

NOTICE OF FILING

Details of Filing

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File Title: ESAFETY COMMISSIONER v X CORP.
Registry: NEW SOUTH WALES 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.



Form 59
Rule 29.02(1)

Affidavit

No. NSD474 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

eSafety Commissioner

Applicant

X Corp.

Respondent

Affidavit of: **Nicholas James Perkins**
Address: Level 11, 5 Martin Place Sydney 2000
Occupation: Lawyer
Date: 9 May 2024

I, Nicholas James Perkins, affirm:

1. I am a solicitor employed by Ashurst Australia (**Ashurst**) working under the supervision of Robert Todd and Andrew Carter, partners at Ashurst, who have the care and day to day carriage of this matter on behalf of the Respondent, X Corp. (**X**).
2. I make this affidavit from my own knowledge save where otherwise stated. Nothing in this affidavit is intended to waive client or legal professional privilege. To the extent that any part of this affidavit may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.
3. This is my second affidavit in this proceeding. I made by first affidavit in the proceeding on 8 May 2024 (my **First Affidavit**).

Filed on behalf of (name & role of party)	X Corp., Respondent
Prepared by (name of person/lawyer)	Robert Todd
Law firm (if applicable)	Ashurst
Tel (02) 9258 6000	Fax (02) 9258 6888
Email	Robert.todd@ashurst.com / imogen.loxton@ashurst.com
Address for service (include state and postcode)	Level 9, 5 Martin Place Sydney NSW 2000

4. I am authorised to make this affidavit in support of the Respondent's Interlocutory Application dated 9 May 2024 seeking non-publication orders in respect of Confidential Annexure MA-1 and Highly Confidential Exhibit MA-1 of the affidavit of Michael Anderson, affirmed on 1 May 2024, and the first sentence of paragraph 6(a) of my First Affidavit (collectively, the **Confidential Material**).
5. I am informed by Michael Anderson, Director of Engineering for Core Services for X and believe that:
 - (a) the Confidential Material deals with matters that are not publicly available and are confidential to X, including the internal processes X uses to analyse Hypertext Transfer Protocol Secure (**HTTPS**) requests that it receives at its data servers in the USA. The confidentiality arises from the commercially sensitive nature of the material, which includes confidential details of the way in which X's systems operate and the security measures implemented by X on its data servers and platform;
 - (b) X is a regular target of threat actors around the world. Accordingly, the details of X's internal systems are highly sensitive and are required to be kept confidential to avoid threat actors being able to use that information to circumvent X's internal processes;
 - (c) X's internal systems described in the Confidential Material also have a number of other important functions, including to assist X in enforcing its Terms of Service, as well as complying with laws governing sanctions, which would be threatened if the Confidential Material is not kept confidential;
 - (d) access by X's competitors to the confidential details of the way in which X's systems operate, which include highly commercially sensitive proprietary methods implemented by X, would result in significant commercial harm to X, because the information could be used to take unfair commercial advantage over X;
 - (e) Confidential Annexure MA-1 to Mr Anderson's affidavit contains parts of the body of the affidavit which are confidential; and
 - (f) Highly Confidential Exhibit MA-1 to Mr Anderson's affidavit contains highly commercially sensitive data used by X to determine a user's location.



6. The first sentence of paragraph 6(a) of my First Affidavit refers to matters described in the Confidential Annexure MA-1 to Mr Anderson's affidavit.

Affirmed by the deponent
at Sydney
in New South Wales
on 9 May 2024
Before me:

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Signature of deponent



Signature of witness