

'AF' and Australian Health Practitioner Regulation Agency (Ahpra)



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

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| Applicant | 'AF' |
| Respondent | Australian Health Practitioner Regulation Agency (Ahpra) |
| Reference number | OCF/19/226 |
| Decision date | 14 December 2021 |
| Catchwords | FREEDOM OF INFORMATION – Whether material is irrelevant to the request – Whether material obtained in confidence – 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 disclosure of personal information is unreasonable – Whether it is contrary to the public interest to release conditionally exempt documents – Freedom of Information Act 1982 ss. 22, 45, 47C, 47E(d) and 47F |

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

Decision

- Under s. 55K I set aside Ahpra's decision of 17 April 2019.
- I substitute my decision that:
 - information concerning practitioners not relevant to the Applicant's FOI request in documents 35, 75 and 92 is deleted under s. 22
 - document 96 is exempt in part under s. 45
 - documents 1, 5, 7, 8, 12, 25, 26, 28, 33, 41, 42, 43, 51, 62, 63, 67, 69, 71, 73, 80, 81, 82, 87 and 90 are exempt in full under s. 47C
 - documents 32, 66 and 89 are exempt in full under s. 47E(d)
 - the following information is exempt under s. 47E(d):
 - protected information provided by third parties to Ahpra officers in documents 35 and 53
 - protected information provided by Ahpra officers to the Nursing and Midwifery Board of Australia in documents 75 and 92
 - documents 3, 27, 36, 40, 61, 76 and 93 are exempt in full under s. 47F

- the following personal information is exempt under s. 47F:
 - the email address and contact phone numbers of [Practitioner A] in documents 10 and 11
 - the confidential information about, or provided to [Practitioner A] by, unknown third parties in relation to their own expressed opinions about the Applicant in document 11
 - the residential addresses of the Practitioners in documents 4, 15, 22, 30, 45, 55 and 65
 - the personal email addresses of the Practitioners in documents 22, 30, 47, 48 and 84
 - the personal opinion of [Practitioner C] about the Applicant in document 56
 - the confidential information about, or provided to [Practitioner C] by, unknown third parties in relation to their own expressed opinions about the Applicant in document 49
 - the names and positions of Ahpra officers and/or Board Members not known to the Applicant in documents 6, 14, 30, 35, 50, 53, 75 and 92
 - the names and positions of Ahpra officers known to the Applicant in documents 14, 35, 53 and 84
 - the specific contents of documents 36, 76, 84 and 93.
 - the remaining material that has been subject to review is to be released to the Applicant.
3. Given the large number of documents relevant to this decision, where I have found one exemption ground applies to a document, I have not considered whether any additional exemptions ought to also apply.
4. The schedule of documents in **Annexure 1** sets out my decision in relation to each document.

Background

5. The Applicant made a number of notifications to Ahpra, the Medical Board of Australia (the Medical Board) and the Nursing and Midwifery Board of Australia (the Nursing and Midwifery Board) about five health practitioners (the Practitioners).
6. The Medical Board and the Nursing and Midwifery Board decided to take no further regulatory action in relation to the notifications.
7. The Applicant made two requests to Ahpra for access to certain documents. Following consultation with Ahpra, the Applicant clarified their request to:
- documents relating to notifications made by [the Applicant] since 13 October 2017. The relevant notifications are:
1. Notification [number] received by Ahpra on 11 May 2018 against [Practitioner A]
 2. Notification [number] received by Ahpra on 11 May 2018 against [Practitioner B]
 3. Notification [number] received by Ahpra on 11 May 2018 against [Practitioner C]
 4. Notification [number] received by Ahpra on 12 May 2018 against [Practitioner D]
 5. Notification [number] received by Ahpra on 16 May 2018 against [Practitioner E].
8. In its decision letter dated 17 April 2019, Ahpra identified 96 documents that fell within the scope of the Applicant's request. Ahpra decided to:
- release 31 documents in full

- exempt 21 documents in part
 - exempt 44 documents in full.
9. The schedule of documents in **Annexure 1** sets out Ahpra's decision in relation to each document.
10. On 17 April 2019 the Applicant sought a review of Ahpra's decision under s. 54L.

Scope of the review

11. The issues I will decide in this review are:
- whether the information that Ahpra found to be irrelevant to the request is irrelevant (s. 22(1)(a)(ii))
 - whether the information that Ahpra found to be exempt under s. 37(1)(c) is exempt under that provision
 - whether the information that Ahpra found to be exempt under s. 45 is exempt under that provision
 - whether the documents that Ahpra found to be exempt under s. 47C are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest
 - whether the documents that Ahpra found to be exempt under s. 47E(d) are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest
 - whether the documents (or part of the document) that Ahpra found to be exempt under s. 47F are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest.
12. During the management of this review, Ahpra decided to release the following documents in part to the Applicant:
- the Decisions and Actions of the Medical Board in relation to the Applicant's notification about [Practitioner A] (document 14)
 - extract of the Decisions and Actions of the Nursing and Midwifery Board in relation to the Applicant's notification about [Practitioner B] (document 35)
 - the Decisions and Actions of the Medical Board in relation to the Applicant's notification about [Practitioner C] (document 53)
 - the Decision and Actions of the Nursing and Midwifery Board in relation to the Applicant's notification about [Practitioner D] (document 75)
 - the Decisions and Actions of the Nursing and Midwifery Board in relation to the Applicant's notification about [Practitioner E] (document 92).
13. As such, the information released in documents 14, 35, 53, 75 and 92 is no longer subject to review. However, during the review Ahpra submitted that the remaining information in documents 14 and 53 is exempt under ss. 47F and 37(1)(c).
14. During the review, Ahpra also submitted that documents 7, 69 and 87 are alternatively exempt in full under ss. 47C and 47E(d). In its initial decision, Ahpra had found these documents (Decisions and Actions of the Medical Board and Nursing and Midwifery Board) exempt in full under s. 47F only.

15. Given the large number of documents relevant to this review, where I have found one exemption ground applies to a document, I have not considered whether any additional exemptions ought to also apply.
16. 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
17. The Applicant and Ahpra were invited to make a written submission about the review. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
18. I have had regard to the object of the FOI Act, which is to give the Australian community access to information held by the Government by requiring agencies to publish that information and by providing for a right of access to documents.³

Review of the exemptions

Section 22: Deleting exempt or irrelevant content from a document

19. 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
20. 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
21. The Office of the Australian Information Commissioner’s FOI Guidelines (FOI Guidelines) explain that a 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 making a decision to edit a document to delete irrelevant content.⁷
22. Ahpra found certain information in document 50 and documents 35, 75 and 92 to be irrelevant to the request.
23. I have examined an unedited copy of the documents. Based on my examination of the documents, the information that Ahpra found to be irrelevant to the request can be categorised as:
 - the names and positions of Ahpra officers in attendance at the relevant meeting of the Medical Board
 - the Decisions and Actions of notifications about other practitioners.

¹ s. 55D(1).

² ss. 55 and 55K.

³ s. 3(1).

⁴ s. 22(1)(a)(ii).

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

⁶ FOI Guidelines [3.54].

⁷ FOI Guidelines [3.99]

24. In relation to the names and positions of Ahpra officers in attendance, I am satisfied that this information might reasonably be taken to be included within the description of 'all documents relating to notifications made by [the Applicant] since 13 October 2017'. Such information is integral to the documents that Ahpra has identified as falling within the scope of the request, as set out in emails exchanged between Ahpra and the Applicant.
25. In relation to the Decisions and Actions of notifications about other practitioners, I am satisfied that this information is irrelevant to the Applicant's request. The information relates to notifications about two practitioners not known to the Applicant. This information would not reasonably be regarded as falling within the scope of the Applicant's request.

Finding

26. The names and positions of Ahpra officers in attendance (as found in document 50) are not irrelevant to the Applicant's request. I will consider whether this information is exempt under s. 47F later in this decision.
27. The Decisions and Actions of notifications about other practitioners (as found in documents 35, 75 and 92) are irrelevant to the Applicant's request. As such, I am satisfied that the information Ahpra deleted from documents 35, 75 and 92 is irrelevant under s. 22.

Section 45: Documents containing material obtained in confidence

28. Section 45 provides that a document is an exempt document if its disclosure would find an action by a person (other than an agency or the Commonwealth) for breach of confidence.
29. Ahpra found the investigation of complaints lodged by the Applicant with Monash Health (document 96) exempt under s. 45.⁸ Ahpra obtained such documentation as part of its investigation of a notification.
30. As discussed in the FOI Guidelines, the main requirement of this exemption is that disclosure of a document would give rise to an action for breach of confidence.⁹
31. A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence.¹⁰ The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.¹¹
32. The FOI Guidelines explain that for s. 45 to apply, the following five criteria must be satisfied:
 - the information must be specifically identified
 - the information must have the necessary quality of confidentiality
 - the information must have been communicated and received on the basis of a mutual understanding of confidence
 - the information must have been disclosed or threatened to be disclosed, without authority

⁸ Ahpra also claims ss. 47B, 47E(d) and 47F in relation to document 96.

⁹ FOI Guidelines [5.155] – [5.172].

¹⁰ *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41.

¹¹ FOI Guidelines [5.158].

- unauthorised disclosure of the information has or will cause detriment.¹²

Specifically identified

33. Confidential information must be specifically identified. The FOI Guidelines explain that it is not sufficient for the 'alleged confidential information to be identified in global terms'.¹³

Quality of confidentiality

34. The FOI Guidelines explain that for the information to have the quality of confidentiality it must be secret or only known to a limited group.¹⁴ Information which is common knowledge or in the public domain will not have the quality of confidentiality.¹⁵

35. The FOI Guidelines further explain:

The quality of confidentiality may be lost over time if confidentiality is waived, or the information enters the public domain. This can occur if the person whose confidential information it is discloses it. The obligation of confidence may also only relate to a limited time period.¹⁶

Mutual understanding of confidence

36. The FOI Guidelines explain that the information must have been communicated and received on the basis of a mutual understanding of confidence.¹⁷ Further, the FOI Guidelines also explain that 'an express mutual understanding may occur where the person providing the information asks the agency to keep the information confidential and the agency assures them that they will'.¹⁸

Unauthorised disclosure or threatened disclosure

37. The FOI Guidelines explain:

The information must have been or been threatened to be disclosed without authority. The scope of the confidential relationship will often need to be considered to ascertain whether disclosure is authorised.¹⁹

Detriment

38. The final element of this exemption is that the unauthorised disclosure of the information has, or will, cause detriment to the person who provided the confidential information.²⁰

39. The FOI Guidelines explain:

¹² FOI Guidelines [5.159].

¹³ FOI Guidelines [5.161].

¹⁴ FOI Guidelines [5.162].

¹⁵ FOI Guidelines [5.162].

¹⁶ FOI Guidelines [5.163].

¹⁷ FOI Guidelines [5.164].

¹⁸ FOI Guidelines [5.167].

¹⁹ FOI Guidelines [5.168].

²⁰ FOI Guidelines [5.171].

The AAT has applied this element in numerous cases, but whether it must be established is uncertain. The uncertainty arises because of an argument that an equitable breach of confidence operates upon the conscience (to request the confidence) and not on the basis of damage caused. Despite the uncertainty, it would be prudent to assume that establishing detriment is necessary.²¹

40. In the Administrative Appeals Tribunal decision of *Francis and Australian Sports Anti-Doping Authority (Freedom of Information)* [2019] AATA 12, Deputy President Sosso considered the nature of the detriment that disclosure of the documents at issue in that case would cause to the third parties. In his analysis Deputy President Sosso referred to Justice Gummow's application of detriment in *Corrs Pavey Whiting & Byrne v Collector of Customs* [1987] FCA 226; (1987) 14 FCR 434 and noted:

The nature of the detriment is also a matter of debate, however it is tolerably clear that the detriment contemplated by Gummow J is not limited to financial detriment, but is of much broader import and can include embarrassment, distress, public ridicule or public criticism.²²

Ahpra's submissions

41. In its decision dated 17 April 2019 Ahpra explained:

Under the [Health Practitioner Regulation National Law (the National Law)], Ahpra provides administrative support to the Medical Board of Australia and to the Nursing and Midwifery Board of Australia in exercising its functions. This includes managing investigations into the professional conduct, performance or health of registered health practitioners.

Section 216 of the National Law imposes a general duty of confidentiality in relation to 'protected information', which broadly covers any information that comes to a person's knowledge in the course of, or because of, the exercise of functions under the National Law. Subject to limited exceptions, a person who is or has been exercising functions under the National Law must not disclose protected information to another person.

Document 96 was received by Ahpra in the course of, and because of, the exercise of functions on behalf of the Board under the National Law. [Document 96] was obtained from Monash Health and reveals their processes and systems for managing confidential information and complaints; and discloses staff identities.

[Ahpra] is satisfied that disclosure of [document 96] would found an action for breach of confidence for the following reasons:

- the information contained in [document 96] falls within the meaning of 'protected information' under the National Law
- the information is of a confidential and sensitive nature that is not publicly available or widely known, and confidentiality has not been waived
- having regard to the nature of the information in [document 96], the circumstances in which it was provided to Ahpra, and the existence and operation of the National Law confidentiality provisions which generally prohibit the disclosure of protected information,

²¹ FOI Guidelines [5.172].

²² *Francis and Australian Sports Anti-Doping Authority (Freedom of Information)* [2019] AATA 12 at [168].

[document 96] was communicated to, and received by, Ahpra on the basis of a mutual understanding of confidence

- consent has not been given to disclose the document to [the Applicant]
- in the absence of consent and noting that the FOI Act does not restrict the use of documents released to [the Applicant], disclosure of a document to which this exemption applies, is likely to cause detriment to, including for example distress resulting from a loss of privacy, or potential exposure to reputational harm.

42. Ahpra further submitted:

The information contained in [document 96] was communicated from Monash Health, a State government authority, to Ahpra. The information consists of Monash Health's internal investigation records in response to [the Applicant's] various complaints to Monash Health about the relevant practitioners. The information was obtained by Ahpra in the context of investigating [the Applicant's] notifications, does not relate to routine or administrative matters, and is not already in the public domain.

Having regard to the nature of the information, the context in which it was provided, the relationship between Ahpra and the State government authority, and the fact that the information is subject to confidentiality obligations under the National Law, I am satisfied that the information was communicated in confidence and this was mutually understood by both parties.

Ahpra is satisfied that [document 96], if disclosed under the FOI Act, would reasonably adversely affect the ability of Ahpra to obtain information from other State government agencies and organisations in the future, which in turn would significantly impact Ahpra's ability to conduct proper and comprehensive investigations into notifications.

43. In addition, during the review Ahpra provided my office with a copy of Monash Health's consultation response which outlined its objection to the release of document 96. Monash Health explained that it provided the document to Ahpra on a strictly confidential basis and with the expectation that Ahpra would treat the document as confidential.

Application of the material obtained in confidence exemption

Specifically identified

44. I have examined an unedited copy of document 96. It can be described as Monash Health's internal investigation records in response to the Applicant's complaints to Monash Health. Without disclosing its contents, the information also reveals information about Monash Health's processes and systems for managing confidential information and complaints and further discloses the identities of Monash Health's officers. Accordingly, I am satisfied that the information has been specifically identified by Ahpra as Monash Health's internal investigation records in response to the Applicant's complaints to Monash Health.

Quality of confidentiality

45. Ahpra has submitted, as set out above at [41-43], that Monash Health's internal investigation records in response to the Applicant's complaints to Monash Health are not in the public domain.

46. There is no evidence before me that the information has entered the public domain or that the information is publicly available or has been distributed widely. I am, accordingly, satisfied that the information has the requisite quality of confidentiality.

Mutual understanding of confidence

47. From Ahpra's submission, I accept that Monash Health expressly requested that the information provided to Ahpra be treated as 'in confidence' and that Ahpra received the information on the basis of a mutual understanding of confidence.

Unauthorised disclosure or threatened disclosure

48. There is no information before me to suggest that the individuals from Monash Health who communicated the information to Ahpra authorised the disclosure of the information to any persons beyond Ahpra officers and Board members carrying out functions under the National Law.

49. Accordingly, I am satisfied that disclosure of the information provided to Ahpra would be unauthorised.

Detriment

50. Ahpra opined that disclosure of the information obtained in document 96 could reasonably result in Monash Health being reluctant to provide Ahpra with confidential information in the future, which in turn would significantly impact Ahpra's ability to conduct proper and comprehensive investigations into notifications. Further, in submissions to my office Ahpra asserted that there is a reasonable expectation of harm to Ahpra should disclosure occur.

51. I find that the information provided to Ahpra is of a sensitive nature and that disclosure of the information could reasonably be expected to cause detriment to the ability of Ahpra to obtain such information from third parties in the future, which in turn would significantly impact Ahpra's ability to conduct proper and comprehensive investigations into notifications.

Finding

52. I am satisfied that the information in document 96 that Ahpra found to be exempt under s. 45 is exempt under that provision.

53. I note that Ahpra also submitted that ss. 47B, 47E(d) and 47F applied in relation to document 96. As I have found that document 96 is exempt under s. 45, it is not necessary for me to consider whether this information is also exempt under ss. 47B, 47E(d), or 47F.

Section 47C: Documents subject to deliberative processes

54. Ahpra found the following documents to be conditionally exempt in full under s. 47C:

- triage, assessment and investigation reports (documents 1, 12, 28, 33, 43, 51, 67, 73, 82 and 90)
- draft assessment reports (documents 24 and 64)
- draft internal clinical advice (documents 6 and 39)
- investigation management plans (documents 71 and 81)
- risk assessments for the Practitioners (documents 5, 25, 41 and 62)

- the Practitioners’ registration histories (documents 8, 26, 42 and 63).
55. During the review, Ahpra also submitted that documents 7, 69 and 87 (Decisions and Actions of the Medical Board and Nursing and Midwifery Board) are exempt in full under s. 47C.
56. 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.²³
57. The main requirements of this conditional exemption are that:
- the document contains or relates to ‘deliberative matter’²⁴
 - the document was prepared for a ‘deliberative purpose’²⁵
 - the document contains material that is not ‘purely factual’ or non-deliberative²⁶
 - it would be contrary to the public interest to give access at the time of the decision.²⁷
58. The term ‘deliberative matter’ is a shorthand term for opinion, advice, recommendation, consultation and deliberation that is recorded or reflected in a document.²⁸
59. 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.²⁹
60. The FOI Guidelines explain:
- In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.³⁰

Ahpra’s submission

61. On 21 May 2019, Ahpra made the following submissions about the relevant documents, including investigation reports, assessment reports, triage reports, risk assessments for the Practitioners and the Practitioners’ registration histories:

²³ s. 47C(1).

²⁴ Ibid.

²⁵ Ibid.

²⁶ s. 47C(2).

²⁷ s. 11A(5).

²⁸ *Parnell and Attorney-General’s Department* [2014] AICmr71, [38].

²⁹ *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945 [39].

³⁰ FOI Guidelines, [6.58] – [6.59].

The ability of Ahpra staff to create documents for the Boards in relation to notifications and preliminary risk assessment reports and investigation management plans confidentially is critical to ensuring that the Boards' decision-making and Ahpra staff's deliberative processes are carried out both efficiently and effectively. These documents are created by Ahpra staff based on the understanding that they will be treated in a confidential manner and will only be used during the notifications process by Ahpra and the Board.

62. During the review, Ahpra also submitted the following in relation to documents 7, 69 and 87:

It is noted Ahpra initially exempted [documents 7, 69 and 87] in full pursuant to s. 47F. ... [documents 7, 69 and 87] are all interim, rather than determinative, decisions and it is submitted that [such documents] should be exempt in full pursuant to s. 47C and s. 47E(d).

[Documents 7, 69 and 87] are deliberative in the context of their consideration in the subsequent determinative decision-making process.

The Applicant's submissions

63. In their application for review to my office on 17 April 2019, the Applicant submitted:

...It is by supplying me with the evidence from these individuals and agencies that I may be able to grasp an understanding of the reasons behind the horrific treatment I have endured and behind the poor response to my requests for the investigations of their actions. Similarly, I feel it is appropriate to understand the extent to which the involved people and agencies went to corroborate details presented to them that significantly affected decisions made in the process of my care.

Application of the deliberative processes exemption

Documents not conditionally exempt

64. Ahpra found documents 6, 24, 39 and 64 to be exempt in full under s. 47C. Ahpra also claims ss. 47E(d) and/or 47F in relation to these documents.³¹

65. After inspecting documents 6, 24, 39 and 64, I determined the information contained in each document is not conditionally exempt under s. 47C. These documents do not contain deliberative matter in the form of opinion, advice, recommendation, consultation or deliberation that is recorded by Ahpra officers for the Boards' consideration under the National Law.

66. Instead, documents 6, 24, 39 and 64 appear to be incomplete internal working document templates that contain:

- generic suggested wording to be used by Ahpra officers when assessing notifications about practitioners
- limited identified personal information of the Practitioners and Ahpra officers

³¹ I note that document 6 is described in Ahpra's schedule of documents as 'Draft risk assessment' but on inspection of the document, I am of the view it is very similar to document 39 ('Draft document internal clinical advice') and therefore should be categorised in the same way.

- no protected information provided by third parties such as notifiers, practitioners and other government bodies or Ahpra officers necessary to facilitate the proper and efficient conduct of Ahpra or the Boards.

67. Accordingly, I do not find documents 6, 24, 39 and 64 to be exempt under s. 47C. I will consider these documents later in this decision in relation to the application of ss. 47E(d) and 47F.

Documents conditionally exempt

68. I have considered whether the following documents are conditionally exempt under s. 47C:

- triage, assessment and investigation reports (documents 1, 12, 28, 33, 43, 51, 67, 73, 82 and 90)
- investigation management plans (document 71 and 81)
- risk assessments for the Practitioners (documents 5, 25, 41 and 62)
- the Practitioners' registration histories (documents 8, 26, 42, 63 and 80)³²
- the Decisions and Actions of the Medical Board and Nursing and Midwifery Board (documents 7, 69 and 87).

69. After inspecting the documents listed in paragraph [68], I am of the view that the documents contain deliberative matter in the form of opinion, advice, recommendation, consultation and deliberation in relation to the functions of Ahpra and the Boards consideration under the National Law.

70. Although some of the documents listed in paragraph [68] contain information of a similar nature to that released to the Applicant in documents 14, 15, 16, 75 and 92, the documents still contain deliberative material and are therefore subject to s. 47C.

71. While I am of the view the documents listed in paragraph [68] contain deliberative matter, I am also of the view that they contain information that is non-deliberative in nature, such as the Practitioners' registration details and brief details surrounding the Applicant's notifications. However, I consider the non-deliberative matter to be an integral part of the deliberative process for which the documents were prepared.

72. In coming to this view, I considered the Australian Information Commissioner's reflection on non-deliberative matter in *Crowe and Department of Prime Minister and Cabinet* [2014] AICmr 72 (30 July 2014):

... there are many sentences in the Incoming Government Brief (IBG) that mirror comments that are already in the public domain or that could individually be released without consequence. However, ... 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...³³

73. In line with the Australian Information Commissioner's reflection, I consider that the confidentiality attached to the deliberative matter in the information contained in the documents listed in paragraph

³² I note that I have considered whether document 80 ('[Practitioner E] registration history') is conditionally exempt under s. 47C. In Ahpra's decision dated 17 April 2019, Ahpra claimed that document 80 is exempt in full under s.47F only. However, after inspecting the documents, I consider document 80 is very similar to documents 8, 26, 42 and 63 and therefore consider it in the context of the application of s. 47C.

³³ *Crowe and Department of Prime Minister and Cabinet* [2014] AICmr 72 (30 July 2014), [39].

[68] extends to the non-deliberative matter that is an integral part of Ahpra and the Boards' deliberations.

74. Accordingly, I am satisfied that the documents listed in paragraph [68] are conditionally exempt under s. 47C.
75. I am now required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt documents at this time.

Section 11A(5): The public interest test

76. 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.³⁴
77. 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.³⁵

Factors favouring disclosure

78. 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.³⁶
79. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.³⁷
80. In forming its decision, Ahpra considered the following factors in favour of disclosure:
- promoting the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities³⁸
 - public scrutiny of documents relevant to deliberations of Ahpra and the Boards may improve the quality of advice and decision-making processes

³⁴ s. 11A(5).

³⁵ *Seven Network (Operations) Limited and Australian Competition and Consumer Commission (Freedom of information)* [2019] AICmr 29 (6 June 2019), [47].

³⁶ s. 11B(3).

³⁷ FOI Guidelines [6.19].

³⁸ s. 3(2)(b).

- 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 Boards)
 - revealing information that informed a decision-making process.
81. I agree that disclosure of the documents listed in paragraph [68] 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 Boards.
82. While I agree there are public interest factors that favour disclosure of the documents listed in paragraph [68], 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

83. Ahpra put forward the following factors against disclosure:
- It is in the public interest to protect and maintain the integrity of Ahpra's investigative processes. Ahpra's ability to properly and efficiently 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, and that only suitable practitioners in various fields of the health profession can provide services to the public.
 - Disclosure could reasonably be expected to affect the candour and frankness of the opinion and advice prepared by Ahpra for consideration of a Board as part of an investigation. Candour is essential when conducting investigations and making decisions relating to notifications. If documents of the kind relating to this matter were to be disclosed, Ahpra officers may be cautious in expressing candid views and providing frank advice and may draft documents tailored to a potential external audience rather than for the benefit of the Board, out of concern that such documents could be subject to disclosure under the FOI Act. This would compromise the functionality of a Board in having available to it complete and unrestricted advice as part of a Board's decision-making process.
84. I 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. 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, or the use of information for purposes extraneous to Ahpra's functions. I consider this to be a persuasive point.

Balancing the public interest factors

85. The National Law creates a reasonable expectation of confidentiality over the communications and documents relevant to the Boards in their investigation of notifications. The deliberative matter in the form of opinions, advice, preliminary findings and recommendations to the Board, are made on the understanding that they will be treated confidentially and will only be used to assist the Board in undertaking its functions under the National Law.

86. If documents containing the opinions, advice, preliminary findings and recommendations of Ahpra and the Boards were released under the FOI Act, it is reasonable to expect that officers may be less frank and candid in the future. This would negatively affect the Board's decision-making processes. This would be contrary to its statutory obligations.
87. I note the FOI Guidelines explain that:
- Agencies should start with the assumption public servants are obliged by their position to provide robust and frank advice at all times and that obligation will not be diminished by transparency of government activities. Special and specific circumstances must exist in order for a 'frankness and candour' claim to be a relevant factor when applying s. 47C.³⁹
88. In my view, the National Law provides special and specific circumstances in relation to Ahpra and the Board.
89. 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

90. I am satisfied that the documents listed in paragraph [68] are exempt in full under s. 47C.
91. I am not satisfied that documents 6, 24, 39 and 64 are exempt under s. 47C.

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

92. Ahpra found the following documents to be conditionally exempt in full under s. 47E(d):
- triage, assessment and investigation reports (documents 1, 12, 28, 33, 43, 51, 67, 73, 82 and 90)
 - draft assessment reports (documents 24 and 64)
 - draft internal clinical advice (document 6)
 - risk assessments for the Practitioners (documents 5, 25, 41 and 62)
 - the Practitioners' registration histories (documents 8, 26, 42 and 63)
 - responses from the Practitioners to the Applicant's notifications about them (documents 32, 66 and 89).
93. I found documents 1, 5, 8, 12, 25, 26, 28, 33, 41, 42, 43, 51, 62, 63, 67, 73, 82 and 90 to be exempt in full under s. 47C and I will therefore not consider whether the documents are also exempt under s. 47E(d).
94. Ahpra found the following documents to be conditionally exempt in part under s. 47E(d):
- the response from [Practitioner A] to the Applicant's notification about them (document 11)
 - the investigation information provided to Ahpra by Monash Health (document 96).
95. Ahpra also claims s. 47F in relation to the identical exempt information in document 11. After inspecting the document, I believe it is more appropriate to consider whether the relevant information

³⁹ FOI Guidelines, [6.83].

is exempt under s. 47F. I will therefore consider document 11 later in this decision in relation to the application of s. 47F.

96. I found document 96 to be exempt in part under s. 45 and will therefore not consider whether the information is also exempt under s. 47E(d).
97. During my review, Ahpra contended the Decisions and Actions of the Boards (documents 35, 53, 75 and 92) are conditionally exempt in part under s. 47E(d).
98. Ahpra also submitted during my review that documents 7, 69 and 87 are exempt in full under ss. 47C and 47E(d). I found these documents to be exempt in full under s. 47C and it is therefore unnecessary for me to consider whether the documents are also exempt under s. 47E(d).
99. 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.⁴⁰
100. 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.⁴¹
101. 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'.⁴² 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'.⁴³
102. A decision-maker should clearly describe the expected effect and its impact on usual operations or activities in the statement of reasons.⁴⁴

Ahpra's operations

103. Under the National Law, Ahpra and the Boards accept and process notifications about registered health practitioners.⁴⁵
104. During the notifications process, Ahpra supports the Boards by collecting and assessing relevant information. In general, Ahpra provides this information to the Boards and the Boards decide whether to take regulatory action in relation to the notification.
105. Under the National Law, all 'protected information' must be treated confidentially, subject to specific exceptions.⁴⁶ 'Protected information' means any information that comes to a person's knowledge in

⁴⁰ s. 47E(d).

⁴¹ FOI Guidelines [6.101] - [6.103].

⁴² FOI Guidelines [5.20].

⁴³ FOI Guidelines [5.20].

⁴⁴ FOI Guidelines [5.21].

⁴⁵ For more information about the Board's functions see [s. 35 of the National Law \(Division 2, page 90\)](#).

⁴⁶ National Law, s.216.

the course of, or because of, the person exercising functions under the National Law (including when handling notifications).⁴⁷

Ahpra's submissions

106. Ahpra made the following submission about the triage, assessment and investigation reports, draft assessment reports, draft internal clinical advice and risk assessments for the Practitioners:

Any potential disclosure of such documents under the FOI Act would likely have a significant impact on the future flow of information from Ahpra staff to the Board, as well as adversely affect the deliberative processes of Ahpra staff within the Notifications Team. Specifically, Ahpra Notification Officers may be discouraged from keeping a complete record of their deliberations or their preliminary findings in relation to notifications out of concern that such documents could be subject to disclosure under the FOI Act. As the Board relies on advice and recommendations given by Ahpra staff in its decision-making process, any compromise to the quality of documents related to the formation of such advice by Ahpra staff during the notification process would in turn have a significant adverse effect on the operations of Ahpra and the Board.

107. Ahpra made the following submission about the records of the decisions and actions of the Boards in relation to the Applicant's notifications:

The documents contain information of a confidential and sensitive nature that is not publicly available or widely known concerning the respective practitioners subject of [the Applicant's] notifications. The documents were created by Ahpra staff and the Boards to keep a record of the finalised decisions and proposed actions during the notifications process. Having regard to the nature of the information in the documents, the circumstances in which they were created by Ahpra and the Boards, and the existence and operation of the National Law confidentiality provisions which generally prohibit the disclosure of protected information, the documents were created by Ahpra and the Boards on the basis that the information contained within would remain confidential, and would only be used by Ahpra and the Boards in carrying out functions under the National Law. There would also have been a corresponding mutual understanding by the respective practitioners involved that these documents would remain confidential.

If the documents were released under the FOI Act, this will likely cause detriment to the respective practitioners, including for example distress resulting from a loss of privacy, or potential exposure to reputational harm. Furthermore, records of decisions and actions by the Boards containing deliberations of notifications, if released under the FOI Act, could undermine practitioners' trust in Ahpra's ability in maintaining confidentiality of protected information under the National Law, and could discourage such practitioners from engaging and assisting Ahpra in the future with investigations and enquiries by the Boards in relation to notifications. This in turn would prejudice Ahpra's and the Boards' investigation and notifications processes and would lead to a significant adverse impact to the operations of Ahpra and the Boards.

108. Further, Ahpra made the following submission about the Practitioners' responses to the Applicant's notifications about them:

⁴⁷ National Law, s.214 (definition of 'protected information').

The documents contain information provided by the respective practitioners to assist Ahpra with its investigation of [the Applicant's] notifications. Having regard to the nature of the documents, the circumstances in which the documents were provided to Ahpra, the general duty of confidentiality under the National Law, and submissions by the practitioners (where relevant and applicable) in response to Ahpra's third party consultation notices, it is evident that the practitioners expected the documents to be treated by Ahpra in a confidential manner.

If the documents were to be released under the FOI Act without the practitioners' consent, this would likely have a significant impact on the future flow of information from registered health practitioners. Specifically, the disclosure of the information in the documents could reasonably be expected to discourage other health practitioners about whom the notification has been made from engaging in meaningful cooperation and sharing of information to assist future investigations by the Boards and Ahpra. These practitioners may also become more cautious in expressing candid views and may draft responses and submissions tailored to an external audience that includes the notifier rather than for the benefit of the Boards and Ahpra during the notification process, out of concern that such documents could be subject to disclosure under the FOI Act. This in turn would prejudice the integrity and robustness of investigation processes.

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

Furthermore, the documents contain personal information about the practitioners and other third parties as defined under the FOI Act, including the practitioners' views in response to the allegations made by [the Applicant], as well as personal information given by practitioners pertaining to [the Applicant's spouse] and other individuals.

Ahpra considers the disclosure of these individuals' personal information to be unreasonable in the circumstances. As discussed above, while the practitioners and other third parties ... are known by [the Applicant] to be associated with the matters dealt with in the document, the specific information, especially the personal views expressed by practitioners (including their views in response to [the Applicant's] allegations) are not known to [the Applicant], nor are they publicly accessible or well known. Further, the practitioners provided this information to Ahpra to assist its investigation into [the Applicant's] notifications, and it is likely they would have had a reasonable expectation that the information provided would only be used by Ahpra and the Boards within this context only.

Application of the certain operations of agencies exemption

Documents not conditionally exempt

109. Ahpra found documents 6, 24 and 64 to be exempt in full under s. 47E(d). Ahpra also claims ss. 47C and 47F in relation to these documents.

110. Documents 6, 24 and 64 appear to be incomplete internal working document templates that contain:

- generic suggested wording to be used by Ahpra officers when assessing notifications about practitioners
- limited identified personal information of the Practitioners and Ahpra officers

- no protected information provided by third parties such as notifiers, practitioners and other government bodies or Ahpra officers necessary to facilitate the proper and efficient conduct of Ahpra or the Boards.

111. After inspecting documents 6, 24 and 64, I consider the information contained in each document is not conditionally exempt under s.47E(d). This is because disclosure would not, or could not reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of Ahpra or the Boards.

112. I am not satisfied that disclosure of incomplete document templates could reasonably be expected to adversely affect Ahpra's operations, or that the effect of disclosure would be serious or substantial.

113. Accordingly, I do not find documents 6, 24 and 64 to be exempt under s. 47E(d).

Documents conditionally exempt

114. I have considered whether the following responses from the Practitioners to the Applicant's notifications about them are exempt in full under s. 47E(d):

- [Practitioner B's] response (document 32)
- [Practitioner D's] response (document 66)
- [Practitioner E's] response (document 89).

115. I have also considered whether the information described below is exempt in part under s. 47E(d):

- protected information provided by third parties to Ahpra officers in documents 35 and 53
- protected information provided by Ahpra officers to the Nursing and Midwifery Board in documents 75 and 92.

116. After inspecting the relevant information and documents, I am of the view that documents 32, 66 and 89, and the relevant information in documents 35, 53, 72 and 92, were provided and/or created in line with Ahpra's functions under the National Law, namely to:

- assess and investigate the Applicant's notifications about the Practitioners' performance
- provide information to the Boards to facilitate the Boards' decision-making.

117. Third parties, practitioners, Ahpra officers and other government bodies must be willing to provide information necessary to facilitate Ahpra and the Boards' assessment and investigation of a notification. This allows the Boards to determine whether regulatory action is required to manage any risks posed by the relevant health practitioner's health, conduct or performance.

118. As outlined in my decisions of 'AA' 'AC', 'AD', 'AE', 'JH' and 'MS'⁴⁸, I draw on 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) (*Mahony*). In *Mahony*, 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

⁴⁸ <https://www.nhpo.gov.au/foi-review-decisions>.

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.⁴⁹

119. 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 to Ahpra or the Boards in relation to an investigation of a notification will be treated confidentially. If Ahpra discloses the documents requested by the Applicant, a reasonable person could conclude that information prepared for the Boards in the future may not be treated confidentially. This in turn could reasonably be expected to impact how effectively Ahpra and the Boards can carry out their functions, as the information they are able to access may be less readily provided or more difficult to obtain.

120. In reaching my view, 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) (*Spragg*). Notably, in *Spragg* the Tribunal considered the application of s. 47E(d) specifically in the context of Ahpra's operations. In that case, the Tribunal found that disclosure of protected information could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.⁵⁰ In making their decision, the Tribunal stated:

...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...⁵¹

121. Taking all relevant factors into consideration, I am satisfied that disclosing the information identified above in paragraph [115] and the documents listed in paragraph [114] could reasonably be expected to affect the future flow of information from third parties, practitioners and Ahpra officers to Ahpra and the Boards. Ahpra and the Boards rely on candid communication from relevant parties to carry out their role in ensuring public safety.

⁴⁹ *Graham Mahony and Australian Charities and Not-for-profits Commission (Freedom of information)* [2019] AICmr 64 (31 August 2019), [22].

⁵⁰ *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017), [35], [75].

⁵¹ *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017), [78].

122. In addition, the National Law imposes a duty of confidentiality in relation to protected information. I consider that release of the information identified above in paragraph [115] and the documents listed in paragraph [114] could reasonably be expected to reduce the confidence of third parties, practitioners and Ahpra officers in Ahpra's ability to maintain the confidentiality of protected information.

123. I consider that disclosure of the information identified above in paragraph [115] and the documents listed in paragraph [114] would prejudice the integrity and robustness of the notifications process and thereby have a substantial adverse effect on the proper and efficient conduct of the operations of Ahpra and the Boards.

124. Accordingly, I am satisfied that the information identified above in paragraph [115] and the documents listed in paragraph [114] is conditionally exempt under s. 47E(d).

125. 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

126. I consider paragraphs [80] to [82] to be of particular relevance here.

127. I agree that disclosure of the information identified above in paragraph [115] and the documents listed in paragraph [114] would promote the objects of the FOI Act and reveal information that informed a decision-making process.

Factors against disclosure

128. I consider paragraphs [83] and [84] to be of particular relevance here.

129. 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

130. The proper and efficient assessment and investigation of notifications is an integral function of Ahpra and the Boards under the National Law. It would be contrary to the public interest if these processes (and by extension, the Boards' core function to ensure the protection of the health and safety of the public) were prejudiced as a result of the disclosure of the information identified above in paragraph [115] and the documents listed in paragraph [114] under the FOI Act.

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

132. 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

133. I am satisfied that the information identified above in paragraph [115] and the documents listed in paragraph [114] are exempt under s. 47E(d).

134. I am not satisfied that documents 6, 24 and 64 are exempt under s. 47E(d).

Section 47F: Documents affecting personal privacy

135. Ahpra found the following documents to be conditionally exempt in full under s. 47F:

- Decisions and Actions of the Boards (documents 7, 14, 69 and 87)
- synopses of notifications and restrictions for the Practitioners (documents 3, 27, 40 and 61)
- correspondence between Ahpra and the Practitioners (documents 30, 36, 65, 76 and 93)
- [Practitioner E]’s registration history (document 80)
- the information about the investigation of complaints provided to Ahpra by Monash Health (document 96).

136. Ahpra found the following documents to be exempt in part under s. 47F:

- triage, assessment and investigation reports (documents 1, 12, 28, 33, 43, 51, 67, 73, 82 and 90)
- draft assessment reports (documents 24 and 64)
- draft internal clinical advice (documents 6 and 39)
- risk assessments for the Practitioners (documents 5, 25, 41 and 62)
- investigation management plans (documents 71, 73 and 81)
- the Practitioners’ registration histories (documents 8, 26, 42 and 63)
- correspondence between Ahpra and the Practitioners (documents 4, 10, 15, 22, 45, 47, 48, 49, 55, 56 and 84)
- [Practitioner A]’s response to the Applicant’s notification about them (document 11)
- the Practitioners’ responses to the Applicant’s notifications about them (documents 32, 66 and 89).

137. During my review, Ahpra also contended the Decisions and Actions of the Boards (documents 14, 35, 53, 75 and 92) to be conditionally exempt in part under s. 47F.

138. I found document 96 to be exempt in part under s. 45 and will therefore not consider whether the information is also exempt under s. 47E(d).

139. I found documents 1, 5, 7, 8, 12, 25, 26, 28, 33, 41, 42, 43, 51, 62, 63, 67, 69, 73, 80, 82, 87 and 90 to be exempt in full under s. 47C and I will therefore not consider whether the documents are also exempt under s. 47F.

140. I found documents 32, 66 and 89 to be exempt in full under s. 47E(d) and I will therefore not consider whether the documents are also exempt under s. 47F.

141. A document is conditionally exempt under s. 47F if its disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person).⁵²

142. The main requirements of this conditional exemption are that:

⁵² s. 47F.

- a document contains ‘personal information’
- disclosure in response to the applicant’s FOI request would be unreasonable⁵³
- it would be ‘contrary to the public interest’ to release the material at the time of the decision.⁵⁴

Personal information

143. ‘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.⁵⁵

144. The FOI Guidelines explain:

The information needs to convey or say something about a person, rather than just identify them. The mere mention of a person’s name or signature may, however, reveal personal information about them depending on the context. For example, a person’s name may appear in a list of benefit recipients, and given that context, the information would be personal information. Conversely, where information does not say anything about that person the information would not be personal information.⁵⁶

Joint personal information

145. 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.⁵⁷

146. Whether it is unreasonable to release the information may depend on the relationship between the individuals.

Unreasonable disclosure of personal information

147. In determining whether the disclosure of the information would involve an unreasonable disclosure of personal information, s. 47F(2) provides that a decision-maker must have regard to:

- the extent to which the information is well known
- whether the person to whom the information relates 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 sources

⁵³ s. 47F(1).

⁵⁴ s. 11A(5).

⁵⁵ *Freedom of Information Act 1982* (Cwlth), s. 4(1) (definition of ‘personal information’); *Privacy Act 1988* (Cwlth), s. 6 (definition of ‘personal information’).

⁵⁶ FOI Guidelines, [6.143].

⁵⁷ FOI Guidelines, [6.150].

- any other matters that the agency or minister considers relevant.

148. The FOI Guidelines explain that other relevant factors include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- any submission an applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information
- whether disclosure of the information might advance the public interest in government transparency and integrity
- that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.⁵⁸

149. The FOI Guidelines explain that the test of 'unreasonableness' under s. 47F 'implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals'.⁵⁹

Ahpra's submissions

150. Ahpra said in its decision:

While each of [the Practitioners'] identify is known by [the Applicant] to be associated with the matters dealt with in the documents, there is specific information contained in the documents not known to [the Applicant], nor are they publicly accessible or well known.

The material was obtained or prepared by Ahpra in undertaking its functions under the National Law. There is an expectation that the personal information relating to a practitioner will be used by Ahpra and the Board within this context only.

[Ahpra] also considered whether the information would shed light on the workings of government, in particular the investigation process. However, when balanced against the other considerations discussed above, [Ahpra] is satisfied that disclosure of practitioner and other third-party personal information would be unreasonable in the circumstances.

151. Ahpra further explained:

In this case, the exempt documents contain joint personal information about [the Applicant] and a number of health practitioners and other third parties. This information is so intertwined that it is not reasonably practicable to separate [the Applicant's] personal information from other people's personal information.

152. During the review, Ahpra also submitted the following in relation to documents 14 and 53:

⁵⁸ FOI Guidelines, [6.143].

⁵⁹ FOI Guidelines, [6.138].

... the decisions/reasons reflected in documents 14 and 53, were made prior to the commencement of the amendments regarding the circumstances in which notifiers will be informed about the reasons for Board decisions.⁶⁰ These documents were released in part to the Applicant on 6 November [2020].

... [Ahpra] are also satisfied that disclosure of the names would, or could reasonably be expected to, create a risk to a third-party individual. Although it is noted that the Ahpra officer's name may be known to the Applicant, it is submitted that it is not within the Applicant's knowledge who attended the meetings... The reasoning [in] *Warren: Chief Executive Officer, Services Australia and (Freedom of Information)* [2020] AATA 4557, in [Ahpra's] view, should operate to exempt the name from release.

153. During the review, Ahpra also submitted the following in relation to documents 36, 76, 84 and 93:

...while certain matters relating to documents 36, 76, 84 and 93 may be known to the Applicant, the specific contents of the documents are not known to the Applicant. In this sense, it is immaterial that the Applicant received substantially the same information from Ahpra via separate communications or that [they] knew that correspondence would be generated as a result of raising concerns about a health practitioner. The content of the documents tends to say something about the health practitioners who were the subject of the notification – specifically the nature of their relationship and interactions with the regulatory body in relation to the notifications process...

Ahpra consulted with third parties whose personal information is contained within the documents sought as required by the FOI Act. Ahpra only holds consent from one practitioner to release their personal information to the Applicant. During the consultation process, safety concerns were also raised in relation to the potential release of personal information. In Ahpra's view, the objections of third parties should be given considerable weight... Ahpra also note that any release of information to the Applicant must be treated as a release of information to the world at large. [Ahpra] understands the Applicant regularly publishes material and opinion relating to the regulatory processes via social media accounts and commentary. There is a real possibility that any documents released will be published by the Applicant to the world at large. In [Ahpra's] view, documents should only be released to the Applicant in circumstances where the law would permit them to be made public and accessible to the wider community.

Application of personal privacy exemption

[Practitioner A]'s response to [the Applicant's] notification about them

154. I am of the view that document 11 contains the following information that constitutes personal information for the purposes of s. 47F:

- the email address and contact phone numbers of [Practitioner A]
- confidential information about, or provided to [Practitioner A], by unknown third parties in relation to their own expressed opinions about the Applicant's health.

155. From my examination of the available information, it is apparent that the identified personal information in paragraph [154] is not known to the Applicant and is not publicly available. In addition, [Practitioner A] objected to the release of the identified personal information in paragraph [154] on

⁶⁰ Common Protocol for Informing notifiers about the reasons for National Board decisions.

the basis that the unknown third parties provided the information to [Practitioner A] on the basis that it would remain confidential.

156. Given this, I am of the view that disclosure of the identified personal information would be unreasonable in these circumstances.

157. I am required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time. I will consider this further below in relation to the public interest test.

Draft internal clinical advice and draft assessment reports

158. Ahpra found documents 6, 24, 39 and 64 to be exempt in full under s. 47C and/or 47E(d) and exempt in part under s. 47F. As discussed above, I do not find these documents to be exempt in full under either 47C or 47E(d). As such, it is necessary for me to consider the application of s. 47F to these documents.

159. I am of the view that these documents contain the following information that constitutes personal information for the purposes of s. 47F:

- the name and position of an Ahpra officer in document 6
- the Practitioner's name, contact details, profession, and/or registration number in documents 6, 24, 39 and 64.

160. In relation to the name and position of an Ahpra officer in document 6, I am of the view that disclosure of this information would be unreasonable.

161. In coming to this view, I considered the recent decision of the Administration Appeals Tribunal (AAT): *Warren; Chief Executive Officer, Services Australia and (Freedom of Information)* [2020] AATA 4557 (*Warren*). The information under review in this decision comprised the names and telephone numbers of various officers of Services Australia contained in a Risk Management Plan, Open Issues Summary, Progress Report and Issues Summary. The AAT found such information to be exempt under s. 47F.

162. In particular, the AAT found:

- the conditional exemption in s. 47F can apply to employees of an agency⁶¹
- when determining whether access would involve unreasonable disclosure, the factors listed above at paragraphs [147] and [148] must be considered.

163. Other relevant factors the AAT considered included:

- whether the individuals are responsible for the matters canvassed in the documents
- whether disclosure would contribute to increased scrutiny or whether the public interest has been met in the form of the disclosure of the substance of the documents
- any public interest in transparency and accountability is outweighed by public interests in the rights of individuals not to have personal information unreasonably disclosed.

164. In *Warren*, the personal information in the documents was conditionally exempt under s. 47F on the basis that there was no suggestion that the individuals' names are well-known outside the agency, the

⁶¹ *Warren; Chief Executive Officer, Services Australia and (Freedom of Information)* [2020] AATA 4557.

individuals were not those responsible for the matters noted, and disclosure would not contribute to increased scrutiny of the program.⁶²

165. The facts of *Warren*⁶³ are analogous to this case on the basis that:

- the identified personal information is not known to the Applicant
- disclosure would not contribute to increased scrutiny.

166. For these reasons, I am satisfied that it has been established that disclosure of the name and position of an Ahpra officer in document 6 would be an unreasonable disclosure for the purposes of s. 47F.

167. I am required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time, and I will consider this further below.

168. In relation to the remaining identified personal information in documents 6, 24, 39 and 64, I am of the view that disclosure of this information would not be unreasonable in the circumstances.

169. The identified personal information is already known to the Applicant. Further, information such as the name, profession and registration number of a health practitioner is already available from publicly accessible sources such as Ahpra's public register of practitioners.

170. For these reasons, I am not satisfied that it has been established that disclosure of the identified personal information in documents 6, 24, 39 and 64 would be an unreasonable disclosure of personal information.

171. As I am not satisfied that the identified personal information in documents 6, 24, 39 and 64 is exempt under s. 47F, I am not required to consider whether giving the Applicant access to such information would be contrary to the public interest.

Synopses of notification and restrictions for the Practitioners

172. After examining documents 3, 27, 40 and 61, I am of the view that these documents contain the following information that constitutes personal information for the purposes of s. 47F:

- whether the Practitioners have had any previous notifications made about them
- and if so, the notifier's name and further details surrounding the notifications.

173. From my examination of the identified personal information in paragraph [172], I am of the view that disclosure of this information would be unreasonable in the circumstances because the identified personal information is not:

- known to the Applicant
- well known publicly
- available from publicly accessible sources.

174. For these reasons, I am satisfied that it has been established that disclosure of the identified personal information in paragraph [172], would be an unreasonable disclosure for the purposes of s. 47F. Consequently, it is my view that documents 3, 27, 40 and 61 are conditionally exempt in full.

⁶² Ibid.

⁶³ Ibid.

175. I am required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time, and I will consider this further below in relation to the public interest test.

Correspondence between Ahpra and the Practitioners

176. After examining documents 4, 10, 15, 22, 30, 36, 45, 47, 48, 49, 55, 56, 65, 76, 84 and 93, I am of the view that these documents contain the following information that constitutes personal information for the purposes of s. 47F:

- the name of [Practitioner B] in documents 22 and 30
- the residential addresses of the Practitioners in documents 4, 15, 30, 36, 45, 55 and 65
- the personal email addresses of the Practitioners in documents 22, 47, 48, 76, 84 and 93
- the email address and contact phone numbers of [Practitioner A] in document 10
- the personal opinion of [Practitioner C] about the Applicant in document 56
- the names and positions of Ahpra officers known to the Applicant in document 36, 76, 84 and 93
- the names and positions of Ahpra officers not known to the Applicant in document 30
- the confidential information about, or provided to [Practitioner C] by, unknown third parties in relation to their own expressed opinions about the Applicant in document 49
- the specific contents of documents 36, 76, 84 and 93.

177. From my examination of the available information, it is apparent that the following identified personal information is not known to the Applicant and is not publicly available:

- the residential addresses of the Practitioners in documents 4, 15, 22, 30, 36, 45, 55 and 65
- the personal email addresses of the Practitioners in documents 10, 22, 30, 47, 48, 76, 84 and 93
- the personal opinion of [Practitioner C] about the Applicant in document 56
- the names and positions of Ahpra officers not known to the Applicant in document 30
- the confidential information about, or provided to [Practitioner C] by, unknown third parties in relation to their own expression opinions about the Applicant in document 49
- the specific contents of documents 36, 76, 84 and 93.

178. From my examination of the identified personal information in paragraph [177], I am of the view that disclosure of this information would be unreasonable in the circumstances because:

- the identified personal information is not known to the Applicant
- disclosure would not contribute to increased scrutiny.

179. For these reasons, I am satisfied that it has been established that disclosure of the identified personal information in paragraph [177], would be an unreasonable disclosure for the purposes of s. 47F.

180. I am required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time. I will consider this further below in relation to the public interest test.

181. In relation documents 36, 76, 84 and 93, I note the names and positions of Ahpra officers in documents 36, 76, 84 and 93 have already been released to the Applicant on several occasions and that certain matters relating to documents 36, 76, 84 and 93 may be known to the Applicant. However, I accept Ahpra's submission that the specific contents of documents 36, 76, 84 and 93 are not known to the Applicant and that the content of documents 36, 76, 84 and 93 says something about the Practitioners who were the subject of the Applicant's notifications in terms of the nature of their relationship and interactions with Ahpra about the notifications process.

182. I also accept Ahpra's submission that the Applicant regularly publishes material and opinion relating to the regulation of health practitioners and that there is a real possibility that documents 36, 76, 84 and 93 may be published by the Applicant to the world at large. For these reasons, I am satisfied that it has been established that disclosure of the identified personal information in documents 36, 76, 84 and 93, would be an unreasonable disclosure for the purposes of s. 47F.

183. I am required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time, and I will consider this further below in relation to the public interest test.

184. In relation to the name of [Practitioner B] in documents 22 and 30, I am of the view that disclosure of this information would not be unreasonable in these circumstances. The identified personal information is known to the Applicant. Information such as the name of [Practitioner B] is already well known to the Applicant given the Applicant submitted a notification about [Practitioner B].

185. For these reasons, I am not satisfied that it has been established that disclosure of the name of [Practitioner B] in documents 22 and 30 would be an unreasonable disclosure of personal information.

186. As I am not satisfied that the remaining identified personal information is exempt under s. 47F, I am therefore not required to consider whether giving the Applicant access to this information would be contrary to the public interest.

Decisions and Actions of the Boards

187. After examining documents 14, 35, 50, 53, 75, and 92, I am of the view that these documents contain the following information that constitutes personal information for the purposes of s. 47F:

- the names and positions of Ahpra officers and Board Members not known to the Applicant in documents 14, 35, 50, 53, 75 and 92
- the names and positions of Ahpra officers known to the Applicant in documents 14, 35 and 53.

188. In relation to the names and positions of Ahpra officers and Board Members not known to the Applicant in documents 14, 35, 50, 53, 75 and 92, I am of the view that disclosure of this information would be unreasonable in the circumstances because:

- the identified personal information is not known to the Applicant
- disclosure would not contribute to increased scrutiny.

189. For these reasons, I am satisfied that it has been established that disclosure of the identified personal information would be an unreasonable disclosure for the purposes of s. 47F.

190. I am required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time. I will consider this further below in relation to the public interest test.

191. In relation to the names and positions of Ahpra officers known to the Applicant in documents 14, 35, and 53 I am of the view that disclosure of this information would be unreasonable in the circumstances. I acknowledge the names and positions of Ahpra officers is known to the Applicant as their names and positions have already been released to the Applicant on several occasions. However, I accept Ahpra's submission at paragraph [152] that the Applicant does not know who attended the relevant Board meetings.

192. For these reasons, I am satisfied that it has been established that disclosure of the identified personal information would be an unreasonable disclosure for the purposes of s. 47F.

193. I am required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time. I will consider this further below.

Section 11A(5): The public interest test

Factors favouring disclosure

194. Regarding the public interest factors for disclosure, I note the factors described at paragraphs [80-82] above in relation to the application of s. 47C. Ahpra identified the following factor for disclosure that relates specifically to s. 47F:

allowing a person to access their personal information, or information relating to matters that otherwise concern them.

195. I agree with the public interest factors identified by Ahpra. In particular, I agree that disclosure would allow a person to access joint personal information.

Factors against disclosure

196. Regarding the public interest factors against disclosure, I note the factors described at paragraph [83] and [84] above in relation to the application of s. 47C. Ahpra identified the following factor against disclosure that relates specifically to s. 47F:

Disclosure could reasonably be expected to prejudice the protection of [the Practitioners'] and other third-party notifiers' right to privacy.

197. I accept that the prejudice to the protection of an individual's privacy is a factor that weighs heavily against disclosure.

Balancing the public interest factors

198. I have considered the nature of the conditionally exempt information and the circumstances in which the information was provided to Ahpra. In these circumstances, I find that greater weight should be given to the factors against disclosure. As such, I find that disclosure at this time would, on balance, be contrary to the public interest.

Finding

199. I am satisfied that the identified personal information above in paragraphs [154], [160], [172], [177], [181], [188] and [191] is exempt under s. 47F.

200. I am not satisfied that the following identified personal information is exempt under s. 47F:

- the Practitioner’s name, contact details, profession and/or registration number in documents 6, 24, 39 and 64
- the name of [Practitioner B] in documents 22 and 30.

Section 37(1)(c): Documents affecting law enforcement and public safety

201. During the review, Ahpra submitted that the names and positions of Ahpra officers and Board members in documents 14 and 53 are exempt under s. 37(1)(c).

202. As I am satisfied that this information is exempt under s. 47F, it is not necessary for me to separately consider whether the information is also exempt under s. 37(1)(c).

Conclusion

203. Under s. 55K I set aside Ahpra’s decision of 17 April 2019.

204. I substitute my decision that:

- information concerning practitioners not relevant to the Applicant’s FOI request in documents 35, 75 and 92 is deleted under s. 22
- document 96 is exempt in part under s. 45
- documents 1, 5, 7, 8, 12, 25, 26, 28, 33, 41, 42, 43, 51, 62, 63, 67, 69, 71, 73, 80, 81, 82, 87 and 90 are exempt in full under s. 47C
- documents 32, 66 and 89 are exempt in full under s. 47E(d)
- the following information is exempt under s. 47E(d):
 - protected information provided by third parties to Ahpra officers in documents 35 and 53
 - protected information provided by Ahpra officers to the Nursing and Midwifery Board of Australia in documents 75 and 92
- documents 3, 27, 36, 40, 61, 76 and 93 are exempt in full under s. 47F
- the following personal information is exempt under s. 47F:
 - the email address and contact phone numbers of [Practitioner A] in documents 10 and 11
 - the confidential information about, or provided to [Practitioner A] by, unknown third parties in relation to their own expressed opinions about the Applicant in document 11
 - the residential addresses of the Practitioners in documents 4, 15, 22, 30, 45, 55 and 65
 - the personal email addresses of the Practitioners in documents 22, 30, 47, 48 and 84
 - the personal opinion of [Practitioner C] about the Applicant in document 56
 - the confidential information about, or provided to [Practitioner C] by, unknown third parties in relation to their own expressed opinions about the Applicant in document 49
 - the names and positions of Ahpra officers and/or Board Members not known to the Applicant in documents 6, 14, 30, 35, 50, 53, 75 and 92
 - the names and positions of Ahpra officers known to the Applicant in documents 14, 35, 53 and 84
 - the specific contents of documents 36, 76, 84 and 93.
- the remaining material that has been subject to review is to be released to the Applicant.

- the remaining material that has been subject to review is to be released to the Applicant.

205. Given the large number of documents relevant to this decision, where I have found one exemption ground applies to a document, I have not considered whether any additional exemptions ought to also apply.

206. The schedule of documents in **Annexure 1** sets out my decision in relation to each document.

Richelle McCausland

National Health Practitioner Privacy Commissioner

Review rights

If a review party is not satisfied with the Commissioner's review decision, the party may apply to the relevant tribunal to have the decision reviewed. This application must be made within 28 days after the party receives the Commissioner's decision.⁶⁴

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.⁶⁵

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:

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

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

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

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⁶⁴ s. 57A.

⁶⁵ s. 60(3).

Annexure 1 – Schedule of documents

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|---|------------------|--|-----------------|--|--|
| Notification [number] – [Practitioner A] | | | | | |
| 1. | 31 May 2018 | The Triage Report to Queensland Triage and Assessment Committee of the Medical Board | 3 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 2. | Undated | Attachments to document 1 | 12 | Exempt in part s. 47F | Not subject to review The exempt material in document 2 is a replica of document 3. As such document 2 is not subject to review. |
| 3. | Undated | Synopsis of notification and restrictions – [Practitioner A] | 2 | Exempt in full s. 47F | Exempt in full s. 47F |
| 4. | 7 June 2018 | Letter from Ahpra to [Practitioner A] | 4 | Exempt in part s. 47F | Exempt in part s. 47F |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---|-----------------|--|--|
| 5. | Undated | Risk Assessment – [Practitioner A] | 5 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 6. | Undated | Draft document internal clinical advice | 1 | Exempt in full ss. 47C, 47E(d) and 47F | Release in part s. 47F Document 6 is to be released to the Applicant with the following information deleted as it is exempt under s. 47F: <ul style="list-style-type: none"> the name and position of the Ahpra officer. The remaining page is to be released in full. |
| 7. | 31 May 2018 | Decisions and Actions of the Medical Board to investigate | 3 | Exempt in full s. 47F | Exempt in full s. 47C |
| 8. | Undated | [Practitioner A] registration history | 17 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---|-----------------|---|--|
| 9. | 13 May 2018 | Attachment to document 4 | 8 | Released in full | Not subject to review |
| 10. | 26 June 2018 | Email exchange between Ahpra and [Practitioner A] | 4 | Exempt in part s. 47F | Exempt in part s. 47F |
| 11. | 19 June 2018 | [Practitioner A] Response | 4 | Exempt in part ss. 47E(d) and 47F | Exempt in part s. 47F |
| 12. | Undated | Assessment Report | 3 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 13. | Undated | Assessment Report Attachments | 9 | Exempt in part ss. 47E(d) and 47F | Not subject to review The exempt material in document 13 is a replica of document 3 and 11. As such |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|---------------------------------|---|
| | | | | | document 13 is not subject to review. |
| 14. | 27 July 2018 | Decisions and Actions of the Medical Board | 3 | Exempt in full s. 47F | Release in part s. 47F During the review, Ahpra decided document 14 is to be released to the Applicant with the following information exempt under s. 47F: <ul style="list-style-type: none"> • the name and position of the Ahpra officer • the names of the Board Members. |
| 15. | 7 August 2018 | Letter from Ahpra to [Practitioner A] | 2 | Exempt in part s. 47F | Exempt in part s. 47F |
| 16. | 7 August 2018 | Letter from Ahpra to [the Applicant] | 3 | Released in full | Not subject to review |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|---|-------------------------|-----------------------------|------------------------|-------------------------|---|
| 17. | 7 August 2018 | Email from [the Applicant] | 1 | Released in full | Not subject to review |
| 18. | 7 August 2018 | Email from [the Applicant] | 1 | Released in full | Not subject to review |
| Notification [number] – [Practitioner B] | | | | | |
| 19. | 11 May 2018 | Notification | 11 | Released in full | Not subject to review |
| 20. | 31 May 2018 | Email from [the Applicant] | 1 | Released in full | Not subject to review |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---|-----------------|--------------------------|---|
| 21. | 30 May 2018 | Letter from Ahpra to [the Applicant] | 13 | Released in full | Not subject to review |
| 22. | 30 May 2019 | Letter from Ahpra to [Practitioner B] | 5 | Exempt in part s. 47F | <p>Exempt in part s. 47F</p> <p>Document 22 is to be released to the Applicant with the following information deleted as it is exempt under s. 47F:</p> <ul style="list-style-type: none"> the personal email address and residential address of [Practitioner B]. <p>The remaining pages are to be released in full.</p> |
| 23. | 11 May 2018 | Redacted Notification – Attachment to document 22 | 7 | Released in full | Not subject to review |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|--|--|
| 24. | Undated | Draft Assessment Report | 5 | Exempt in full ss. 47C, 47E(d) and 47F | Release in full |
| 25. | Undated | Risk Assessment for [Practitioner B] | 5 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 26. | Undated | [Practitioner B] registration history | 22 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 27. | Undated | Synopsis of notification and restrictions – [Practitioner B] | 2 | Exempt in full s. 47F | Exempt in full s. 47F |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---------------------------------------|-----------------|--|--|
| 28. | 6 July 2018 | Assessment Report | 3 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 29. | Undated | Assessment Report attachments | 9 | Released in full | Not subject to review |
| 30. | 3 July 2018 | Letter from Ahpra to [Practitioner B] | 1 | Exempt in full s. 47F | Release in part s. 47F Document 30 is to be released to the Applicant with the following information deleted as it is exempt under s. 47F: <ul style="list-style-type: none"> • the name and position of the Ahpra officer • the email address and residential address of [Practitioner B]. The remaining page is to be released in full. |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|---|---|
| 31. | 22 October 2018 | Information sharing under s. 216(2)(a) of the National Law | 1 | Released in full | Not subject to review |
| 32. | 14 December 2018 | [Practitioner B] response | 12 | Exempt in full s. 47E(d) and 47F | Exempt in full s. 47E(d) |
| 33. | 17 January 2019 | Investigation Report | 6 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 34. | Undated | Attachments to document 33 | 8 | Exempt in part ss. 47E(d) and 47F | Not subject to review The exempt material in document 34 is a replica of document 32 and 27. As such document 34 is not subject to review. |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---|-----------------|---------------------------------|--|
| 35. | 17 January 2019 | Extract of Decisions and Actions of the Nursing and Midwifery Board | 4 | Exempt in full s. 47F | Release in part ss. 22, 47E(d) and 47F During the review, Ahpra released document 35 to the Applicant in part exempting the following information: <ul style="list-style-type: none"> • the names and positions of Ahpra officers and Board Members under s. 47F • protected information provided by third parties to Ahpra officers under s. 47E(d) • information concerning practitioners not relevant to the Applicant's FOI request under s. 22. |
| 36. | 17 January 2019 | Letter from Ahpra to [Practitioner B] | 3 | Exempt in full s. 47F | Exempt in full s. 47F |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|---|------------------|--|-----------------|-----------------------------------|--|
| 37. | 17 January 2019 | Letter from Ahpra to [the Applicant] | 3 | Released in full | Not subject to review |
| Notification [number] – [Practitioner C] | | | | | |
| 38. | 11 May 2018 | Notification | 11 | Released in full | Not subject to review |
| 39. | Undated | Draft document internal clinical advice | 2 | Exempt in full ss. 47C and 47F | Release in full |
| 40. | Undated | Synopsis of notification and restrictions – [Practitioner C] | 2 | Exempt in full s. 47F | Exempt in full s. 47F |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|--|--|
| 41. | Undated | Risk Assessment for [Practitioner C] | 5 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 42. | Undated | [Practitioner C] registration history | 17 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 43. | 31 May 2018 | Triage Report to Queensland Triage and Assessment Committee of the Medical Board | 3 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 44. | Undated | Attachment to document 43 | 11 | Released in full | Not subject to review |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---|-----------------|---------------------------------|--|
| 45. | 4 June 2018 | Letter from Ahpra to [Practitioner C] | 4 | Exempt in part s. 47F | Exempt in part s. 47F |
| 46. | Undated | Attachment to document 45 | 6 | Released in full | Not subject to review |
| 47. | 12 June 2018 | Email exchange between Ahpra and [Practitioner C] | 2 | Exempt in part s. 47F | Exempt in part s. 47F |
| 48. | 13 June 2018 | Email exchange between Ahpra and [Practitioner C] | 2 | Exempt in part s. 47F | Exempt in part s. 47F |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|--|--|
| 49. | Undated | [Practitioner C] response attached to document 48 | 5 | Exempt in part s. 47F | Exempt in part s. 47F |
| 50. | 31 May 2018 | The Medical Board Decisions and Actions to seek response from [Practitioner C] | 2 | Released in full s. 22 | Release in part s. 47F Document 50 is to be released to the Applicant with the following information deleted as it is exempt under s. 47F: <ul style="list-style-type: none"> the names and positions of Ahpra officers. The remaining page is to be released in full. |
| 51. | 24 July 2018 | Assessment Report | 4 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|---------------------------------|---|
| 52. | Undated | Attachments to document 51 | 368 | Exempt in part s. 47F | Not subject to review The exempt material in document 52 is a replica of document 49. As such document 52 is not subject to review. |
| 53. | 27 July 2018 | Decisions and Actions of the Medical Board | 4 | Exempt in full s. 47F | Release in part ss. 47E(d) and 47F During the review, Ahpra released document 53 to the Applicant in part exempting the following information: <ul style="list-style-type: none"> • the name and position of the Ahpra officer and Board Members under s. 47F • protected information provided by third parties to Ahpra officers under s. 47E(d). |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|---------------------|-------------------------|--|------------------------|---------------------------------|---|
| 54. | 7 August 2018 | Letter from Ahpra to [the Applicant] | 3 | Released in full | Not subject to review |
| 55. | 7 August 2018 | Letter from Ahpra to [Practitioner C] | 2 | Exempt in part s. 47F | Exempt in part s. 47F |
| 56. | 8 August 2018 | Telephone call from [Practitioner C]'s note | 1 | Exempt in part s. 47F | Exempt in part s. 47F |
| 57. | 7 August 2018 | Email exchange between Ahpra and [the Applicant] | 1 | Released in full | Not subject to review |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|---|-------------------------|--|------------------------|---------------------------------|---|
| 58. | 7 August 2018 | Email exchange between Ahpra and [the Applicant] | 1 | Released in full | Not subject to review |
| Notification [number] – [Practitioner D] | | | | | |
| 59. | 12 May 2018 | Notification | 12 | Released in full | Not subject to review |
| 60. | 23 May 2018 | Letter from Ahpra to [the Applicant] | 13 | Released in full | Not subject to review |
| 61. | Undated | Synopsis of notification and restrictions – [Practitioner D] | 1 | Exempt in full s. 47F | Exempt in full s. 47F |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---------------------------------------|-----------------|--|--|
| 62. | Undated | Risk Assessment for [Practitioner D] | 6 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 63. | Undated | [Practitioner D] registration history | 28 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 64. | Undated | Draft Assessment Report | 5 | Exempt in full ss. 47C, 47E(d) and 47F | Release in full |
| 65. | 23 May 2018 | Letter from Ahpra to [Practitioner D] | 5 | Exempt in full s. 47F | Release in part s. 47F Document 65 is to be released to the Applicant with the following information deleted as it is exempt under s. 47F: <ul style="list-style-type: none"> the residential address of [Practitioner D]. |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|--|---|
| | | | | | The remaining pages are to be released in full. |
| 66. | 8 June 2018 | [Practitioner D] response | 4 | Exempt in full ss. 47E(d) and 47F | Exempt in full s. 47E(d) |
| 67. | 6 July 2018 | Triage Report to Notifications Committee of the Victorian Board of the Nursing and Midwifery Board | 3 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 68. | Undated | Attachments to document 67 | 12 | Exempt in part s. 47E(d) | Not subject to review The exempt material in document 68 is a replica of document 66. As such document 68 is not subject to review. |
| 69. | 5 July 2018 | Extract of Decision of the Nursing and Midwifery Board to investigate | 5 | Exempt in full s.47F | Exempt in full s. 47C |

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|---------------------|-------------------------|---|------------------------|--|---|
| 70. | 23 August 2018 | Correspondence exchange between Ahpra and Monash Health | 6 | Released in full | Not subject to review |
| 71. | 9 August 2018 | Investigation Management Plan | 2 | Exempt in full ss. 47C and 47F | Exempt in full s. 47C |
| 72. | 23 August 2018 | Document 70 (emailed version) | 2 | Released in full | Not subject to review |
| 73. | 6 September 2018 | Investigation Report | 7 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|--|---|
| 74. | Undated | Attachments to document 73 | 82 | Exempt in part ss. 45, 47(B), 47E(d) and 47F | Not subject to review The exempt material in document 74 is a replica of document 66 and an extract contained in document 96. As such document 74 is not subject to review. |
| 75. | 6 September 2018 | Extract of Decision of the Nursing and Midwifery Board | 6 | Exempt in full s. 47F | Release in part ss. 22, 47E(d) and 47F During the review, Ahpra released document 75 to the Applicant in part exempting the following information: <ul style="list-style-type: none"> • the names and positions of all but one Ahpra officer under s. 47F • the names of Board Members under s. 47F • protected information provided by Ahpra officers to the Board under s. 47E(d) • information concerning practitioners not |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|-------------------|--|-----------------|---------------------------------|--|
| | | | | | relevant to the Applicant's FOI request under s. 22. |
| 76. | 25 September 2018 | Email and letter to [Practitioner D] | 4 | Exempt in full s. 47F | Exempt in full s. 47F |
| 77. | 25 September 2018 | Email and letter to [the Applicant] | 8 | Released in full | Not subject to review |
| 78. | 9 October 2018 | Email exchange between [the Applicant] and Ahpra | 2 | Released in full | Not subject to review |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|---|------------------|--|-----------------|---|--|
| Notification [number] – [Practitioner E] | | | | | |
| 79. | 12 May 2018 | Notification | 12 | Released in full | Not subject to review |
| 80. | Undated | [Practitioner E] registration history | 30 | Exempt in full s. 47F | Exempt in full s. 47C |
| 81. | 8 August 2018 | Investigation Management Plan | 2 | Exempt in full ss. 47C and 47F | Exempt in full s. 47C |
| 82. | 5 July 2018 | Triage Report to Notifications Committee of the Victorian Board of the Nursing and Midwifery Board | 3 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|---|-----------------|--------------------------|--|
| 83. | Undated | Attachment to document 82 | 9 | Released in full | Not subject to review |
| 84. | 9 August 2018 | Letter from Ahpra to [Practitioner E] advising of notification | 33 | Exempt in part s. 47F | Exempt in part s. 47F |
| 85. | 12 May 2018 | Redacted notification sent with document 84 | 9 | Released in full | Not subject to review |
| 86. | 23 August 2018 | Correspondence exchange between Ahpra and Monash Health | 6 | Released in full | Not subject to review |
| 87. | 5 July 2018 | Extract of Decision of the Nursing and Midwifery Board to investigate | 5 | Exempt in full s. 47F | Exempt in full s. 47C |

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|--------------|------------------|--|-----------------|--|--|
| | | | | | |
| 88. | 9 August 2018 | Email and letter from Ahpra to Monash Health | 6 | Released in full | Not subject to review |
| 89. | 22 August 2018 | [Practitioner E] response | 5 | Exempt in full ss. 47E(d) and 47F | Exempt in full s. 47E(d) |
| 90. | 6 September 2018 | Investigation Report | 7 | Exempt in full ss. 47C, 47E(d) and 47F | Exempt in full s. 47C |
| 91. | Undated | Attachments to document 90 | 84 | Exempt in part ss. 45, 47(B), 47E(d) and 47F | Not subject to review The exempt material in document 91 is a replica of document 66 and an extract contained in document 96. As |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|------------------|--|-----------------|---------------------------------|---|
| | | | | | such document 91 is not subject to review. |
| 92. | 6 September 2018 | Extract of Decision of the Nursing and Midwifery Board | 6 | Exempt in full s. 47F | Release in part ss. 22, 47E(d) and 47F During the review, Ahpra released document 92 to the Applicant in part exempting the following information: <ul style="list-style-type: none"> • the names and positions of all but one Ahpra officer under s. 47F • the names of Board Members under s. 47F • protected information provided by Ahpra officers to the Board under s. 47E(d) • information concerning practitioners not relevant to the |

| Document No. | Date of document | Document description | Number of pages | Ahpra's decision | National Health Practitioner Privacy Commissioner's decision |
|--------------|-------------------|--|-----------------|---------------------------------|--|
| | | | | | Applicant's FOI request under s. 22. |
| 93. | 25 September 2018 | Email and letter to [Practitioner E] | 4 | Exempt in full s. 47F | Exempt in full s. 47F |
| 94. | 25 September 2018 | Email and letter to [the Applicant] | 8 | Released in full | Not subject to review |
| 95. | 9 October 2018 | Email exchange between [the Applicant] and Ahpra | 2 | Released in full | Not subject to review |

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|--|------------------|--|-----------------|--|--|
| Monash Health Complaint documentation obtained by Ahpra | | | | | |
| 96. | Undated | Investigation of complaints lodged by [the Applicant] with Monash Health | n/a | Exempt in part ss. 45, 47(B), 47E(d) and 47F | Exempt in part s. 45 |