

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 11/10/2022 11:50:00 AM AEDT
Date Accepted for Filing: 12/10/2022 11:47:33 AM AEDT
File Number: VID519/2021
File Title: REX PATRICK v AUSTRALIAN INFORMATION COMMISSIONER
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



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.

Form 15
Rules 8.01(1); 8.04(1)



Second Further Amended Originating application

No. VID519/2021

Federal Court of Australia
District Registry: Victoria
Division: Administrative and Constitutional Law & Human Rights

Rex Patrick

Applicant

Australian Information Commissioner

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Melbourne

The Court ordered that the time for serving this application be abridged to N/A

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Rex Patrick
Prepared by (name of person/lawyer) Flavio Verlato
Law firm (if applicable) _____
Tel 0417 852 676 Fax _____
Email fverlato@ozemail.com.au
Address for service 22 Sando Avenue Tranmere SA 5074
(include state and postcode) _____



Details of claim

On the grounds stated in the statement of claim, accompanying affidavit or other document prescribed by the Rules, the Applicant claims:

1. A declaratory order pursuant to s 16(3)(b) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR**) that in respect of each IC Review Application referred to in Appendix A to the Second Further Amended Originating Application (**Current IC Review Application**), the Respondent has a duty, pursuant to section 55(4)(c) and s 55K(1) of the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to conduct a review of each Current IC Review Application by making a decision and has failed to do so such that each decision is attended by unreasonable delay.
2. Further or alternatively to paragraph 1 herein, an order pursuant to s 16(3)(a) or 16(3)(c) of the ADJR that the Respondent make a decision in respect of each Current IC Review Application according to law and do so by a time and a date fixed by the Court.
3. Alternatively to paragraphs 1 and 2 herein, a declaration pursuant to s 16(2)(a) of the ADJR that in respect of each Current IC Review Application the Respondent has engaged and is engaging in conduct for the purpose of making a decision to which section 55K(1) of the *Freedom of Information Act 1982* (Cth) applies that is improper, in that it results in an exercise of the review powers conferred by Division 5 of Part VII of the FOI Act and an exercise of the decision power contained in section 55K(1) in a way that is uncertain.
4. Further or alternatively to paragraph 3 herein, an order pursuant to s 16(2)(b) of the ADJR that the Respondent:
 - (a) refrain from conduct in respect of the conduct of each Current IC Review Application that makes no decision with respect to any of them; and
 - (b) make a decision in respect of each application by a time and date fixed by the Court
5. Such other or further relief that this Court may consider appropriate.
- ~~1. Pursuant to s 16(3)(a) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR**), orders that the Respondent make a decision on each of the Long Term Outstanding IC Review Applications which were lodged with the respondent 6 months or more prior to 1 September 2021 (see Appendix A to Amended Originating Application) in Appendix A to the Further Amended Originating Application which have not been decided at the date of the order within 30 days, or such alternate timeframe as the court deems appropriate.~~
- ~~2. Further and in the alternative, pursuant to s 16(3)(b) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR**), an order declaring that the delay in the Respondent processing the IC Review Applications which were lodged 6 months or more prior to 1~~



~~September 2021 (see **Appendix A to Amended Originating Application**) is contrary to the interests of the administration of the *Freedom of Information Act 1982 (Cth)*. In the alternative, pursuant to s 16(3)(c) of the *Administrative Decision (Judicial Review) Act 1977 (Cth)* (**ADJR**), orders directing the Respondent to determine the IC Review Applications in **Appendix A to the Further Amended Originating Application** which have not been decided at the date of the order without further unreasonable delay.~~

3. ~~Such further or other order as the court deems appropriate. Further, pursuant to s 16(3)(b) of the *Administrative Decision (Judicial Review) Act 1977 (Cth)* (**ADJR**), an order declaring that the delay in the Respondent considering each of the IC Review Applications which were lodged less than 6 months prior to 1 September 2021 (see **Appendix A to Amended Originating Application**) is contract to the interests of the administration of the *Freedom of Information Act 1982 (Cth)*.~~

Claim for interlocutory relief

The Applicant also claims interlocutory relief.

1. ~~On 16 March 2022, the Court made an order pursuant to rule 40.51 of the *Federal Court Rules 2011 (Cth)* the maximum costs as between party and party that may be recovered in the proceeding in relation to the trial of the applications marked "separate question" in **Appendix A to the Further Amended Originating Application** is \$80,000 \$10 in an amount to be determined by the court.~~

Applicant's address

The Applicant's address for service is:

Place: ~~(Electorate Office) Lvl 2/31 Ebenezer Place, Adelaide, SA, 5000~~

~~22 Sando Avenue Tranmere SA 5074.~~

Email: ~~Senator.Patrick@aph.gov.au fveralto@ozemail.com.au~~

The Applicant's address is ~~place of business~~. 28 Union Street, Adelaide, SA.

Service on the Respondent

It is intended to serve this application on all Respondents.



Date: ~~9 September 2021~~ ~~11 October 2021~~ ~~10 December 2021~~ 30 September 2022



Signed by ~~Stella Majury~~
~~Flavio Verlato~~
Lawyer for the Applicant