

From: Canberra Registry
Sent: Mon, 8 May 2023 11:41:31 +1000
To: s 22
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Listing Notice [SEC=OFFICIAL: Sensitive, ACCESS=Personal-Privacy] [SEC=OFFICIAL]
Attachments: 2lh7f7yvu8ih45q-2021_8354-20230508-3k0xvb.pdf, 2lh6fa0eg0ih45q-2021_8354-20230508-3k0wka.pdf

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Dear Parties,

Please find attached a Listing Notice, relating to the publication of a Decision in this matter.

Please note that generally listings information is publicly available.

Yours sincerely,

s 22

Associate

Administrative Appeals Tribunal
Canberra Registry
T: 02 6243 4611 F: 02 6243 4600
E: canberra.registry@aat.gov.au

www.aat.gov.au

Please refer to the AAT website for information about temporary changes in place to respond to the impact of COVID-19 on services, including special measures practice directions:
<http://www.aat.gov.au/impact-of-coronavirus-covid-19-on-our-services>.

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Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

8 May 2023

Clearview AI Inc
C/- BAL Lawyers
GPO Box 240
CANBERRA ACT 2601

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Publication of decision

Date: Monday, 8 May 2023

Time: 4:00PM

Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611
Email: canberra.registry@aat.gov.au



Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

8 May 2023

Australian Information Commissioner
C/- AUSTRALIAN GOVERNMENT SOLICITOR
GPO Box 2853
MELBOURNE VIC 3001

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Publication of decision

Date: Monday, 8 May 2023

Time: 4:00PM

Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611

Email: canberra.registry@aat.gov.au

From: Canberra Registry
Sent: Mon, 8 May 2023 16:03:58 +1000
To: s 22
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Decision [SEC=OFFICIAL: Sensitive, ACCESS=Personal-Privacy] [SEC=OFFICIAL]
Attachments: 2ligr1qack00ih46q-2021_8354-20230508-ctv0ta.pdf, 2ligs1qcrkpsih46q-2021_8354-20230508-ctv2jb.pdf, 2lih51qfd8moih46q-Clearview Signed Decision 8-05-2023 SEALED.pdf

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Dear Parties,

Please find attached a copy of a Decision that the Tribunal has made in this application, together with a copy of a covering letter accompanying the Decision.

The attached letter provides important information about appeal rights and time limits. Please read the letter carefully. If you experience problems opening the document, please contact us immediately by email, or call 1800 228 333.

Please note that generally AAT decisions are made publicly available.

I also note that a further Directions Hearing by telephone will be listed to seek the views of the parties' as to how this matter should progress.

Yours sincerely,

s 22
Associate

Administrative Appeals Tribunal
Canberra Registry
T: 02 6243 4611 F: 02 6243 4600
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www.aat.gov.au

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Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: § 22

8 May 2023

Australian Information Commissioner
C/- AUSTRALIAN GOVERNMENT SOLICITOR
GPO Box 2853
MELBOURNE VIC 3001

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

We have made a decision in this application. We have sent you a copy of our decision with this letter.

Can I appeal this decision?

If you think the decision is wrong, you might be able to appeal to the Federal Court of Australia. There is a time limit for appealing to the Federal Court. If you received this letter by email, the appeal period starts to run from the date of the email. If you are considering an appeal, obtain legal advice without delay.

A fee must usually be paid when lodging an appeal in the Federal Court, and other fees might be payable during the course of the appeal. However, some people are exempt from paying fees.

You need to be aware that, if your application is unsuccessful, it is likely that you will be ordered to pay the court fees and legal costs of the other party. Legal costs include the amount that a person pays a lawyer for legal advice and representation.

For further information on applying to the Federal Court, including information about forms, court fees and costs, please see the Court's website at www.fedcourt.gov.au or contact the Federal Court registry in your State. The contact details of the Court's registry in your State are:

Federal Court of Australia
Nigel Bowen Commonwealth Law Courts Building
Childers Street
Canberra City ACT 2601

1300 720 980
8.30am - 5.00pm - *Mon-Fri*
actreg@fedcourt.gov.au

Do you want to know more?

If you want more information or assistance, call us on **1800 228 333***.

Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611

Email: canberra.registry@aat.gov.au

* You will be connected to the AAT office in your capital city. Residents of northern NSW (postcodes 2460–2490) will be connected to the Brisbane office and residents of the Northern Territory will be connected to the Adelaide office. Local call charge from fixed phone lines; calls from mobiles may cost more.



Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: § 22

8 May 2023

Clearview AI Inc
C/- BAL Lawyers
GPO Box 240
CANBERRA ACT 2601

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

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Email: canberra.registry@aat.gov.au

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From: Canberra Registry
Sent: Thu, 11 May 2023 14:17:32 +1000
To: s 22
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Listing Notice [SEC=OFFICIAL: Sensitive, ACCESS=Personal-Privacy] [SEC=OFFICIAL]
Attachments: 2lok1zz1e00ih4n3-2021_8354-20230511-94kb8b.pdf, 2lok0101qhdcih4n3-2021_8354-20230511-94k9ia.pdf

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Yours sincerely,

s 22

Associate

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Canberra Registry
T: 02 6243 4611 F: 02 6243 4600
E: canberra.registry@aat.gov.au

www.aat.gov.au

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Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

11 May 2023

Clearview AI Inc
C/- BAL Lawyers
GPO Box 240
CANBERRA ACT 2601

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Directions Hearing by telephone

Date: Wednesday, 17 May 2023

Time: 9:00AM

What happens if you do not attend?

If you cannot attend at the time listed above, you should advise us as soon as possible.

If an applicant or an applicant's representative fails to attend, the Tribunal may dismiss the application under section 42A(2) of the AAT Act.

Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611
Email: canberra.registry@aat.gov.au



Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

11 May 2023

Australian Information Commissioner
C/- AUSTRALIAN GOVERNMENT SOLICITOR
GPO Box 2853
MELBOURNE VIC 3001

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

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Date: Wednesday, 17 May 2023

Time: 9:00AM

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Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611
Email: canberra.registry@aat.gov.au

From: s 22 [REDACTED]@ballawyers.com.au>
Sent: Wednesday, 17 May 2023 8:30 AM
To: s 22 [REDACTED] Canberra Registry
Cc: s 22 [REDACTED]
Subject: RE: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Directions hearing [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316] [BAL-M.CLEA0009.200240]

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Please dial in the following for the Applicant:

s 22 [REDACTED]
 Thank you

s 22 [REDACTED]
 LEGAL DIRECTOR
 BUSINESS & CORPORATE

P 02 6274 0999
 F 02 6274 0888

BAL *Genuine
leadership
in law*



Level 9 Canberra House, 40 Marcus Clarke St. Canberra ACT 2601
 GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

[BALLAWYERS.COM.AU](https://ballawyers.com.au) | [LINKEDIN](#)

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 Please consider the environment before printing this email.

From: s 22 [REDACTED]@ags.gov.au>
Sent: Wednesday, May 17, 2023 8:03 AM
To: Canberra Registry <canberra.registry@aat.gov.au>
Cc: s 22 [REDACTED]@ballawyers.com.au>; s 22 [REDACTED]@ags.gov.au>
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Directions hearing [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

OFFICIAL

Dear Registry,

2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Directions hearing

We refer to this matter which is listed for a telephone directions hearing at 9am today, 17 May 2023.

For the respondent, could the following persons please be dialled in to the directions hearing:

1. s 22 [REDACTED], Counsel – s 22 [REDACTED]
2. s 22 [REDACTED], AGS – s 22 [REDACTED]
3. s 22 [REDACTED], OAIC – s 22 [REDACTED]
4. s 22 [REDACTED], OAIC – s 22 [REDACTED]

Kind regards,

s 22 [REDACTED]

S 22
Senior Lawyer
Australian Government Solicitor
T S 22
S 22 @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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From: Canberra Registry <canberra.registry@aat.gov.au>
Sent: Thursday, 11 May 2023 2:18 PM
To: S 22 @ballawyers.com.au; S 22 @ags.gov.au
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Listing Notice
[SEC=OFFICIAL: Sensitive, ACCESS=Personal-Privacy] [SEC=OFFICIAL]

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Dear Parties,

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Yours sincerely,

S 22
Associate

**Administrative Appeals Tribunal
Canberra Registry**
T: 02 6243 4611 F: 02 6243 4600
E: canberra.registry@aat.gov.au

www.aat.gov.au

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</p><

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From: Canberra Registry
Sent: Tue, 23 May 2023 11:18:09 +1000
To: s 22
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Listing Notice & Direction [SEC=OFFICIAL: Sensitive, ACCESS=Personal-Privacy] [SEC=OFFICIAL]
Attachments: 2m68huoc8tsih6hg-2021_8354-20230523-2oxera.pdf, 2m68iurbeuoih6hg-2021_8354-20230523-2oxrcb.pdf, 2m67quuraq8ih6hg-2021_8354-20230523-2jtk1a.pdf

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Dear Parties,

Please find attached a copy of a Direction in this matter, together with a copy of a Listing Notice accompanying the Direction.

Please note that listings information generally is publicly available.

Yours sincerely,

s 22

Associate

Administrative Appeals Tribunal

Canberra Registry

T: 02 6243 4611 F: 02 6243 4600

E: canberra.registry@aat.gov.au

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Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

23 May 2023

Australian Information Commissioner
C/- AUSTRALIAN GOVERNMENT SOLICITOR
GPO Box 2853
MELBOURNE VIC 3001

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Directions Hearing by telephone

Date: Monday, 10 July 2023
Time: 9:00AM

What happens if you do not attend?

If you cannot attend at the time listed above, you should advise us as soon as possible.

If an applicant or an applicant's representative fails to attend, the Tribunal may dismiss the application under section 42A(2) of the AAT Act.

Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611
Email: canberra.registry@aat.gov.au



Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

23 May 2023

Clearview AI Inc
C/- BAL Lawyers
GPO Box 240
CANBERRA ACT 2601

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

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Directions Hearing by telephone

Date: Monday, 10 July 2023
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Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611
Email: canberra.registry@aat.gov.au



Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL

)

) No: 2021/8354

FREEDOM OF INFORMATION DIVISION

)

Re: **Clearview AI Inc**
Applicant

And: **Australian Information Commissioner**
Respondent

DIRECTION

TRIBUNAL: **Senior Member Damien O'Donovan**

DATE: 19 May 2023

PLACE: Canberra

The Tribunal DIRECTS:

1. On or before **14 June 2023**, the respondent must provide to the Tribunal and the applicant a document which sets out the form of relief it seeks and an explanation of the basis upon which that relief is sought.
2. On or before **5 July 2023**, the applicant must provide to the Tribunal and the respondent a document which sets out its position in relation to the proposed orders and an explanation of the basis upon which that position rests.

.....[sgd].....
Senior Member Damien O'Donovan



NOTES TO DIRECTION

1. If you do not comply with a direction, the Tribunal will list the application for a directions hearing. You will be required to attend the directions hearing and explain why you have not complied with the direction.
2. The Tribunal can dismiss an application if an Applicant fails within a reasonable time to comply with a direction made by the Tribunal. This power is set out in section 42A(5)(b) of the *Administrative Appeals Tribunal Act 1975*. If you are the Applicant and you fail to comply with a direction, you may also be asked to explain at the directions hearing why your application should not be dismissed.
3. If a party fails to comply with this direction, the Tribunal will not necessarily decide to adjourn, or delay the listing of, an alternative dispute resolution process or hearing.
4. Where the Tribunal has the power to award or recommend the payment of costs, failure by a party to comply with this direction may be taken into account in making a decision relating to costs.
5. If you do not believe you will be able to comply with a timeframe or any other aspect of this direction, you must make a request to the Tribunal for an extension of time to comply or for a variation of the direction. You should make the request well before the date by which you are required to comply with the direction.

Unless the Tribunal allows otherwise, the request must:

- a. be in writing
- b. explain the reasons for requesting more time or for the variation, and
- c. tell us whether or not the other party agrees to the request.

The Tribunal may ask you or the other party for more information, list a directions hearing or decide the request on the papers.

6. If you have been directed to give the Tribunal a Hearing Certificate, in accordance with the General Practice Direction, the Tribunal may list your application for hearing without further consultation if you do not provide the Hearing Certificate by the specified date.

FOIREQ23/00129 000081

From: s 22
Sent: Wed, 14 Jun 2023 18:32:14 +1000
To: Canberra Registry
Cc: s 22
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]
Attachments: 20230614 Respondent's justification for proposed declaration.pdf, 20230614 Respondent's proposed declarations 21008608.pdf

OFFICIAL

Dear Registry,

2021/8354 - RE Clearview AI Inc and Australian Information Commissioner

We refer to the above matter and, **attach**, for lodging:

1. Respondent's proposed declarations
2. Respondent's justification for the proposed form of declarations

We confirm the Applicant's representative is copied to this email by way of service.

Kind regards,

s 22

s 22

Senior Lawyer

Australian Government Solicitor

T s 22

s 22 @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL DIVISION
CANBERRA REGISTRY

NO 8354 OF 2021

CLEARVIEW AI, INC
Applicant

AUSTRALIAN INFORMATION COMMISSIONER
Respondent

RESPONDENT'S JUSTIFICATION FOR PROPOSED FORM OF DECLARATIONS

1. In accordance with the directions of the Tribunal dated 19 May 2023, the Respondent (**the Commissioner**) seeks declarations to give effect to the reasons of the Tribunal dated 8 May 2023 in the form **attached**. The Respondent's justification for seeking declarations in that form is as follows.
2. First, the Commissioner agrees with the Tribunal (as set out at paragraphs 151 to 153 of its reasons) that the effect of the repeal of s 5B(3)(c) of the *Privacy Act 1988* (**the Act**) on 13 December 2022 is that, so long as the Applicant has an Australian link, all of the personal information which it collects, regardless of its geographical source, is regulated by the Act. Accordingly, by paragraph 1 of the proposed declarations, the Commissioner seeks declarations under s 52(1A)(a) of the Act consistent with that scope.
3. Secondly, in relation to the Applicant's ongoing conduct (and consistent with the reasoning of the Tribunal at paragraphs 152 and 200 of its reasons), the Commissioner seeks a declaration under s 52(1A)(b) of the Act that the Applicant cease to collect images from servers located in Australia: see paragraph 2(a) of the proposed declarations.
4. Thirdly, the Commissioner seeks declarations under s 52(1A)(b) of the Act directed to the deletion of images collected in breach of the Act during the period while the Applicant has or had an Australian link. The Commissioner accepts that, prior to 13 December 2022 (because of the additional requirement that the information in question be collected in Australia), the only images that could be the subject of such a declaration are images collected from servers located in Australia. However, as the Applicant retains a record of the URL from which each image in its database was collected, there should not be any difficulty giving effect to such a declaration (see paragraph 2(c) of the proposed declarations).
5. Further, after 13 December 2022, all of the images collected by the Applicant are subject to the operation of the Act. Accordingly, in relation to this period, the Commissioner seeks declarations under s 52(1A)(b) of the Act requiring the Applicant to delete all images from sources that are likely to include Australians and individuals located in Australia. Those sources are specified in paragraph 2(d) of the proposed declarations.

Lodged on behalf of the Respondent by: s 22

Australian Government Solicitor
4 National Circuit
Barton ACT 2600

Contact: s 22

File ref: 21008608

Telephone: s 22

E-mail: s 22 @ags.gov.au

6. The Commissioner also contends that, in circumstances where she has no means of verifying the Applicant's compliance with the declarations, it is appropriate that as part of its declarations under s 52(1A)(b), that the Tribunal to make a declaration in accordance with s 52(1AAA) of the Act requiring the Applicant to appoint, in consultation with the Commissioner, a suitably qualified independent adviser to review the steps taken by the Applicant to comply with the declarations and to provide a copy of that review to the Commissioner.

Date: 14 June 2023

s 22

Counsel for the Respondent

s 22

s 22

AGS lawyer

for and on behalf of

The Australian Government Solicitor

Solicitor for the Respondent

**ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL DIVISION
CANBERRA REGISTRY**

2021/8354

CLEARVIEW AI, INC.
Applicant

AUSTRALIAN INFORMATION COMMISSIONER
Respondent

RESPONDENT'S PROPOSED DECLARATIONS

1. Pursuant to s 52(1A)(a) of the *Privacy Act 1988* (the Act), the Tribunal declares that:
 - a. the collection by the Applicant of images from the internet and from law enforcement agencies for inclusion in a facial recognition database, and the creation of vectors of those images, without the consent of the individuals depicted in those images is an interference with the privacy of those individuals.
 - b. the Applicant must not repeat or continue that practice.
2. Pursuant to s 52(1A)(b) of the Act, the Tribunal declares that the Applicant must take the following steps within 90 days of this declaration (or such further period as is agreed by the Respondent in writing) to ensure that the practice described in paragraph 1(a) is not repeated or continued:
 - a. cease to collect images or create vectors of images from websites with an IP address in the Australian IP address range or a name server with an IP address in the Australian IP address range;
 - b. notify the Respondent as soon as paragraph 2(a) has been implemented;
 - c. delete all images and vectors collected or created prior to 13 December 2022 from websites with an IP address in the Australian IP address range or a name server with an IP address in the Australian IP address range;
 - d. delete all images and vectors collected or created between 13 December 2022 and the date of the notification referred to in paragraph 2(b) that:
 - i. are from websites with an IP address in the Australian IP address range or a name server with an IP address in the Australian IP address range;

Lodged on behalf of the Respondent

Contact: s 22

Prepared by: s 22
AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

File ref: 21008608

Telephone: s 22

Facsimile: s 22

Address for Service:
The Australian Government Solicitor
Level 34, 600 Bourke Street, Melbourne VIC 3000

E-mail: s 22 @ags.gov.au

- ii. are from websites with an Australian country code top level domain;
 - iii. have geolocation data indicating that they were taken in Australia; and/or
 - iv. are from a social media account with account data or other information indicating it is from an Australian or individual located in Australia;
- e. notify the Respondent as soon as paragraphs 2(c) and 2(d) have been implemented; and
- f. in accordance with s 52(1AAA) of the Act, after the notifications referred to in paragraphs 2(b) and 2(e):
 - i. engage, in consultation with the Respondent, a suitably qualified independent adviser to review the steps taken by the Applicant to
 - 1. ensure that the practice described in paragraph 1(a) is not repeated
 - 2. implement paragraphs 2(a), 2(c) and 2(d) above; and
 - ii. provide a copy of the review to the Respondent.

Date: 14 June 2023

s 22

s 22

AGS lawyer
for and on behalf of
the Australian Government Solicitor
Solicitor for the Respondent

From: s 22
Sent: Mon, 26 Jun 2023 10:09:14 +1000
To: s 22
Cc: s 22
Subject: Confidential : OAIC - CLEARVIEW AI Inc and Australian Information Commissioner AAT [BAL-M.CLEA0009.200240]
Attachments: 230626 - Letter to AGS.pdf

CAUTION: This email originated from outside of the organisation. Do not follow guidance, click links, or open attachments unless you recognise the sender and know the content is safe.

Dear s 22

Please see **attached** letter.

Kind regards,

s 22
EXECUTIVE ASSISTANT
BUSINESS & CORPORATE

Ps 22

F 02 6274 088
8

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leadership
in law*

Level 9 Canberra House, 40 Marcus Clarke St. Canberra ACT 2601
GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

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FOIREQ23/00129 000089

From: s 22
Sent: Wed, 28 Jun 2023 09:07:36 +1000
To: s 22
Cc: s 22
Subject: Confidential : OAIC - CLEARVIEW AI Inc and Australian Information Commissioner AAT [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

OFFICIAL

Dear Mr s 22

We refer to your letter dated 26 June 2023.

Please note that the respondent's Counsel is presently on leave. We do not anticipate being in a position to provide a substantive response to your letter prior to 5 July 2023, the date by which your client is due to inform the Tribunal of its position with respect to the Commissioner's proposed declarations.

We also note that your client intends to file evidence with the Tribunal in support of its assertions about cessation of certain web crawling activities.

We will advise of our client's position regarding the matters raised in your letter in due course, after we have had an opportunity to consider the evidence your client intends to file with the Tribunal.

Could you please ensure my colleague s 22 is copied into correspondence regarding this matter.

Kind regards

s 22

s 22
Senior Lawyer
Australian Government Solicitor
T s 22
s 22 @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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OFFICIAL

From: s 22 @ballawyers.com.au>
Sent: Monday, 26 June 2023 10:09 AM
To: s 22 @ags.gov.au>
Cc: s 22 @ballawyers.com.au>; s 22 @ballawyers.com.au>
Subject: Confidential : OAIC - CLEARVIEW AI Inc and Australian Information Commissioner AAT [BAL-M.CLEA0009.200240]

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Dear **S 22**

Please see **attached** letter.

Kind regards,

S 22
EXECUTIVE ASSISTANT
BUSINESS & CORPORATE

P S 22

F 02 6274 088
8

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in law*

Level 9 Canberra House, 40 Marcus Clarke St. Canberra ACT 2601
GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

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FOIREQ23/00129 000091

From: s 22
Sent: Mon, 3 Jul 2023 14:21:20 +1000
To: s 22
Cc: s 22
Subject: OAIC - CLEARVIEW AI Inc and Australian Information Commissioner AAT [BAL-M.CLEA0009.200240]
Attachments: Letter to AGS with subs (3 July 2023).pdf, Applicant's submissions on proposed for of declarations 03.07.23.pdf, s 22 Witness Statement (29 June 2023).pdf, 230703 - s 22 Witness Statement (3 July 2023).pdf

CAUTION: This email originated from outside of the organisation. Do not follow guidance, click links, or open attachments unless you recognise the sender and know the content is safe.

Dear Ms s 22

Please see **attached** by way of service.

Yours sincerely,

s 22
EXECUTIVE ASSISTANT
BUSINESS & CORPORATE

P s 22
F 02 6274 088
8

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Level 9 Canberra House, 40 Marcus Clarke St. Canberra ACT 2601
?GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

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BAL LAWYERS
ABN 37 628 135 120

3 July 2023

By email: **s 22** [@ags.gov.au](mailto:s22@ags.gov.au)

Contact

s 22

PRIVATE AND CONFIDENTIAL

s 22

A/g Senior Executive Lawyer
Australian Government Solicitor - M
Level 34, 600 Bourke Street
MELBOURNE VIC 3000

Direct Line

s 22

Our Reference
200240

Dear Ms **s 22**

OAIC - CLEARVIEW AI Inc and Australian Information Commissioner AAT

Please find **attached** the following by way of service:

1. Applicant's Submissions On Proposed Form Of Declarations;
2. A **s 22**
3. A statement from the writer.

In the circumstances, our offer of 26 June 2023 is withdrawn.

Our client is willing to consider consent orders that are compatible with our submissions.

Yours sincerely

s 22



Legal Director

Direct Line: **s 22**
Email: **s 22** [@ballawyers.com.au](mailto:s22@ballawyers.com.au)

Level 9
Canberra House
40 Marcus Clarke St.
Canberra ACT 2601

GPO Box 240
Canberra ACT 2601
DX 5626 Canberra

P 02 6274 0999
F 02 6274 0888
E reception@ballawyers.com.au

BALLAWYERS.COM.AU

200240_4248903_1

From: s 22
Sent: Tue, 4 Jul 2023 10:18:10 +1000
To: canberra.registry@aat.gov.au
Cc: s 22
Subject: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240]
Attachments: Applicant's submissions on proposed for of declarations 03.07.23.pdf, s 22
Witness Statement (29 June 2023).pdf, 230703 - s 22 Witness Statement (3 July 2023).pdf

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Dear Registry,

Clearview AI, Inc. v Australian Information Commissioner
In the Administrative Appeals Tribunal – 2021/8354

We refer to the above proceeding and confirm that we act for the Applicant, Clearview AI, Inc.

We confirm that the solicitors for the Respondent have been copied into this email.

Please find enclosed:

1. Applicant's Submissions on Proposed Form of Declarations
2. Witness Statement of s 22 dated 3 July 2023; and
3. Witness Statement of s 22 dated 3 July 2023.

Kind regards,

s 22
LAWYER
LITIGATION & DISPUTE RESOLUTION

P s 22
F 02 6274 088
8

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leadership
in law*

Level 9 Canberra House, 40 Marcus Clarke St. Canberra ACT 2601
GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

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Please consider the environment before printing this email.

From: s 22
Sent: Thu, 6 Jul 2023 18:36:46 +1000
To: s 22
Cc: s 22
Bcc: 'OAIC _ CLEARVIEW AI Inc and Australian Information Commissioner AAT 2021_8354 _21008608_ Email'
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner [AGSDMS-DMS.FID4513316]
Attachments: 20230706 Letter to BAL Lawyers 21008608.pdf

Dear Mr s 22

2021/8354 - RE Clearview AI Inc and Australian Information Commissioner

Please see attached letter.

Kind regards

s 22
Senior Executive Lawyer
Australian Government Solicitor
T s 22
s 22 @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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43102394

specific functionality to prevent such collection from January 2023, that matter was not raised:

- 6.1. at any time while the Tribunal's decision was reserved in the period 13 December 2022 to 8 May 2023 (including in the further submissions filed by Clearview about the effect of the *Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022*), despite it being critical to findings the Tribunal might need to make about Clearview's activities;
- 6.2. at any time prior to the interlocutory hearing on 5 April 2023 regarding the Commissioner's application to vary the conditional stay order made on 10 December 2021, including in the evidence or submissions filed on behalf of Clearview in relation to that application, despite the application being primarily based on the Applicant's continued collection of images from Australian servers; or
- 6.3. at the directions hearing on 17 May 2023, where the Tribunal required both parties to file material related to final relief in the proceeding, despite it plainly being directly relevant to that issue.

Request for directions in relation to production by Clearview

7. In light of the above, the respondent intends to seek directions that your client produce information pursuant to s 33 of the *Administrative Appeals Tribunal Act 1975* (Cth) in the categories set out in **Annexure A** in order to enable our client to verify and understand the effect of the assertions in the Statement.
8. Once it has had an opportunity to consider that material, our client will then be in a position to respond to the matters raised in the Statement and your client's submissions.
9. Accordingly, the directions we propose to seek at the directions hearing on 10 July 2023 are as follows:
 - 9.1. The applicant produce documents in accordance with the categories set out in Annexure A by 7 August 2023;
 - 9.2. The respondent file any evidence and an outline of submissions in response to the material filed on behalf of the Applicant by 18 September 2023;
 - 9.3. The matter be listed for hearing in relation to the form of appropriate relief on the next available date after 25 September 2023 on an estimate of 1 day.
10. Please contact me if you wish to discuss.

Yours sincerely

s 22

s 22

Senior Executive Lawyer

T s 22

F s 22

s 22

@ags.gov.au

Annexure A

1. All documents referring to the timing of the project to deploy a new version of the Clearview database referred to in paragraph 4 of the Statement.
2. All documents referring to the need to cease all web crawling as part of that project.
3. All communications recording or evidencing instructions to cease all web crawling as part of that project.
4. All communications referring to the implementation of those instructions.
5. All communications recording or evidencing instructions to resume web crawling as part of or following the completion of the project.
6. All communications referring to the implementation of those instructions.
7. All documents recording or evidencing the development or deployment of functionality to prevent crawling from Australian servers as referred to in paragraph 6 of the Statement.
8. All documents explaining the operation or effectiveness of that functionality.

From: Canberra Registry
Sent: Fri, 7 Jul 2023 09:59:58 +1000
To: s 22
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Listing Notice [SEC=OFFICIAL: Sensitive, ACCESS=Personal-Privacy] [SEC=OFFICIAL]
Attachments: 2o3co1wlt76oihdgl-2021_8354-20230707-1f3xhub.pdf, 2o3cn1wovso0ihdgl-2021_8354-20230707-1f3xgja.pdf

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Dear Parties

I refer to the Directions Hearing listed for 9:00AM on Monday, 10 July 2023. The Tribunal has determined that this listing will take place by MS Teams.

Please find attached a Listing Notice in this matter with the MS Teams Link.

Please note that generally listings information is publicly available.

Yours sincerely

s 22

Senior Tribunal Officer

**Administrative Appeals Tribunal
Registry**

T: 02 6243 4611 F: 02 6243 4600

E: canberra.registry@aat.gov.au

www.aat.gov.au

Please refer to the AAT website for information about temporary changes in place to respond to the impact of COVID-19 on services, including special measures practice directions:
<http://www.aat.gov.au/impact-of-coronavirus-covid-19-on-our-services>.

The AAT will not usually send a hard copy of any document sent to you by email, unless you request that we do so.

The Administrative Appeals Tribunal acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and elders past and present.

IMPORTANT:

This mailbox is monitored intermittently. To avoid processing delays, please lodge applications and submit documents through the Administrative Appeals Tribunal's [online services portal](#). For more information about how to use the online portal, visit our [website](#) or [contact us](#)

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Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

7 July 2023

Clearview AI Inc
C/- BAL Lawyers
GPO Box 240
CANBERRA ACT 2601

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Directions Hearing by MS Teams

Date: Monday, 10 July 2023
Time: 9:00AM

Please join using the link below.

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 426 339 282 871

Passcode: pwwfF2

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

530646548@vc.aat.gov.au

Video Conference ID: 133 332 498 1

[Alternate VTC instructions](#)

Or call in (audio only)

[+61 2 9158 7123..293899645#](#) Australia, Sydney

Phone Conference ID: 293 899 645#

[Find a local number](#) | [Reset PIN](#)

What happens if you do not attend?

If you cannot attend at the time listed above, you should advise us as soon as possible.

If an applicant or an applicant's representative fails to attend, the Tribunal may dismiss the application under section 42A(2) of the AAT Act.

Yours sincerely

s 22 [REDACTED]

For the Registrar

Telephone: (02) 6243 4611

Email: canberra.registry@aat.gov.au



Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

7 July 2023

Australian Information Commissioner
C/- AUSTRALIAN GOVERNMENT SOLICITOR
GPO Box 2853
MELBOURNE VIC 3001

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Directions Hearing by MS Teams

Date: Monday, 10 July 2023
Time: 9:00AM

Please join using the link below.

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 426 339 282 871

Passcode: pwwfF2

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

530646548@vc.aat.gov.au

Video Conference ID: 133 332 498 1

[Alternate VTC instructions](#)

Or call in (audio only)

[+61 2 9158 7123..293899645#](#) Australia, Sydney

Phone Conference ID: 293 899 645#

[Find a local number](#) | [Reset PIN](#)

What happens if you do not attend?

If you cannot attend at the time listed above, you should advise us as soon as possible.

If an applicant or an applicant's representative fails to attend, the Tribunal may dismiss the application under section 42A(2) of the AAT Act.

Yours sincerely

s 22 [REDACTED]

For the Registrar

Telephone: (02) 6243 4611

Email: canberra.registry@aat.gov.au

From: s 22
Sent: Fri, 7 Jul 2023 15:14:53 +1000
To: s 22
Cc: s 22
Subject: OAIC - CLEARVIEW AI and Australian Information Commissioner AAT [BAL-M.CLEA0009.200240]
Attachments: Letter to AGS re discovery (7 July 2023).pdf

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Dear Ms s 22

Please see the **attached** letter.

Yours sincerely,

s 22
EXECUTIVE ASSISTANT
BUSINESS & CORPORATE

P s 22
F 02 6274 088
8

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BAL LAWYERS
ABN 37 628 135 120

7 July 2023

By email: s 22 @ags.gov.au

Contact
s 22

PRIVATE AND CONFIDENTIAL

s 22

A/g Senior Executive Lawyer
Australian Government Solicitor - M
Level 34, 600 Bourke Street
MELBOURNE VIC 3000

Direct Line
s 22

Our Reference
200240

Dear Ms s 22

OAIC - CLEARVIEW AI Inc and Australian Information Commissioner AAT

I refer to your letter sent late 6 June 2023, received this morning.

The facts stated by s 22 29 July 2023 statement are directly within his personal knowledge. The matters stated are not complicated:

1. Either there is use of the Clearview System within Australia since March 2020 or there has not been. s 22 there has not been.
2. Either Clearview ceased all web crawling in October 2022, or it didn't. s 22 it did.
3. Either Clearview started web crawling again in January 2023 or it didn't. s 22 it did.
4. Following the restart, either Clearview implemented a s 22 block s 46 block) that prevented any crawling from Australian servers, or it didn't. s 22 it did.

With respect, such statements by s 22 need no "support".

No explanation of hardware or firmware functionality is either warranted or needed. Both IBM and Wikipedia give reasonable explanations of what s 46 is. What can be used to "improve" addressing can be used otherwise; that needs no greater explanation.

The evidence in the statement of 29 June 2023 is s 22

s 22

s 22

related generally to the period since the Order s 22 was made. To have answered differently s 22 would have been misleading. s 22

Equally s 22 it was not considered that the indiscriminate crawling from a New York based server was or even could be considered as something that amounted to anything like "conducting business" in every country in the world that hosts an IP Address to which the crawler's requests might be sent. The fact is, our client instructs that the internet functions quite the way the evidence has been interpreted, yet that interpretation of functionality flows from the evidence given of a simplified description of the operation of the Internet put before the Tribunal. s 22

s 22

s 22 integrity. The implication in your letter that our client is not now stating the truth is completely rejected.

Level 9
Canberra House
40 Marcus Clarke St.
Canberra ACT 2601

GPO Box 240
Canberra ACT 2601
DX 5626 Canberra

P 02 6274 0999
F 02 6274 0888
E reception@ballawyers.com.au

BALLAWYERS.COM.AU

Australian Government Solicitor - s 22

2.

BAL LAWYERS

7 July 2023

s 22 did not consider that there was any Australian Link arising from the indiscriminate crawling of the Internet from a New York based server. With that understanding, there was no point of purpose in raising a matter (such as the suspension of collection of data) that has considerable commercial sensitivity before an Australian Tribunal, a country with which our client has no dealings.

Your extraordinary demand for information is quite obviously for the reason that "you don't believe the statement". With respect, that is not a sufficient basis to seek the documents you seek in your Annexure A.

Our client will explain, like all businesses, Clearview is concerned with its costs. It is concerned, in particular, with its energy consumption. The costs of operating a crawler of the kind previously used by Clearview is not trivial. Walk into a server room and experience the heat, which will give you, we trust, some insight into the issue that was being addressed by the changes to the Clearview System being implemented in October 2022.

The changes to the Clearview System being implemented in October 2022 had nothing to do with a Tribunal matter in a country remote to our client's business interests. Put simply:

- a) the overwhelming volume of relevant information to be searched, like your client's own website, is situated within a small number of locations, none of which are "Australia";
- b) In December 2022, the implementation of the changes was not complete; and
- c) s 22 had no basis to believe that these two things would be connected at all.

That, we hope, makes it obvious as to why the matter was not regarded as relevant to any issue before the Tribunal, as much of this "apparent relevance" relies on the accepting the simplified description of the operation of a "GET Request", which s 22

With respect, what you seek is irrelevant to the issues in dispute and further, is largely seeking commercially sensitive information and an improper use of the Tribunal's function. We hope to have the additional statement to you before 10 July 2023.

Yours sincerely
BAL LAWYERS

s 22



Legal Director

Direct Line: s 22
Email: s 22 @ballawyers.com.au

FOIREQ23/00129 000127

From: S 22
Sent: Sat, 8 Jul 2023 12:34:41 +1000
To: S 22 canberra.registry@aat.gov.au
Cc: S 22
Bcc: 'OAIC _ CLEARVIEW AI Inc and Australian Information Commissioner AAT 2021_8354 _21008608_ Email'
Subject: RE: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240] [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]
Attachments: oia-S 22-statement-v7.pdf, oia-S 22-signed.pdf, oia-S 22-signed.pdf

OFFICIAL

Dear Mr S 22

We note that four statements are listed below, but only three statements were attached to your email.

Could you please provide the additional statement, or confirm the applicant's intention to lodge three statements only.

Kind regards

S 22
Senior Executive Lawyer
Australian Government Solicitor
T S 22
S 22 @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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From: S 22 <S 22 @ballawyers.com.au>
Sent: Saturday, 8 July 2023 10:30 AM
To: canberra.registry@aat.gov.au
Cc: S 22 @ags.gov.au; S 22 @ballawyers.com.au; S 22 @ballawyers.com.au; S 22 @ballawyers.com.au
Subject: RE: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240]

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Dear Registry,

Clearview AI, Inc. v Australian Information Commissioner
In the Administrative Appeals Tribunal – 2021/8354

We refer to the above proceeding and confirm that we act for the Applicant, Clearview AI, Inc.

We confirm that the solicitors for the Respondent have been copied into this email.

Please find enclosed:

1. Witness Statement of S 22 dated 7 July 2023;
2. Witness Statement of S 22 dated 7 July 2023;
3. Witness Statement of S 22 dated 7 July 2023; and
4. Witness Statement of S 22 dated 7 July 2023.

sincerely

S 22
LEGAL DIRECTOR
BUSINESS & CORPORATE

P S 22
F 02 6274 088
8

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leadership
in law*



Level 9 Canberra House, 40 Marcus Clarke St. Canberra ACT 2601
GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

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FOIREQ23/00129 000135

From: s 22
Sent: Sat, 8 Jul 2023 12:47:15 +1000
To: s 22 canberra.registry@aat.gov.au
Cc: s 22
Bcc: 'OAIC _ CLEARVIEW AI Inc and Australian Information Commissioner AAT 2021_8354 _21008608_ Email'
Subject: RE: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240] [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

OFFICIAL

Dear Mr s 22

Thank you for the confirmation.

Kind regards

s 22
Senior Executive Lawyer
Australian Government Solicitor
T s 22
s 22 @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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OFFICIAL

From: s 22 @ballawyers.com.au>
Sent: Saturday, 8 July 2023 12:46 PM
To: s 22 @ags.gov.au>; canberra.registry@aat.gov.au
Cc: s 22 @ballawyers.com.au>; s 22 @ballawyers.com.au>; s 22 @ballawyers.com.au>; s 22 @ags.gov.au>
Subject: Re: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240] [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

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Regrets all.

The s 22 statement is listed twice. There is only one such statement from him dated 7 July 2023.

s 22

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S 22
LEGAL DIRECTOR
BUSINESS & CORPORATE

P S 22

F 02 6274 088
8

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GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

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From: S 22 <[redacted]@ags.gov.au>
Sent: Saturday, July 8, 2023 12:34:46 PM
To: S 22 <[redacted]@ballawyers.com.au>; canberra.registry@aat.gov.au
<canberra.registry@aat.gov.au>
Cc: S 22 <[redacted]@ballawyers.com.au>; S 22 <[redacted]@ballawyers.com.au>; S 22 <[redacted]@ballawyers.com.au>; S 22 <[redacted]@ags.gov.au>
Subject: RE: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240] [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

OFFICIAL

Dear Mr S 22

We note that four statements are listed below, but only three statements were attached to your email.

Could you please provide the additional statement, or confirm the applicant's intention to lodge three statements only.

Kind regards

S 22
Senior Executive Lawyer
Australian Government Solicitor
T S 22
S 22 <[redacted]@ags.gov.au>

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OFFICIAL

From: s 22 <[REDACTED]@ballawyers.com.au>
Sent: Saturday, 8 July 2023 10:30 AM
To: canberra.registry@aat.gov.au
Cc: s 22 <[REDACTED]@ags.gov.au>; s 22 <[REDACTED]@ballawyers.com.au>; s 22 <[REDACTED]@ballawyers.com.au>; s 22 <[REDACTED]@ballawyers.com.au>
Subject: RE: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240]

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Dear Registry,

Clearview AI, Inc. v Australian Information Commissioner
In the Administrative Appeals Tribunal – 2021/8354

We refer to the above proceeding and confirm that we act for the Applicant, Clearview AI, Inc.

We confirm that the solicitors for the Respondent have been copied into this email.

Please find enclosed:

1. Witness Statement of s 22 <[REDACTED]> dated 7 July 2023;
2. Witness Statement of s 22 <[REDACTED]> dated 7 July 2023;
3. Witness Statement of s 22 <[REDACTED]> dated 7 July 2023; and
4. Witness Statement of s 22 <[REDACTED]> dated 7 July 2023.

sincerely

s 22 <[REDACTED]>
LEGAL DIRECTOR
BUSINESS & CORPORATE

Ps s 22 <[REDACTED]>
F [02 6274 0888](tel:0262740888)
8

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FOIREQ23/00129 000138

From: s 22
Sent: Sun, 9 Jul 2023 12:47:52 +1000
To: s 22; canberra.registry@aat.gov.au
Cc: s 22
Bcc: 'OAIC _ CLEARVIEW AI Inc and Australian Information Commissioner AAT 2021_8354 _21008608_ Email'
Subject: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]
Attachments: oiaac-s 22-statement-v7.pdf, 20230706 Letter to BAL Lawyers 21008608.pdf

OFFICIAL

Dear Registry and Mr s 22

The Witness Statement of s 22 dated 7 July 2023 refers to the letter from AGS to BAL Lawyers dated 6 July 2023 as HTTD-1, but does not attach the letter.

We attach a copy of that letter to this email for reference.

Kind regards

s 22

s 22

Senior Lawyer

Australian Government Solicitor

T s 22

s 22 @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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OFFICIAL

From: s 22 @ballawyers.com.au>
Sent: Saturday, 8 July 2023 12:46 PM
To: s 22 @ags.gov.au>; canberra.registry@aat.gov.au
Cc: s 22 @ballawyers.com.au>; s 22 @ballawyers.com.au>; s 22 @ballawyers.com.au>; s 22 @ags.gov.au>
Subject: Re: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240] [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

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Regrets all.

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s 22

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s 22

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BUSINESS & CORPORATE

P s 22

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Please consider the environment before printing this email.

From: s 22 @ags.gov.au

Sent: Saturday, July 8, 2023 12:34:46 PM

To: s 22 @ballawyers.com.au; canberra.registry@aat.gov.au
<canberra.registry@aat.gov.au>

Cc: s 22 @ballawyers.com.au; s 22 @ballawyers.com.au; s 22 @ballawyers.com.au; s 22 @ballawyers.com.au; s 22 @ags.gov.au

Subject: RE: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240] [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

OFFICIAL

Dear Mr s 22

We note that four statements are listed below, but only three statements were attached to your email.

Could you please provide the additional statement, or confirm the applicant's intention to lodge three statements only.

Kind regards

s 22

Senior Executive Lawyer
Australian Government Solicitor

T s 22

s 22 @ags.gov.au

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OFFICIAL

From: s 22 [REDACTED]@ballawyers.com.au>
Sent: Saturday, 8 July 2023 10:30 AM
To: canberra.registry@aat.gov.au
Cc: s 22 [REDACTED]@ags.gov.au>; s 22 [REDACTED]@ballawyers.com.au>; s 22 [REDACTED]@ballawyers.com.au>; s 22 [REDACTED]@ballawyers.com.au>
Subject: RE: Filing of Documents | Clearview AI, Inc. v Australian Information Commissioner – 2021/8354 [BAL-M.CLEA0009.200240]

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Dear Registry,

Clearview AI, Inc. v Australian Information Commissioner
In the Administrative Appeals Tribunal – 2021/8354

We refer to the above proceeding and confirm that we act for the Applicant, Clearview AI, Inc.

We confirm that the solicitors for the Respondent have been copied into this email.

Please find enclosed:

1. Witness Statement of s 22 [REDACTED] dated 7 July 2023;
2. Witness Statement of s 22 [REDACTED] dated 7 July 2023;
3. Witness Statement of s 22 [REDACTED] dated 7 July 2023; and
4. Witness Statement of s 22 [REDACTED] dated 7 July 2023.

sincerely

s 22 [REDACTED]
 LEGAL DIRECTOR
 BUSINESS & CORPORATE

Ps s 22 [REDACTED]
 F 02 6274 088
 8

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FOIREQ23/00129 000142

From: s 22
Sent: Mon, 10 Jul 2023 10:25:38 +1000
To: s 22
Cc: s 22
Subject: RE: Clearview - proposed categories [BAL-M.CLEA0009.200240]
[SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

OFFICIAL

Dear s 22

Thank you, we will provide a copy of those revised categories to the Tribunal registry email address.

Kind regards

s 22
Senior Lawyer
Australian Government Solicitor
T s 22
s 22 @ags.gov.au

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From: s 22 @ballawyers.com.au>
Sent: Monday, 10 July 2023 10:18 AM
To: s 22 @ags.gov.au>
Cc: s 22 @ballawyers.com.au>; s 22 @ags.gov.au>
Subject: RE: Clearview - proposed categories [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316] [BAL-M.CLEA0009.200240]

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Yes – all of that is suitable.
Kind regards

s 22
LEGAL DIRECTOR
BUSINESS & CORPORATE

P s 22
F 02 6274 088
8



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GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra

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From: S 22 <S22@ags.gov.au>
Sent: Monday, July 10, 2023 10:15 AM
To: S 22 <S22@ballawyers.com.au>
Cc: S 22 <S22@ballawyers.com.au>; S 22 <S22@ags.gov.au>
Subject: Clearview - proposed categories [SEC=OFFICIAL] [AGSDMS-DMS.FID4513316]

OFFICIAL

Dear Mr S 22

We refer to the discussion just now on the telephone. As discussed, the proposed categories of documents are:

1. All documents that demonstrate or show that web crawling ceased as part of the project referred to in paragraph 4 of the Statement, and the timing of that cessation.
2. All documents that demonstrate or show that web crawling resumed as referred to in paragraph 5 of the Statement, and the timing of that resumption.
3. All documents that demonstrate or show the functionality of the Clearview system that prevents crawling or collection of data from Australian servers as referred to in paragraph 6 of the Statement.
4. All documents explaining the operation or effectiveness of that functionality.

In relation to the timing of the resumed hearing, as indicated, Counsel for the respondent is not available on 5-6 October 2023 but is available in the week of 23 October and therefore proposes that the re-listed hearing be listed during that week.

Kind regards

S 22

S 22
Senior Lawyer
Australian Government Solicitor
T S 22
S 22 <S22@ags.gov.au>

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FOIREQ23/00129 000145

From: s 22
Sent: Mon, 10 Jul 2023 10:29:25 +1000
To: canberra.registry@aat.gov.au
Cc: s 22
Subject: Clearview AI v Australian Information Commissioner AAT [SEC=OFFICIAL]
[AGSDMS-DMS.FID4513316]
Importance: High

OFFICIAL

For the Urgent attention of the Associate to Senior Member O'Donovan

Dear Registry

We refer to the directions hearing in this matter which is presently adjourned.

We advise that the revised proposed categories of documents as discussed between the parties are:

1. All documents that demonstrate or show that web crawling ceased as part of the project referred to in paragraph 4 of the Statement, and the timing of that cessation.
2. All documents that demonstrate or show that web crawling resumed as referred to in paragraph 5 of the Statement, and the timing of that resumption.
3. All documents that demonstrate or show the functionality of the Clearview system that prevents crawling or collection of data from Australian servers as referred to in paragraph 6 of the Statement.
4. All documents explaining the operation or effectiveness of that functionality.

Kind regards

s 22

s 22
Senior Lawyer
Australian Government Solicitor
T s 22
s 22 @ags.gov.au

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From: Canberra Registry
Sent: Mon, 10 Jul 2023 15:43:28 +1000
To: s 22
Subject: 2021/8354 - RE Clearview AI Inc and Australian Information Commissioner - Listing Notice & Direction [SEC=OFFICIAL: Sensitive, ACCESS=Personal-Privacy] [SEC=OFFICIAL]
Attachments: 2o6zlvu4ve8ihdyp-2021_8354-20230710-c3o54a.pdf, 2o64wvx795sihdyp-2021_8354-20230710-3r6fxa.pdf, 2o64xw037g0ihdyp-2021_8354-20230710-3r6i3b.pdf

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Dear Parties,

Please find attached a copy of a Direction in this matter, together with a copy of a Listing Notice accompanying the Direction.

Please note that generally listings are publicly available.

Yours sincerely,

s 22

Associate

Administrative Appeals Tribunal

Canberra Registry

T: 02 6243 4611 F: 02 6243 4600

E: canberra.registry@aat.gov.au

www.aat.gov.au

Please refer to the AAT website for information about temporary changes in place to respond to the impact of COVID-19 on services, including special measures practice directions:
<http://www.aat.gov.au/impact-of-coronavirus-covid-19-on-our-services>.

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The Administrative Appeals Tribunal acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and elders past and present.

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Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL

)

) No: 2021/8354

FREEDOM OF INFORMATION DIVISION

)

Re: **Clearview AI Inc**
Applicant

And: **Australian Information Commissioner**
Respondent

DIRECTION

TRIBUNAL: **Senior Member Damien O'Donovan**

DATE: 10 July 2023

PLACE: Canberra

The Tribunal DIRECTS:

1. On or before **14 August 2023**, the applicant must give to the Tribunal and the respondent documents in accordance with the categories as set out in Annexure A to this Direction.
2. On or before **14 August 2023**, the applicant must give to the Tribunal and the respondent any further evidence upon which it intends to rely and any further outline of submissions in relation to the form of the decision the Tribunal should make.
3. On or before **2 October 2023**, the respondent must give to the Tribunal and the applicant any evidence upon which it intends rely and an outline of submissions in response.
4. On or before **9 October 2023**, the applicant must provide to the Tribunal and the respondent any further evidence in reply.

.....[sgd].....
Senior Member Damien O'Donovan



ANNEXURE A

1. All documents that demonstrate or show that web crawling ceased as part of the project referred to in paragraph 4 of the Statement of § 22 dated 29 June 2023 (the Statement), and the timing of that cessation.
2. All documents that demonstrate or show that web crawling resumed as referred to in paragraph 5 of the Statement, and the timing of that resumption.
3. All documents that demonstrate or show the functionality of the Clearview system that prevents crawling or collection of data from Australian servers as referred to in paragraph 6 of the Statement.
4. All documents explaining the operation or effectiveness of that functionality.

NOTES TO DIRECTION

1. If you do not comply with a direction, the Tribunal will list the application for a directions hearing. You will be required to attend the directions hearing and explain why you have not complied with the direction.
2. The Tribunal can dismiss an application if an Applicant fails within a reasonable time to comply with a direction made by the Tribunal. This power is set out in section 42A(5)(b) of the *Administrative Appeals Tribunal Act 1975*. If you are the Applicant and you fail to comply with a direction, you may also be asked to explain at the directions hearing why your application should not be dismissed.
3. If a party fails to comply with this direction, the Tribunal will not necessarily decide to adjourn, or delay the listing of, an alternative dispute resolution process or hearing.
4. Where the Tribunal has the power to award or recommend the payment of costs, failure by a party to comply with this direction may be taken into account in making a decision relating to costs.
5. If you do not believe you will be able to comply with a timeframe or any other aspect of this direction, you must make a request to the Tribunal for an extension of time to comply or for a variation of the direction. You should make the request well before the date by which you are required to comply with the direction.

Unless the Tribunal allows otherwise, the request must:

- a. be in writing
- b. explain the reasons for requesting more time or for the variation, and
- c. tell us whether or not the other party agrees to the request.

The Tribunal may ask you or the other party for more information, list a directions hearing or decide the request on the papers.

6. If you have been directed to give the Tribunal a Hearing Certificate, in accordance with the General Practice Direction, the Tribunal may list your application for hearing without further consultation if you do not provide the Hearing Certificate by the specified date.



Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

10 July 2023

Australian Information Commissioner
C/- AUSTRALIAN GOVERNMENT SOLICITOR
GPO Box 2853
MELBOURNE VIC 3001

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Hearing

Date: Monday, 23 October 2023

Time: 10:00AM

Address: Level 8, 14 Moore St

CANBERRA ACT 2600

What happens if you do not attend?

If you cannot attend at the time listed above, you should advise us as soon as possible.

If an applicant or an applicant's representative fails to attend, the Tribunal may dismiss the application under section 42A(2) of the AAT Act.

Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611

Email: canberra.registry@aat.gov.au



Administrative Appeals Tribunal

Freedom of Information Division

Our Ref: 2021/8354

Contact Officer: s 22

10 July 2023

Clearview AI Inc
C/- BAL Lawyers
GPO Box 240
CANBERRA ACT 2601

Dear Sir/Madam

APPLICANT: Clearview AI Inc
RESPONDENT: Australian Information Commissioner

This application has been listed as shown below:

Hearing

Date: Monday, 23 October 2023

Time: 10:00AM

Address: Level 8, 14 Moore St

CANBERRA ACT 2600

What happens if you do not attend?

If you cannot attend at the time listed above, you should advise us as soon as possible.

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Yours sincerely

s 22

For the Registrar

Telephone: (02) 6243 4611

Email: canberra.registry@aat.gov.au