

'JH' and Australian Health Practitioner Regulation Agency (Freedom of Information) – 6 February 2020

Decision and reasons for decision of the National Health Practitioner Ombudsman and Privacy Commissioner

Applicant	'JH'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Decision date	6 February 2020
Reference number	OCF/19/136
FOI request	Applicant seeks access to a submission provided to Ahpra by a registered health practitioner in response to the applicant's notification about the practitioner's performance

Decision

1. Under section 55K of the Commonwealth *Freedom of Information Act 1982* (FOI Act), I vary the decision of the Australian Health Practitioner Regulation Agency (Ahpra) dated 1 February 2019. I find the document that Ahpra decided is exempt under sections 45, 47E(d) and 47F is exempt under sections 47E(d) and 47F of the FOI Act.

Background

2. The applicant made a notification to Ahpra and the Medical Board of Australia (the Board) about a medical practitioner. The Board decided to take no further action in relation to the notification and Ahpra communicated this decision to the applicant.
3. On 5 December 2018, the applicant applied to Ahpra under the FOI Act for access to the submission which the practitioner provided to Ahpra and the Board in response to the applicant's notification.
4. Ahpra identified one document relevant to the request: the practitioner's response to the applicant's notification. For convenience, I refer to this document as 'the document' throughout this decision.
5. On 1 February 2019, Ahpra communicated to the applicant its decision to fully exempt the document under sections 45, 47E(d) and 47F of the FOI Act.
6. On 5 March 2019, the applicant applied to my office, the office of the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC), under section 54L of the FOI Act for a review of Ahpra's decision.

Scope of the review

7. During the course of this review, Ahpra submitted to the NHPOPC that the document is fully exempt under sections 47E(d) and 47F of the FOI Act only.
8. In a review of an access refusal decision, the agency bears the onus of establishing that its decision is justified or that I should give a decision adverse to the applicant (section 55D(1) of the FOI Act). As Ahpra has not made submissions in relation to the document being exempt under section 45 of the FOI Act, this exemption is no longer at issue and I will not give this exemption any further consideration in this review.
9. Accordingly, the issues to be decided in this review are:
 - whether the document which Ahpra found to be exempt under section 47E(d) of the FOI Act is conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest (**Issue 1**)
 - whether the document which Ahpra found to be exempt under section 47F of the FOI Act is conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest (**Issue 2**).
10. In making my decision, I have had regard to the following:
 - the applicant's FOI review application and submissions to the NHPOPC regarding the review
 - Ahpra's decision dated 1 February 2019 and its reasons for decision
 - the document at issue (the practitioner's response to the notification made to Ahpra by the applicant)
 - submissions from the applicant and Ahpra in relation to the review
 - third party submissions from the legal representative of the practitioner who authored the document at issue
 - FOI Act, sections 3, 4, 11A(5), 11B(3), 27A, 47E(d), 47F, 55D, 55K
 - Privacy Act 1988 (Cwlth), section 6
 - Health Practitioner Regulation National Law (National Law), as enacted in all states and territories of Australia, sections 35, 214, 216
 - Office of the Australian Information Commissioner FOI Guidelines (FOI Guidelines)
 - Relevant cases including:
 - *Graham Mahony and Australian Charities and Not-for-profits Commission (Freedom of information)* [2019] AICmr 64 (31 August 2019)
 - *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 (5 October 1984)
 - *Seven Network (Operations) Limited and Australian Competition and Consumer Commission (Freedom of information)* [2019] AICmr 29 (6 June 2019)
 - *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017)
 - *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2013).

Issue 1: Effective operations of agencies conditional exemption (s 47E(d))

11. A document is conditionally exempt under section 47E(d) of the FOI Act 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.
12. 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.ⁱ
13. 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'.ⁱⁱ 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'.ⁱⁱⁱ
14. A decision-maker should clearly describe the expected effect and its impact on the usual operations or activity of the agency in the statement of reasons. Ahpra bears the onus of establishing that its decision to exempt the document under section 47E(d) is justified.^{iv}

Ahpra's operations

15. Ahpra and the Board have powers under the National Law to handle notifications about registered health practitioners (that is, concerns raised about the health, conduct and/or performance of practitioners).^v The Board may decide to investigate a practitioner and in some cases, may take regulatory action against a practitioner.
16. The document at issue was provided to Ahpra following the applicant's notification about a practitioner. This is because Ahpra and the Board, in the course of assessing the applicant's notification, sought a response from the practitioner. The document then formed part of Ahpra and the Board's investigation of the practitioner.

Ahpra's submissions

17. Under the National Law, 'protected information' must be treated confidentially, subject to specific exceptions.^{vi} '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.^{vii}
18. In its reasons for decision dated 1 February 2019, Ahpra explained that:

"Submissions made by practitioners in response to notifications are made on the understanding that they will be treated in a confidential manner in accordance with the National Law confidentiality provisions...

If the document were to be released under the FOI Act without consent, or in the absence of any other provisions under the National Law that authorises the disclosure of protected information, this would likely have a significant impact on the future flow of information from practitioners to Ahpra and the Board. In particular, practitioners may be reticent to express free, candid and complete responses in relation to notifications out of concern that their submissions may be subject to disclosure under the FOI Act. Other agencies and organisations could be similarly discouraged from engaging in meaningful cooperation and information sharing to assist investigations by Ahpra and the Board. This in turn would prejudice the integrity and robustness of investigation processes".

19. Ahpra submitted to the NHPOPC on 18 April 2019 that:

"The Document contains information provided by [the practitioner] to assist Ahpra with its investigation of [the applicant's] notification about [the practitioner]. Having regard to the nature of the Document, the circumstances in which the Document was provided to Ahpra, the general duty of confidentiality under the National Law, and [the practitioner's lawyer's] submissions on behalf of [the practitioner] in response to Ahpra's third party consultation notice, it is evident that [the practitioner] expected the Document to be treated by Ahpra in a confidential manner...

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

Applicant's submissions

20. In a submission dated 5 March 2019, the applicant noted the following in relation to Ahpra's decision to exempt the document under section 47E(d) the FOI Act:

"... Ahpra cannot say with certainty that providing me with the [document] will result in, or have any bearing on, any future doctors' open, frank and truthful responses, particularly, given what may be at stake for the individual doctor. Nor can it be certain that third parties or agencies will no longer be co-operative. That is only speculation on their part and in my view quoted to bolster the Ahpra Decision".

21. The applicant added that:

"Ahpra further stated that disclosing the [document] to me may fail 'to protect and maintain the integrity of Ahpra's investigative processes.' I say denying me access to the [document] will certainly damage Ahpra's integrity of their investigative processes as I, the complainant, can have no faith in that process unless I have access to the [document]."

Application of the agency operations conditional exemption

22. I have considered the parties' submissions. I have also considered relevant Australian Information Commissioner and Tribunal decisions, as well as commentary in the FOI Guidelines in relation to the application of the agency operations conditional exemption.

23. The FOI Guidelines provide a relevant example of when this conditional exemption may apply in relation to information provided to investigative bodies:

"The exemption may also apply to documents that relate to a complaint made to an investigative body. The disclosure of this type of information could reasonably affect the willingness of people to make complaints to the investigative body, which would have a substantial adverse effect on the proper and efficient conduct of the investigative body's operations."^{viii}

24. I am of the view that just as people must feel free to make confidential notifications about health practitioners, people must be willing to provide their response and professional opinions about a notification to Ahpra and the Board.

25. I have considered 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). In that 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.

26. In discussing whether the section 47E(d) conditional exemption applied in that case, the Australian Information Commissioner stated at paragraph [22]:

"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."^{ix}

27. It is my view that similarities can be drawn between provisions of the ACNC Act and the confidentiality provisions in the National Law. Section 216 of the National Law creates a reasonable expectation that information provided by a person to Ahpra or the Board in the course of exercising their investigative functions will be treated confidentially. If Ahpra discloses the document requested by the applicant in circumstances where the practitioner has objected to the release of that document, a reasonable person could conclude that any documents they provide to Ahpra in the future may not be treated confidentially, despite the duty of confidentiality under the National Law. This in turn could reasonably be expected to impact how effectively Ahpra and the Board can carry out their functions, as the information they are able to access may be less readily provided or more difficult to obtain.

28. I also draw similarities between this matter and the case before the State Administrative Tribunal in *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017). In *Spragg*, the Tribunal found that disclosure of information provided to Ahpra by a practitioner who is the subject of a notification could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.^x

29. Relevantly, paragraph [78] of the Tribunal's decision in *Spragg* states:

"The Tribunal finds that the proper and efficient conduct of the operations of the agency are assisted by the circumstance that information provided to it by a registered health practitioner under compulsion is protected information and its disclosure is prohibited. The agencies [sic] operations are advanced when a registered health practitioner is forthright and frank in providing information when required. The Tribunal finds that the prospects of a forthright and frank answer are considerably enhanced in circumstances where the practitioner has confidence that the information provided is protected information. The Tribunal finds that this is particularly the case in the instance of these Documents. Here, the Practitioner objects to the disclosure of the Documents..."^{xi}

30. I am satisfied that Ahpra has discharged its onus of establishing the particulars of the predicted adverse effect of disclosure, including that the effect would be substantial and that it could reasonably be expected to occur. Ahpra has clearly described the impact of the reasonably expected substantially adverse effect on the conduct of its operations.
31. Accordingly, I am satisfied that the document is conditionally exempt under section 47E(d) of the FOI Act.
32. 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.

The public interest test (s 11A(5))

33. The FOI Act says 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.^{xii}
34. 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.^{xiii}

Factors favouring disclosure

35. Section 11B(3) of the FOI Act provides a list of public interest factors favouring disclosure. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.^{xiv}
36. In its reasons for decision, Ahpra identified the following public interest factors in favour of disclosure:
- promoting the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (section 3(2)(b) of the FOI Act)
 - public scrutiny of documents relevant to deliberations of Ahpra and the Board may improve the quality of decision-making processes
 - facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the agency
 - revealing information that informed a decision-making process
 - allowing a person access to their personal information.
37. I have considered the factors above in favour of disclosure. I agree that disclosure of the document would promote the objects of the FOI Act. In particular, I agree that increased public scrutiny of documents relevant to deliberations of Ahpra and the Board may improve the quality of decision-making processes.
38. While I agree there are public interest factors that favour disclosure of the practitioner's response, these factors must be balanced against countervailing public interests when determining whether access should be given to a conditionally exempt document.

Factors against disclosure

39. In relation to public interest factors against disclosure, Ahpra identified:
- the public interest in protecting and maintaining Ahpra's investigative processes. Ahpra's ability to properly conduct and efficiently consider 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
 - disclosure could reasonably be expected to affect the willingness of practitioners (and other individuals) to cooperate and provide candid information as part of the notifications process if responses cannot be kept confidential.
40. I have also considered the Victorian Civil and Administrative Tribunal's decision in *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2013). In that case, the Tribunal accepted Ahpra's submissions that disclosure of the relevant material would be contrary to the public

interest.^{xv} Ahpra's submissions included that there is a public interest in ensuring its ability to receive and investigate notifications is not hampered by the disclosure of confidential information, or the use of information for purposes extraneous to Ahpra's functions.^{xvi} I find this case persuasive.

Balancing the public interest factors for and against disclosure

41. Having considered the relevant material, I give greater weight to the public interest factors against disclosure. I am of the view that disclosure of the document could reasonably be expected to prejudice Ahpra's ability to obtain confidential or similar information from practitioners in relation to notifications in the future.
42. The proper and efficient assessment and investigation of notifications 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 Board's core function to ensure the protection of the health and safety of the public) are prejudiced as a result of the disclosure of a practitioner's response to a notification under the FOI Act without the consent of the practitioner.
43. Giving the applicant access to conditionally exempt material at this time would, on balance, be contrary to the public interest.

Finding

44. The document is exempt under section 47E(d) of the FOI Act.

Issue 2: Personal privacy conditional exemption (s 47F)

45. A document is conditionally exempt under section 47F of the FOI Act if disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person). This exemption is intended to protect the personal privacy of individuals.^{xvii}

Personal information

46. Personal information has the same meaning as in the *Privacy Act 1988* (Cwlth), which provides that:

“personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information is true or not;
- whether the information or opinion is recorded in a material form or not.”^{xviii}

47. That is, the information needs to convey or say something about a person, rather than just identify them.^{xix}

48. The FOI Act states that this conditional exemption does not apply if the personal information is only about the applicant.^{xx} This is not the case here. The document contains information from and about the practitioner the subject of the applicant's notification. As in *Spragg*, the issue in this review is whether the disclosure of the document would involve the unreasonable disclosure of personal information about any other person.^{xxi}

49. It is also important to note that the applicant's notification to Ahpra was made in relation to the medical care and treatment provided to the applicant's husband, who is now deceased. The document in issue therefore contains personal information about the applicant's husband. It appears that the applicant has the right to access personal information regarding the applicant's husband as they have explained the applicant is his representative.

Whether disclosure would be unreasonable

50. The FOI Guidelines explain:

The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.^{xxii}

51. The FOI Guidelines set out matters which an agency must have regard to when determining whether disclosure of a document would involve an unreasonable disclosure of personal information. These are:

- the extent to which the information is well-known

- whether the person to whom the information related is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly accessible resources
- any other matters that the agency or minister considers relevant.^{xxiii}

52. The FOI Guidelines go on to list the following key factors for determining whether disclosure is unreasonable:

- the author of the document is identifiable
- the document contains third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release.^{xxiv}

Joint personal information

53. The FOI Guidelines state that where it is not possible to separate an applicant's personal information from a third party's personal information, the exemption may be claimed if it is unreasonable to release the information.^{xxv} Whether it is unreasonable to release the information may depend on the relationship between the individuals.

54. I note that in this case, the document contains personal information about the applicant's husband and the practitioner. The document also contains personal information about the applicant to the extent that the document was prepared in response to the applicant's notification to Ahpra.

Ahpra's submissions

55. Ahpra found the document to be exempt under section 47F of the FOI Act. Ahpra considered that disclosure of the document would involve an unreasonable disclosure of third party personal information.

56. Ahpra's reasons for decision demonstrate consideration of the factors which I listed above in paragraph [51]. In addition, Ahpra also considered:

- the sensitive nature of the information and the circumstances in which it was given to Ahpra
- the reasonable expectation of confidentiality, with regard to the confidentiality provisions of the National Law
- the current relevance and recent age of the document
- objections to disclosure made in response to third party consultation with the practitioner
- whether the information would shed light on the current workings of the government.

57. Ahpra further submits that the document contains joint personal information about the applicant and the practitioner which is so intertwined that it is not reasonably practicable to separate.

Applicant's submissions

58. It appears Ahpra's discussion of joint personal information has caused the applicant some confusion. The applicant explained in their submission:

"I have never met [the practitioner], I have never spoken to [them], I do not know anything about [them]. I first became aware of [their] existence when I saw the Death in Hospital Form and the Death Certificate (both signed by [them]) and [their] hand written note on the medical records penned on 7 August 2015 in relation to the telephone call.

Further, I did not know that [the document] contained my personal information. Given we have never met nor spoken, I do not know what possible personal information of mine [the practitioner] could comment on."

59. I agree Ahpra's decision dated 1 February 2019 could have been clearer in its explanation of joint personal information as it relates to the particular circumstances of this case. The applicant's notification was made in respect of medical care and treatment provided to the applicant's husband. I am of the view that the practitioner's personal information is intertwined with the applicant's husband's personal information. This is because the document contains the practitioner's opinion on matters relevant to the applicant's husband's medical care and treatment. I find that the document also contains personal information about the applicant because it contains the practitioner's responses to the issues raised in the applicant's notification.

60. The FOI Guidelines state that it is not settled whether the motives and identity of the applicant are relevant when considering reasonableness in the context of the personal privacy conditional exemption.^{xxvi} In submissions dated 25 March 2019, the applicant explains the reasons for seeking access:

“I hoped that the [document] may clarify whether [the practitioner] alone spoke to the Coronial Officer or whether [the practitioner] did so with or separately to [another practitioner]. Rather, whilst the Board’s decision [the practitioner] had spoken to a Coronial Officer it offered no other details.

...Unless and until I am granted access to [the document] I am unable to firm [sic] an opinion as to whether or not the Board’s decisions in respect of [the practitioner were] made in a fair and reasonable manner.”

61. I understand why the applicant may seek clarity in relation to these specific issues and believes the document may contain this information. However, these submissions do not respond to the exemptions in the FOI Act relied on by Ahpra to refuse access to the document.

62. In relation to personal information specifically, the applicant’s submission asks:

“If I cannot obtain a document which was penned directly because of my Complaint and which Ahpra confirms contains my personal information, then how can any member of the public have any confidence in the making of future complaints? More importantly, how can I have confidence in how the Board reached its decision?”

Application of the personal privacy exemption

63. In considering whether disclosure of personal information is unreasonable, the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 stated that this requires:

“a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...”^{xxvii}

64. I am satisfied that the document contains the practitioner’s expressed opinions in response to the allegations raised in the applicant’s notification. This is personal information about the practitioner that is neither known to the applicant nor publicly accessible.

65. While the response could be seen to also contain personal information about the applicant, I accept Ahpra’s submission that any personal information of the applicant (by virtue of the document constituting a response to the applicant’s notification) is intertwined with the practitioner’s personal information to the extent that it is not possible to separate.

66. I note the FOI Guidelines also indicate that disclosure may be unreasonable if the person provided the information on the understanding that it would not be made publicly available, and there are no other statutory disclosure frameworks that would require release of the information.^{xxviii} In this regard, I refer to my earlier comments in relation to the duty of confidentiality in the National Law and the practitioner’s objection to the release of the document.

67. On balance, I am satisfied that the document is conditionally exempt for the purposes of section 47F of the FOI Act.

68. The FOI Act says that, if a document is conditionally exempt, it must be disclosed unless access to the document at this time would, on balance, be contrary to the public interest.^{xxix} I am therefore now required to consider whether it would be contrary to the public interest to give access to the document at this time.

The public interest test (s 11A(5))

69. In its decision, in addition to the public interest factors in favour of disclosure listed in paragraph [36] above, Ahpra identified the following factor which relates specifically to the personal privacy conditional exemption:

- allowing a person access to their personal information (noting in this case, the document contains joint personal information).

70. I accept the factors identified above in favour of disclosure. In particular, I note the applicant's submissions at paragraph [62] in relation to confidence in the processes of Ahpra and the Board. I also agree that disclosure of document would reveal information that informed Ahpra's decision-making process and would allow the applicant access to their personal information.
71. In regard to public interest factors against disclosure, in addition to the factors described at [39] above in relation to the section 47E(d) conditional exemption, Ahpra identified the following factor that relates specifically to section 47F of the FOI Act:
- disclosure could reasonably be expected to prejudice the protection of a third party individual's right to privacy.

Balancing the public interest factors for and against disclosure

72. I have considered the nature of the information contained in the document, the circumstances in which it was provided to Ahpra and the expressed objection to disclosure made by the practitioner. In these circumstances, I find that greater weight should be given to the protection of third party personal information than factors favouring disclosure, such as revealing information that informed a decision-making process.
73. I have given particular weight to the context in which the document was provided to Ahpra in forming this view, namely, to assist Ahpra and the Board's investigative functions and that it was provided on an understanding that it would be kept confidential. I find that the duty of confidentiality in section 216 of the National Law is a compelling factor weighing against disclosure.
74. I am satisfied that giving access to the document would, on balance, be contrary to the public interest.

Finding

75. The document is exempt under section 47F of the FOI Act.

Conclusion

76. I vary Ahpra's decision dated 1 February 2019 to exempt the document under sections 45, 47E(d) and 47F of the FOI Act. I find the document is exempt under sections 47E(d) and 47F of the FOI Act.

Richelle McCausland

National Health Practitioner Ombudsman and Privacy Commissioner

Rights

Review rights

If a review party is not satisfied with a review decision of the NHPOPC, the party may apply to a relevant tribunal under section 57A of the FOI Act to have the decision reviewed. An application must be made within 28 days after the day the party receives this decision.

Appeal rights

A review party may appeal to the Supreme Court on a question of law from a decision of the NHPOPC if the party believes the NHPOPC incorrectly interpreted and applied the FOI Act. An appeal must be made either:

- within 28 days after the day a review party receives the NHPOPC'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 NHPOPC (other than findings resulting from an error of law), and it appears to be convenient for the Supreme Court.

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ⁱ FOI Guidelines [6.101].

ⁱⁱ FOI Guidelines [5.20].

ⁱⁱⁱ FOI Guidelines [5.20].

^{iv} *Freedom of Information Act 1982* (Cwlth), s 55D(1).

^v For more information about the Board's functions see National Law, s 35.

^{vi} National Law, s 216.

^{vii} National Law, s 214 (definition of 'protected information').

^{viii} FOI Guidelines [6.122].

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

^x *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017), [75].

^{xi} *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017), [78].

^{xii} *Freedom of Information Act 1982* (Cwlth), s 11A(5).

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

^{xiv} FOI Guidelines [6.19].

^{xv} *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2013), [67].

^{xvi} *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2013), [67].

^{xvii} FOI Guidelines [6.124].

^{xviii} *Freedom of Information Act 1982* (Cwlth), s 4(1) (definition of 'personal information'); *Privacy Act 1988* (Cwlth), s 6 (definition of 'personal information').

^{xix} FOI Guidelines [6.136].

^{xx} *Freedom of Information Act 1982* (Cwlth), s 47F(3).

^{xxi} *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017), [40].

^{xxii} FOI Guidelines [6.138].

^{xxiii} FOI Guidelines [6.140].

^{xxiv} FOI Guidelines [6.142].

^{xxv} FOI Guidelines [6.150].

^{xxvi} FOI Guidelines [6.146].

^{xxvii} *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 (5 October 1984), [51]-[52].

^{xxviii} FOI Guidelines [6.145].

^{xxix} *Freedom of Information Act 1982* (Cwlth), s 11A(5).