by the (2) but I thought you might want to see the report.

P/SEC MFA

From: (1)
Sent: Wednesday, 2 July 2014 10:08 p.m.
To: (1) (SEA) P/SEC MFA (DS AAG)
Cc: (1) (DPMC); (1) (CEO); (1) (GM SGG);
(KLU); (1) (PRD)
Subject: Diplomatic Immunity Case: High Commissioner's Meeting with Malaysian MoFA and MinDef

Summary

(3)

(3)

(3)

From:

① (ESD)

Sent:

Thursday, 3 July 2014 10:00 a.m.

To:

P/SEC MFA (PRD) (GM SGG)

Cc:

(DS AAG) P/SEC MFA

Subject:

RE: Media Questions on return of Malaysian diplomat

Hi ①

Thanks for that. I think we are on the same wavelength with this. I'm putting together update talking points to cover this aspect, and have further discusses with

Will get back to you.

From: P/SEC MFA

Sent: Thursday, 3 July 2014 9:53 a.m.

To: ① (PRD); ① (GM SGG)

Cc: ① (DS AAG); PRESS SEC MFA; P/SEC MFA; ① (ESD); P/SEC MFA

Subject: Media Questions on return of Malaysian diplomat

Hi ①

Sorry to bother you when you are no doubt very busy. We keep getting the same media questions over and over again regarding the case – media want to know if immunity has been waived, and whether the accused would serve a sentence in New Zealand if found guilty.

Apologies for continuing to create more work for you, but I'd be very grateful if you could provide some answers. To try and save time, Adham and I have had a crack at a first draft – feel free to entirely scrap this if you think it is rubbish/inccorect.

I note that on the immunity issue, the Malaysian press statement is not clear (it says he will be returned to assist with the investigation). I do wonder if we need to get clarification in KL about this matter asap: although Anifah told MFA that immunity would be waived, I don't recall hearing this from the Malaysian system at all?

Has immunity been lifted for the alleged offender?

We have not yet received formal notification from Malaysia that they will waive immunity. We would expect to receive this once we have more details about the likely arrival of the accused.

If he is found guilty here, would he serve a sentence here or in Malaysia?

If diplomatic immunity was waived, the accused offender would be treated like any other foreign national facing trial in New Zealand. He would have the right to be presumed innocent. If found guilty, standard practice would be for a foreign national to service their sentence in New Zealand.

Thank you once again for everyone's work on this, and :

I do appreciate that everyone is working really hard to try and get us the information we request as quick as possible.

From: P/SEC MFA
Sent: Thursday, 3 July 2014 10:10 a.m.
To: ① (ESD); P/SEC MFA ① (PRD) ① (GM)
SGG)
Cc: ① (DS AAG);
Subject: RE: Media Questions on return of Malaysian diplomat

Hi all

It might be good to work in this line from the Malaysian statement too...

Malaysia has complete faith in the New Zealand legal system and has full confidence that Mr. Muhammad Rizalman will be given fair treatment with dignity as provided under the law.

②
We do need to lock this point down though ⑤

Thanks

P/SEC MFA

①

Office of Hon Murray McCully

From:
Sent:
To:
Subject:

SPS MFA

Thursday, 3 July 2014 10:24 a.m.

P/SEC MFA; P/SEC MFA; PRESS SEC MFA; P/SEC MFA
advice to the Ministry

HI team

Something we will want to do over the next few days is send a message to MFAT asking for a range of improvements/protocols for the way the Ministry communicates with the office and provides information. I'd very much like us to take a solutions-approach to this exercise, but I also want to be firm – the situation we have found ourselves in over recent days is entirely inappropriate and the office, and the Ministry, will need to make changes to the ways we work to ensure it isn't repeated.

I'd like your suggestions/views on what we include in our message, the substance of which I will follow-up with in person with SLT and Directors.

My thoughts so far are:

MFAT

- a more formal email protocol with the office
 - Private Secretaries are the primary points of direct contact regarding portfolio responsibilities (excl any specific issues that SPS/FPA/Press Sec might have lead on)
 - Need to copy things widely
 - Need to act when OOO messages are received
- Greater senior oversight on material being sent to the office (one of my preferences is for all media material (excluding CONS cases) to be signed out by a Dep Sec/CEO)
- Addition of a media/risk issues agenda item to CEO and IDG/Dep Secs meeting
- Weekly risk/media issues brief provided to the office (SportsNZ do something MFAT could copy)
- Weekly meeting between Private Sec – and senior portfolio staff (Dep Sec, Directors) with attendance from FPA, others if required

Office

- Formalise coverage arrangements when people are travelling
- Standardise OOO messages
- Clarify roles and specific responsibilities of staff within the office and with departments
- SPS to specify tasking around large issues where

Only rough, please send me your thoughts. ①

① | Senior Private Secretary | Office of Hon Murray McCully

①

From: ① PRESS SEC MFA
Sent: Thursday, 3 July 2014 10:50 a.m.
To: P/SEC MFA ① : ① (PRD) ① (GM SGG)
Cc: (DS AAG); (ESD); P/SEC MFA
Subject: RE: Media Questions on return of Malaysian diplomat

Hi all

The Minister is comfortable that Malaysian FM said immunity would be waived in their phone call. Is MFAT happy with this stronger line?

The Malaysian Government have acted in remarkably good faith by agreeing to return the accused to New Zealand to assist with the NZ police investigation.

We are working closely with them on this on the process.

They have indicated they are willing to waive immunity.

Thanks

①

① | Press Secretary | Office of Hon Murray McCully

From: ① P/SEC MFA
Sent: Thursday, 3 July 2014 9:53 a.m.
To: ① (PRD) ① (GM SGG)
Cc: ① (DS AAG); PRESS SEC MFA; P/SEC MFA; ① (ESD); P/SEC MFA
Subject: Media Questions on return of Malaysian diplomat

Hi ① ①

Sorry to bother you when you are no doubt very busy. We keep getting the same media questions over and over again regarding the case – media want to know if immunity has been waived, and whether the accused would serve a sentence in New Zealand if found guilty.

Apologies for continuing to create more work for you, but I'd be very grateful if you could provide some answers. To try and save time, ① and I have had a crack at a first draft – feel free to entirely scrap this if you think it is rubbish/inccorect. PRESS SEC MFA

I note that on the immunity issue, the Malaysian press statement is not clear (it says he will be returned to assist with the investigation). I do wonder if we need to get clarification in KL about this matter asap: although Anifah told MFA that immunity would be waived, I don't recall hearing this from the Malaysian system at all?

Has immunity been lifted for the alleged offender?

We have not yet received formal notification from Malaysia that they will waive immunity. We would expect to receive this once we have more details about the likely arrival of the accused.

If he is found guilty here, would he serve a sentence here or in Malaysia?

If diplomatic immunity was waived, the accused offender would be treated like any other foreign national facing trial in New Zealand. He would have the right to be presumed innocent. If found guilty, standard practice would be for a foreign national to service their sentence in New Zealand.

Thank you once again for everyone's work on this, and apologies to anyone I was grumpy with on the phone yesterday! I do appreciate that everyone is working really hard to try and get us the information we request as quick as possible.

P/SEC MFA ①

From: PRESS SEC MFA
Sent: Thursday, 3 July 2014 11:04 a.m.
To: P/SEC MFA (AAG) P/SEC MFA (GM SGG)
Cc: (ESD); P/SEC MFA
Subject: RE: Media Questions on return of Malaysian diplomat

Sorry – Minister has oked this line

Minister Anifah and he advised me that the Malaysian authorities will be returning the official in question to New Zealand to assist with our investigation.

He also indicated to me that they would be willing to waive his right to immunity.

① Press Secretary | Office of Hon Murray McCully

①

From: PRESS SEC MFA
Sent: Thursday, 3 July 2014 10:50 a.m.
To: P/SEC MFA, (GM SGG)
Cc: ① (DS AAG); P/SEC MFA; P/SEC MFA ①
Subject: RE: Media Questions on return of Malaysian diplomat

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② Thank you once again for everyone's work on this, ⑤

I do appreciate that everyone is working really hard to try and get us the information we request as quick as possible.

①

From:
Sent:
To:
Subject:

① (ESD) ①
Thursday, 3 July 2014 11:28 a.m.
PRESS SEC MFA; PISEC MFA ①
update talking points for PMO - will you forward to ① as see fit.
DEMC

Draft talking points for the Prime Minister

- Foreign Minister, Murray McCully, was contacted by his counterpart, Minister Anifah, last night and advised the official accused of a serious crime will return to New Zealand.
- New Zealand welcomes the decision and appreciates the cooperation of the Malaysia government. It underscores the strong bilateral relationship between us.
- There was no intention by either government to let this matter rest.
- We welcome the Malaysian statement that it has complete faith in the New Zealand legal system and has full confidence that Mr. Muhammad Rizalman will be given fair treatment with dignity as provided under the law.
- It has been a distressing time for the woman at the centre of this incident. I hope this outcome goes some way towards helping her feel her rights are being supported by the government
- It must be noted that the accused has the right to be presumed innocent until proven guilty and deserves the right to a fair trial. The individual is returning to assist the police with their investigation.
- There is a process to be followed by both Police and Justice officials and it remains important for the proper and due process be allowed to follow its course.
- I think it has been made clear by the Minister and the Ministry of Foreign Affairs that there have been shortcomings with how this matter has been handled and the quality of advice presented to me.
- I am pleased that we have reached the point where a legal process can be followed in New Zealand and the official held to account for a serious crime he allegedly committed here.

Question answers

When will he be returned?

I don't have any official advice on when this will take place and officials are still working in arrangements. However a proper process is being followed and it should be allowed to run its course. We are reaching the point where it's not appropriate for Ministers to provide commentary so as to allow a clean criminal justice process.

Have the Malaysians waived diplomatic immunity?

The Malaysians have made a good faith decision to send the individual back. They have indicated they will assist with the investigation and have faith with our judicial system. The Malaysian Foreign Minister indicated during his phone conversation with Minister McCully that they would be willing to waive the immunity.

Will he be arrested immediately on his return?

Ultimately decisions about these steps will rest with the New Zealand Police and the criminal justice system.

If he is found guilty here, would he serve a sentence here or in Malaysia?

I can't forecast the outcome of any criminal justice proceedings.

Any foreign national facing trial in New Zealand has the right to be presumed innocent.

What is happening with the Ministry of Foreign Affairs review?

Our Mfat CEO John Allen indicated yesterday he is initiating a review process within the Ministry. I don't have advice on how long it will take however I am sure the CEO will take all appropriate measures.

Has anyone been held accountable?

The review process may have employment consequences but I can't second guess that process.

Who has changed their position here, the New Zealand or the Malaysian government?

I think both governments are very conscious about the importance of allowing the opportunity for a form of justice for the victim and both governments had expressed their intent to achieve it.

As you will be aware, there has been some conflicting advice about the sequence of events which allowed the individual to return to Malaysia. However I believe an appropriate outcome has now been reached.

Background

The decision to return the individual was conveyed by the Malaysian Foreign Minister to Minister McCully by phone on Wednesday evening. The Malaysian cabinet approved this decision and Foreign Minister Anifah issued a media release making the announcement at approximately 9.40pm NZ time. Minister McCully issued a statement shortly after.

In its statement Malaysia stated it has complete faith in the New Zealand legal system and has full confidence that Mr. Muhammad Rizalman will be given fair treatment with dignity as provided under the law. They indicated Mr Rizalman will be accompanied by a senior Defence Force official. The Malaysian statement says the return was "to assist in the investigation for the charges of burglary and assault with intent to commit rape."

From:
Sent:
To:
Cc:
Subject:

PRESS SEC MFA ①
Thursday, 3 July 2014 11:46 a.m.
MFA; McCully1
P/SEC MFA; P/SEC MFA; P/SEC MFA ①
Draft talking points for the Prime Minister

Minister – here are the latest set of media points for the PM on the Malaysia issue.

Draft talking points for the Prime Minister

- Foreign Minister, Murray McCully, was contacted by his counterpart, Minister Anifah, last night and advised the official accused of a serious crime will return to New Zealand.
- New Zealand welcomes the decision and appreciates the cooperation of the Malaysia government. It underscores the strong bilateral relationship between us.
- There was no intention by either government to let this matter rest.
- We welcome the Malaysian statement that it has complete faith in the New Zealand legal system and has full confidence that Mr. Muhammad Rizalman will be given fair treatment with dignity as provided under the law.
- It has been a distressing time for the woman at the centre of this incident. I hope this outcome goes some way towards helping her feel her rights are being supported by the government
- It must be noted that the accused has the right to be presumed innocent until proven guilty and deserves the right to a fair trial. The individual is returning to assist the police with their investigation.
- There is a process to be followed by both Police and Justice officials and it remains important for the proper and due process be allowed to follow its course.
- I think it has been made clear by the Minister and the Ministry of Foreign Affairs that there have been shortcomings with how this matter has been handled and the quality of advice presented to me.
- I am pleased that we have reached the point where a legal process can be followed in New Zealand and the official held to account for a serious crime he allegedly committed here.

Question answers

When will he be returned?

I don't have any official advice on when this will take place and officials are still working on arrangements. I understand it will be a matter of days not weeks or months.

Have the Malaysians waived diplomatic immunity?

The Malaysians have made a good faith decision to send the individual back. They have indicated they will assist with the investigation and have faith with our judicial system. The Malaysian Foreign Minister

indicated during his phone conversation with Minister McCully that they would be willing to waive the immunity.

Will he be arrested immediately on his return?

Ultimately decisions about these steps will rest with the New Zealand Police and the criminal justice system.

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Press Secretary | Office of Hon Murray McCully

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

From: ① (SEA)
Sent: Thursday, 3 July 2014 11:48 a.m.
To: P/SEC MFA ① (DS AAG); (PRD);
(GM SGG); ① (ESD); ① (SEA); ① (ESD);
① (CEO Office); ① (DS AAG Office)
Subject: FINAL DRAFT COVER NOTE: Malaysian Diplomatic Immunity Case - Summary to 11.45am 3 July (version 3)
Attachments: Malaysian Diplomatic Immunity Case - Summary to 3 July 2014.docx
Importance: High

Colleagues, the attached has been vetted by ① and ①. Note this is a much tidier version, with facts added and certain details checked for accuracy.

P/SEC MFA

① I have a couple of details to add to the timeline, but this can be printed out in annex as a separate page. ① with you soon.

①

"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 recipient you must not use, disclose, copy or distribute this message or the information in it as this may be unlawful. If you have received this message in error, please email or telephone the sender immediately."

Summary and overview

At the core of this case and the political controversy are the questions:

- whether New Zealand authorities did all they could to prevent the repatriation, under diplomatic immunity, of a Malaysian High Commission official charged with serious home invasion charges;
- whether liaison between the Ministry of Foreign Affairs and Trade and the Malaysian High Commission in Wellington led the Malaysian Government to believe New Zealand was offering an alternative to our formal request Kuala Lumpur waive diplomatic immunity so the official could be tried in New Zealand, and;
- whether MFAT should have done more to brief the Prime Minister and the Minister of Foreign Affairs and Trade of this serious issue, and to have done so earlier.

The facts:

On the evening of Friday 9 May Police arrested a Malaysian man in the Brooklyn, Wellington, home of a 21-year-old woman. They alleged he had followed her home from the local dairy, that he assaulted her before she broke free and barricaded herself behind her bathroom door. When Police arrived in response to reports of her screaming, they found him wearing only a shirt and charged him with burglary and assault with intent to rape. Muhammad Rizalman Bin Ismail appeared before a Justice of the Peace the following day. In the intervening time, MFAT Protocol had been alerted to the case and confirmed with the Malaysian High Commissioner the man had diplomatic status - a status of which she was unaware - alerted the Police to the fact this meant he should not have been arrested and could not be charged or detained under the Vienna Convention, which governs conditions for diplomatic rights, privileges and protections between countries.

The man's status set in train a process by which, on Saturday 10 May 2014, MFAT Protocol Division issued a third person note (TPN) - a formal diplomatic note - requesting in very clear terms that Malaysia agree to waive Rizaman's diplomatic immunity to allow him to stand trial on the charges in a New Zealand court. Rizalman remained in New Zealand on bail in his own home while the Malaysian authorities considered the request for a waiver of immunity. On Wednesday 21 May 2014 MFAT received from the Malaysian High Commission in Wellington a formal diplomatic note (attached) refusing the request and undertaking to ensure Rizalman would not return to New Zealand. Rizalman left New Zealand with his family Thursday 22 May, under escort from a senior Malaysian military officer.

MFAT was told by the Malaysian High Commissioner

(2)

The

Malaysian Ministry of Defence established a board of inquiry process on 26 May and required Rizalman to undergo examination (still under way).

During the liaison among MFAT, the High Commissioner and her staff and Police there was discussion about Rizalman's behaviour and its possible causes. The discussion canvassed options for Rizalman leaving the country in the event immunity was not waived. Malaysia has ⁽²⁾ is as an indication New Zealand's request for immunity was subject to other options that would result in his leaving New Zealand quickly. This has since been portrayed in the media as constituting a possible 'deal' and underlies the confusion highlighted by the Foreign Ministers of both countries, which came to light on Tuesday 1 July.

Management of the case by MFAT Protocol Division:

Protocol Division acts as a liaison point between foreign diplomatic missions and the agencies of government.

When an employee of a diplomatic or consular mission is suspected of breaking the law but is entitled to immunity from prosecution under the Vienna Conventions and the relevant New Zealand legislation and the New Zealand Police, the police will consider whether given the information they have there is sufficient public interest to seek a waiver of diplomatic immunity.

If the police wish to proceed with a prosecution, they then request in writing that MFAT seek a waiver of immunity from the Government for whom the employees works.

Protocol Division will send a formal Third Person Note to the High Commission or Embassy requesting the waiver.

Protocol Division will also call in the Head of the Mission to the Ministry discuss the reasons for seeking the waiver. The Police will usually attend these meetings to provide technical information about the case. The implications for the individual of granting a waiver or not granting a waiver are explained.

The practice has been that these matters have been dealt with by Protocol Division- the Chief of Protocol and the Deputy Chief of Protocol- because of the sensitivity of the issues. Regional divisions are kept informed as the case proceeds. The Office Solicitor is consulted and provides advice on legal issues.

The foreign mission will respond by Third Person Note on its Government's decision on whether or not to waive immunity.

If the decision is made to waive immunity it becomes a matter for the police.

If the mission advises that immunity will not be waived, the Head of Mission is called in by Protocol Division and informed that the next step will be for the New Zealand

Government to declare the individual persona non grata unless he or she is withdrawn from the country as soon as possible.

How this case differed from others in both nature and management by MFAT

Unusual circumstances surrounding this case, the alleged offender and the nature of the offences he faced made management of it by MFAT and Police particularly complicated. Factors included:

- Malaysian High Commission were not aware that the man was entitled to diplomatic immunity and therefore the man was arrested and court proceedings were initiated;
- The Police and the Malaysian High Commission at the outset expressed concerns about the possible causes of Mr Rizalman's behaviour.

The effect of the media story:

How MFAT responded. When MFAT became aware the Herald on Sunday was to publish a report that weekend about the case it discussed the events surrounding the repatriation. South East Asia Division instructed the post in Kuala Lumpur to ascertain what had become of Rizalman and learnt on Wednesday 25 June from the Deputy High Commissioner's call on the relevant Director-General in Malaysia's Foreign Ministry of the defence inquiry and the ongoing investigation. MFAT ascertained the Defence Attache had made "casual inquiries" of his defence contacts but that no information had been gained from the latter.

MFAT Protocol and South East Asia Divisions both spoke at length last week to the Malaysian High Commissioner,

(2)

MFAT produced media talking points for the Prime Minister and the Minister of Foreign Affairs on Friday 27 June, subsequently refined on Sunday, following the PM's comments to the media. These were on hand for the PM's Monday morning media engagements, and with further refinement for his post-Cabinet press conference. Media interest picked up rapidly from Monday, and the issue dominated the PM's post-Cabinet press conference.

Minister McCully spoke with MFAT senior officials about the issue on Monday. It was unclear to both the Minister and the officials present – who did not include a Protocol Division representative due to the absence of the relevant people – that there was any ambiguity in the mind of the Malaysian Foreign Minister. There was no indication in the minds of those in the meeting that New Zealand's position in seeking a waiver of immunity was anything other than conveyed in MFAT's formal diplomatic note of 10 May,

or that any ambiguity underlay the Malaysian formal response of 21 May rejecting the waiver request.

On that basis MFAT CEO (1) called the High Commissioner in to the Ministry on Minister McCully's instruction late on the afternoon of Monday 30 June. In that discussion the High Commissioner repeated her view that "options" had been offered to Malaysia for how Rizalman was treated, but said

(2) brought home. Neither the CEO nor the Director of South East Asia Division, present in this discussion, was aware of any documentation that might support the High Commissioner's view of an alternative interpretation, (2)

The ground began to change substantially around the middle of Tuesday 1 July, when Malaysian media reported Foreign Minister Anifah would address the issue in a press conference. New Zealand's High Commissioner to Malaysia, (1), having spoken to Minister Anifah before the press conference, met with him immediately afterwards. In that meeting Minister Anifah referred specifically to an email from MFAT Protocol Division containing the words: "If [Rizalman] were to complete his posting prior to 30 May [his scheduled court appearance] and return to Malaysia with his family, that would be the end of the matter." This specific detail enabled MFAT management to locate the email.

With the email in hand, Minister McCully phoned Minister Anifah and apologised for the misunderstandings, thanking him for Malaysia's constructive response and advising he would issue a press statement clarifying the history of the issue. Minister Anifah confirmed it had been his wish to agree to a waiver of immunity for Rizalman but that he had agreed to repatriate him on the understanding this was acceptable to New Zealand. Minister Anifah also confirmed the Malaysian Defence Ministry was pursuing a rigorous process of investigation and that Rizalman would face the full penalty for his actions if found guilty.

After speaking with Minister Anifah, Minister McCully apologised to the Prime Minister for the incomplete nature of his briefing to him on the issue, based on what MFAT officials had told him, and conveyed to the Prime Minister the implications of the new direction the issue was taking, both domestically and in relation to Malaysia.

The Chief Executive of MFAT has stated categorically to the Minister and publicly, on 2 July, that the Ministry fell short in its interactions with the Malaysian High Commission on this matter and in the advice it provided to the Minister (and Prime Minister).

On Wednesday 2 July High Commissioner (1) called on the Malaysian Foreign Ministry at officials level and confirmed that the Malaysian military had established a board of inquiry to investigate Rizalman. Minister Anifah asked to see (1) immediately afterwards and told him the (2) to return Rizalman to New Zealand to face trial here. The two Ministers discussed this course of action by phone at 5pm New Zealand time that afternoon, and both issued press statements to this effect later in the evening. Minister Anifah's said:

Malaysia has complete faith in the New Zealand legal system and has full confidence that Mr. Muhammad Rizalman will be given fair treatment with dignity as provided under the law. The Government of Malaysia's decision is a clear testament of the excellent bilateral relations between Malaysia and New Zealand.

In discussions between the two Ministers, and between Minister Anifah and High Commissioner ①

Minister Anifah told him the ②

High Commissioner ① said referred to the strong

What The Prime Minister and Minister of Foreign Affairs were told and when:

Both the Prime Minister's and Minister of Foreign Affairs' Offices were alerted to the case by MFAT on Saturday 10 May. MFAT also produced contingency media points for the Prime Minister should the issue become public.

On 22 May MFAT Protocol Division copied MFA's Office in on an email advising of the 21 May Malaysian TPN refusing to waive immunity and advised Rizalman had left the country on 22 May.

On 27 June MFAT put up media talking points and background to the Prime Minister and Minister of /foreign affairs in anticipation of the story breaking in the Herald on Sunday. These talking points were modified on Sunday evening and again on Monday, in preparation for the PM's post-Cabinet press conference.

Appendix 1: Timeline of Events

Two TPNs.

Friday 9 May – approx. 9pm: call from Diplomatic Protection Service to Chief of Protocol

Friday 9 May: Chief of Protocol rings Malaysian High Commissioner to advise that a member of the staff of the Malaysian High Commission has been arrested by Police after a home invasion in Brooklyn.

High Commissioner said that the person concerned did not have diplomatic immunity but she would send a staff member to the Police station to assist.

Saturday 10 May, 9am: Chief of Protocol rings deputy to ask her to verify diplomatic status of individual.

Diplomat appears in court before JP and suppression order granted. Remanded on bail with conditions to 30 May 2014.

Saturday 10 May: deputy confirms diplomatic immunity with Police. Deputy asks police for factual summary and police recommendation. Police formally seek a waiver of immunity. Third Person Note sent to Malaysian High Commission seeking a waiver of immunity.

Minister's office, deputy secretary, MFAT media and regional division alerted by protocol division.

Monday 12 May: meeting between Police, MFAT and Malaysian High Commissioner to discuss the consequences of agreeing to a waiver of Immunity or declining. Police expressed also reminded the High Commissioner of the victim's distress and expectation of accountability. MFAT advised that should the government decline the request for a waiver the matter would not rest there.

Malaysian High Commissioner sought more information from Police about the case in order to brief her foreign minister. Malaysian HC advise they do not have mandate to make decision

Meeting planned for Wednesday 14 May for Police to provide further information to High Commissioner. Police requested more time in order to interview victim and meeting was confirmed for Monday 19 May.

14 May 2014 - MFAT confirm diplomatic community in writing to NZ Police.

15 May 2014 – Bail conditions withdrawn at court. Defendant did not appear.

Monday 19 May: same group met; Police read a detailed account to the High Commissioner of the incident and handed a copy to her. High Commissioner then confirmed verbally that the Malaysian government had decided to withdraw the staff member.

Tuesday 20 May: Protocol division told by High Commission to expect a Third Person Note.

Wednesday morning 21 May: Third Person Note delivered i) declining request for a waiver and advising that staff member would be repatriated as soon as possible and assuring MFAT that staff member would not return to New Zealand in the future. The Third Person Note also requested that the documentations be sealed and the charges be withdrawn.

Wednesday 21 May: Malaysian Third Person Note sent to Police.

Thursday 22 May: staff member and family departed accompanied by defence adviser.

Minister's office was advised on 10 May and summary of case sent through on 22 May. MFAT divisions kept informed throughout.

From: ① PRESS SEC MFA
Sent: Thursday, 3 July 2014 12:00 p.m.
To: SPS MFA
Subject: FW: MALAYSIAN MILITARY ATTACHE: POLICE CASE

This is my first correspondence with the boss as far as I can see.

① | Press Secretary | Office of Hon Murray McCully

From: PRESS SEC MFA
Sent: Thursday, 26 June 2014 4:41 p.m.
To: MFA; McCully1
Cc: P/SEC MFA ; SPS MFA ; ① [DPMC]
Subject: MALAYSIAN MILITARY ATTACHE: POLICE CASE

Minister -- for your information

The Herald on Sunday has been in touch with NZ Police about a case involving the Malaysian military attaché.

The relevant background and information police will provide to the journalist is copied below.

Police will be responding this afternoon and we assume this will result in further enquiries being directed to MFAT.

MFAT have prepared draft reactive media points (also below) in anticipation. The matter is subject to a suppression order so there is little Police or MFAT can provide in way of detail to media.

Thanks

① PRESS SEC MFA

MALAYSIAN MILITARY ATTACHE: POLICE CASE

MFAT Media points

- Under the Vienna Convention there is global recognition that diplomats are entitled to immunity from arrest and detention.
- The New Zealand Government expects diplomats to respect New Zealand laws. In the case of a serious allegation such as this, the New Zealand Government seeks a waiver of immunity from the sending State so that the matter can be dealt with by the New Zealand courts.
- In this instance, the request for a waiver of immunity was declined by the sending State and the individual was made to return home.

If asked - about further action

- This matter is now the responsibility of the sending state.

If asked - for further details

- The Ministry is unable to release any further detail as the matter is subject to a suppression order.

Summary

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.

The following morning it was confirmed that he was 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.

On 21st May MFAT received a diplomatic Note from the Malaysians i) declining the request for a waiver of immunity; and ii) confirming the decision to repatriate the attaché and his family. The family departed NZ on 22 May.

The Police intend to issue the attached short statement on 26/06/2014. The statement does not release any details that may identify the alleged perpetrator as he was granted name suppression.

Police draft statement

Man charged in relation to Brooklyn assault has arrest warrant issued for return

Wellington Police can confirm that a male in his 30s was arrested in Brooklyn on the night of Friday 9 May. Police laid charges of burglary and assault with intent to rape after he followed a 21-year-old woman and assaulted her.

It was subsequently established that the prosecution was unable to proceed and the victim has been fully informed of the process through out. The alleged offender has since left New Zealand.

The charges remain active and a warrant to arrest for the man has been issued by the court. Should he return to New Zealand at any time it is likely he will face prosecution for the offences it is alleged he has committed.

ENDS



| Press Secretary | Office of Hon Murray McCully

From: PRESS SEC MFA
Sent: Thursday, 3 July 2014 12:26 p.m.
To: P/SEC MFA.
Subject: FW: Malaysian Diplomat - Herald on Sunday
Attachments: RE: Conversation with Malaysian High Commissioner: Media Request re Diplomatic Incident

Importance: High

① | Press Secretary | Office of Hon Murray McCully

①

From: ① (ESD)
Sent: Friday, 27 June 2014 10:34 a.m.
To: PRESS SEC MFA ①
Cc: ① ① (ESD); (ESD)
Subject: Fw: Malaysian Diplomat - Herald on Sunday
Importance: High

Hi PRESS SEC MFA

Here is the current advice from SEA.

- A) Email below from ①
- B) Update from Post attached following discussions with Ministry of Foreign Affairs in Malaysia.

Also we have made some suggestions to your draft script at the bottom of this email (hopefully making it a bit stronger. It is currently being circulated but see draft below).

Once you have discussed with MFA, we can discuss how we package this for the PM (DPMC has asked for further information by 1pm).

Thanks

①

From: ① (SEA)
Sent: Friday 27 June 2014 10:22 a.m.
To: ① (ESD); ① (ESD)
Subject: Fw: Malaysian Diplomat - Herald on Sunday
Importance: High

On the NZ High Commission follow-up with Malaysian authorities, the following (from ① email yesterday, which I attach) is particularly pertinent:

- ① also noted that with the man in question belonging to the military, MFA would have to find out how he was being dealt with in a process ②
- ① observed that they would need to gather this information asap. He expected the Malaysian media would also pick up on the NZ coverage, take an interest, and want to know from Malaysian authorities what had been done. ② but to ensure they had correct information and could be transparent.

In addition, our ① will continue to make separate inquiries with the Malaysian military.

It is clear this issue is being taken very seriously by Malaysia, including by its Foreign Minister. It is possible Mr McCully will visit Kuala Lumpur in August, in which case he could raise it with FM Anifah and could expect an informed and sympathetic hearing.

It is important comments by P/Ministers do not name Malaysia (though the story will), break the name suppression order or refer to the mental health dimension. It is important Malaysia respond to the issue – though we can't make them – and we have done our utmost to persuade them of the merits of doing so. Both the High Commissioner here and her HQ have acknowledged this fact.

⑤

①

I am aware of the case. I would like to start by noting that the situation is subject to a suppression order and I can't speak in much detail.

What I can say is that 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.

On this occasion a diplomat has committed a serious crime.

Our preference would have been to see him face justice in New Zealand. This is fairer for the victim.

We asked the diplomat's government to waive his right to immunity but this was declined.

As a consequence he was returned home and we have been assured an investigation is under way. ~~he will face justice there.~~

we appreciate this is a very difficult situation for the victim of this crime.

Why did NZ grant him the right to leave/diplomatic immunity?

The New Zealand Government did not grant him immunity. He was immune to prosecution under the Vienna Convention. We sought to have this right to immunity waived.

Is it fair to the victim?

This has been a shocking ordeal for the victim. Our preference would have been to see him face justice in New Zealand, this is why we sort 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.

It is our expectation that they would then face justice in their own country.

Why do we have diplomatic immunity?

The principle of diplomatic immunity is outlined in the Vienna Convention. Diplomats sometimes require immunity from prosecution to carry out their work and operate effectively in foreign country.

It is not designed to give them special privileges to break the law. We expect diplomats in NZ to abide by our laws.

Do we need to withdraw from the Vienna Convention/seek changes?

Let's put this in perspective. Serious crimes committed by diplomats are very rare. The Vienna Convention underpins the global diplomatic network and we could not withdraw from it without cutting off diplomatic ties with the rest of the world.

Are we putting our diplomatic relations ahead of the rights of a victim?

Our primary concern is for the victim of the crime. Our preference would have been to see him face justice in New Zealand, this is why we sort a waiver of immunity.

What sanctions will they face at home?

We have been assured he will face justice in his home country. We have approached the Malaysian Government and have been assured that an investigation is under way.

Could the person return to NZ?

The charges remain active. Should he return to New Zealand at any time ~~it is likely~~ he will face prosecution for the offences it is alleged he has committed.

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From: ① (ESD) ① @mfat.govt.nz>
Sent: Thursday 3 July 2014 1:29 p.m.
To: ① PISEC MFA
Subject: FW: MEDIA BRIEF Malaysian incident 2Jul14
Attachments: MEDIA BRIEF Malaysian incident 2Jul14.docx

[UNCLASSIFIED]

From: ① (CEO Office)
Sent: Thursday, 3 July 2014 1:27 p.m.
To: ① (ESD)
Cc: ① (ESD)
Subject: FW: MEDIA BRIEF Malaysian incident 2Jul14

① [UNCLASSIFIED]

Hi: ① – revised transcript attached noting my comments below.
Cheers

①

From: ① (CEO Office)
Sent: Thursday, 3 July 2014 1:19 p.m.
To: ① (ESD); ① (ESD)
Cc: ① (CEO)
Subject: MEDIA BRIEF Malaysian incident 2Jul14

I have revisited listening to the transcript against what I transcribed last evening. There are some very minor changes but you should note in particular that I had omitted from ① ; first answer on Page 4, line 2 the words, "we didn't" which changes the context of his response to the question asked.

① answer now reads:

".....various conversations with Mr McCully through this process but what – the point is that we didn't at that stage know that there was in fact....."

Would you please delete the earlier version of the transcript and replace with the attached for future reference.

Thanks

①

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MEDIA BRIEF

MALAYSIAN DIPLOMAT ISSUE

Wednesday, 2 July 2014 : 1530hrs

MFAT: L12.12-13

JA: involving a Malaysian Diplomat of sexual assault. Quite clearly there has been miscommunication in the way in which this case has been handled and earlier today I expressed my disappointment and apology to the Foreign Minister and through him the Prime Minister for the situation in which they find themselves. I also want this afternoon to express my apology to the victim of this alleged incident for the turmoil that she has had to suffer as a consequence of this issue playing out in the way that it has.

The conversation I had with the Foreign Minister was obviously a broad ranging conversation talking not only about the issue as it has arisen but importantly what we are going to do about it going forward.

In that regard we focused not only on the need for us to enhance the capability set in management oversight for the areas of the Ministry in question but also the need for us to improve our communication processes with the Beehive and the need for us to get an independent review of the way in which we manage these sensitive and important cases.

Q: Did you offer your resignation to Murray McCully?

JA: Well I had a wide ranging conversation with the Foreign Minister in which he expressed confidence in me, in my role, and he expressed confidence in the steps that we are now undertaking to address the issues that identified.....

Q: Prior to that did you offer your resignation to Murray McCully – yes or no?

JA: Well I'm not to say whether or not in terms of the detail of the conversation but what I can say to you is that the Minister has expressed confidence in me in this role and as I say confidence in the steps that we have agreed to take to ensure that the sort of situation in which we find ourselves is never repeated.

Q: So he turned down your resignation?

Q: How did this mid-level protocol officer get it so wrong?

JA: Well I think these issues are very complex and very difficult and very sensitive. What's happened here is that the formal communication process has been very clear. New Zealand has requested a waiver which the Malaysian Government has not acquiesced to but the informal conversation that has gone on alongside that has led to an impression on the part of the Malaysian colleagues that an alternative course in which they do not accept the waiver the person gets returned to Malaysia and faces a military tribunal would be acceptable to the New Zealand Government.

Q: What was said to the Malaysians?

JA: So in relation to the material presented it was more about the way in which options were presented.

Q: What options were presented?

JA: So under the Vienna Convention there are a range of steps that can potentially be taken by countries when they are facing these situations. From my reading of

things my understanding now of what has occurred here an impression unintended was left with our Malaysian colleagues that they had an option of not accepting the waiver proposition, returning the diplomat to Malaysia, and allowing the military tribunal to run its course. That was *not* the intention but that was an impression that was left.

Q: Was that what you offered them though?

JA: No – we didn't make an offer to them. This was an impression that was created through that conversation. So there was not an offer.

Q: Were they wrong about that?

JA: Well I don't believe there was an offer made. I think that the misapprehension or misunderstanding arose through a range of conversations that were occurring in the context of a very difficult and sensitive case and I am very disappointed and concerned that that misapprehension was allowed to be created.

Q: So when were you first aware of this ambiguity as it were?

JA: Well I was aware of the event for the first time on Friday of last week. I was aware of the ambiguity when I met with the Malaysian High Commissioner on Monday evening this week at the request of the Foreign Minister and it became clear to me in the conversation that I had with the High Commissioner that there were different impressions between the positions I understood it to be and the position as she understood it to be. This was then – sorry – this was then reinforced in the comments that were made by Foreign Minister Anifah in Malaysia later on Tuesday.

Q: Let's be clear – so what are saying – that you didn't know that any of this had happened until last Friday?

JA: That's correct. I didn't know that any of this had happened. This is the issue that I am saying to you there is quite a bit of work to do in the communication space but the context is important. The context is that these are very difficult and sensitive cases. That they are managed in quite a compartmentalised way within the Ministry. Now clearly that has led to the difficulties that are confronted here. Equally clearly that can't be sustained moving forward and as I say the independent review process that we will put in place and the other actions that the Foreign Minister and I have agreed I am confident will ensure that we don't run into these sorts of misunderstandings again.

Q: Let's be very clear about the problem here. Someone in your department helped this guy get away.

JA: Well the person, the people in my department were not helping the guy get away.

People let him go ... let him go.

The people in my department were working through a complex case involving complex and sensitive issues. There were mistakes made. Quite clearly there were some mistakes made. I take responsibility for those mistakes. I have apologised for making those mistakes. I am now taking action to address those mistakes moving forward and that is where we currently are.

Q: If it's going to a court martial as New Zealand providing what sort of information can you provide to make sure that there justice is found in Malaysia.

JA: Well I'm not an expert in exactly how that works between the New Zealand Police and between the authorities in Malaysia but I understand that there are formal

arrangements that can be invoked by the Malaysian authorities to enable material that has been collected by the New Zealand Police to be presented in that tribunal.

Q: Has there been any disciplinary action ... instigated at all?

JA: I haven't instigated any disciplinary action at this stage but I don't rule out that disciplinary action could potentially be taken depending on where we get to through these due processes that I have described.

Q: Because this was such an important issue don't you think that as the man in charge here that you should have been kept in the loop?

JA: Yes I do think I should have been kept in the loop and yes I do think that that was a mistake and quite clearly I wasn't the only person who wasn't sufficiently kept in the loop. The environment as I have described to you is one in which these issues are quite carefully managed and quite carefully compartmentalised within the Ministry. Quite clearly that approach has not delivered the results it needs to deliver. Quite clearly that approach can't continue and as I say the review process that we have under way I am sure will lead to a change to that process.

Q: How can it possibly happen that the Foreign Affairs minister is advised of the government's position obviously because he has a copy of that note but isn't informed of the Malaysian Government's reaction?

JA: Well it shouldn't happen. Quite clearly it shouldn't happen. I think the Foreign Minister has expressed himself as being surprised, disappointed and unimpressed.

Q: Well how does it happen because it breaches no surprises as well as any other protocols you may have surely?

JA: Well clearly it shouldn't happen. The question that I have to work through now is why it did happen and how we ensure that it doesn't happen moving forward and that is the process that we currently have under way.

Q: Does this go back to a meeting on May the 12th? Is that when that ambiguity first occurred?

JA: Look I'm not sure whether it was entirely on May the 12th. There was a meeting on May the 12th but there were other meetings, there were other conversations. Exactly how the ambiguity was created is still, you know, not entirely clear but what is clear is that there was an ambiguity created. What is clear is that our Malaysian colleagues believed that the option of not agreeing to the waiver allowing the diplomat to be repatriated and a facing military tribunal was a process that the New Zealand Government agreed with quite clearly that *was not* the position of the New Zealand Government and to that extent quite clearly this Ministry has dropped the ball.

Q: And so Mr Allen you said that you were aware of the ambiguity first when you met with the Malaysian High Commissioner on Monday evening – correct?
Soon on the Tuesday morning Mr Key and Mr McCully both appeared to be holding the original line that it wasn't until Tuesday afternoon that Mr McCully seemed to know about this.

JA: No, so what I said was that when I met with the Malaysian High Commissioner it was clear to me that there was a different understanding between us of what had transpired. What I started then was a process investigation to see whether or not there was any substance to that process and when Mr Anifah made his statements later in the day that was the catalyst through which we then really interrogated the data and found the inconsistencies.

Q: So looking at that then you probably would concede you should have spoken to Mr McCully straight away – correct?

JA: Well, I mean, there were various conversations with Mr McCully through this process but what - the point is that we didn't at that stage know that there was in fact a foundation for what appeared to be the ambiguity that had been raised with me by the High Commissioner. What became clear in the course of that day and particularly following Foreign Minister's Anifah's comments in Malaysia was that there was a foundation for that confusion. That our colleagues in Malaysia did – were, you know – did have a misunderstanding of the New Zealand Government's position. That that had been contributed to by comments that had been made by Ministry officials and that is the issue that I have apologised for to the Foreign Minister; I have apologised for through him to the Prime Minister; I have apologised for to the victim of this alleged assault and which I need to address to restore the pride and confidence of the people in this Ministry.

Q: You offered your resignation to Murray McCully and he declined it – didn't he?

JA: So, I'm not going to comment on the details of that conversation. I've already said that the Minister expressed confidence in me. He expressed confidence in the programme of work that we are putting in place to ensure that this doesn't occur again.

Q: How can justice be done on behalf of this victim when in fact she won't be in Malaysia to be questioned about the alleged incident?

JA: Well exactly how this will now play is still to be determined. What Mr McCully has said is that extradition remains a possibility and that the relevant authorities in New Zealand will need to consider whether or not extradition is appropriate in this case. What the Foreign Minister has also said is that he has confidence in the tribunal process that has been set up and has confidence following his discussions with Foreign Minister Anifah in the intent of the Malaysian system to provide a proper judicial process around these allegations.

Last question please.

Q: You don't get told as a matter of course when New Zealand requests a waiver of diplomatic immunity. You don't get told that as a matter of course?

JA: That's true. I don't get told that as a matter of course. That is one of the issues that will be evaluated in the process that we are currently.....

Q: How odd is that that you don't get told this kind of thing?

JA: Well I have explained that the environment in which this occurs is that we try to protect information. These are sensitive cases but quite clearly in my view I should have been told.

Q: If the chief executive isn't/doesn't know about a sensitive case – who should?

JA: So there's the point. That we need to continue to go through the process I have described to address the underlying issues here in relation to communication. I am confident that we can do that. I am confident that we will do that and as a consequence I am confident that these issues will not arise again.

Q: Had you set up a structure where you shouldn't be told this?

JA: No I hadn't set up a structure that I shouldn't be told it but I wasn't told it. These structures are long-standing structures and obviously they need to be re-evaluated.

Obviously they are going to be re-evaluated so that we can move forward with confidence.

One last question.

Q: What did the victim say to you when you spoke to her?

JA: No, I haven't spoken to the victim. I am extending an apology to the victim through this conference and through the Police as well.

Q: How many actual MFAT staff involved in this?

SP: In what?

Q: In dealing with the Malaysian authorities.

SP: I couldn't give you a specific figure really. It depends where you count from. I mean if you count our High Commission through to our Protocol Division through to management any one point in time.

Q: So how many people were speaking to the Malaysian authorities in there discussions? Like he said it was compartmentalised which implies there are whole lot of people.

SP: Are you talking about the very first stage?

.....

END

From: ① (KLU) <①_mfat.govt.nz>
Sent: Thursday 3 July 2014 2:34 p.m.
To: ① (SEA)
Cc: ① (KLU); ① (KLU); ① (DS AAG);
① (CEO); ①
Subject: Malaysia: Rizalman: NZ Inc Briefing

[UNCLASSIFIED]

①

Just to let you know I called an all-staff NZ Inc meeting this morning. I provided a brief summary of the situation drawing on what was available from the public domain, emphasising the sensitivity of the situation and the need for discretion inside and outside the office. ① reminded staff of the procedures for dealing with media inquiries.

I emphasised that the good relationship at the Government to Government level had remained intact throughout, referencing the comments by both Foreign Ministers. NZTE and we are making sure that this message gets out to the NZ/Malaysia business community.

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From: PRESS SEC MFA ①
Sent: Thursday, 3 July 2014 2:38 p.m.
To: MFA; McCully1
Cc: P/SEC MFA; P/SEC MFA ①
Subject: ① letter to victim

Minister – ① would like to send this letter (or similar) to NZ Police for passing to the young woman involved in this matter.

I think it's a good idea as long as it's done via Victim Support/Police

Do you have a view or happy to leave to the CE to handle as he sees fit?

Thanks

PRESS SEC MFA

① aft letter to victim via NZ Police

①
Wellington District Police Commander

Dear ①

①

Yours sincerely,

①

| Press Secretary | Office of Hon Murray McCully

From: (SEA) (1) @mfat.govt.nz>
Sent: Thursday, 3 July 2014 3:15 p.m.
To: (1) (OFS); (1) (GM SGG); (1) (ESD);
(1) (OFS); (1) (PRD); (1) (CEO Office);
(1) (DS AAG); (1) (ESD); (1) (ESD);
(ESD); (1) (KLU); (1) (KLU);
Subject: Record of (1) telecon 2pm 3 July. Plus his discussion with Minister Anifah 2.45pm today
Importance: High

Telephone call (1) and (1) with (1) 2.00pm Thurs 3 July 2014. Also I've added quick readout of a discussion with FM Anifah a few minutes ago. He phone on his way to meet the Attorney-General, at the latter's request.

(2)

(1) please let us know if Minister McCully is insistent on a Friday return; my sense from your comments before was that he is open to this to enable good process.

is hoping to test before his formal meeting (7pm NZT) return. (Below meeting will allow that)

(2)

We reiterated that the Police intended to arrest Rizalman on arrival (under the terms of the outstanding warrant).

(2)

(4)

(6)

(1) confirmed it was full criminal immunity consistent with his full diplomatic privileges and immunities).

(1) clarified that although full immunity ceased once Rizalman left NZ, he still enjoys immunity for "official acts" i.e. performed in the course of his job while in NZ.

(1) asked (2) It was agreed we couldn't indicate any intervention by MFAT in the bail process, e.g. indicating whether NZ Police would oppose a bail application.

① asked for ②

① You responded that this would not need to be unwound as long as it was defined what the basis of his return would be. You mat, however, have been thinking this was the NZ TPN of 10 May (which doesn't make this condition clear). Could you clarify this point please?

① qdvised that there was no pressing need for Minister McCully to phone Minister Anifah.

②

High Commissioner I ① telecon with FM Anifah, 2.45pm NZT:

①

②

③

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From:

① P/SEC MFA

Sent:

Thursday, 3 July 2014 3:41 p.m.

To:

① P/SEC MFA

Subject:

Minister Anifah-I ①

Minister,

An update from MFAT on the return of the Malaysian diplomat (Rizalman).

Minister Anifah has phoned

①

②

As you know,

②

I understand

①

is seeing the Attorney-

②

General in Malaysia this afternoon to discuss

②

②

As you and I discussed,

②

②

On the basis of these issues,

②

it right.

- Are you still okay with this? I see no issue with delaying this for a few days to make sure we get

① got the sense that

②

there is not any

②

① as told MFAT that the key thing they will need to do is make sure

Happy to discuss,

②

①

From: (1) ESD) (1)
Sent: Thursday, 3 July 2014 4:11 p.m.
To: (1) (GM SGG); (1) (DS AAG); (OFS);
(OFS); (SEA); (PRD); (KLU); (KLU); (KLU); (CEO)
Office (1) (ESD); P/SEC MFA; PRESS SEC (1) (ESD);
(ESD); MEDIA MFA
Cc:
Subject: Police media release
Importance: High

Hi all,

Police are planning on putting this release out this afternoon due to media enquiries on the process.

Thanks

From: (1) [redacted]
Sent: Thursday, 3 July 2014 4:01 p.m.
To: (1) (ESD)
Subject: Today's release...
[redacted] police.govt.nz

To be attributed to (1) , **Wellington District Police Commander:**

Police are working closely with Crown Law and MFAT on the legal process and logistical details to facilitate Muhammad Rizalman bin Ismail's return to New Zealand. This is a unique and complex legal situation so careful planning is required and no date for his return has been set. Police are continuing to support the victim and have kept her up to date.

When someone with a warrant to arrest arrives in New Zealand they are met at the border by Police, arrested and they are taken to the nearest court. The court can then remand them in custody, release them at large or release them on bail, with or without conditions. At this time the next hearing date is also set.

As the matter is before the courts it is not appropriate for Police to make any further comment about the circumstances of the offences. We would also encourage other commentators on this matter to be very wary of the potential implications of their actions on any legal process.

ENDS



(1)
Wellington District Communications Manager | New Zealand Police
Room 9.12 | Wellington DHQ | 41 Victoria Street | Wellington
(1)

From:

P/SEC MFA

Sent:

Thursday, 3 July 2014 5:32 p.m

To:

(1) (SEA) (1) (OFS) (1) (GM SGG);
(ESD); (OFS); (PRD);
(CEO Office); (1) (DS AAG) (1) (ESD) (1)
(ESD) (1) (ESD) (1) (KLU); (1) (KLU); (1)
(KLU)

Cc:

P/SEC MFA; P/SEC MFA; PRESS SEC MFA

Subject:

RE: Record of telecon 2pm 3 July. Plus his discussion with Minister
Anifah 2.45pm today

(1)

Many thanks for this update.

On your specific question regarding a Friday return,

(2)

(2)

The Minister reiterated on the phone that

(2)

While he will be keen to be kept updated with what is going on, it is also important that the Minister does not cross the line into making decisions best made by the legal system, police etc.

As a result, if MFAT and Police (and other relevant agencies) think that it would be useful to have more time to sort out the logistics etc, then feel free to communicate that with the Malaysian side.

Please do continue to keep me informed on how the issues are panning out.

Cheers

(1)

Private Secretary
Office of Hon Murray McCully, Minister of Foreign Affairs
Parliament Buildings | Wellington | New Zealand
Phone:

(1)

②

ENDS

From: SEA ①
Sent: Thursday, 3 July 2014 7:41 p.m.
To: P/SEC MFA ① (DS AAG); ① (CEO Office);
(CEO); ① (PRD);
DPmc ① (ESD); ① (ESD); P/SEC MFA x2 ①
①
Subject: FW: FORMAL MESSAGE: RETURN OF MR MUHAMMAD RIZALMAN BIN ISMAIL TO NEW ZEALAND

Kia ora tatau

Sending direct to selected personal inboxes. I am expecting ① contact me after the meeting and to report by reply formal message. Minister's Office has asked to have KLU's report overnight for start of business Friday.

①
From: ① (SEA)
Sent: Thursday, 3 July 2014 7:22 p.m.
To: KUALA LUMPUR
Cc: CEO; CON; DS AAG; LGL; MEDIA; SEA; DS MLG; FM.P/S Defence; FM.P/S MFA; FM.P/S Police; FM.P/S Trade; FM.Crown Law Office (Seemail); FM.DPMC (FPA); FM.Police (Seemail); ESD; OFS; PRD
Subject: FORMAL MESSAGE: RETURN OF MR MUHAMMAD RIZALMAN BIN ISMAIL TO NEW ZEALAND

HANDLING INSTRUCTIONS:

FOR POLICE (PLEASE PASS TO ① CIB and ①, POLICE HQ)
FOR CROWN LAW (PLEASE PASS TO ①)

①
message

We provide guidance for your discussion today with MoFA regarding Mr Muhammad Rizalman's return to New Zealand, including information we seek from Malaysia. Further to our conversation we met with NZ Police this afternoon. Like us and the Malaysians they wish to ensure expectations are properly calibrated with the Malaysian Government and that the process facilitates the smooth return of Rizalman to New Zealand as soon as possible. We provide detail from NZ Police on the processs Rizalman could expect on return to New Zealand and steps he and Malaysian authorities might take to prepare the way.

②
With that in mind we provide the following points to inform your exchange. These draw on detailed discussion with Detective Inspector ①, who is familiar with the circumstances of Rizalman's alleged offending.

④ and ⑥

3 Police fully acknowledge the ②
They share the Malaysian wish to follow careful process, not force the pace and risk mistakes or ②
Their overriding goal is to ensure a rigorous and fair legal process.

4 Police **advise Rizalman to secure counsel as soon as possible**, including a legal representative in Kuala Lumpur who can guide the process before Rizalman departs for New Zealand. Police wish to ensure Rizalman is fully supported through fair process and that he understands fully the process he is returning to. Legal representation will need to be arranged for Mr Rizalman by the Malaysian High Commission or delegated authority. If that does not happen the Court will appoint a lawyer to represent him.

5 Mr Rizalman will be arrested at the airport by New Zealand Police (NZP) under an outstanding warrant. If that occurs during working hours then it may be possible for him to appear in court for a bail application fairly shortly after. If not, then there is the possibility he would be detained in custody until that could happen.

- It is **highly unlikely he would be handcuffed on arrival**, especially given his voluntary return; the process would be to arrest him airside and take him by the quickest and least visible route to a waiting police van (with darkened windows).
- If he were to arrive in Auckland during business hours **he would be taken directly to the Manukau District Court to appear**, but would probably be remanded without plea for a period (probably a week) before his reappearance to plead to the charges.
- A preferable arrangement would be for him to fly via Sydney direct into Wellington, so he could be taken to the Wellington District Court to appear and for a trial date to be set.
- If the arrival time meant he could not be taken directly to court, he would be detained by Police who would meet him on arrival.
- It would be possible for Rizalman to enter a plea on this first appearance, though the court may determine that should be deferred to give Rizalman time to settle.

On the matter of bail, you will need to note that the Court is independent from Police and the Crown and will make the decision on whether the suspect is granted bail or remanded in custody until the substantive trial (the fact that the suspect has voluntarily returned will be taken into account when the decision on bail is reached but this is not a guarantee that the suspect will not be detained). If bail is granted there will normally be conditions such as the forfeiture of passport till the case is heard and perhaps a clause requiring him to reside at a specific address and/or regularly report to Police. A date will also be set for the trial.

6 Police will make available to Rizalman and his counsel the court (charging) documents relating to the charges, and the detailed summary of facts, which describe the events sufficient to support a conviction in the event Rizalman were to plead guilty. (Access to these is automatic by way of discovery).

7 Please clarify with Malaysian Foreign Affairs:

- Whether it can encourage Rizalman to secure New Zealand counsel while still in Malaysia. His counsel could then begin liaison with the Crown Solicitor and could also begin preparations for the management of charges and the trial details.
- Reiterate the need for Mr Rizalman to be freely and willingly returning to New Zealand under his own volition, to avoid potential problems arising under the New Zealand Bill of Rights Act.

②

- Media will not be given details of Mr Rizalman's return by MFAT or NZ Police, however we cannot rule out media being present at the airport when he arrives. Once the case is before the Courts we can expect fairly heavy media attention.

We also have some questions for the Malaysian side as follows:

- We would appreciate the passport and flight details for Mr Rizalman and the senior military officer that will accompany him to New Zealand. Both individuals will be granted visitor visas on arrival in New Zealand. We note your information that Rizalman is no longer a serving military officer and will therefore arrive in civilian clothes on a normal passport. Police advise it is for Malaysia to determine whether he is escorted, but they suggest the escort also not wear uniform, in order not to attract attention.
- We would like you to test with MoFA whether they could issue a TPN officially waiving diplomatic immunity for Mr Rizalman. This is of course now a formality, but advice from NZP is that it would be useful for the forthcoming legal process. You can confirm that Mr Rizalman's official visa has been rescinded by NZ Immigration authorities and that he no longer has diplomatic status, and the privileges and immunity that status confers.
- Inquire regarding the outcome of the psychiatric evaluation undertaken on Mr Rizalman.

We would appreciate a read-out of your discussion by telephone (to ① as soon as you are able, following up by email or formal message reply.

ENDS

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