

HIGH COURT OF AUSTRALIA

JAGOT J

IN THE MATTER OF AN APPLICATION BY
GERRARD TATE FOR LEAVE TO ISSUE OR FILE

[2026] HCASJ 26
Date of Judgment: 11 August 2026
C12 of 2026

ORDER

1. *The ex parte application filed on 20 July 2026 for leave to issue or file the proposed application for a constitutional or other writ is dismissed.*

Representation

The applicant is unrepresented

1 JAGOT J. On 17 July 2026, Gordon A-CJ made a direction under r 6.07.2 of the
2 *High Court Rules 2004* (Cth) that the Registrar refuse to issue or file an application
3 by the applicant for a constitutional or other writ without leave of a Justice first
4 had and obtained. By ex parte application filed on 20 July 2026 under r 6.07.3 of
5 the *High Court Rules*, the applicant seeks such leave. The application is supported
6 by an affidavit sworn by the applicant on 17 July 2026.

For the following reasons, leave to issue or file the proposed application for
a constitutional or other writ should be refused.

Relevant principles

The criteria governing the exercise of the discretion to refuse leave to issue
or file a document under r 6.07.3 of the *High Court Rules* are the same as those
that inform the decision of the Registrar to seek a direction from a Justice under
r 6.07.1. That is, leave to issue or file the document will ordinarily be refused
where the document "appears ... 'on its face' to be an abuse of process of the Court,
to be frivolous or vexatious or to fall outside the jurisdiction of the Court".¹

While the actions that will constitute an abuse of this Court's process are
not defined by "closed categories", the concept is plainly engaged by an attempt to
invoke the jurisdiction of the Court on a basis that is "confused or manifestly
untenable".² Clearly enough, the discretion to refuse leave to issue or file an
application and thereby "nip a proceeding in the bud" should be exercised "only in
the clearest of cases".³

Consideration

The proposed application names three defendants: the Commissioner of the
Australian Federal Police, the Attorney-General of the Commonwealth, and the
Attorney-General for the State of Victoria.

The applicant's central claims are as follows: (a) that the Australian Federal
Police ("the AFP") seized his property and data obtained via the execution of
warrants at his residence, which he alleges amounts to an improper exercise of
power; (b) that the AFP then retained that property and data, which he alleges
amounts to a denial of procedural fairness and negligence or recklessness; (c) that
the AFP failed to provide all relevant documents to the Office of the Australian
Information Commissioner ("the OAIC") as required during the review of a request

1 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570, referring to r 6.07.1
of the *High Court Rules*.

2 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

3 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

made by the applicant to the AFP under the *Freedom of Information Act 1982* (Cth);⁴ and (d) the AFP issued a "directive" that the applicant not communicate with the Attorney-General of the Commonwealth or Commonwealth departments, outside the scope of the AFP's authority. The applicant also alleges the AFP "failed to provide adequate reasons" for its conduct and that the conduct "infringes the [applicant's] rights under s 75(v) of the *Constitution*".

7 The relief sought by the applicant includes a writ of mandamus compelling the AFP to provide him with recordings of his police interviews, to return items of seized property, and to "[p]roduce all documents required under the statutory direction issued by [the OAIC]". The applicant also seeks a writ of prohibition and/or an injunction restraining the AFP from issuing, enforcing or threatening to enforce any directive purporting to prohibit the applicant from corresponding with the Attorney-General of the Commonwealth or Commonwealth departments, as well as declarations that the directive issued to the applicant purporting to prohibit correspondence with Commonwealth departments was invalid, and that the AFP has failed to comply with the OAIC's statutory direction. The applicant also seeks damages.

8 The applicant additionally claims that his "confidential disclosures were mishandled", which appear to relate to the Trade Union Governance and Corruption Royal Commission, although the application does not specifically seek relief in respect of this alleged mishandling.

9 The materials before the Court do not provide any supporting evidence in respect of the alleged unlawful conduct. The applicant's affidavit does not disclose the nature of the property seized or any correspondence from the AFP in relation to its seizure or retention. Beyond providing the letter and directions prepared by the OAIC on commencing a review of the applicant's request under the *Freedom of Information Act*, nothing in the affidavit indicates the AFP's response to those directions or the outcome of the review. Further, there is no evidence of the directive from the AFP in relation to the applicant communicating with the Commonwealth. As a result, the filed material discloses no apparent factual basis for the claims made or the relief sought.

10 It is plain on the face of the proposed application and the supporting affidavit that the applicant seeks to invoke this Court's jurisdiction on a basis that is "confused or manifestly untenable". Nothing in the proposed application, nor the supporting affidavit, discloses an arguable basis for the relief sought. The proposed application, accordingly, would be an abuse of process if the document was filed.

4 The direction to produce documents issued by the OAIC to the AFP under s 55(2)(e)(ii) of the *Freedom of Information Act* required only that relevant documents be provided to the OAIC, not to the applicant.

3.

- 11 For these reasons, the applicant's ex parte application filed on 20 July 2026 for leave to issue or file the proposed application for a constitutional or other writ is dismissed.