‘AV’ and Australian Health Practitioner Regulation Agency (Freedom of Information)

National Health Practitioner Privacy Commissioner

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

Applicant	‘AV’
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/14792023
Decision date	15 September 2025
Catchwords	FREEDOM OF INFORMATION –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. 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

1. Under s. 55K, I set aside Ahpra’s decision dated 7 September 2023.
2. I substitute my decision that the document in question is to be released to the Applicant in part, excluding the third party’s contact email address which is exempt under s. 47F.

Background

3. Ahpra provides administrative assistance and support to the National Health Practitioner Boards (the National Boards) in exercising their functions relating to the regulation of health practitioners in Australia.
4. The Applicant made a request to Ahpra for access to documents in the following terms:

   I am amending my Application to the purported letter sent to [the third party] as clearly indicated in [Aphra’s] email of the 5 January 2017. I certainly hope that is the case as mentioned by [Ahpra] in [its] email to myself.

5. Ahpra identified 1 document relevant to the request, being correspondence sent by Ahpra to a third party consulting with them in relation to an FOI request that the Applicant made to Ahpra in 2016.

6. In its decision letter dated 7 September 2023, Ahpra decided to refuse access to the document in full on the basis that the information in the document was exempt under ss. 47E(d) and 47F.
7. The Applicant did not seek an internal review of Ahpra's decision.
8. On 19 September 2023, the Applicant sought a review of Ahpra's decision under s. 54L.

Scope of the review

9. The issue to be decided in this review is whether the document that Ahpra found to be exempt in full under ss. 47E(d) and 47F is conditionally exempt under these provisions, and if so, whether giving access to the document would be contrary to the public interest.
10. In a review of an access refusal decision, Ahpra bears the onus of establishing that its decision is justified or that I should give a decision adverse to the Applicant.[1] However, it is open to me to obtain any information from any person, make any inquiries that I consider appropriate, and change the basis on which the decision is made.[2]
11. The Applicant and Ahpra were invited to make written submissions about this review. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
12. I have had regard to the object of the FOI Act, which is to give the Australian community access to information held by the Government by requiring agencies to publish that information and by providing for a right of access to documents.[3]

Review of the exemptions

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

13. Ahpra found the document to be conditionally exempt in full under s. 47E(d).
14. 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.
15. The Office of the Australian Information Commissioner's FOI Guidelines (the FOI Guidelines) explain that the predicted effects need 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.[4]
16. The term 'substantial adverse effect' broadly means an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonably person.
17. A decision-maker cannot merely assert that an effect will occur following disclosure. The particulars of the predicted effect should be identified during the decision-making process, including whether the effect could reasonably be expected to occur.[5]

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[1] s. 55D(1).

[2] ss. 55 and 55K.

[3] s. 3(1).

[4] FOI Guidelines, [6.90].

Ahpra's operations

18. Under the *Health Practitioner Regulation National Law Act 2009* (as it applies in each State and Territory) (the National Law), Ahpra and the National Boards exercise functions including the following:[6]

    - registering suitably qualified and competent persons in the health professions and, if necessary, imposing conditions on the registration of persons in the professions
    - deciding the requirements for registration or endorsement of registration in the health professions, including the arrangements for supervised practice in the professions
    - overseeing the receipt, assessment and investigation of notifications about persons who are or were registered as health practitioners under the National Law
    - overseeing the management of health practitioners and students registered in the health professions, including monitoring conditions, undertakings and suspensions imposed on the registration of the practitioners or students.

Ahpra's submissions

19. In its decision dated 7 September 2023, Ahpra said the following with respect to s. 47E(d):

    > I am satisfied that disclosure of the document would, or could reasonably be expected to have substantial adverse effect on the proper and efficient conduct of the operations of Ahpra and the National Boards for the following reasons:
    >
    > - The FOI Act does not restrict the subsequent use of information released to an applicant under the FOI Act. In Australia there is case law relating to disclosure of information under the FOI Act, for example, the Administrative Appeals Tribunal (AAT) has stated that '*access to a document under the FOI Act must be considered not on the basis of the identity and the qualities of the person who seeks that access but on the basis that it may be seen by anybody. As it is usually expressed, access under the FOI Act, is access to the world at large*';[7]
    > - Information received or otherwise held by Ahpra and the [National Boards] is held on the understanding that it will be treated in a confidential manner and used in accordance with the National Law and the Privacy Act 1988 (Cth) (the Privacy Act). The information in this instance is considered protected information within the meaning of section 214 of the National Law. It is an offence to disclose protected information unless an exception applies;[8]
    > - In processing FOI requests, Ahpra is required to follow the procedures set out under the FOI Act, which includes consulting with relevant third parties as required. In consulting with third parties, Ahpra relies on the personal information it holds about individuals such as their contact details and other information, in order to facilitate that communication. If the relevant correspondence was released under the FOI Act, without the express consent of the relevant party, this would have a significant adverse impact on the future flow of information from practitioners and other parties, to Ahpra. Pertinently, this may inhibit individuals from expressing freely and providing complete and frank information out of concern that

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[5] FOI Guidelines, [6.92].

[6] For more information about the National Boards' functions refer to s. 35 of the National Law.

[7] *Meschino and Centrelink* [2002] AATA 627 [23].

[8] National Law, s. 216.

communications to or from them, which they had understood to be private and confidential may be subject to disclosure under the FOI Act. This would likely reduce the effectiveness of third-party participation in Ahpra and the Board's processes and in turn make those processes less effective, slower and more costly.

20. In the course of this review, Ahpra provided further submissions, including the following with respect to s. 47E(d):

> In so far as section 47E(d) of the FOI applies, we note that the FOI application has been made in the circumstance of the Applicant's ongoing grievances with [the third party] and matters relating to diagnosis and treatment under an involuntary treatment order which occurred over ten years ago. It is not apparent that the [National Health Practitioner Privacy Commissioner] has given any weight to the potential risk that the Applicant may pose to [the third party] through the release of information which may lead to inappropriate attempts to contact other parties, including [the third party] to reagitate these matters. In our view the Applicant has engaged in a recent pattern of unreasonably persistent and inappropriate behaviour toward individuals about whom [their] complaints relates and it is not unforeseeable that [they] would continue to act in that manner if [they were] given the document.

The Applicant's submission

21. The Applicant provided the following submission:

> …Even if Ahpra were genuine about revealing [the third party] contact details. Well even the simplest of minds would expect for the contact details to be whited out.

Application of the agency operations conditional exemption

22. I have considered whether the document is conditionally exempt under s. 47E(d).

23. Taking all relevant factors and submissions into consideration, it is my view that release of the document would not, or could not be reasonably expected to, have a substantial adverse impact on the proper and efficient conduct of the operations of Ahpra.

24. After inspecting the document, I am not satisfied that the document concerns Ahpra exercising its functions under the National Law. Rather, the document concerns Ahpra exercising its functions under the FOI Act.

25. As acknowledged by Ahpra in its decision, Ahpra is required to follow the procedures set out under the FOI Act when processing FOI requests, which includes consulting with relevant third parties as required. I am not satisfied that disclosure of the correspondence sent to the third party in accordance with the FOI Act in this instance would have a significant adverse impact on the future flow of information from third parties to Ahpra. This is a different situation to where third parties provide information in confidence to Ahpra and the National Boards so that they may exercise their functions under the National Law.

26. The contents of the document explain that an FOI request has been made concerning the third party and that Ahpra is required to consult with them about the release of a document. The document then describes Ahpra's typical FOI consultation process and legislative background to FOI consultation. The letter is in a standard format and does not appear to be tailored to the specific circumstances, besides

the use of the third party's and Applicant's names. Further, the Applicant is already aware that the third party was consulted about the FOI request.

27. I appreciate Ahpra's view that disclosure of information provided by practitioners and third parties may prejudice the future free flow of information that is made on an understanding of confidentiality. However, the document at issue does not contain confidential information provided by the third party. It contains general information about Ahpra's FOI consultation process, provided by Ahpra. I am not satisfied that disclosure of the information in this letter would have a substantial adverse effect on Ahpra's operations.

28. If the information in the document were released, it is unlikely a reasonable person would conclude that information provided to Ahpra may not be treated confidentially in the future. I am not satisfied that release of this particular document could be reasonably expected to impact the effectiveness of Ahpra and the National Boards' operations.

29. I note Ahpra's view that the Applicant has engaged in a recent pattern of unreasonably persistent and inappropriate behaviour towards individuals about whom the Applicant's notification relates. However, I am not satisfied that the available information supports this view. I have not been presented with any recent correspondence from the Applicant that would be considered unreasonably persistent or inappropriate behaviour towards any individual.

30. Accordingly, I am not satisfied that the document is conditionally exempt under s. 47E(d).

Finding

31. I am of the view that the document is not conditionally exempt under s. 47E(d). Given this finding, I am not required to consider whether it would be contrary to the public interest to give the Applicant access to the document.

Section 47F: Documents affecting personal privacy

32. Ahpra also found the document to be conditionally exempt under s. 47F.

33. 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).[9]

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

- a document contains 'personal information'
- disclosure in response to the applicant's FOI request would be unreasonable[10]
- it would be contrary to the public interest to release the material at the time of the decision.[11]

35. The FOI Guidelines explain:

> The information needs to be 'about' an individual – there must be a connection between the information and the person. This is a question of fact and depends on the context and

[9] s. 47F.

[10] s. 47F(1).

[11] s. 11A(5).

circumstances. Some information is clearly about an individual – for example, name, date of birth, occupation details and medical records. A person's signature, home address, email address, telephone number, bank account details and employment details will also generally constitute personal information. Other information may be personal information if it reveals a fact or opinion about the person in a way that is not too tenuous or remote. Invoices related to the purchase of alcohol for Prime Ministerial functions do not disclose personal information about the Prime Minister if it is possible that a staff member made the purchases based on something other than the Prime Minister's preferences. Examples of when information is not 'about' a person and therefore the information is not personal information for the purposes of s 6 of the Privacy Act, include the colour of a person's mobile phone or their network type (e.g., 5G).[12]

Unreasonable disclosure of personal information

36. 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
    - any other matters that the agency or minister considers relevant.
37. 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
    - the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
    - 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.[13]
38. 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'.[14]

[12] FOI Guidelines, [6.131].

[13] FOI Guidelines, [6.138].

[14] FOI Guidelines, [6.133].

Ahpra's submissions

39. In its decision dated 7 September 2023, Ahpra said the following with respect to s. 47F:

> The document contains information about [the third party] in the form of [their] contact details and other information comprising correspondence sent to [them] by Ahpra. The correspondence was sent directly to [the third party] by Ahpra and [the Applicant is] not a party to that correspondence…
>
> I am satisfied from my own enquiries that the personal information is not well known or publicly available. Ahpra generated this information in the course of processing a request made under the FOI Act by [the Applicant]. There is an expectation, reinforced by the confidentiality provisions of section 216 of the National Law, that the personal information of third parties generated in connected to such as request would be used by Ahpra within this context only and only in a manner consistent with the Privacy Act and Australian Privacy Principles…

40. In the course of this review, Ahpra noted the following:

> On 15 August 2023, Ahpra consulted with the affected third party to seek their view on the potential release of the document to the applicant. Ahpra did not receive a response. On 31 August 2023, Ahpra sent another e-mail to the affected third party to seek their view about the request from the applicant. On 31 August 2023, Ahpra received an out of office reply from the affected third party's email address stating that they were not returning to work until 3 October 2023. Therefore, Ahpra was unable to obtain a view from the affected third party about their personal information contained within the document.

41. Ahpra also made the following submissions with respect to s. 47F:

> It is evident that the document contains the personal information of [the third party] in the form of correspondence sent to [them] individually, by Ahpra, in respect of a particular process. In other words, the document, in context, says something about [them].
>
> If the contents of the document were truly isolated descriptions of FOI processes, the Applicant could avail [themself] of material published to the [Office of the Australian Information Commissioner's] website. It is clear that the perceived value of the document is in the fact that it identifies with precision, what was communicated to [the third party] by Ahpra at a particular time and in a particular item of correspondence. Indeed, the FOI request is posed in terms of seeking specific correspondence sent to [the third party] and is not seeking a generic document describing FOI processes…

42. Ahpra submitted that release of the document would have the effect of displacing my previous determinations such as *MS v Ahpra* and *AG v Ahpra*, creating a new precedent that is inconsistent with the FOI Act.

Application of the personal privacy exemption

43. After reviewing the document, I am of the view that the document is exempt in part under s. 47F, to the extent it discloses the third party's contact email address.

44. I find that the third party's email address can be considered personal information. However, it is my view that the remainder of the document does not contain personal information. The document predominantly contains generic information about the FOI consultation process. I am not satisfied that

the third party being consulted with under the FOI Act can be considered personal information 'about' them,[15] especially as the document does not discuss the nature of the information being consulted on.

45. Even if the information in the document can be considered personal information, I am not satisfied that disclosure would be unreasonable. I have considered the factors under s. 47F(2) when reaching this view, and note that:
    - the Applicant is already aware of the third party's involvement in the FOI consultation process. I consider this to weigh strongly against disclosure being unreasonable
    - the third party has not objected to the release of the document.
46. As noted above, Ahpra submitted that release of the document would have the effect of displacing my previous determinations such as *MS v Ahpra* and *AG v Ahpra*, creating a new precedent that is inconsistent with the FOI Act. I do not agree with Ahpra's view. These previous determinations concern documents relating to the notifications process and communications with the practitioner notified about, not the FOI consultation process. In *MS v Ahpra*, the documents under consideration were the practitioner's response to a notification made about them and their registration information. In *AG v Ahpra*, I considered correspondence from Ahpra to the practitioner and while I found these documents were exempt under s. 47E(d), I did not consider whether they were also exempt under s. 47F. Every FOI review application must be determined on its own merits, and I consider the circumstances of this matter to be vastly different to those in *MS v Ahpra* and *AG v Ahpra*.
47. Taking all factors into account, I consider that it would not be unreasonable to release the document in part. The only information I believe would be unreasonable to disclose is the third party's email address. This information is not well known or publicly available, and its release would prejudice the third party's privacy without advancing any public interest.
48. I am therefore of the view that part of the document is conditionally exempt under s. 47F. Given this finding, I am required to consider whether it would be contrary to the public interest to give the applicant access to this information.

Section 11A(5): The public interest test

49. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed unless in the circumstances access to the document at this time would on balance be contrary to the public interest.[16]
50. 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.[17]

[15] *Privacy Commissioner v Telstra Corporation Limited* [2017] FCAFC 4.

[16] s. 11A(5).

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

Factors favouring disclosure

51. 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.[18]
52. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.[19]
53. 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 activities
    - facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the agency (including FOI processes)
    - allowing a person to access information relating to matters that concern them.

Factors against disclosure

54. The FOI Act does not list any factors weighing against disclosure but the conditional exemptions themselves recognise that harm may result from disclosure in certain circumstances (for example where disclosure could prejudice an investigation).
55. As an example, some factors against disclosure include whether disclosure could reasonably be expected to:
    - prejudice public health or safety
    - impede the flow of information to a regulatory authority
    - prejudice the ability of officers to express frank and fearless opinions and have their recommendations protected from scrutiny given they are recommendations only and it is for the relevant National Board to make regulatory decisions
    - prejudice Ahpra or the National Boards' ability to obtain confidential or similar information in the future.
56. In forming its decision, Ahpra stated the following factors as weighing against disclosure:
    - it is in the public interest, and vital to the functions of Ahpra, that third parties are able to communicate with Ahpra in good faith and without fear that communications to or from them would be disclosed to others in the absence of their consent. Such a disclosure may expose them to reprisals, collateral litigation or otherwise to their detriment in other forums. Their inability to engage freely will in turn have an adverse effect on the proper and efficient conduct of the operations of Ahpra and the National Boards.

[18] s. 11B(3).

[19] FOI Guidelines, [6.231].

- the prejudice to an individual's right to privacy, particularly as the relevant material is not well known, or publicly available. Disclosure could also expose individuals to unfair scrutiny, in circumstances where there was an expectation of confidentiality or where they otherwise understood their personal information would be confidential. The personal privacy exemption is designed to prevent unreasonable invasion of a third party's privacy. I consider that the prejudice to the protection of an individual's right to privacy is a factor that weighs heavily against full disclosure.

57. In the course of this review, Ahpra submitted that the public interest factors weigh against the release of the information given that:

    - the content of the document was not well known to the applicant or publicly known. While the applicant may have knowledge or have made inferences about the consultation process undertaken by Ahpra under the FOI Act, the applicant was not aware of the content or detail of the document
    - the third party had not expressed an opinion on the release of the document and consent was absent. It submitted that the document is personal information and considered 'protected information' under the National Law which is subject to a duty of confidentiality
    - the document does not facilitate the applicant's access and involvement in the activities of government
    - the document that the applicant seeks relates to a FOI process that does not relate to their legal rights or interests.

58. Under s. 11B(4), there are certain factors that must not be taken into account, namely whether:

    - disclosure could result in embarrassment to the Commonwealth Government
    - disclosure would result in any person misinterpreting or misunderstanding the document
    - the author of the document was of high seniority in the agency
    - access to the document could result in confusion or unnecessary debate.

Balancing the public interest factors for and against disclosure

59. In balancing the public interest in this case, I have considered the factors for and against disclosure.

60. The factors favouring disclosure include that the disclosure of the information would promote the objects of the FOI Act, reveal information that informed a decision-making process and allow the applicant access to information relating to matters that concern them.

61. The factors against disclosure include that disclosure may prejudice the protection of a third party's right to privacy and that the third party's personal contact details bear little relevance to any public interest in government transparency and accountability.

62. Every FOI request must be considered on its merits at the time the decision is made. I have considered the specific circumstances, the nature of the relevant information and the submissions from Ahpra and the Applicant.

63. In relation to the information I consider conditionally exempt under s. 47F, being the third party's email address, I am satisfied the public interest factors against disclosure outweigh those in favour of

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

Finding

64. I am satisfied that the third party's contact email address is exempt under s. 47F on the basis that disclosure of this information would be contrary to the public interest for the purposes of s. 11A(5).

Conclusion

65. Under s. 55K, I set aside Ahpra's decision of 7 September 2023.

66. I substitute my decision that the document is to be released in part to the Applicant, excluding the third party's contact email address which is exempt under s. 47F.

Richelle McCausland
National Health Practitioner Privacy Commissioner

Rights

Review rights

If a review party is not satisfied with a review decision of the Commissioner, the party may apply to a relevant tribunal to have the decision reviewed. This application must be made within 28 days after the day the party receives the Commissioner's decision. [20]

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. [21]

Appeal rights

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

An appeal must be made either:

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

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

[20] s. 57A.

[21] s. 60(3).

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