

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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File Number:	VID829/2023
File Title:	JAN MAREK KANT v THE AUSTRALIAN INFORMATION COMMISSIONER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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

JAN MAREK KANT

Applicant

THE AUSTRALIAN INFORMATION COMMISSIONER

Respondent

Date: 24 September 2024

Applicant's Submissions

(in the 18 Jul 2024 amended interlocutory application)

Evidence

1. Evidence in the interlocutory application includes:
 - a. the affidavits filed in the proceeding
 - b. the 23 Feb 2024 Tender Bundle filed by the Respondent
 - c. the 23 Feb 2024 Notice to Admit enclosing *Knowles v Secretary, Department of Defence [2020] FCA 1328* filed by the Applicant
 - d. the 24 Feb 2024 Notice to Admit enclosing *Department of Defence and 'W' [2013] AICmr 2 (17 January 2013)* filed by the Applicant

Limited authorities

2. Directions given 20 Dec 2023 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. Interlocutory judgement in this proceeding is necessarily excepted.

Australian Information Commissioner

3. The *Australian Information Commissioner*, as officer and not a natural person with that job title, is the Respondent. Distinction between the *Australian Information Commissioner* and *Office of the Australian Information Commissioner (OAIC)* is arbitrary.
4. The Respondent can cause laws to be changed; natural justice requires only laws in force on 22 Aug 2023 apply in this proceeding.
5. The *Public Service Act 1999* and the Legal Services Directions made under s. 55ZF *Judiciary Act 1903* bind the Respondent in this proceeding and the subsequent appeal.

Mandamus

6. The interlocutory judgment handed down on 11 Jun 2024 settles the dispute between parties as to the subject of the proceeding¹; a privacy complaint about the *Australian Security Intelligence Organisation (ASIO)* is not the subject of this Federal Court proceeding².

¹ See: *Kant v Australian Information Commissioner* [2024] FCA 599 at [1]

² See: "JMK-33" p.9

7. There is now sufficient material before the Court to enable it to determine whether the Respondent's refusal of the Applicant's request is in accordance with the law.
8. The Applicant's 22 Aug 2023 request has nothing to do with grievance concerning disclosure of information to ASIO. The Respondent's refusal of the Applicant's request, on a ground that ASIO is excluded from coverage of the Privacy Act by effect of 7(1A) *Privacy Act 1988*, is plainly wrong and not in accordance with the law. Mandamus lies against the Respondent in this matter.
9. The Respondent has no reasonable prospect of defending the part of the proceeding relating to his refusal of the Applicant's 22 Aug 2023 Request; the Court may give judgment³ in this interlocutory application accordingly.

Conspiracy

10. 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 information retrieved by the Applicant from *legislation.com.au* and *austlii.edu.au*.
11. *austlii.edu.au* is an **official** source of legal information; the Note in 12B *Privacy Act 1988*, between text of subsections 12B(2) and 12B(3), confirms this.
12. The document enclosed in annexure to the Applicant's 23 Feb 2024 *Notice to admit* form purports to be a record of a judgment, handed down by Justice Snaden on 17 September 2020, available at *austlii.edu.au*. The Respondent admitted the document is reproduction of contents of a webpage linked in an email he sent to the Applicant.
13. The document enclosed in annexure to the Applicant's 24 Feb 2024 *Notice to admit* form purports to be a record of a *vexatious applicant declaration*, made by the Respondent on 17 January 2013 under 89K(1) *Freedom of Information Act 1982*, available at *austlii.edu.au*. The Respondent admitted the document is reproduction of the content of a document known to him before filing of the 24 Feb 2024 *Notice to admit*.
14. The document enclosed in annexure to the Applicant's 23 Feb 2024 *Notice to admit* does not contain record a judgment handed down by Justice Snaden on 17 September 2020. The information shouldn't exist, yet the Respondent made it available from an official source not ordinarily controlled by him. This shows the Respondent:
 - a. interferes (directly) with the Applicant's access to legal information; or,
 - b. acts in conspiracy with others to interfere with the Applicant's access to legal information.
15. The document enclosed in annexure to the Applicant's 24 Feb 2024 *Notice to admit* form is not a record of a *vexatious applicant declaration* made by the Respondent on 17 January 2013. The Respondent knew of a document created to deceive the Applicant. This shows the Respondent acts in conspiracy with others to interfere with the Applicant's access to information generally.
16. The Respondent and (possibly) the courts are participants in a widespread conspiracy to interfere with the Applicant's access to information, including legal information, and keep him "*removed from the protection of the law*"⁴; the conspiracy is (or may be) a component of the same matter disclosed in the Applicant's 22 Aug 2023 letter to the Respondent.

Modification of the original request

³ See: 31A *Federal Court of Australia Act 1976*

⁴ As in meaning of 268.21 *Criminal Code*

17. The Applicant seeks (not in this proceeding) prosecution of the *National Anti-Corruption Commission (NACC)*, and/or officers of the NACC, in relation to one or more crimes of corruption it/they committed when responding to a report of corrupt conduct made by the Applicant to the NACC⁵. This requires neither the NACC nor any of its officers investigate, or otherwise contribute to investigation of (except by answering questions, etc.), any corruption or corruption-related matter disclosed by the Applicant or otherwise involving the Applicant.

Authorities & stay of proceeding

18. On a ground of interference with his access to legal information, the Applicant requested on 20 Dec 2023 a continuance (or some other postponement) of this proceeding until another application, for remedy in the nature of Habeas Corpus, was determined. The Registrar refused to grant the sought postponement and directed the Applicant instead obtain his legal information in/for this proceeding from *legislation.gov.au*.
19. Interference with the Applicant's access to information, including to legal information, is apparent on examination of the evidence⁶. Since 20 Dec 2023, the Applicant has obtained evidence of interference with his access to legal information at *legislation.gov.au*. The interference with access to legal information is seen to include alteration of authorities in this proceeding⁷.
20. It must be inferred that false legal information given to the Applicant is produced to him with (perhaps non-exclusive⁸) intention he relies on it. It must be further inferred that true legal information is also hidden from the Applicant with intention he not rely on it.
21. Habeas Corpus failed⁹ and justice can't be done until interference with the Applicant's access to legal information ceases. Australian authorities are incompetent to stop ongoing interference with the Applicant's access to information; whether relevant treaty bodies, etc. are competent in these matters¹⁰ remains to be seen. Doing justice on final determination of the proceeding requires it be stayed until further application by the Applicant.
22. Directions limiting authorities in this proceeding to those at *legislation.gov.au* don't serve their intended purpose; excluding authorities from other sources, which may or may not be interfered with, is an unnecessary inconvenience. The Applicant therefore seeks withdrawal of these directions.

Requirement not to commence investigation until further notice

23. The OAIC is seen to be ineffectual on examination of the evidence. The Respondent doing as the Applicant requested on 22 Aug 2023 is, in prevailing circumstances, of no value to the Applicant and would constitute unnecessary interference with his right of privacy.
24. Circumstances may change; the Respondent may cease his participation in conspiracies to interfere with the Applicant's access to information and the OAIC may become not-ineffectual. Preventing interference with the privacy of the Applicant in the interim, however, requires the Respondent not do as the Applicant requested on 22 Aug 2023 until further notice.

⁵ See: "JMK-22" & "JMK-54"

⁶ See especially: "JMK-31" and "JMK-35"

⁷ See: "JMK-31" and Schedule 2 of *Australian Human Rights Commission Act 1986*

⁸ There may exist a concurrent intention to procure experimental data.

⁹ See especially: "JMK-35" and "JMK-52"

¹⁰ See the Applicant's 23 Sep 2024 affidavit (and enclosures)

Transfer of proceeding

25. The Applicant seeks transfer of this proceeding to the Supreme Court of Victoria under 5(4) *Jurisdiction of Courts (Cross-vesting) Act 1987*. The Applicant is also a Plaintiff in another proceeding, pending in the Supreme Court, that arises out of similar matter¹¹.

Intervention

26. 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 his subordinates accordingly; and,
- c. all of the following may be done by ASIO under a such warrant:
 - i. examination of records; and,
 - ii. accessing computers likely to be used by any specified person, including by use of a telecommunications facility operated by the Commonwealth; and,
 - iii. intercepting of any communication passing over a telecommunications system; and,
 - iv. 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,
 - v. anything required to conceal the fact that anything was done under such warrants; and,
 - vi. anything incidental to the above.

27. 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. It is to be inferred that such interference is authorised by warrant(s) issued by the Attorney-General or on his behalf. It is to be expected that any intervention in this proceeding by an Attorney-General or Minister (or other officer of executive government) will be motivated by interests similar to those motivating interference with the Applicant's access to legal information. Preventing injustice in this proceeding requires preventing third-party intervention in it.

Reasons for judgement

28. Despite case-managementesque nature of interlocutory orders sought, the present application requires the Court adjudicate on significant questions of law and give judgement of a form amenable to appeal.

29. The public interest in open justice requires publication of the Judge's *Reasons for judgment* in this interlocutory application.

Costs

30. 4.2 *Legal Services Directions 2017* requires the Respondent pay costs, including the costs of this interlocutory application, if any part of the proceeding is a "test case in the public interest". One or more parts of this proceeding are a test case in the public interest.

¹¹ See: "JMK-47"

31. The Applicant seeks costs be assessed on an indemnity basis if the Respondent complies with *Public Service Act 1999*, *Legal Services Directions 2017*, and the *overarching purpose* of the civil practice and procedure provisions.

Prepared by: Jan Marek Kant, Applicant