

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



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

Applicant	'AM'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/01942023
Decision date	15 April 2024
FOI request	FREEDOM OF INFORMATION – Whether documents contain deliberative matter prepared for a deliberative purpose – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether it is contrary to the public interest to release conditionally exempt documents – Freedom of Information Act 1982 ss. 47C and 47E(d)

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 decision of 1 February 2023.

Background

2. The Applicant is a medical practitioner.
3. The Medical Board of Australia (the Board) has responsibilities relating to the regulation of medical practitioners. Ahpra provides administrative assistance and support to the Board in exercising its functions.
4. On 22 December 2020, following a number of notifications made to the Board about the Applicant, the Board took action under s. 156 of the Health Practitioner Regulation National Law Act 2009 (as it applies in each State and Territory) (the National Law) against the Applicant by way of accepting an undertaking from them.
5. On 12 July 2022 the Board considered an agenda paper regarding the Applicant's alleged non-compliance with the undertaking.

6. On 25 January 2023 the Applicant applied to Ahpra under the FOI Act for access to:
...the agenda paper regarding the compliance of [their] conditions given to the WA Board of the Medical Board on 12 July 2022.
7. Ahpra identified one document relevant to the request, namely an Ahpra compliance agenda paper. On 1 February 2023 Ahpra made a decision to exempt the document in full under ss. 47C and 47E(d).
8. On 7 February 2023 the Applicant sought a review of Ahpra's decision under s. 54L.

Scope of the review

9. The issues I have decided in this review are:
 - whether the document that Ahpra found to be exempt under s. 47C is conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest
 - whether the document that Ahpra found to be exempt under s. 47E(d) is conditionally exempt under the provision, and if so, whether giving access would be contrary to the public interest.
10. 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 any information from any person, make any inquiries that I consider appropriate, and change the basis on which the decision is made.²
11. The Applicant and Ahpra were invited to make a written submission about the review of Ahpra's decision. I have considered all relevant communications and submissions received from both the Applicant and Ahpra.
12. 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 applied to the document

Section 47C: Document subject to deliberative processes

13. A document is conditionally exempt under s. 47C if its disclosure would disclose deliberative matter in the nature of, or relating to, either:
 - an opinion, advice or recommendation that has been obtained, prepared or recorded
 - a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister.

¹ s. 55D(1).

² ss. 55 and 55K.

³ s. 3(1).

14. The main requirements of this conditional exemption are that:
- the document contains or relates to ‘deliberative matter’⁴
 - the document was prepared for a ‘deliberative purpose’⁵
 - the document contains material that is not ‘purely factual’ or non-deliberative⁶
 - it would be contrary to the public interest to give access at the time of the decision.⁷
15. The term ‘deliberative matter’ is a shorthand term for opinion, advice, recommendation, consultation and deliberation that is recorded or reflected in a document.⁸
16. In the Administrative Appeals Tribunal (AAT) decision of *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945, Deputy President Forgie explained that:
- ...the meanings of the words ‘opinion’, ‘advice’ and ‘recommendation’ all involve consideration, followed by the formation of a view either about a certain subject or about a course of action and the subsequent transmission of that view.⁹
17. The Office of the Australian Information Commissioner’s FOI Guidelines (FOI Guidelines) explain that a ‘deliberative process’ generally refers to:
- the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.¹⁰

Ahpra’s submissions

18. In its decision of 1 February 2023 Ahpra said:

The National Law establishes the ... Board ... as one of the responsible entities for the regulation of each of the 16 different health professions that fall within the jurisdiction of the National Law. It also provides a process for the receipt, assessment and investigation of notifications of health, performance and/or conduct concerns [regarding] registered health practitioners.

Ahpra provides administrative assistance and support to the Board in exercising their functions under the National Law. Amongst other things, Ahpra (on behalf of the Board) manages investigations into the health, professional conduct and/or performance of registered health practitioners including monitoring compliance with restrictions.

...The relevant information relates to Ahpra officers’ preliminary internal advice, opinions and recommendations generated as part of Ahpra’s functions in preparing material for consideration by the Medical Board of Australia.

⁴ s. 47C(1).

⁵ Ibid.

⁶ s. 47C(2).

⁷ *Parnell and Attorney-General’s Department* [2014] AiCmr71, [38].

⁸ *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945 [39].

⁹ *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945 [39].

¹⁰ FOI Guidelines, [6.59].

19. During the review Ahpra further submitted:

The document identified was prepared by Ahpra and contains advice and recommendations to be considered by the Board and information which discloses deliberations (including preliminary assessments) by Ahpra, in the course of, and for the purposes of, deciding whether or not to take relevant action under the ... National Law ... against the Applicant ... in breach of [their] Ahpra undertaking in September 2021. Ahpra is satisfied that disclosure of the document would disclose deliberative matter in the nature of, and relating to, advice and recommendations that were prepared, and deliberation that has taken place, in the course of, or for the purposes of the deliberative processes involved in the functions of Ahpra and the Board under the National Law.

The deliberative material identified does not contain operational information (as defined in section 8A) or purely factual material. To the extent the information is of a factual nature, such information is an integral part of the deliberative content and purpose of the document or is otherwise so embedded in or intertwined with the deliberative content such that it is impracticable to separate it. The deliberative material also does not include reports of scientific or technical experts, reports of a prescribed body or organisation, or the record or reasons for a final decision given in the exercise of a power or adjudicative function.

Applicant's submissions

20. In their application for review the Applicant submitted:

The agency [Ahpra] has proved to be incompetent and inefficient in all my dealings with them. The FOI may cast some light into the reasons behind their harsh treatment of my case. Hopefully something meaningful might emerge from this information to restore confidence in the Agency.

21. During the review the Applicant further submitted:

Doctors are leaving General practice [sic] in droves. One of the reasons given is the fear of receiving notifications from Ahpra and the Board. It appears that the Board does not issue as many notifications to specialists. My case highlights their fears are justified and the public (including my patients) should be informed of the real reasons the Board issues and revokes notifications...

As I have suffered greatly for seemingly no apparent reasons, I believe the Board should, at the very least, provide an explanation that is likely to be in the compliance report...

It is time that the Board's deliberations are made public especially if there might be influence from a breach of the Privacy Act, denial of procedural fairness, and opaqueness at a time when the public requires transparency to restore its [sic] faith in the integrity of public officials...

Application of the deliberative processes exemption

22. I am of the view that the document contains deliberative matter in the form of opinion, advice and recommendation prepared by Ahpra for consideration by the Board, in the course of, and for the purpose of, monitoring a health practitioner's compliance with restrictions on their registration that arose in the context of investigations into the health, conduct and/or performance of the registered health practitioner.

23. While I am of the view that the document contains deliberative matter, I also acknowledge that it may contain information that could be considered to be non-deliberative in nature. However, I consider

that any non-deliberative matter would be an integral part of the deliberative process for which the document was prepared.

24. In the case of *Hassan v Australia Health Practitioner Regulation Agency* [2014] QCAT 414 (Hassan), the Queensland Civil and Administrative Tribunal (QCAT) found an investigation report and other documents to be exempt under the former s. 36 (internal working documents exemption). This exemption provided that an exempt document is a document that would disclose matter in the nature of or relating to opinion, advice, recommendation, consultation or deliberation occurring or recorded as part of the deliberative processes involved in the functions of an agency and release would be contrary to the public interest.
25. In *Hassan*, the applicant was a registered medical practitioner whose conduct had been investigated after a number of complaints were received. The investigation was undertaken by the then Health Quality Complaints Commissioner, who ultimately referred the matter to the Medical Board of Queensland (which subsequently became the Board). The applicant sought documents related to the investigation of his conduct, including an investigation report prepared by an investigation officer for consideration by a committee of the Board. It contained an analysis of the evidence by the applicant and other factual information, as well as the investigator's findings and recommendations. In finding the document to be exempt, the QCAT stated:

...The investigator's findings are not the Committee's findings and it is up to the Committee to come to its own conclusions about the investigation. Similarly, the recommendation made by the investigator does not necessarily have to be adopted by the Committee it is a matter for it to consider with all of the other relevant information.¹¹
26. In the case of *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2013) (Hanes), the Victorian Civil and Administrative Tribunal (VCAT) noted the tribunal had on many occasions found documents exempt under the internal working documents exemption when they concerned the investigation of a complaint.
27. In this matter, the Applicant is seeking a document that was generated by Ahpra for the purpose of the Board's investigation and compliance functions in relation to registered health practitioners. Accordingly, I am satisfied that the document is conditionally exempt under s. 47C.
28. I am now required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt document at this time.

Section 11A(5): The public interest test

29. 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.
30. 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

¹¹ At [23].

access to the document, at the time of the decision would, on balance, be contrary to the public interest.¹²

Factors favouring disclosure

31. The FOI Act provides public interest factors to be considered, including that disclosure would:
- promote the objects of the FOI Act (including all the matters set out in ss. 3 and 3A)
 - inform debate on a matter of public importance
 - promote effective oversight of public expenditure
 - allow a person access to his or her personal information.¹³
32. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.¹⁴
33. In forming its decision, Ahpra considered the following factors were in favour of disclosure:
- promoting the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities
 - facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the agency (including investigation processes of Ahpra and the Board)
 - revealing information that informed a decision-making process
 - allowing a person to access their personal information, or information relating to matters that otherwise concern them.
34. I agree that these public interest factors favour disclosure, although they 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

35. Ahpra put forward the following factors against disclosure:
- the public interest in protecting and maintaining the integrity of Ahpra's investigative processes. Ahpra's ability to receive, assess and investigate notifications in respect of the health, performance and/or conduct of registered health practitioners is integral to the maintenance and enforcement of the National Law. There is a strong public interest in ensuring proper processes for consumer protection,¹⁵ and that only suitable practitioners in various fields of the health profession can provide services to the public.¹⁶
 - that disclosure could reasonably be expected to prejudice the conduct of future monitoring of compliance, by discouraging staff from keeping complete records of their deliberations,¹⁷ or being

¹² *Seven Network (Operations) Limited and Australian Competition and Consumer Commission (Freedom of information)* [2019] AICmr 29 (6 June 2019), [47].

¹³ s.11B(3).

¹⁴ FOI Guidelines [6.19].

¹⁵ See *Ah Teo v Pacific Media Group* [2016] VSC 626 at [30].

¹⁶ See *Hanes v Ahpra* [2013] VCAT 1270 at [67] quoting *Hulls and Victorian Casino and Gaming Authority* (1998) 12 VAR 483.

¹⁷ See *Hanes* at [30].

more circumspect in their preliminary findings that are expressed to Ahpra and the Board because of public scrutiny¹⁸

- that disclosure of an officer's preliminary analysis, before it has been considered and tested, may generally undermine confidence in the health regulation system and health practitioners.
36. Ahpra referred to *Ah Teo v Pacific Media Group* [2016] VSC 626. This case was in a different context where the Supreme Court of Victoria was considering whether to release parties in defamation proceedings from their 'Harman Undertaking' with respect to documents generated for the investigation and prosecution of a complaint against a health practitioner. The Court noted how the processes carried out by the Board are subject to a variety of confidentiality protections under the National Law and the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) and were subject to a greater public interest. In that case, the Court was not persuaded that the defendant to the defamation proceedings, a media outlet, had identified special circumstances justifying the release of the documents from the Harman Undertaking.
37. Ahpra also referred to Hanes. In that case, the VCAT accepted Ahpra's submissions that disclosure of the relevant material would be contrary to the public interest.¹⁹ It noted the following public interests in particular:
- a) Protecting and maintaining the integrity of its investigative processes in relation to notifications. Importantly, the notification in investigation procedures exist to protect the public in ensuring that only suitable practitioners in various fields of the health profession are able to provide services to the public...
 - d) Ensuring that advice, opinion and recommendations made in the course of the investigative process can be expressed directly and recorded;
 - e) Avoiding the risk of mischief, misinterpretation and re-agitation of issues already determined that might result from the release of the documents.
38. The VCAT noted how disclosure would make investigations more difficult and the broad public interest which centres around Ahpra's role in protecting the public. I consider these to be persuasive points.
39. Ahpra also referred to Hassan. In circumstances where the investigator's findings and recommendations were not the Committee's findings or decision and it was up to the Committee to come to its own conclusions about the investigation with all of the other relevant information, the QCAT found it would be contrary to the public interest to disclose the investigation documents.

Balancing the public interest factors for and against disclosure

40. In balancing the public interest in this case, I have considered the factors for and against disclosure, including relevant factors favouring disclosure set out in s. 11B(3). In particular, I consider that releasing the relevant document would promote the objects of the FOI Act by:
- facilitating access to documents generally
 - facilitating access to information that allows individuals to be satisfied that proper processes have been followed

¹⁸ See *Hassan v Ahpra* [2014] QCAT 414 at [26].

¹⁹ Hanes, [67].

- revealing information that informed a decision-making process
 - allowing a person to access their personal information or information relating to matters that otherwise concern them.
41. The factors against disclosure include the public interest in protecting and maintaining the integrity of Ahpra and the Board’s processes for monitoring a health practitioner’s compliance with restrictions on their registration. There is also a strong public interest in Ahpra and the Board being able to carry out their statutory functions as efficiently and effectively as possible.
42. While I acknowledge the Applicant’s interest in obtaining access to the document, I accept there is a stronger public interest in Ahpra and the Board’s ability to perform their functions in a way that is consistent with their statutory duties and the legislative framework.
43. I am satisfied that giving the Applicant access to the conditionally exempt material at this time would, on balance, be contrary to the public interest.

Finding

44. I am satisfied that the document is exempt in full under s. 47C.

Section 47E(d): Document affecting certain operations of agencies

45. A document is conditionally exempt under s. 47E(d) if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.²⁰
46. The FOI Guidelines 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 document were to be released.²¹
47. The FOI Guidelines further explain that the term ‘substantial adverse effect’ broadly means ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person’.²² The word ‘substantial’, taken in the context of substantial loss or damage, has been interpreted as ‘loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal’.²³
48. A decision-maker should clearly describe the expected effect and its impact on usual operations or activities in the statement of reasons.²⁴

Ahpra’s operations

49. Under the National Law, the Board’s functions include:
- registering suitably qualified and competent persons in the health profession and, if necessary, imposing conditions on the registration of persons in the profession

²⁰ s.47E(d).

²¹ FOI Guidelines [6.101]-[6.103]

²² FOI Guidelines [5.20].

²³ FOI Guidelines [5.20].

²⁴ FOI Guidelines [5.21].

- overseeing the receipt, assessment and investigation of notifications about persons who are or were registered as health practitioners under the National Law
 - overseeing the management of health practitioners and students registered in the health profession, including monitoring conditions, undertakings and suspensions imposed on the registration of practitioners or students.²⁵
50. Ahpra supports the Board by collecting and assessing relevant information. Ahpra then provides this information to the Board and the Board is the regulatory decision-maker.
51. Under the National Law, all ‘protected information’ must be treated confidentially, subject to specific exceptions.²⁶ ‘Protected information’ means any information that comes to a person’s knowledge in the course of, or because of, the person exercising functions under the National Law. An exception arises where the disclosure is with the agreement of the person to whom the information relates.²⁷

Ahpra’s submissions

52. In its decision of 1 February 2023 Ahpra said:

Amongst other things, on behalf of the National Boards, Ahpra manages investigations into the professional conduct, performance or health of registered health practitioners, including monitoring their compliance with restrictions.

The document ... is an Ahpra agenda paper which consists of preliminary internal advice, opinions and recommendations prepared by Ahpra officers as part of the deliberative processes of Ahpra and the Medical Board of Australia.

I am satisfied that disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Ahpra and the National Boards for the following reasons:

- The FOI Act does not restrict the subsequent use of information released to an applicant under the FOI Act. In Australia there is case law relating to disclosure of information under the FOI Act, for example, the Administrative Appeals Tribunal (AAT) has stated that ‘access to a document under the FOI Act must be considered not on the basis of the identify and the qualities of the person who seeks that access but on the basis that it may be seen by anybody. As it is usually expressed, access under the FOI Act, is access to the world at large’.²⁸
- There is an expectation that deliberative material prepared by Ahpra officers is used only for the purposes of guiding recommendation and not forming the basis of recommendation itself. Ahpra staff may be discouraged from keeping complete records of their deliberations or being more circumspect in their preliminary findings that are expressed to other officers or the National Boards because of public scrutiny. This would in turn have a severe adverse effect on the ability of Ahpra to conduct investigations. The maintenance of confidentiality over deliberative documents and communications is essential to ensure that staff are able to

²⁵ National Law, s. 35.

²⁶ National Law, s.216.

²⁷ National Law, s.216(2)(d).

²⁸ *Meschino and Centrelink* [2002] AATA 627 at [23].

thoroughly discuss and deliberate on relevant issues in order to provide robust and defensible information to the decision makers.

- As it is a core function of Ahpra under the National Law to regulate health professionals, damage to Ahpra's ability to properly and efficiently conduct such regulation would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

53. During the review Ahpra further submitted:

If the relevant document was provided to the Applicant, it would disclose information about Ahpra's investigative processes, and the steps taken to monitor the practitioner's compliance with the undertaking [they] made previously to the Board. If detailed information about the Board's process for detecting noncompliance was provided to a person being monitored for compliance it may provide them with an opportunity to understand the methods being used for information gathering and deliberation in a manner which may provide opportunities for undetected non-compliance in the future. The circumstances of this FOI application can therefore be distinguished from similar applications a practitioner may make for agenda papers in relation to regulatory decisions following a notifications process, but where that decision has not led to a further monitoring and compliance process.

Applicant's submissions

54. In their application for review, the Applicant stated:

I have lost confidence in Ahpra officers as they have behaved unprofessionally...

55. As outlined earlier in paragraph [21], the Applicant further submitted during the review that the document should not be exempt because of four main reasons, including due to a denial of procedural fairness and the public interest.

Application of the certain operations of agencies exemption

56. I am of the view that the document was created in line with Ahpra and the Board's functions under the National Law, namely to oversee the management of health practitioners, including by monitoring conditions, undertakings and suspensions imposed on the registration of the practitioners.

57. There are two cases of note that considered the operation of the former s. 40(1)(d) of the FOI Act. This former section of the FOI Act is similar to s. 47E(d) in that it exempted a document if its disclosure would, or could reasonably be expected to, have a substantial effect on the proper and efficient conduct of the operations of an agency unless, on balance, disclosure would be in the public interest.

58. In *Meschino and Centrelink* [2002] AATA 627, the AAT found this exemption applied to a document known as the 'CRAM Report'. CRAM reports were created specifically for audit purposes to identify who was accessing Centrelink records, and were constantly run by Centrelink's investigation team to check for fraudulent behaviour. The concern in this case was that disclosure of CRAM reports would compromise investigations as it could identify access had occurred, leading to anyone behaving fraudulently adapting their behaviour. The AAT accepted those concerns and found that the value of CRAM reports would be substantially compromised as a result of disclosure, which would lead to a substantial adverse effect on the proper and efficient conduct of Centrelink's operations. This outweighed the benefit the applicant felt they would gain by being able to see the investigation team had checked their file and taken action in relation to their complaints.

59. In *Hanes*, in addition to applying the internal working documents exemption, the VCAT also applied s. 40(1)(d). For example, the VCAT found a note made by an officer of PRBV gathering information from a potential witness during the investigation process was exempt under s. 40(1)(d).
60. Further, as outlined in my decisions of ‘AA’ ‘AC’, ‘AD’, ‘AE’, ‘AF’, ‘AG’, ‘AI’, ‘JH’ and ‘MS’, the Australian Information Commissioner’s decision in *Graham Mahony and Australian Charities and Not-for-profits Commission (Freedom of information)* [2019] AICmr 64 (31 August 2019) is also relevant. In this case, the request was for access to all documents relevant to investigations conducted by the Australian Charities and Not-for profits Commission (ACNC) into concerns relating to a particular building fund. The Australian Information Commissioner affirmed the ACNC’s decision to exempt documents falling within the scope of the request. In discussing whether s. 47E(d) applied in that case, the Australian Information Commissioner stated:
- The fact that s. 150-25 of the Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act) protects information provided to or obtained by the ACNC under the ACNC Act from disclosure, leads me to be satisfied that the ACNC, as it contends, relies on sensitive information being provided to it on a voluntary basis and on the understanding that the information will not be disclosed to third parties. As the ACNC explained in its reasons for decision..., I accept that the rationale for this secrecy provision is to establish a regulatory regime where the ACNC can discharge its regulatory functions in an environment of trust and engagement with the not-for-profit sector.²⁹
61. While the duty of confidentiality under the National Law does not apply where the disclosure is with the agreement of the person to whom the information relates, I still consider that release of the document could prejudice the integrity and robustness of the investigation process and thereby have a substantial adverse effect on the proper and efficient conduct of the operations of Ahpra and the Board.
62. Accordingly, I am satisfied that the document is conditionally exempt under s. 47E(d).
63. I am now required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt material at this time.

Section 11A(5): The public interest test

Factors favouring disclosure

64. I consider paragraph [33] to be of particular relevance here.
65. I agree that disclosure of the document would:
- promote the objects of the FOI Act
 - facilitate access to information that allows individuals to be satisfied that proper processes have been followed
 - reveal information that informed a decision-making process

²⁹ *Graham Mahony and Australian Charities and Not-for-profits Commission (Freedom of information)* [2019] AICmr 64 (31 August 2019), [22].

- allow a person to access their personal information or information relating to matters that otherwise concern them.

Factors against disclosure

66. Paragraphs [35] to [39] set out relevant factors against disclosure.
67. In particular, I consider there is a strong public interest in protecting and maintaining the integrity of Ahpra and the Board's investigative processes, and avoiding re-agitation of issues already determined. Disclosure of the document could have a significant adverse impact on the integrity and robustness of investigation and compliance processes, and the ability of Ahpra and the Board to carry out their functions and duties in an effective manner.

Balancing the public interest factors for and against disclosure

68. The proper and efficient management and investigation of health practitioners is an integral function of Ahpra and the Board under the National Law. It would be contrary to the public interest if these processes (and by extension, the core function to ensure the protection of the health and safety of the public) were prejudiced as a result of the disclosure of the document under the FOI Act. Based on the available information, I am satisfied that the public interest factors against disclosure outweigh those in favour of disclosure.
69. I am satisfied that giving the Applicant access to the conditionally exempt material at this time would, on balance, be contrary to the public interest.

Finding

70. I am satisfied that the document is exempt in full under s.47E(d).

Conclusion

71. I affirm Ahpra's decision of 1 February 2023.

Richelle McCausland

National Health Practitioner Privacy Commissioner

Rights

Review rights

If a review party is not satisfied with a review decision of the NHPO, the party may apply to a relevant tribunal to have the decision reviewed. This application must be made within 28 days after the day the party receives the Commissioner's decision.³⁰

³⁰ s. 57A.

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.³¹

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 NHPO's review decision, or
- within further time that the Supreme Court or another appropriate court allows, and
- 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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³¹ s. 60(3).