

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	17/10/2025 1:56:53 PM AEDT
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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



A handwritten signature in blue ink, reading "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.



**IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA REGISTRY
DIVISION: GENERAL**

NO. VID 829 OF 2023

JAN MAREK KANT

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

RESPONDENT'S FURTHER SUBMISSIONS

1. The Court has invited further submissions on whether it was reasonably open to the delegate to characterise the applicant's complaint as being exclusively about ASIO's handling of his personal information, and whether that characterisation is significant.
2. Although the complaint of 22 August 2023 referred to an "interference by multiple regulated entities", the documents attached to it suggest that the relevant conduct was confined to ASIO. These documents included:
 - 2.1. A letter dated 18 May 2023 from the applicant to ASIO requesting records;¹ and
 - 2.2. A letter from the Office of the Inspector General of Intelligence and Security (IGIS) to the applicant dated 21 August 2023 stating that it had investigated his complaint about ASIO and decided to close the matter as further inquiry was not warranted.²
3. While other documents were attached to the complaint, they did not clearly indicate which entities were the subject of the complaint.
 - 3.1. A 2 July 2023 letter to IGIS referred vaguely to "multiple and repeated interferences" by "one or more intelligence agencies", without identifying any specific agency;³ and
 - 3.2. A complaint to the CIA did not concern any Australian entity.⁴
4. The applicant's subsequent conduct supports the conclusion that the complaint was confined to ASIO, or at least that he acquiesced in it being treated that way.

¹ RB 9-10.

² RB 12.

³ RB 11.

⁴ RB 8.

5. On 12 September 2023, the OAIC wrote to the applicant acknowledging receipt of the complaint and stated that it related to ASIO, “in which you claim ASIO has mishandled your personal information.”⁵ The delegate found that the complaint did not meet the requirements of s 36(1) of the Act and declined to investigate.
6. On the same day, the applicant responded, stating that complaint CP23/02755 was, as he understood it, “limited to the privacy aspect of EN23/09186 as it relates to ASIO.”⁶ The email stated that “the OAIC **does** have authority to investigate the handling of [his] personal information by ASIO”⁷ and requested that the OAIC review its decision accordingly. The applicant did not assert that the scope of the complaint had been misunderstood but instead argued that the OAIC had jurisdiction to investigate ASIO’s handling of personal information under the ICCPR.
7. The applicant’s response further supports that it was reasonably open to the delegate to treat the complaint as being about ASIO alone. Even if the complaint, properly characterised, was directed at “multiple regulated entities”, any mischaracterisation by the delegate is immaterial.⁸ Under s 36(5) of the *Privacy Act 1988*, a complaint must “specify the respondent to the complaint.” Where multiple respondents are identified, each gives rise to a separate complaint.⁹
8. In this case, the complaint that is the subject of the present judicial review proceeding is the one finalised by the respondent’s letter dated 12 September 2023, which was characterised as being against ASIO. If the applicant intended to pursue complaints against other entities arising from his correspondence of 22 August 2023, those would be separate complaints, which are not the subject of the 12 September 2023 decision, and are not within the scope of this proceeding.

Date: 17 October 2025

KYLIE MCINNES
Counsel for the Respondent



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Elena Arduca
AGS Lawyer
For and on behalf of the Australian Government Solicitor
Solicitor for the Respondent

⁵ RB 13.

⁶ RB 15.

⁷ RB15 (emphasis in original).

⁸ *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at [7].

⁹ *Rana v Australian Information Commissioner* [2023] FCAFC 17 at [15].