

'AK' and Australian Health Practitioner Regulation Agency (Freedom of Information)



Decision and reasons for decision of the National Health Practitioner Privacy Commissioner, Richelle McCausland

Applicant	'AK'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/01282022
Decision date	5 February 2024
Catchwords	FREEDOM OF INFORMATION – Whether disclosure would, or could reasonably be expected to, prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency – Whether disclosure would, or could reasonably be expected to, prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency – Whether it is contrary to the public interest to release conditionally exempt documents – Freedom of Information Act 1982 ss. 47E(a) and 47E(b)

All references to legislation in this document are to the *Freedom of Information Act 1982* (Cwlth) (FOI Act) unless otherwise stated.

Decision

1. Under s. 55K, I affirm Ahpra's internal review decision of 16 December 2021.

Background

2. The Psychology Board of Australia (the Board) has responsibilities relating to the regulation of psychologists. Ahpra provides administrative assistance and support to the Board in exercising its functions.
3. The Board requires applicants to pass the National Psychology Exam (the NPE) to be eligible to apply for general registration as a psychologist in Australia (unless exempt). According to the Board's website, the NPE is one regulatory tool used to ensure applicants for general registration have obtained a minimum level of applied professional knowledge of psychology.
4. In addition, the Board may require applicants to pass the NPE if they are returning to practice as a psychologist after more than five years. The Board, a panel or a tribunal may also direct an individual

to complete the NPE as part of their application for registration or following a notification about their health, performance or conduct. Other regulators, such as the Psychology Council of New South Wales, may also require an individual to complete the NPE in some circumstances.

5. The Applicant sat the NPE three times between 2019 and 2020.
6. The Applicant made a request to Ahpra for access to:
 - National Psychology Exam – documents held by Ahpra and the Psychology Board*
 - *The three exam papers and my answers and results (as listed in the original request). The Exams I sat were on 24 May 2019, 2 November 2019 and 16 November 2020.*
 - *Documents which explain how scaling is applied to the Exam results (and specifically documents relating to how the three Exams that I have sat were scaled).*
 - All documents (including file notes) relating to complaints made about me that were sent or received by Ahpra to/from the Psychology Council, and the Health Care Complaints Commission. This should include documents sent or received by Ahpra to/from Committee Panels and the Performance Assessors who were involved in the Process.*
7. In its decision letter dated 18 October 2021, Ahpra identified 15 documents that fell within the scope of the Applicant’s request. Ahpra decided to release 12 documents in full and exempt three documents in full under ss. 47E(a), 47E(b) and 47E(d).
8. On 18 November 2021 the Applicant requested an internal review of Ahpra’s decision. In its internal review decision letter dated 16 December 2021 Ahpra affirmed its original decision.
9. On 7 February 2022 the Applicant sought a review of Ahpra’s internal review decision under s. 54L.

Scope of the review

10. The issues I have decided in this review are:
 - whether the three documents that Ahpra found to be exempt under s. 47E(a) are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest
 - whether the three documents that Ahpra found to be exempt under s. 47E(b) are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest
 - whether the three documents that Ahpra found to be exempt under s. 47E(d) are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest.
11. In a review of an access refusal decision, Ahpra bears the onus of establishing that its decision is justified or that I should give a decision adverse to the Applicant.¹ However, it is open to me to obtain

¹ s. 55D(1).

any information from any person, make any inquiries that I consider appropriate, and change the basis on which the decision is made.²

12. The Applicant and Ahpra were invited to make written submissions about this review of Ahpra's internal review decision. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
13. I have had regard to the object of the FOI Act, which is to give the Australian community access to information held by the Government by requiring agencies to publish that information and by providing for a right of access to documents.³

Review of the exemptions

Section 47E(a): Prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits

14. Ahpra found the three documents to be exempt in full under s. 47E(a).
15. A document is conditionally exempt under s. 47E(a) if disclosure would, or could reasonably be expected to, prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency.⁴
16. For this exemption to apply, consideration needs to be given to the content and context of the document to be able to identify the purpose, methodology or intended objective of the examination, test or audit.⁵ The decision-maker is then required to assess whether the conduct or objects of the test, examination or audit would, or could reasonably be expected to, be prejudiced by the release of the document.⁶
17. As discussed in the FOI Guidelines:

...a prejudicial effect could be regarded as one which would cause a bias or change to the expected results leading to detrimental or disadvantageous outcomes. The expected change does not need to have an impact that is 'substantial and adverse', which is a stricter test.⁷
18. The FOI Guidelines further explain that the predicted effect needs to be reasonably expected to occur and that there must be more than merely an assumption or allegation that damage may occur if the documents were to be released.⁸

² ss. 55 and 55K.

³ s. 3(1).

⁴ s. 47E(a).

⁵ FOI Guidelines [6.105].

⁶ FOI Guidelines [6.99].

⁷ FOI Guidelines [6.100].

⁸ FOI Guidelines [6.101].

19. The particulars of the predicted effect need to be identified.⁹ The FOI Guidelines clarify that a detailed description of the predicted effect will enable a comprehensive comparison of the predicted effect against the usual effectiveness of existing testing methods.¹⁰
20. Circumstances previously considered where disclosure of a document may prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits include:
 - permitting analysis of responses to tests or examinations or information gathered during an audit
 - facilitating cheating, fraudulent or deceptive conduct by those being tested or audited
 - permitting pre-prepared responses which would compromise the integrity of the testing process.¹¹

Ahpra's submission

21. Ahpra explained that the three documents are reports that have been produced by electronic means by downloading data held by a third-party examination provider that administers the NPE. The documents contain the NPE questions, the Applicant's response to each question and the correct answer for each question.

22. In its original decision, Ahpra stated that:

The NPE is made up of a series of multiple-choice questions and exists in multiple versions. Each version of the NPE can be used more than once and some exam items are used across different versions.

Disclosure of the exam items in any one or more exam would reveal questions that may be reused in other exams. This would allow for candidates to pre-prepare answers, gaining an unfair advantage over others and compromising the integrity of the exam itself. Such an outcome would seriously undermine the integrity of the NPE to the extent that it could no longer be relied on to accurately select for candidates who demonstrate the appropriate level of skills, knowledge and experience.

Applicant's submission

23. In their review application, the Applicant explained that they are seeking the documents because they want to:

... see my results and the questions I got wrong, or in the alternative, at least the scores (both my unscaled and scaled scores), given my career is wrongfully in the balance... The Exams and/or results are required because... there have been serious errors of fact and statements in reports provided by the regulator throughout this process...

24. The Applicant submitted:

Releasing my unscaled and scaled scores is not contrary to the public interest. No one is harmed and it does not compromise the Exam and therefore the marks must be released...

⁹ FOI Guidelines [6.103].

¹⁰ FOI Guidelines [6.106].

¹¹ FOI Guidelines [6.108].

To suggest that I would want to risk and damage my reputation and career by disclosing exam questions and answers to a class of persons, ie students, that I do not know or mix with, is not reasonable, plausible or based on any fact – it is an incorrect assumption...

The public interest is harmed by good psychologists being impeded from practising at a time when there is a critical demand for their services in the community.

Application of the conditional exemption

25. Based on my assessment of the three documents, I am of the view that the release of the documents would, or could reasonably be expected to, prejudice the effectiveness of Ahpra and the Board's procedures or methods in conducting the NPE.
26. I accept that disclosure of the documents would reveal questions that may be reused in future NPEs, giving candidates (including the Applicant should they re-sit the NPE) an unfair advantage as they could pre-prepare answers. This could reasonably be expected to undermine the procedures and methods of the NPE.
27. In particular, I accept that disclosure of exam questions that are still in use would likely necessitate a fundamental redesign of the procedures and methods of the NPE to protect the integrity of the exam.
28. In analysing the application of this conditional exemption, I considered the Australian Information Commissioner's decision in *HI and Civil Aviation Safety Authority* [2015] AICmr 69 (22 October 2015) (*HI and CASA*). In that case, access was being sought to two examinations used by the Civil Aviation Safety Authority (CASA) to establish a person's competence to fly an aircraft, including the answers provided to those examinations by the applicant. The Australian Information Commissioner affirmed CASA's decision that disclosure of the examinations could reasonably be expected to have a substantial and adverse effect on the delivery and assessment of such examinations and hence that the relevant documents were conditionally exempt under s. 47E(a).¹²
29. I note the Applicant submitted that the circumstances of *HI and CASA* are different from their own matter. The Applicant explained that, unlike the applicant in *HI and CASA* who was not qualified and had not passed any entry examination, the Applicant is already qualified and has been practising as a psychologist for many years. I do not agree that this is relevant to whether the release of the documents would, or could reasonably be expected to, prejudice the effectiveness of Ahpra and the Board's procedures or methods in conducting the NPE.
30. I also note the Applicant's offer to sign a confidentiality undertaking in order to see the documents in a controlled environment at Ahpra's offices and not remove them. The Applicant has suggested that it would be impossible for them to remember all the NPE questions and answers after viewing them at Ahpra's offices, and this approach would also address Ahpra's concerns about "release [of the NPE questions] to the world at large." The Applicant's suggestions are relevant to the predicted effect of the disclosure of the documents.

¹² *HI and Civil Aviation Safety Authority* [2015] AICmr 69 (22 October 2015).

31. The Administrative Appeal Tribunal (the AAT)'s decision in *Crawley and Centrelink* [2006] AATA 572 (30 June 2006) considered similar issues. In that case, Mr Crawley was seeking access to documents which included the questions posed in a psychometric test and his answers. The AAT's decision states:

With respect to Mr Crawley and without seeking to question his genuineness, it is not to the point that he says that he would not make the material publicly available nor would he attempt to distort his answers on any future test. As to the former, if, on the proper application of the principles under the FOI Act, it is released to Mr Crawley, then it must be released to anyone else who seeks its release. And Mr Crawley's assurance that he would not seek to manipulate future test results, whilst no doubt genuine, does not exclude the likelihood of unconscious manipulation were he to become familiar with the terms of the questions.¹³

32. I agree that, despite the Applicant's contention that it would be impossible for them to remember all the NPE questions and answers after viewing the documents at Ahpra's offices, this "would not exclude the likelihood of unconscious manipulation" as referred to by the AAT. Further, I acknowledge that if the NPE questions and answers were released to the Applicant, then a strong argument could be made that they should be released to anyone else who seeks the same information.

33. Having reviewed the documents, I accept the reasons set out in Ahpra's decision and I am satisfied that the three documents are conditionally exempt under s. 47E(a).

34. I am now required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt documents this time.

Section 11A(5): The public interest test

35. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed unless in the circumstances access to the document at this time would, on balance, be contrary to the public interest.¹⁴

36. In *Seven Network (Operations) Limited and Australian Competition and Consumer Commission (Freedom of information)* [2019] AICmr 29 (6 June 2019) the Australian Information Commissioner explained that:

...the public interest test does not require a decision-maker to consider whether disclosure of conditionally exempt material would be in the public interest. Rather, a decision-maker must start from the position that access to a conditionally exempt document must be given, unless giving access to the document, at the time of the decision would, on balance, be contrary to the public interest.¹⁵

Factors favouring disclosure

37. The FOI Act provides public interest factors to be considered where relevant, including that disclosure would:

- promote the objects of the FOI Act (including all the matters set out in ss. 3 and 3A)

¹³ *Crawley and Centrelink* [2006] AATA 572 (30 June 2006).

¹⁴ s. 11A(5).

¹⁵ *Seven Network (Operations) Limited and Australian Competition and Consumer Commission (Freedom of information)* [2019] AICmr 29 (6 June 2019), [47].

- inform debate on a matter of public importance
 - promote effective oversight of public expenditure
 - allow a person access to his or her personal information.¹⁶
38. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.¹⁷
39. In its reasons for its original decision, Ahpra identified the following factors in favour of disclosure:
- promoting the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities¹⁸
 - facilitating access to information to members of the public that demonstrates that agencies are following proper administrative processes
 - revealing information that informed a decision-making process; and
 - allowing a person to access their personal information, or information relating to matters that otherwise concern them.
40. The Applicant submitted that it is in the public interest for the documents to be disclosed because their registration as a psychologist is at risk and there is currently a shortage of psychologists in Australia.
41. I have considered the factors in favour of disclosure. I agree that disclosure of the documents would promote the objects of the FOI Act and facilitate a person's access to information relating to them. In addition, noting the Applicant's concerns about alleged errors made by Ahpra and the Board, the release of the documents may have the effect of demonstrating that proper administrative processes were followed in relation to the NPE.
42. While I agree there are public interest factors that favour disclosure of the documents, these factors must be balanced against any public interest factors opposing disclosure when determining whether access should be given to a conditionally exempt document.

Factors against disclosure

43. In relation to public interest factors against disclosure, Ahpra identified:
- the public interest in protecting and maintaining the integrity of Ahpra and the Board's, and other similar agencies', regulatory processes, particularly the strong public interest in ensuring that only suitable health practitioners can provide services to the public¹⁹
 - the public interest in Ahpra and the Board being able to carry out their statutory functions as efficiently and effectively as possible, including conducting exams in a way that is insulated so far as possible from academic dishonesty
 - the likely prejudice to the NPE should exam questions become more widely disseminated, as this would enable individuals to pre-prepare answers, which would in turn harm the effectiveness of the exam itself and undermine the objects it seeks to achieve

¹⁶ s. 11B(3).

¹⁷ FOI Guidelines [6.19].

¹⁸ s. 3(2)(b).

¹⁹ *Hanes v Australian Health Practitioner Regulation Agency* [2013] VCAT 1270 at [67] quoting *Hulls and Victorian Casino and Gaming Authority (1998)* 12 VAR 483.

- the prejudice to the Board and its administration of the NPE, insofar as the disclosure of exam questions would require a substantial redesign of the NPE and the replacing of questions after having been used only once.

44. I agree that these are relevant factors against disclosure.

Balancing the public interest factors for and against disclosure

45. In response to Ahpra's original decision, the Applicant argued that all the public interest factors against disclosure outlined by Ahpra could be mitigated if the Applicant provided an undertaking not to further disseminate the information in the documents and if access to the documents was provided in a supervised and controlled environment.

46. In its internal review decision, Ahpra stated:

It is difficult to envisage how Ahpra would effectively monitor and enforce such an undertaking in practice. If the undertaking were breached, then it may have a significant impact on the [Board's] ability to perform its functions. Persons may be able to obtain registration as a psychologist in circumstances where they would otherwise have been considered unsuitable. It is possible, perhaps likely, that the inappropriate dissemination of examination questions would not even come to the attention of the regulator.

For these reasons [Ahpra] is not satisfied that the risk to the public interest could be effectively mitigated by the acceptance of an undertaking.

[Ahpra is] not satisfied that the supervised access could also address the identified prejudice to the public interest. Any recording or replication of the information contained within the documents may give rise to the risks outlined by [Ahpra] within [its original] decision. If supervised access was granted, then the risk may still be realised via the subsequent publication of material from the memory of those who have read the documents.

47. I accept Ahpra's arguments that the impact to the public interest could not be effectively mitigated by taking the steps suggested by the Applicant.

48. There is a strong public interest in ensuring that only suitably qualified and skilled psychologists can provide services to the public. The NPE therefore serves an important regulatory purpose. It would be contrary to the public interest if the effectiveness of the procedures and methods relevant to the NPE were negatively impacted because of the disclosure of the three documents.

49. Based on the available information, I am satisfied that the public interest factors against disclosure outweigh those in favour of disclosure.

50. I am satisfied that giving the Applicant access to the documents at this time would, on balance, be contrary to the public interest.

Finding

51. I am satisfied that the three documents are exempt in full under s. 47E(a).

Section 47E(b): Prejudice the attainment of the objects of particular tests, examinations or audits

52. Ahpra also found the three documents to be exempt in full under s. 47E(b).

53. A document is conditionally exempt under s. 47E(b) if disclosure would, or could reasonably be expected to, prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency.²⁰
54. Similar to the conditional exemption in s. 47E(a), consideration needs to be given to the content and context of the document to be able to identify the purpose, methodology or intended objective of the examination, test or audit.²¹
55. The FOI Guidelines explain that the agency would be undertaking the testing or examination to meet particular requirements, and have a particular need for the results (the ‘test objectives’). The underlying operational requirements for the test objectives are the context for assessing the document against the conditional exemption.²²
56. Examples of test objectives outlined in the FOI Guidelines include ensuring:
- only properly qualified people are flying aircraft
 - the selection of the most competent and best candidates for promotion
 - that an agency’s expenditure is being lawfully spent through proper acquittal.²³
57. As discussed in the FOI Guidelines, the predicted prejudicial effect of disclosure needs to be reasonably expected to occur,²⁴ and the particulars of the predicted effect need to be identified.²⁵
58. In previous cases, the AAT has accepted that the disclosure of documents would be prejudicial to testing methods where it would:
- allow for plagiarism or circulation of questions or examination papers that would lead to a breach of the integrity of the examination system
 - allow for examiners to be inhibited in future marking by the threat of challenge to their marking
 - allow scrutiny of past test results or questions for the pre-preparation of expected/acceptable responses, rather than honest or true responses.²⁶

Ahpra’s submission

59. In its original decision, Ahpra stated:

The purpose of the NPE is to protect the public by ensuring that only those practitioners who are suitably trained and qualified to practice psychology in a competent and ethical manner are registered. In notifications, the exam is used to assist the Board, panel or tribunal to be assured about a practitioner’s health, performance or conduct under Part 8 of the Health Practitioner Regulation National Law...

²⁰ s. 47E(b).

²¹ FOI Guidelines [6.105].

²² FOI Guidelines [6.110].

²³ FOI Guidelines [6.111].

²⁴ FOI Guidelines [6.101].

²⁵ FOI Guidelines [6.103].

²⁶ FOI Guidelines [6.112].

...disclosure would enable candidates to know what questions may be used in future exams. This would enable and encourage candidates to engage in academically dishonest practices such as circulation of questions and pre-preparing of answers. Having regard to the objects of the NPE as a regulatory exam, utilised to assess the competency of practitioners, such an effect would compromise its integrity by providing a benefit to individuals who engage in dishonest practices, rather than testing them on the basis of their actual knowledge and ability. Such an effect would vitiate the objects of the NPE to help select for suitable candidates to practice the professions.

Applicant's submission

60. In relation to the attainment of the objects of the NPE, the Applicant submitted:

... [The Applicant] has already been assessed on multiple occasions to be a competent and professional practitioner – [they are] not looking to enter the profession – [they have] already qualified officially and [have] been practising safely for [many] years...

The curriculum [the Applicant] studied was a different one to that which the NPE tests and current students who sit the NPE have the very unfair advantage that they are taught the curriculum and modules to pass the NPE – they do not have to locate and then trawl through thousands of pages of text book materials on their own and teach themselves a new curriculum, with no guidance, while working full time to support themselves. There is clearly a distinct disadvantage that [the Applicant] faces when compared to these students.

[The Applicant] has never engaged in academic dishonesty and nor would [they] ever do so. Any concerns regarding this are alleviated if only [their] Supervisor and [their] solicitor view the Exams...

Application of conditional exemption

61. Based on my assessment of the three documents, I am of the view that disclosure would, or could reasonably be expected to, prejudice Ahpra and the Board's attainment of the objects of the NPE.
62. The NPE is designed to protect the public by ensuring that only those candidates who can demonstrate the appropriate level of skills and knowledge in the field of psychology receive a pass mark.
63. While I am not suggesting that the Applicant is being untruthful regarding their intentions, I agree with Ahpra that disclosure of the documents could enable and encourage candidates to engage in academically dishonest practices such as circulation of questions and/or pre-preparing of answers for future tests. Such practices would have the likely effect that the NPE could no longer accurately test candidates on the basis of their actual knowledge and ability.
64. I therefore consider that disclosure of the documents would compromise the integrity of the NPE and negatively impact Ahpra and the Board's ability to ensure that only suitable persons are registered to practise the profession.
65. In coming to this view, I considered the Australian Information Commissioner's decision in *Australian Federation of Air Pilots and Civil Aviation Safety Authority (Freedom of Information)* [2022] AICmr 65 (14 October 2022) (*AFAP and CASA*). In that case, access was being sought to material including interview questions, interview notes and assessment forms used by CASA to determine a person's

suitability for the roles of Chief Pilot and Head of Training and Checking. The Australian Information Commissioner explained:

I am satisfied that the objects of the relevant assessment questions and processes reflected in the documents at issue is to determine a person's suitability for certain roles in an aviation business. I am further satisfied that disclosure of the documents at issue would allow prospective appointees to prepare to respond to specific assessment criteria or questions. Prospective appointees would not then need to acquire a comprehensive understanding of the relevant framework and responsibilities information. As a result, disclosure of the documents at issue could reasonably be expected to make it easier for prospective appointees to pass assessments without obtaining a comprehensive understanding of information relevant to the roles in question.²⁷

66. The Applicant submitted that their matter can be distinguished from *AFAP and CASA* because the applicant in that case:

- was not already qualified or employed to practise in their respective professions, when the Applicant is and has been for many years
- had not already passed an entrance exam, when the Applicant has
- had not been assessed as being competent to practise by a senior member of their profession, when the Applicant has
- has not been required to study an entirely new university curriculum on their own, when the Applicant has
- had not offered a confidentiality undertaking or to view the documents in a restricted environment, when the Applicant has offered to do so.

67. I acknowledge the Applicant's unique circumstances. However, it is clear that the purpose of the NPE is to ensure a consistent professional standard of psychologists nationally, and to protect the public by ensuring that only those candidates who can demonstrate the appropriate level of skills and knowledge in the field of psychology receive a pass mark. Disclosure of the documents at issue could reasonably be expected to make it easier for individuals to pass the NPE without having the appropriate level of skills and knowledge.

68. Accordingly, I accept the reasons set out in Ahpra's decision and I am satisfied that the three documents are conditionally exempt under s. 47E(b).

Section 11A(5): The public interest test

Factors favouring disclosure

69. Paragraphs [39] and [40] are relevant here.

70. I agree that disclosure of the documents would promote the objects of the FOI Act and facilitate a person's access to information relating to them. The release of the documents may also have the effect of demonstrating that proper administrative processes were followed in relation to the NPE.

²⁷ Australian Federation of Air Pilots and Civil Aviation Safety Authority (Freedom of Information) [2022] AICmr 65 (14 October 2022), [30].

71. While I agree there are public interest factors that favour disclosure of the documents, these factors must be balanced against any public interest factors opposing disclosure when determining whether access should be given to a conditionally exempt document.

Factors against disclosure

72. The factors against disclosure set out by Ahpra are outlined in paragraph [43].

73. I agree that there are compelling public interest factors against disclosure.

Balancing the public interest factors for and against disclosure

74. There is a strong public interest in ensuring that only suitably qualified and skilled psychologists can provide services to the public. The NPE therefore serves an important regulatory purpose. It would be contrary to the public interest if the attainment of the objectives of the NPE was impacted because of the disclosure of the three documents.

75. I accept Ahpra's arguments outlined in paragraph [46] that the impact to the public interest could not be effectively mitigated by taking the steps suggested by the Applicant in paragraph [45].

76. Based on the available information, I am satisfied that the public interest factors against disclosure outweigh those in favour of disclosure.

77. I am satisfied that giving the Applicant access to the documents at this time would, on balance, be contrary to the public interest.

Finding

78. I am satisfied that the three documents are exempt in full under s. 47E(b).

Section 47E(d): Documents affecting certain operations of agency

79. Ahpra also found the three documents to be conditionally exempt in full under s. 47E(d).

80. I found the three documents to be exempt in full under ss. 47E(a) and 47E(b). I therefore will not consider whether the three documents are also exempt under s. 47E(d).

Conclusion

81. Under s. 55K, I affirm Ahpra's internal review decision of 16 December 2021.

Richelle McCausland

National Health Practitioner Privacy Commissioner

Rights

Review rights

If a review party is not satisfied with the Commissioner's review decision, the party may apply to a relevant tribunal to have the decision reviewed. An application must be made within 28 days after the day the party receives the Commissioner's decision.

Where an application for a review is made to the relevant tribunal, the proper respondent to such a proceeding is the agency to whom the freedom of information request was initially made (not the Commissioner). In this case, the respondent is Ahpra.²⁸

Appeal rights

A review party may appeal to the Supreme Court on a question of law from a decision of the Commissioner if the party believes the Commissioner incorrectly interpreted and applied the FOI Act.

An appeal must be made either:

- within 28 days after the day a review party receives the Commissioner's review decision
- within further time that the Supreme Court or another appropriate court allows
- in any way that is prescribed by rules of court made under the relevant legislation of the Supreme Court or another appropriate court.

In determining a question of law, the Supreme Court may make findings of fact if its findings of fact are not inconsistent with findings of fact made by the Commissioner (other than findings resulting from an error of law), and it appears to be convenient for the Supreme Court.

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²⁸ s. 60(3).