

High Court throws out AFP warrant against News Corp journalist Annika Smethurst

Elizabeth Byrne and Matthew Doran - ABC - 15 April 2020

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<https://www.abc.net.au/news/2020-04-15/annika-smethurst-wins-afp-fight-high-court/12147706>

The warrant used by Australian Federal Police officers to search the home of News Corp journalist Annika Smethurst last year has been thrown out by the High Court, but police will be allowed to keep the materials they seized in the raid.

Key points:

- The court found the warrant used to search Ms Smethurst's home was not correctly issued
- The saga sparked concerns over press freedom, but the court did not rule on that issue
- Ms Smethurst's reports examined plans to expand spying powers

The court unanimously ruled the warrant was invalid but was split on whether police should be forced to hand back what they took.

Ms Smethurst's home was raided after the Sunday Telegraph published a story she wrote on plans [to expand the powers of the Australian Signals Directorate \(ASD\)](#).

The story included images of a document created by the ASD marked "secret" and "top secret", leading the AFP to argue Ms Smethurst and the Sunday Telegraph had broken the law by publishing them.

More than a year after the story went to print, [the AFP obtained a search warrant](#) for a range of general items belonging to Ms Smethurst and an order she provide her phone password.

The raid sparked a national debate about press freedom, which intensified when [AFP officers searched the ABC's Sydney headquarters over a different story the same week](#).

The High Court unanimously found the warrant was invalid as it misstated the relevant law and failed to specify the offence being investigated.

As a result, the court did not consider whether the raid had an impact on freedom of political communication.

The court ordered the AFP pay the costs of Ms Smethurst and News Corp.

AFP allowed to keep seized materials

Lawyers for Ms Smethurst, and her employer News Corp, argued the court should issue an injunction requiring the AFP to hand back the seized materials or destroy any copies.

While the court was unanimous in quashing the warrant, it was divided over what should happen to the material seized.

The data taken from Ms Smethurst's phone was identified through specific word searches for items including mentions of the ASD and story pitches.

The Commonwealth had asked the High Court to find it should be allowed to keep the material, even if it was obtained illegally.

While three judges said they thought the material should not be kept by police, the majority of the court declined to make an order, meaning police could keep the material for any future possible prosecution related to the case.

The journalists' union, the Media Entertainment and Arts Alliance, issued a statement welcoming the decision, but raised concerns about the court allowing police to keep the documents.

If the case was ever to come to trial, lawyers could argue the data was not able to be used as evidence because the warrant had been thrown out by the highest legal authority in the land.

But no trial is on the horizon, and Attorney-General Christian Porter has said any decision on prosecuting journalists will need to be signed off by him.

A spokesman for the AFP said it was considering the decision and would "act in accordance with the ruling".