

Timor-Leste: court upholds Australian government refusal to release documents on Indonesia's invasion

Exclusive: ruling says releasing cables and cabinet documents could damage Australia's security

By *Helen Davidson* and Christopher Knaus in The Guardian, 3 July 2020

Decades-old documents relating to Australia's involvement in the Indonesian invasion of Timor-Leste will remain secret after a court upheld the Australian government's refusal to release them.

It took the administrative appeals tribunal more than two years to rule on the case, finding that releasing the documents "could reasonably be expected to cause damage to the security or international relations of the commonwealth".

Academic Kim McGrath had repeatedly sought access from the National Archives to the diplomatic cables and cabinet documents which relate to maritime border negotiations between Indonesia and Australia in the 1970s.

But the archives has resisted granting access to the documents, and its decision was upheld in the tribunal last month.

[In 2018 Guardian Australia revealed](#) that some documents declassified during the hearing showed that Australia appeared driven by its desire for oil and gas rights when it legitimised Indonesia's 1975 occupation of Timor-Leste.

The ruling has sparked criticism from lawyer Bernard Collaery, who is himself [facing prosecution for his role in exposing a spy scandal involving Australia's treatment of Timor-Leste](#).

Collaery said the ruling showed the need for an inquiry into Australia's official records system.

"There are lessons in history, and shrouding that history with the absurdity of the claims in the McGrath matter reinforces a significant failure in our democracy," he told the Guardian. "A failure of governance, and the arrogance of the executive in deciding what the public can know 30 and 40 years after events, 50 years after events, that hold no conceivable damage to our foreign relations."

McGrath has claimed the declassified documents supported her research findings that successive Australian governments appeared to deliberately hide the key role its interests in the rich resource reserves played in its diplomacy.

Australia was the only western nation to recognise Indonesia's sovereignty over Timor-Leste, and [the violent occupation continued until 1999](#).

Under the Archives Act, cabinet documents are made public after 30 years – currently transitioning to 20 years – but there are exemptions, under which some of McGrath's requests were denied.

The AAT upheld various reasons for refusal, including that some information in the documents was protected by parliamentary privilege, had the potential to damage international relations, or contained information "relevant to the capability, sources, objectives, methods, areas of interest or operations of an Australian intelligence agency".

It relied on classified and unclassified affidavits and testimony from Australian diplomats involved in border negotiations, and intelligence officials who objected to the release of many of the documents.

"I believe the release of the exempt material would lead to adverse consequences for Australia,"

said Dr Greg French in his public affidavit of February 2019. French was a key figure in negotiations on the maritime boundary and law of the sea matters, and is now Australia's ambassador to Italy.

"In my view there is a real risk that disclosure of the exempt text could damage Australia's relations with Timor-Leste. I also believe disclosure of the exempt text at this time is very likely to damage Australia's relations with Indonesia."

Since the AAT hearing began in 2018, the decades-long dispute between Australia and Timor-Leste over their maritime border has ended, with Australia ratifying [a bilateral treaty](#) in 2019.

The treaty revealed [Australia had profited for decades](#) from oilfields which were later found to belong to Timor-Leste, and [the delay in ratification added to those profits](#).

"My mind boggles at what could be in the documents from 40 to 50 years ago that could damage the relationship between Timor-Leste and Australia," McGrath told Guardian Australia.

"The relationship has survived Australia's support for the Indonesian invasion in 1975, Australia's coverup of the atrocities against the Timorese, [Australia's reluctance to go in in '99](#) and support independence, the bugging in 2004, the continued bullying through the rest of the maritime boundary negotiations, and the raid on Bernard Collaery's office where AFP and ASIO took Timor-Leste's documents in breach of diplomatic immunity," she said.

"That relationship has already been tested on so many levels."

McGrath said equally the relationship with Indonesia had survived incidents such as the Snowden revelations that [Australian spy agencies targeted the phones of the president, his wife, and ministers](#), and that Indonesia had been happy with the outcome of the 1970s negotiations.

The 2018 AAT hearing was conducted partly in secret, with McGrath and her lawyers prevented from hearing the reasons successive governments had blocked her applications for the documents over a number of years.

An AAT deputy president, Stephanie Forgie, delivered two sets of reasons – one public, and one available only to the National Archives and its legal team.

McGrath said she was surprised the tribunal took two years to make a decision, only to rule that all the documents must remain restricted.

"Some had been declassified [during the hearing] and the sky hadn't fallen in. Using those examples I thought there would be other documents that could therefore be released."

It's the second major case in recent years where the archives has faced criticism for refusing to release critical documents. It lost a case against historian Jenny Hocking in the high court after refusing to release documents about the dismissal of Gough Whitlam.

Collaery, while researching his book on Australian-Timor-Leste history, said he was able to access Australian records through the UK's royal archives that he was not able to access here.

He said the UK's system was built on the presumption of releasing public records, because [access requests are made through freedom of information laws](#).

"The concept of freedom of information reflects the statutory right. So the presumption is that there's a right in the UK. There's a presumption of a right to access," he said.

The attorney general, Christian Porter, referred questions to the director general of the National Archives of Australia, which noted the decision and declined to comment.

The shadow attorney general, Mark Dreyfus, declined to comment. The foreign affairs minister, Marise Payne, did not respond to a request for comment.

... in the coming year, and the results will define the country for a generation. These are perilous times. Over the last three years, much of what the Guardian holds dear has been threatened – democracy, civility, truth.

Science and reason are in a battle with conjecture and instinct to determine public policy in this time of a pandemic. Partisanship and economic interests are playing their part, too. Meanwhile, misinformation and falsehoods are routine. At a time like this, an independent news organisation that fights for data over dogma, and fact over fake, is not just optional. It is essential.

The Guardian has been significantly impacted by the pandemic. Like many other news organisations, we are facing an unprecedented collapse in advertising revenues. We rely to an ever greater extent on our readers, both for the moral force to continue doing journalism at a time like this and for the financial strength to facilitate that reporting.

We believe every one of us deserves equal access to fact-based news and analysis. We've decided to keep Guardian journalism free for all readers, regardless of where they live or what they can afford to pay. This is made possible thanks to the support we receive from readers across America in all 50 states.

As our business model comes under even greater pressure, we'd love your help so that we can carry on our essential work. **If you can, support the Guardian from as little as \$1 - it only takes a minute. Thank you.**

