

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



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

| | |
|------------------|--|
| Applicant | 'AO' |
| Respondent | Australian Health Practitioner Regulation Agency (Ahpra) |
| Reference number | NHPO/14782023 |
| Decision date | 26 November 2024 |
| Catchwords | FREEDOM OF INFORMATION – Whether documents contain irrelevant matter – Whether documents contain deliberative matter prepared for a deliberative purpose – Whether disclosure would have a substantial adverse effect on the management or assessment of personnel – Whether it is contrary to the public interest to release conditionally exempt documents – Freedom of Information Act 1982 ss. 22, 47C, 47E(d), 47F and 47E(c) |

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 7 September 2023.

Background

2. The Applicant made a notification to Ahpra and the Medical Board of Australia (the Medical Board) about a medical practitioner (the Practitioner).
3. The Medical Board decided to take no further action in relation to the notification.
4. The Applicant made a request to Ahpra for access to:
'all documents absolutely in relation to the decision of the 29 June 2023. But not limited to diary notes, internal memos, emails, facsimiles (excluding the practitioner's submissions) and correspondence'.
5. In its decision letter dated 7 September 2023, Ahpra identified three documents that fell within the scope of the Applicant's request, being the:

- Assessment Report for the notification (document one). Ahpra decided to exempt document one from release in full under ss. 47C, 47E(d) and 47F
 - Attachments to the Assessment Report for the notification (document two). Ahpra decided to release document two document to the Applicant with irrelevant information removed under s. 22
 - Decisions and Actions paper for the notification (document three). Ahpra decided to exempt document three from release in part under s. 47E(c).
6. On 19 September 2023, the Applicant sought a review of Ahpra’s decision under s. 54L.

Scope of the review

7. The issues I have decided in this review are:
- whether the information Ahpra found to be partially exempt under s. 22 is exempt under that provision
 - whether the document 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 information Ahpra found to be exempt under s. 47E(c) is conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest
 - whether the document Ahpra found to be exempt under s. 47E(d) is conditionally exempt under that provision, and if so, whether releasing the document would be contrary to the public interest
 - whether the document Ahpra found to be exempt under s. 47F is conditionally exempt under that provision, and if so, whether releasing the document would be contrary to the public interest.
8. Where I have found one exemption applies to the document, I have not considered whether any additional exemptions also apply.
9. 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
10. The Applicant and Ahpra were invited to make written submissions about this review. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
11. 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

¹ s. 55D(1).

² ss. 55 and 55K.

³ s. 3(1).

Review of the exemptions

Section 22: Deleting irrelevant content from a document

12. Ahpra found certain information in document two to be irrelevant to the Applicant's request. Ahpra released an edited copy of document two with this information removed.
13. Section 22 provides that an agency may prepare an edited copy of a document by deleting information 'that would reasonably be regarded as irrelevant to the request for access'.⁴ The implicit purpose of s. 22 is to facilitate efficient FOI processing through the deletion of material that can readily be deleted, and that an applicant has either agreed, or is likely to agree, is irrelevant.⁵
14. The Office of the Australian Information Commissioner's FOI Guidelines (FOI Guidelines) explain that an FOI request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used.⁶ Consideration should be given to consulting with the applicant before deciding to edit a document to delete irrelevant content.⁷

Ahpra's submissions

15. During the review, Ahpra submitted that:

...The material removed from [document two] in accordance with section 22 of the FOI Act is reasonably regarded as irrelevant as it is information that the applicant expressly excluded from the scope of this request (namely, practitioner submissions).

The Applicant's submissions

16. The Applicant did not make any submissions specifically relevant to the application of s. 22.

Application of the provision for deleting irrelevant content

17. I have examined an unedited copy of document two. I found the information Ahpra decided was irrelevant to the request can be categorised as the Practitioner's response to the notification made by the Applicant.
18. The Applicant's request to Ahpra was explicitly "excluding the practitioner's submissions". Given this, I am satisfied this information would not reasonably be regarded as falling within the scope of the Applicant's request.

Finding

19. The Practitioner's response to the notification made by the Applicant in document two is irrelevant to the Applicant's request. Therefore, I am satisfied that the information Ahpra deleted from document two is irrelevant under s. 22.

⁴ s. 22.

⁵ *FM and Department of Foreign Affairs and Trade* [2015] AICmr 31, [15].

⁶ FOI Guidelines, [3.54].

⁷ *Ibid*, [3.99].

Section 47C: Documents subject to deliberative processes

20. Ahpra found document one to be conditionally exempt in full under s. 47C.
21. 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.⁸
22. The term ‘deliberative matter’ is a shorthand term for opinion, advice, recommendation, consultation and deliberation that is recorded or reflected in a document.⁹
23. The main requirements of this conditional exemption are that:
- the document contains or relates to ‘deliberative matter’¹⁰
 - the document was prepared for a ‘deliberative purpose’¹¹
 - the document contains material that is not ‘purely factual’ or non-deliberative¹²
 - it would be contrary to the public interest to give access at the time of the decision.¹³
24. In the Administrative Appeals Tribunal 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.¹⁴
25. The 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.¹⁵

Ahpra’s submissions

26. In its decision of 7 September 2023, Ahpra said:
- ...I find that the information exempt under section 47C would, if disclosed, disclose opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the deliberative processes of Ahpra and the Board. This claim is made in respect of the assessment report prepared by the Ahpra officer for the Board in the course of Ahpra’s

⁸ s. 47C(1).

⁹ *Parnell & Dreyfus and Attorney-General’s Department* [2014] AICmr71, [38].

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² s. 47C(2).

¹³ s. 11A(5).

¹⁴ *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945, [39].

¹⁵ FOI Guidelines, [6.54].

management of the notification [the Applicant] raised. Specifically, the information relates to risk assessment, opinion and recommendation generated as part of the agency's functions in preparing material for assessment by the Board as statutory decision makers.

The deliberative material I have identified does not contain operational information (as defined in section 8A). To the extent that the documents may contain purely factual information, such information is so connected to the deliberative nature of the document that its separation would not be practicable. The information does not include reports of scientific or technical experts, reports of a prescribed body or organization, or the record or reasons for a final decision given in the exercise of a power or adjudicative function.

I note that the National Health Practitioner Privacy Commissioner (the Commissioner) in its review decision of *'AC' and Ahpra (FOI)*, considered the case of *Crowe and Department of Prime Minister and Cabinet* at [39]. In the case of *Crowe*, the Australian Information Commissioner (the AIC) stated that:

“many sentences in the IGB [Incoming Government Brief] that mirror comments that are already in the public domain or that could individually be released without consequence. However, as I noted in *Parnell & Dreyfus* at [82], the confidentiality that attaches to deliberative content in an IGB has less to do with the character of individual sentences or comments, and more to do with their inclusion in a document of a special nature.”

I consider that the nature of an Ahpra assessment report is inherently deliberative in the context of its agency operations, such that they are a class of document of a 'special nature' within the meaning contemplated by *Crowe*. The nature of the document subject to the current FOI application cannot be distinguished in substance from that considered by the Commissioner in *'AC' and Ahpra*.

The Applicant's submissions

27. During the review, the Applicant submitted in relation to document one:

Please see Section 33 Acts Interpretation Act 1901 (Cth)...Ahpra will need to confirm first that a report pursuant to Section 166 of the National Law was not provided to the National Board then this is incontrovertible [sic] evidence of fraud.

Application of the deliberative processes' exemption

28. I am of the view that document one contains deliberative matter in the form of opinion, advice, recommendation, consultation and deliberation in relation to the functions of Ahpra and the Medical Board under the Health Practitioner Regulation National Law (the National Law).
29. While I am of the view that document one contains deliberative matter, I also acknowledge that document one contains information that is 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.
30. In the case of *Hassan v Australian 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 function of an agency and release would be contrary to the public interest.

31. 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 Medical Board). The applicant in that case sought documents related to the investigation of their conduct, including an investigation report prepared by an investigation officer for consideration by a committee of the Board. It contained an analysis of evidence 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 conclusion 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 information.

32. In the case of *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2023) (*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.
33. Considering the nature of document one as a report relating to the assessment of a notification and containing recommendations for the Medical Board's consideration, I am satisfied that it is conditionally exempt under s. 47C.
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 document at 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.¹⁶
36. In *Seven Network (Operations) Limited and Australian Competition and Consumer Commission (Freedom of Information)* [2019] AICmr 29 (6 June 2019) (*Seven Network*), 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.¹⁷

¹⁶ s. 11A(5).

¹⁷ *Seven Network (Operation) Limited and Australian Competition and Consumer Commission (freedom of Information)* [2019] AICmr 29 (6 June 2019, [47]).

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)
 - inform debate on a matter of public importance
 - promote effective oversight of public expenditure
 - allow a person access to his or her personal information.¹⁸
38. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.¹⁹
39. In forming its decision, Ahpra considered the following factors in favour of disclosure:
- promoting the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities²⁰
 - facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the agency
 - allowing a person to access their personal information, or information relating to matters that otherwise concern them.
40. I agree that disclosure of document one would promote the objects of the FOI Act and reveal information that informed a decision-making process, which may in turn improve the quality of advice and decision-making processes of Ahpra and the Medical Board.
41. While I agree there are public interest factors that favour disclosure of document one, 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

42. Ahpra put forward the following factors against disclosure:
- the public interest in protecting and maintaining the integrity of Ahpra and the Board's 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,²¹ and that only suitable practitioners in various fields of the health profession are able to provide services to the public²²
 - the public interest in Ahpra and the National Boards being able to carry out their statutory functions as efficiently and effectively as possible. Disclosure of the conditionally exempt documents could reasonably be expected to deter health practitioners from disclosing key information in response to a notification, despite it being relevant to Ahpra's evaluation of the

¹⁸ s. 11B(3).

¹⁹ FOI Guidelines, [6.231].

²⁰ s. 3(2)(b).

²¹ *Ah Teo v Pacific Media Group* [2016] VSC 626 [30].

²² Hanes quoting *Hulls and Victorian Casino and Gaming Authority* (1998) 12 VAR 483.

notification, and a Board's decision about what action is required.²³ This would have a significant adverse impact on the integrity and robustness of Ahpra's regulatory processes, and the ability of Ahpra and the National Boards to carry out their functions and duties in an effective manner

- that disclosure could reasonably be expected to prejudice the conduct of future notifications, by discouraging staff from keeping detailed records of their deliberations,²⁴ or being more circumspect in their preliminary findings that are expressed to the Board because of public scrutiny.²⁵

43. The Hanes decision is also relevant when considering factors against disclosure. In that case, the Tribunal accepted Ahpra's submissions that disclosure of the relevant material would be contrary to the public interest. Ahpra's submissions included that there is a public interest in protecting and maintaining the integrity of its investigative processes in relation to notifications and in ensuring its ability to investigate notifications is not hampered by the disclosure of confidential information.
44. In Hanes, the Tribunal noted how disclosure of information relating to notifications would make investigations more difficult and suggested that the broad public interest centres around Ahpra's role in protecting the public in terms of regulating the provision of medical services. I consider this to be a persuasive point.

Balancing the public interest factors for and against disclosure

45. In balancing the public 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 document one would promote the objects of the FOI Act by facilitating access to documents generally, as well as facilitating access to information that allows individuals to be satisfied that proper processes have been followed, revealing information that informed a decision-making process, and allowing a person to access information relating to matters that concern them.
46. The factors against disclosure include the public interest in protecting and maintaining the integrity of Ahpra and the Medical Board's processes for receiving, assessing and investigating notifications in respect of the health, performance and/or conduct of registered health practitioners. There is a strong public interest in Ahpra and the Medical Board being able to carry out their statutory function as efficiently and effectively as possible.
47. I also note that the National Law creates a reasonable expectation of confidentiality over the communications and documents relevant to the assessment and investigation of notifications. I acknowledge that the deliberate matter in the form of opinions, advice, preliminary findings and recommendations to the Medical Board are made on the understanding that they will be treated confidentially and will only be used to assist the Medical Board in undertaking its functions under the National Law.
48. While I acknowledge the Applicant's interest in obtaining access to document one, I accept there is a stronger public interest in Ahpra and the Medical Board's ability to perform their functions in a way that is consistent with their statutory duties and legislative framework.

²³ *YJI v Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [76]

²⁴ Hanes, [30].

²⁵ Hassan, [26].

49. I am satisfied that giving the Applicant access to the confidentiality exempt material at this time would, on balance, be contrary to the public interest.

Finding

50. I am satisfied that document one is exempt in full under s. 47C.

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

51. I found document one to be conditionally exempt in full under s. 47C. I therefore will not consider whether document one is also exempt under s. 47E(d).

Section 47F: Documents affecting personal privacy

52. I found document one to be conditionally exempt in full under s. 47C. I therefore will not consider whether document one is also exempt under s. 47F.

Section 47E(c): Documents affecting management and assessment of personnel

53. Ahpra found document three to be conditionally exempt in part under s. 47E(c) to the extent it revealed the names and roles of Ahpra officers and members of the Medical Board.

54. A document is conditionally exempt under s. 47E(c) if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

55. 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.²⁶ It also must arise from the disclosure of the document being assessed. In particular, the decision maker may need to consider the context of the document and the integrity of a system that may require the documents, such as witness statements required to investigate a workplace complaint.²⁷

56. 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'. 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'.²⁸

57. As an example, the FOI Guidelines note how the Administrative Appeals Tribunal (AAT) has accepted that candour is essential when an agency seeks to investigate staff complaints, especially those of bullying.²⁹

²⁶ FOI Guidelines, [6.15] and [6.104].

²⁷ Ibid, [6.105].

²⁸ Ibid, [6.18] and [6.104].

²⁹ Ibid, [6.106].

58. A decision-maker should clearly describe the expected effect and its impact on usual operations or activities in the statement of reasons.³⁰
59. The FOI Guidelines deal specifically with public servants and state that, in some circumstances, it may be appropriate to address concerns about the work health and safety impacts of disclosing public servants' personal information (such as names and contact details) under s. 47E(c), rather than s. 47F.³¹ In particular, the FOI Guidelines state:

An assessment conducted on a case-by-case basis, based on objective evidence, is required when considering whether it is appropriate to apply s 47E(c). The type of objective evidence needed to found a decision that disclosure of a public servant's personal information may pose a work health and safety risk will depend on all the circumstances. For example, the security risks to operational law enforcement and intelligence agencies, and to the employees of law enforcement and intelligence agencies more generally, will be well known to the agency based on experience and understanding of the operating environment. Some agencies will already be aware of, and have documented, abusive behaviour by individuals that will be sufficient evidence not to disclose the personal information of their staff to those individuals. That information may have informed a decision by an agency to impose communication restrictions on an individual to mitigate work health and safety risks. In some cases, a public servant may be able to provide evidence of online abuse or harassment. Additionally, self-report by an individual of their health and safety concerns should this information be disclosed may be sufficient.

Relevant factors to consider when deciding whether s 47E(c) applies to conditionally exempt the names and contact details of public servants include:

- the nature of the functions discharged by the agency
- the relationship between the individual public servant and the exercise of powers and functions discharged by the agency (i.e., are they a decision maker?)
- the personal circumstances of the individual public servant which may make them more vulnerable to, or at greater risk of, harm if their name and contact details are released, for example – due to family violence or mental health issues
- whether the relevant information is already publicly available
- whether the FOI applicant has a history of online abuse, trolling or insults
- any communication restrictions the agency has imposed upon the individual
- whether the FOI applicant has a history of harassment or abusing staff.³²

Ahpra's operations

60. Under the National Law, the Medical Board's functions include:
- to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession

³⁰ FOI Guidelines, [6.19] and [6.104].

³¹ Ibid, [6.109] and [6.151].

³² Ibid, [6.110] to [6.111].

- to oversee the receipt, assessment and investigation of notifications about persons who are or were registered as health practitioners under the National Law
 - to oversee the management of health practitioners and students registered in the health profession, including monitoring conditions, undertakings and suspensions imposed on the registration of the practitioners or students.³³
61. Ahpra supports the Medical Board by collecting and assessing relevant information. Ahpra then provides this information to the Medical Board and the Medical Board decides whether to take regulatory action.
62. Under the National Law, all ‘protected information’ must be treated confidentially, subject to specific exceptions.³⁴ ‘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.³⁵

Ahpra’s submissions

63. In its decision dated 7 September 2023, Ahpra said:

...The information in the FOI documents that I have found to be conditionally exempt from disclosure under section 47E(c) are names of Ahpra staff and Board members who attended a meeting of the Medical Board in which the notification decision was made.

Ahpra and the [Medical] Board retain and manage staff incidentally to the fulfilment of its regulatory functions under the National Law. In managing its staff, Ahpra has a legal responsibility to ensure the health and safety of its workforce. Section 19 of the *Work Health and Safety Act 2011* requires employers to ensure, as far as is reasonably practicable, the health and safety of their workers, including by eliminating risks to health and safety so far as is reasonably practicable to do so, or to otherwise minimise those risks where elimination is not reasonably practicable.

Disclosure of staff information in the present circumstances could reasonably be expected to expose those staff to a workplace health and safety risk, by enabling them to be inappropriately contacted or made the subject of unfair communication outside of accepted channels and processes. In circumstances where there already exists a pattern of unreasonable and persistent contact, I consider that the risk of harm to Ahpra’s workplace health and safety is real and not fanciful.

On this basis, I consider that disclosure could reasonably be expected to adversely affect Ahpra and the National Boards’ management of staff and it is my view that this adverse effect is serious and not insubstantial. I therefore find the relevant information to be conditionally exempt under section 47E(c) of the FOI Act.

The Applicant’s submissions

64. During the review, the Applicant submitted:

³³ National Law, s. 35.

³⁴ National Law, s. 216.

³⁵ Ibid, s. 216(2)(d).

...Please provide the persons [sic] name in the mere communication...as I need to show who contravened Section 7 & 8 of the Criminal Code 1899.

Application of the agency operations conditional exemption

65. As noted above, the FOI Guidelines deal with the application of s. 47E(c) to the personal information of public servants. In particular, they state that it may be appropriate to address concerns about work health and safety impacts under s. 47E(c). The FOI Guidelines note how relevant factors include whether the FOI applicant has a history of online abuse, trolling or insults, whether they are subject to any communication restrictions and whether they have a history of harassment or abusing staff.³⁶
66. In *Bachelard and Australian Federal Police (Freedom of Information)* [2024] AATA 312, the AAT applied s. 47E(c) to information in statements and a Professional Standards Report, on the basis that, if released, it would have a real and material impact on appointees' willingness to participate fully and frankly in an investigative process. In particular, there would be an impact on the management of personnel and their discipline.
67. Here, there is evidence that the Applicant has engaged in harassment and other unreasonable behaviour. This includes the Applicant's persistent, unreasonable and inappropriate contact with Ahpra staff through email. I accept Ahpra's submissions that withholding the names of the staff and members of the Medical Board involved in the Applicant's notification is necessary to protect them from risk of unfair and inappropriate contact from the Applicant amounting to an occupational health and safety risk.
68. The Applicant's conduct towards Ahpra staff has been ongoing during the notifications and FOI processes, strongly indicating the risk of harm following disclosure can be reasonably expected. The effect on the management of personnel is clearly adverse and I am satisfied, on balance, the effect is substantial.
69. Accordingly, I am satisfied that the information is conditionally exempt under s. 47E(c).

Section 11A(5): The public interest test

Factors favouring disclosure

70. I consider paragraph [37] to be of particular relevance here.
71. I agree that disclosure of the exempted material in document three would:
 - promote the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of Ahpra's activities³⁷
 - facilitate access to information to members of the public that allows them to be satisfied that proper processes have been followed by an agency
 - allow a person to access information relating to matters that concern them.

³⁶ FOI Guidelines, [6.110] and [6.111]

³⁷ s. 3(2)(b).

Factors against disclosure

72. I consider paragraphs [42] to [44] are relevant here.
73. I agree there is a strong public interest in protecting and maintaining the integrity of Ahpra's investigative processes in relation to the health, conduct and performance of health practitioners.

Balancing the public interest factors

74. 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).
75. My consideration of these factors in paragraphs [45] and [46] are also relevant here.
76. While I acknowledge the Applicant's interest in obtaining access to the exempt information contained within document three, I accept there is a stronger public interest in Ahpra and the Medical Board's ability to perform their functions in a way that is consistent with their statutory duties and the legislative framework, and in a way consistent with work health and safety obligations. I am satisfied that disclosure of personal information about Ahpra officers in the present circumstances could reasonably be expected to expose those individuals to a workplace health and safety risk in circumstances where there already exists a pattern of unreasonable and persistent contact.
77. Based on the available information, I am satisfied that the public interest factors against disclosure outweigh those in favour of disclosure.
78. Therefore, 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

79. I am satisfied that the exempt information contained within document three is exempt under s. 47E(c).

Conclusion

80. Under s. 55K, I affirm Ahpra's decision of 7 September 2023.

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.³⁸

³⁸ 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.³⁹

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.

To receive this document in another format phone 1300 795 265, using the National Relay Service 13 36 77 if required, or email our FOI team <foi@nhpo.gov.au>.

Authorised and published by the National Health Practitioner Ombudsman, 50 Lonsdale St, Melbourne.

GPO Box 2630

Melbourne VIC 3001

Phone 1300 795 265

[Email](mailto:foi@nhpo.gov.au) National Health Practitioner Ombudsman <foi@nhpo.gov.au>

National Health Practitioner Ombudsman [website](http://www.nhpo.gov.au) <www.nhpo.gov.au>

© National Health Practitioner Ombudsman, Australia, November 2024.

³⁹ s. 60(3).