

Setback for whistleblowers in East Timor bugging case

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Lawyers Haydn Carmichael (far left) and Chris Ward (far right) for Witness K and Bernard Collaery arrive at the ACT Magistrate's Court. *Jamila Toderas*

The [prosecution of a former spy and his lawyer for revealing a bugging operation against East Timorese ministers](#) is increasingly likely to be held in secret because of national security considerations following a court hearing in Canberra on Friday.

In a blow to Witness K and his lawyer Bernard Collaery, ACT Chief Magistrate Lorraine Walker on Friday adjourned the case while Attorney-General Christian Porter determines if the brief of evidence against the pair contains national security material.

Mr Porter is weighing up whether to issue a non-disclosure certificate at the request of Commonwealth prosecutors. Such a move could see the trial held behind closed doors.

Under the provisions of the National Security Information Act, lawyers for the defendants could be excluded from hearings if they do not undergo a security clearance. Mr Collaery's lawyers are yet to undergo a clearance.

The act also allows defendants themselves to be excluded from a hearing.

[Witness K – a former operative for the overseas spy agency, the Australian Secret Intelligence Service – and Mr Collaery were charged in June](#) with conspiring to release ASIS information after they blew the whistle on a 2004 operation to plant listening devices in Timor-Leste's cabinet room during negotiations with the Howard government to settle the maritime boundary that would carve up lucrative oil and gas rights.

Ms Walker rejected an application from the pair's lawyers for an open hearing. If successful, that would have kept the case largely public but would have ensured sensitive national security matters could be managed confidentially.

While noting the Act was "clearly potentially prejudicial to the defendants", Ms Walker said Mr Porter's deliberations took precedence while he mulled whether to issue a certificate or not.

Speaking outside the court, Centre Alliance senator Rex Patrick said while he respected Ms Walker's ruling, the government had "demonstrated incompetence in relation to its national security judgment, often wrapping embarrassing, but unclassified, information in the national flag".

"While the Attorney-General's certificate will be subject to judicial scrutiny, the fact that Witness K or Bernard Collaery, and possibly even some of their legal representatives, will be unable to see the information over which a national security claim is being made will substantially prejudice them in the case," he said.