

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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File Title:	JAN MAREK KANT v THE AUSTRALIAN INFORMATION COMMISSIONER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



No. VID829/2023

Federal Court of Australia

District Registry: Victoria

Division: General Division

**JAN MAREK KANT**

Applicant

**THE AUSTRALIAN INFORMATION COMMISSIONER**

Respondent

Date: 12 March 2024

### Applicant's Submissions

#### Authorities

1. Directions given 20 Dec 2023 by JUDICIAL REGISTRAR LUXTON limit authorities in this proceeding to those at *legislation.gov.au*; the common law must be inferred from statute law. Procedural fairness requires that these directions are also binding on the Respondent.
2. This proceeding takes place in Victoria; consequently, the common law is that of Australia as modified by the Constitution and statute law in force in the State of Victoria.

#### Evidence

3. Evidence in this proceeding includes:
  - a. Affidavits enclosing "JMK-1" to "JMK-50", excluding the 24 Jan 2024 *Affidavit of Service* filed by the Applicant; and,
  - b. the 22 Nov 2023 *Notice of Intention to Adduce Coincidence Evidence* filed by the Applicant, where item 3 under *Evidence required* is evidence itself; and,
  - c. the 25 Jan 2024 *Notice of Dispute* filed by the Respondent; and,
  - d. the 12 Feb 2024 *Notice of Dispute* filed by the Respondent; and,
  - e. the 23 Feb 2024 *Tender Bundle* filed by the Respondent; and,
  - f. the 23 Feb 2024 *Notice to Admit* enclosing *Knowles v Secretary, Department of Defence [2020] FCA 1328* filed by the Applicant; and,
  - g. the 24 Feb 2024 *Notice to Admit* enclosing *Department of Defence and 'W' [2013] AICmr 2 (17 January 2013)* filed by the Applicant.

#### The Respondent

4. The *Australian Information Commissioner*, as officer and not a natural person with that job title, is the Respondent.
5. The mind of the *Australian Information Commissioner* is inferred from evidence.

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6. Distinction between a *Freedom of Information Commissioner*, *Privacy Commissioner* and *Information Commissioner* is arbitrary.
7. Distinction between the *Australian Information Commissioner* and *Office of the Australian Information Commissioner* (OAIC) is arbitrary.
8. The Respondent in this proceeding has “*right or power to deal*” with all information that he can lawfully obtain, whether by exercise of his coercive powers or otherwise.
9. The Respondent in this proceeding can cause laws to be changed; natural justice requires that only laws as in force on 22 Aug 2023 can apply in this proceeding.

### The decision

10. The Applicant’s 22 Aug 2023 letter to the Respondent has nothing to do with grievance concerning disclosure of information to *The Australian Security Intelligence Organisation* (ASIO). The Respondent’s decision he discloses in the 12 Sep 2023 letter is plainly wrong.
11. Substantially better reason to refuses to act on the Applicant’s 22 Aug 2023 letter exists in the second-to-next subsection, of the same item of legislation, beneath the clause put forward as the reason for refusal; the Respondent providing an outcome doomed to fail against judicial review was no accident or “whoopsie”. The Respondent intended for his decision to be subject to judicial review.

### Dishonesty and the overarching purpose

12. At the 20 Dec 2023 case management hearing, the solicitor for the Respondent misinformed the Court of the subject of this proceeding being a complaint concerning ASIO and having agreed the same with the Applicant. The Respondent subsequently served a tender bundle missing relevant documents, including a letter sent by ASIO in response to a complaint by the Applicant and subsequently produced by him to the Respondent in this proceeding.
13. The dispute disclosed in the 25 Jan 2024 *Notice of Dispute* serves to unnecessarily emburden the Applicant with proving the OAIC ineffectual and it must be inferred that the Respondent had intention with respect to this result<sup>1</sup>.
14. The dispute disclosed in the 12 Feb 2024 *Notice of Dispute* is seen intended to require the Applicant to prove, in submissions not exceeding 10 pages, all facts enumerated in the 28 Jan 2024 *Notice to Admit*. Noting especially that reasonable grounds to dispute item 1 are inconceivable, it must be inferred that the Respondent had intention with respect to imposition of such a requirement.
15. The 25 Jan 2024 and 12 Feb 2024 *Notices of Dispute* are anathema to the overarching purpose of the *civil practice and procedure provisions*; and,
16. *Dishonesty* in meaning of *Public Service Act 1999* is its ordinary meaning as repeated in s.130.3 *Criminal Code*; and,

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<sup>1</sup> see especially: “**JMK-8**” and item 3 below *Evidence required* in the 22 Nov 2023 *Notice of Intention to Adduce Coincidence Evidence* filed by the Applicant

17. The Respondent and his solicitor are bound by the *APS Code of Conduct* to behave honestly in this proceeding; and,
18. The 25 Jan 2024 and 12 Feb 2024 *Notices of Dispute* are produced dishonestly<sup>2</sup>; therefore,
19. The 12 Feb 2024 *Notice of Dispute* is unlawful, and the dispute disclosed therein must be struck out; and,
20. The dishonest conduct of the Respondent and his solicitor in this proceeding, and that otherwise contrary to the overarching purpose of the *civil practice and procedure provisions*, may be taken into consideration for ordering assessment of costs otherwise than on indemnity basis.

#### Damages in lieu of costs

21. Provisions of the statute law are insufficient to remedy expense incurred by unrepresented litigants in proceedings before the Federal Court; s.80 *Judiciary Act 1903* thus provides that unrepresented litigants may claim damages in lieu of costs.
22. The Applicant claims damages in lieu of costs against the Commonwealth under s.80 *Judiciary Act 1903*.
23. The Applicant seeks an interlocutory order for damages in lieu of costs in amount:
  - a. assessed by the Court; and,
  - b. not less than a competent lawyer may bill for work as done by the Applicant in this proceeding.

#### Abuse of process

24. The Respondent and his solicitor coerced the continuing participation of the Applicant in this proceeding with an implied threat of costs on discontinuance. This is seen in the Respondent's 21 Nov 2023 email conspicuously enclosing *related services*<sup>3</sup> absent mention of costs orders as proposed by the Applicant or otherwise<sup>4</sup>.
25. An outcome preferable to the Respondent in this proceeding, to that proposed by the Applicant on 21 Nov 2023, is inconceivable unless the Respondent seeks judgment in favour of the Applicant.
26. The evidence proves the *Information Commissioner* is ineffectual<sup>5</sup>. On 21 Nov 2023, the Respondent knew this to be inevitable.
27. The Respondent and his solicitor acted to secure continuing participation of the Applicant in this proceeding, and in so doing they:
  - a. knew that his continuing participation was involuntary; and,
  - b. acted intentionally; and,

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<sup>2</sup> within meaning of *Public Service Act 1999*

<sup>3</sup> within meaning of Part VIIIB *Judiciary Act 1903*

<sup>4</sup> see: 05 Jan 2024 Affidavit enclosing "**JMK-8**"

<sup>5</sup> see especially: 10(1) *Australian Information Commissioner Act 2010*

- c. knew to have, or were reckless as to having, duty to refrain from such action<sup>6</sup>; and,
- d. were reckless as to whether it would cause loss.

28. The Applicant claims damages against the Commonwealth in tort under s.80 *Judiciary Act 1903*.

#### Damages in tortious abuse of process

- 29. Courts of Federal jurisdiction have in practice accepted that going through the court process is disagreeable generally to people who go through it<sup>7</sup>; however,
- 30. Establishing a claim to damages in tortious *abuse of process* requires authorities other than at *legislation.gov.au* and that this proceeding be stayed until further notice.

#### Serious and repeated interference with privacy

- 31. A single event causing multiple interferences with the privacy of an individual is *serious interference with the privacy of an individual*.
- 32. The Respondent attempted *serious interference with privacy* of the Applicant in continuing to seek judgment in his favour in this proceeding despite knowing him to have withdrawn consent to doing of things as in his 22 Aug 2023 letter<sup>8</sup>.
- 33. Repeated interferences with the privacy of an individual are a *serious interference with the privacy of an individual*.
- 34. The Respondent committed *repeated interference with the privacy* of the Applicant by failing or refusing to allow him access to his own personal information when requested.
- 35. The attempted *serious interference* in this proceeding and continuing *repeated interference* constitute *serious interference* with Applicant's privacy beginning on first refusal or failure to allow him access to his own personal information as requested and as within the Respondent's "*right or power to deal*"<sup>9</sup>.
- 36. In committing *serious interference with the privacy* of the Applicant, the Respondent:
  - a. acted, and failed to act, intentionally; and,
  - b. intended to procure, and to use, his personal information; and,
  - c. knew to have duty to refrain from such procurement and use of personal information; and,
  - d. was reckless as to whether procurement and use of his personal information would cause him loss.
- 37. The Respondent committed tort of *disprivacy*. The Applicant claims damages against the Commonwealth under s.80 *Judiciary Act 1903*.

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<sup>6</sup> see especially: 13(1) *Public Service Act 1999*

<sup>7</sup> see especially: "**JMK-26**"

<sup>8</sup> see: s.92 *Regulatory Powers (Standard Provisions) Act 2014*

<sup>9</sup> see: s.93 *Regulatory Powers (Standard Provisions) Act 2014*

### Damages in *disprivacy*, serious and repeated interference

38. The *Privacy Act 1988* has the effect it would have if its operation in relation to the Commonwealth were expressly confined to an operation to give effect to the *International Covenant on Civil and Political Rights* (ICCPR); therefore, in relation to the Commonwealth, *serious and repeated interference* in meaning of s.13G *Privacy Act 1988* extends to interference with rights enumerated in the ICCPR.
39. The *Privacy Act 1988* also has the effect it would have if its operation in relation to the Commonwealth were expressly confined to bodies politic that are corporations; and,
40. *Adjusted turnover* as in 13G(5) *Privacy Act 1988* is meaningless in application to monies of a body politic; and, monetary value of any benefit obtained by a body politic from serious or repeated interferences with rights of individuals is oft, and in this instance, indeterminable; therefore,
41. The standard penalty for contravention of 13G(1) *Privacy Act 1988* by the Commonwealth must be not more than the greater of \$50,000,000 or 30% of ordinary financial turnover of the Commonwealth during the *breach turnover period*.
42. The Respondent is being sued on behalf of the Commonwealth in this proceeding.
43. 82(6) *Regulatory Powers (Standard Provisions) Act 2014* requires that penalties for *serious and repeated interference*, committed on behalf of the Commonwealth by the Respondent in this proceeding, must not be lesser than the maximum.
44. The Commonwealth engaged in conduct such that constitutes a system of conduct or pattern of behaviour resulting in numerous refusals or failures to produce documents or records to the Applicant as required under *Privacy Act 1988*; in so doing, the Commonwealth offended against 66(1AA) *Privacy Act 1988* and can be found guilty of the same in suit.
45. The provisions of *Regulatory Powers (Standard Provisions) Act 2014* are insufficient to carry into effect the *Privacy Act 1988* in matters of *serious and repeated interference* by officers of the Commonwealth including the Respondent in this proceeding; s.80 *Judiciary Act 1903* thus provides that penalty amounts are forfeit to the claimant.
46. The applicable amount in forfeiture for *serious and repeated interference* in this matter prohibits the Applicant from proceeding severally against the Commonwealth and its officers. A combined *breach turnover period* must be determined in this proceeding.

### Extrajudicial interference

47. Reading of the *Australian Security Intelligence Organisation Act 1979* shows:
  - a. the Attorney-General has discretion to issue warrants in relation to *security matters*, including discretion to decide what constitutes a *security matter*; and,
  - b. the Minister so described in the ASIO Act can direct the Director-General of ASIO to request a warrant and direct subordinates accordingly.
48. Reading of the *Australian Security Intelligence Organisation Act 1979* further shows that all of the following may be done by ASIO under such warrant:
  - a. examination of records; and,

- b. accessing computers likely to be used by any specified person, including by use of a telecommunications facility operated by the Commonwealth; and,
- c. intercepting of any communication passing over a telecommunications system; and,
- d. whenever convenient, use of any computer of communication in transit to add, copy, delete or alter data in a computer or communication in transit; and,
- e. anything required to conceal the fact that anything was done under such warrants; and,
- f. anything incidental to the above.

49. Legal materials available to the Applicant are seen to be affected by addition of data to communications in transit and/or alteration of data on the computers he uses. This extends to alteration of legal materials that may be authorities in this proceeding, including materials retrieved by the Applicant from *legislation.com.au*<sup>10</sup>.

50. It is to be expected that justice won't be done in this proceeding while such interference can continue.

#### Preventing further interference

51. The Applicant seeks an interlocutory order no person may *intervene* or be otherwise joined as a party to this proceeding, except on further application by the Applicant.

#### Prevailing circumstances

52. The Applicant has reasonable (on the evidence) grounds to believe that:

- a. the OAIC is ineffectual; and,
- b. Australian courts are ineffectual; and,
- c. the Respondent is presently screwing with him; and,
- d. the Federal Court is presently screwing with him<sup>11</sup>; and,
- e. this proceeding is means to gather intelligence about the Applicant for reasons of politics dressed as "National Security".

53. The Applicant further has reason to suspect that:

- a. the Respondent in this proceeding is co-conspirator in the matter disclosed in the 22 Aug 2023 letter; and,
- b. except as mechanism for gathering intelligence about the Applicant, the Respondent in this proceeding does not exist.

54. It is to be expected that relief initially sought in this proceeding will be of no benefit to the Applicant in prevailing circumstances.

55. An expectation that justice won't be done makes a proceeding unfair by disinclining full and effective participation of a person having such expectation. The Applicant has reasonable grounds to believe that prevailing circumstances won't allow justice to be done.

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<sup>10</sup> see especially: 26 Feb 2024 Affidavit enclosing "JMK-31"

<sup>11</sup> see especially: items as appear in the 06 March 2024 *Notice of intention to adduce coincidence evidence*

### Stay and transfer of proceeding

56. The Applicant intends to proceed in respect of multiple causes of action in the Supreme Court of Victoria. Some of these arise from similar matter to this proceeding.
57. Doing justice on final determination of this proceeding, and avoiding injustice done the Respondent in multiplicity of proceedings, requires it be stayed until further notice.
58. The Applicant seeks an order staying this proceeding, except so much of it as concerns:
- a. the item in paragraph 5 of the 24 Jan 2024 *Amended originating application for relief under section 39B Judiciary Act 1903*; or,
  - b. the items in his 13 Feb 2024 *Amended Interlocutory application*.
59. The Applicant seeks an order transferring this proceeding to the Supreme Court of Victoria under 5(4) *Jurisdiction of Courts (Cross-vesting) Act 1987*.
60. The Applicant seeks an order under *Federal Court of Australia Act 1976* staying transfer of this proceeding until further application by him.

### Suppression

61. The Applicant no longer seeks the same suppression orders he sought in this proceeding before 13 Feb 2024; instead,
62. The Applicant presently seeks declaratory suppression orders; including, an interlocutory order under *Federal Court of Australia Act 1976*:
- a. affirming dismissal of his 26 Nov 2023 application for suppression orders; and,
  - b. declaring no information or document given or produced in this proceeding can become subject to a *suppression* order or *non-publication* order (however described), except as necessary to protect safety of natural persons otherwise identifiable.

### Injunction

63. The Applicant seeks an interlocutory injunction as in paragraph 2 of his 13 Feb 2024 *Amended Interlocutory Application*.

### Withdrawal of directions

64. The Applicant seeks an order withdrawing directions of JUDICIAL REGISTRAR LUXTON that limit authorities in this proceeding to those at *legislation.gov.au*; and,
65. The Applicant seeks an order under *Federal Court of Australia Act 1976* staying withdrawal of these directions until further application by him.

### Interlocutory orders

66. The Applicant will apply for the interlocutory order(s) described above at the case management hearing on 19 April 2024; and,
67. The Applicant seeks *Reasons for decision* and publication of the same.