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Ex-spook Witness K closer to day in court

By Marion Rae AAP

Former spy Witness K may finally get a day in court after years of political and procedural delays to stop the exposure of Australia's operations against its friend and neighbour East Timor.

The retired Australian Secret Intelligence Service officer is being prosecuted for breaches of the Intelligence Services Act after blowing the whistle on the bugging of oil and gas talks with East Timor that he says occurred in 2004.

Allegedly acting on instructions from then ASIS head David Irvine, Witness K reportedly installed listening devices in the East Timor cabinet room as Australia and the nascent democracy prepared to slice up lucrative resources.

Witness K's identity remains classified, and while judges may believe it to be in the national interest for the facts of the case to be known to the public, the Commonwealth does not.

Tim Begbie, counsel for the absent Attorney-General Christian Porter, warned in court on Monday the case posed a "real and not merely remote risk" to national security.

But he conceded there is "a need for open justice as much as possible".

It has been listed for June 3-4 to hear the sentence proceedings before a plea is taken, the ACT Magistrates Court confirmed at the procedural hearing.

A minor victory was achieved when it was agreed current orders will not allow automatic and blanket closure of the court.

Rather, the court will be able to make decisions on closing the court on the day and arrangements will be made for Witness K to appear via CCTV from another room in the building.

An unredacted statement of facts could be given to a temporarily closed court and a transcript released after security checks.

Legal experts and civil liberties lawyers say the case raises complex legal issues, including the influence of Mr Porter on the prosecutorial process, the legality of spying on a friendly neighbour, and using national security laws to keep details secret.

Former NSW Supreme Court judge Anthony Whealy has said acknowledging that the operation took place and apologising for it would enhance, not undermine, Australia's reputation.

Former attorney general George Brandis was reluctant to chase a prosecution, even when armed with a brief of evidence prepared for him by the Commonwealth Director of Public Prosecutions.

But with Mr Porter's legal team still holding tight to redacted information, Witness K's application for a "temporary stay" will be heard a month from now.

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