

<https://www.afr.com/news/politics/closed-proceedings-in-witness-k-case-a-matter-for-court-christian-porter-20190104-h19pi9>

Closed proceedings in ‘Witness K’ case a matter for court: Christian Porter

By Tom McIlroy 04 Jan 2019

The federal government has flagged the likelihood of the case of a former spy and his lawyer accused of conspiracy being held in closed court to protect information it says could prejudice national security.

Witness K – a former operative for the overseas spy agency the Australian Secret Intelligence Service – and his lawyer Bernard Collaery were charged in June with conspiring to release secret ASIS information, after they blew the whistle on a 2004 operation to plant listening devices in the cabinet room of TimorLeste’s government.

The bugging operation came during negotiations with the Howard government to settle the maritime boundary that would carve up lucrative oil and gas rights between the two countries.

Mr Collaery had been representing Timor-Leste in its dispute with Australia.

In November, ACT Chief Magistrate Lorraine Walker adjourned the case while Attorney-General Christian Porter determines if the brief of evidence against the pair contains material related to national security information.

Such a move could see the trial held behind closed doors, while provisions of the National Security Information Act could see lawyers for the defendants excluded from hearings if they do not have the required security clearance.

Lawyers for Mr Collaery, a former ACT attorney-general and deputy chief minister, were yet to undergo a clearance late last year.

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

If Mr Porter deems the brief of evidence is likely to prejudice national security, a preliminary hearing would be held to consider the material in a closed court.

National security

It would determine how much of Witness K and Mr Collaery's future trial will be held in secret.

On Friday, Mr Porter said he expected applications for closed proceedings would be made to protect information the government says should be kept secret for national security reasons.

"I have previously expressed the view that as far as it is possible, any legal proceedings in this matter should be conducted in open court and this remains my view," he said in a statement.

"However, it is obvious that there will be applications for the protection of national security information arising during the proceedings.

"It is the duty of any government and, specifically the Attorney-General, to ensure that information central to national security is not publicly disclosed."

Mr Porter said parties to the case were currently negotiating on the issues, but it was ultimately a matter for the court to reach a ruling.

In November Ms Walker rejected an application from lawyers defending the pair for an open hearing.

If that move had been successful, it would have kept the case largely public.

Australia and Timor-Leste agreed to a permanent maritime border for the first time, signing a treaty in New York in March to settle the entitlement of both countries to oil and gas reserves in the Timor Sea.

The reserves take in those in the Greater Sunrise basin — expected to contain as much as \$53 billion worth of so far untapped gas stocks.