

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



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

Applicant	'AW'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/07052024
Decision date	15 September 2025
Catchwords	FREEDOM OF INFORMATION – Whether including matter in the reasons for decision would cause that document to be an exempt document by virtue of ss. 47E(c) and/or 47F — Freedom of Information Act 1982 s. 26(2)

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 2 May 2024 and in substitution for that decision decide that s. 26(2) does not apply.
2. The effect of this decision is that Ahpra must identify the documents sought and make a decision on their release under the FOI Act.
3. In doing so, I acknowledge that ss. 47E(c) and 47F may apply to (some or all of) the information in the documents.

Background

4. 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.
5. The Applicant made a request to Ahpra for access to documents in the following terms:
The curriculum vitae/resume of each member of the Agency Management Committee that approved on the 16 November 2021 the AHPRA COVID-19 vaccination policy.

6. In its decision dated 2 May 2024, Ahpra issued a decision letter which did not contain information either confirming or denying the existence of any documents relevant to the Applicant's request under s. 26(2). To the extent that any documents may exist, Ahpra determined these documents were exempt in full under ss. 47E(c) and 47F.
7. The Applicant did not seek an internal review of Ahpra's decision.
8. On 10 May 2024, the Applicant sought a review of Ahpra's decision under s. 54L.
9. It is noted that Ahpra's Agency Management Committee is now known as the Ahpra Board.

Scope of the review

10. The issue to be decided in this review is whether including in the decision notice matter in response to the request would cause the reasons for the decision to be an exempt document.
11. 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
12. The Applicant and Ahpra were invited to make written submissions about the review. I have considered all relevant communications and submissions received from both the Applicant and Ahpra.
13. 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 decision

Section 26(2): Not providing information which would confirm or deny the existence of documents

14. Section 26(1) requires a decision-maker who has made a decision refusing to grant access to a document to give notice in writing of the decision to the applicant, setting out certain matters. Section 26(2) states that a notice under s. 26 is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
15. In some respects, s. 26(2) is similar to s. 25(2). Section 25(2) allows an agency or minister to give an applicant notice in writing that does not confirm or deny the existence of a document but instead tells the applicant that, if it existed, such a document would be exempt. In these circumstances, the agency or minister does not have to search for or conduct an inquiry into the nature of the document being sought. Rather, s. 25(2) requires only an assessment of whether a document of the kind requested is, or would be, an exempt document under ss. 33 (documents affecting national security, defence or

¹ s. 55D(1).

² ss. 55 and 55K.

³ s. 3(1).

international relations), 37(1) (documents affecting enforcement of law and protection of public safety) or 45A (Parliamentary Budget Office documents).⁴

16. Here, Ahpra has relied on s. 26(2) in conjunction with ss. 47E(c) and 47F.
17. Section 47E(c) provides that a document is conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.
18. Section 47F provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person).

Ahpra's submissions

19. In its decision, Ahpra stated that disclosure of the curriculum vitae and resumes of Agency Management Committee members in the present circumstances could reasonably be expected to expose the workforce management process to prejudice, by disclosing information that was obtained or held by Ahpra for the purpose of recruitment and staffing and was understood by those individuals to be held in confidence and for those purposes only.
20. Ahpra further stated that disclosure of the documents would involve the unreasonable disclosure of personal information about individuals. This is because the information would not be well known or publicly available in the manner which Ahpra received it or holds it, and there is an expectation, due to the confidentiality provisions of s. 216 of the *Health Practitioner Regulation National Law 2009* (as it applies in each State and Territory), that personal information provided to Ahpra would be used within this context only and only in a manner consistent with the *Privacy Act 1988* (Cwlth) and Australian Privacy Principles.
21. Also in its decision, Ahpra considered public interest factors in favour of, and against, disclosure. The public interest factors in favour of disclosure of the documents were:
 - promoting the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of a government's activities
 - facilitating access to information to individuals allows them to be satisfied that proper processes have been followed.
22. The public interest factors considered by Ahpra against disclosure were:
 - the prejudice to an individual's right to privacy
 - disclosure of the personal information inherent in an individual's curriculum vitae and/or resume may discourage individuals from providing full and detailed communications to Ahpra and other agencies, and may deter internal and external applicants from recruitment processes, which would have a significant adverse impact on the integrity and robustness of Ahpra's personnel management function.
23. In the course of the review, Ahpra made submissions as to why it had applied s. 26(2) to neither confirm nor deny the existence of documents. I have treated those submissions as confidential and taken them into account.

⁴ FOI Guidelines, [3.104] and [3.105].

24. Ahpra also made submissions in the course of the review about the application of ss. 47E(c) and 47F. These submissions noted how the Applicant had made approximately 19 applications to Ahpra under the FOI Act for access to documents that relate to COVID-19 and associated health policies, including vaccine mandates. Ahpra also referred to the decision of the Administrative Appeals Tribunal in *Warren; Chief Executive Officer, Services Australia and (Freedom of Information)* [2020] AATA 4557 (9 November 2020).
25. Ahpra's submissions included additional public interest factors against disclosure, such as concerns with Ahpra's involvement in future recruitment and selection processes and the fact that release under the FOI Act is not controlled or restricted and could be used to harass or intimidate.

Applicant's submissions

26. In their application for review, the Applicant stated (amongst other things):

I made this FOI request because I believe that AHPRA workers and members of the public should know the details of the collective expertise of this Committee...The public need to have some confidence that the decisions that are being made about their health and welfare are being made by members of Committees that have the necessary expertise and experience to assess The Science™.

Application of s. 26(2)

27. I have considered whether s. 26(2) applies here so as not to require the decision notice to reference the documents sought on the basis that this would cause the decision notice to be an exempt document.
28. Taking all relevant factors and submissions into consideration, it is my view that s. 26(2) does not apply here. This is because I am not satisfied that identifying the documents in response to the Applicant's request would reveal exempt matter in and of itself.
29. I find that the names of Agency Management Committee members, or the fact that these individuals submitted a curriculum vitae and/or resume as part of a recruitment process, is not exempt matter under either ss. 47E(c) or 47F. In particular, release of such information of itself would not, or could not be reasonably expected to, have a substantial adverse impact on the management and assessment of personnel by Ahpra and would not be an unreasonable disclosure of personal information about any person.
30. In *TFS Manufacturing Pty Limited and Department of Health* [2016] AICmr 73 (31 October 2016), the Australian Information Commissioner considered the application of s. 26(2). In that case, the request related to a range of documents and the Department of Health made a decision giving access to some documents in full and in part. However, with respect to some of the documents sought, being correspondence between the Therapeutic Goods Administration (TGA) and six named individuals, the Department of Health found that, pursuant to s. 26(2), it did not have to disclose the existence of any such documents. As a result, one of the issues to be decided by the Commissioner was whether including any findings in relation to that part of the request would cause the reasons for decision to be an exempt document. The Commissioner noted how the Department of Health provided extensive confidential submissions addressing this matter, which were taken into account, along with the following:

- the post market regulatory function of the TGA relies on information from a number of sources provided on a voluntary and confidential basis
 - there are particular sensitivities surrounding correspondence with the TGA as the decision-maker in relation to the registration of goods on the Australian Register of Therapeutic Goods
 - if individuals were aware that any communications they might have with the TGA might be disclosed then individuals may be less forthcoming and willing to report matters to the TGA for fear their privacy would not be protected or they may be subject to pressure or harassment from the sponsors of relevant goods
 - the small pool of individuals identified by the applicant in terms of the FOI request.
31. The Australian Information Commissioner accepted that, in some circumstances, if individuals were aware that their identities or personal information could be disclosed in connection with particular subject matter through the FOI process, they may be reluctant to provide information to the TGA in the future. The Commissioner was satisfied that, in the particular circumstances of that case, further information with respect to the existence of any documents responsive to that part of the request could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the TGA's operations under s. 47E(d) and, further, that it would be contrary to the public interest to provide details of whether the individuals have had correspondence with the TGA.
 32. This case is very different to the circumstances here. The names of the members of the Agency Management Committee are known, especially due to their publication on Ahpra's website and in other materials such as Ahpra's Annual Report. I consider it would be expected that they submitted a curriculum vitae and/or resume as part of the process of being appointed to that Committee.
 33. Another case of note is *'BA' and Merit Protection Commissioner* [2014] AICmr 9 (30 January 2014). This was also a decision of the Australian Information Commissioner and concerned a request for access to vocational assessment information relating to a successful promotion candidate, including their application and curriculum vitae.
 34. In this case, the Merit Protection Commissioner had decided to grant access to the documents sought but the Australian Information Commissioner set aside that decision and made a decision granting access to some of the documents sought while refusing access to others. The Commissioner referred to a number of earlier cases that had dealt with the release of vocational assessment information, such as curriculum vitae, and found that they should be reassessed in light of changes in privacy law, information technology and community concern about privacy protection.
 35. The Australian Information Commissioner found the documents contained personal information about the successful candidate and, with respect to the curriculum vitae, found that it would be unreasonable to release. This was for a number of reasons, such as the fact that the candidate had objected to its disclosure, it contained information that was distinctly personal about the candidate's career and how they perceived their own strengths, it was prepared for a specific purpose and with a particular audience in mind, and it was prepared with the expectation that it would be treated confidentially. The Commissioner also found it would be contrary to the public interest to provide access. In particular, the Commissioner commented that he did not place great weight on granting FOI access to the personal information of another person as the preferred or necessary means of enabling unsuccessful candidates to learn more about why another candidate was successful. As a result, the Commissioner found the curriculum vitae was exempt under s. 47F.

36. Having regard to all of the above, I note the following in relation to the matter under review:
- the issue here is whether including information in the decision notice about the existence of documents responsive to the request would cause the reasons for decision to be an exempt document. This is a different question as to whether the documents themselves are exempt
 - the request seeks access to documents comprising the curriculum vitae or resume of the members of the Agency Management Committee who made a decision at a meeting on 16 November 2021
 - the record of the meeting on 16 November 2021, referenced in the request, has been partially released to the Applicant under the FOI Act. This included the names of the Agency Management Committee members present at the meeting
 - the names of Agency Management Committee members are easily found on Ahpra's website and in other communications, such as Ahpra's Annual Report
 - there is information on Ahpra's website that outlines the recruitment process for Agency Management Committee members and details the requirement to provide a curriculum vitae. It is not unusual for a curriculum vitae to be required in circumstances like this.
37. Given the above, I am not satisfied that s. 26(2) applies here.
38. In reaching this view, I do not make a decision at this time as to whether any of the documents sought are exempt documents under the FOI Act. That assessment will need to be made by Ahpra once it has identified the documents.

Finding

39. I am not satisfied that s. 26(2) of the FOI Act applies.

Conclusion

40. I set aside the decision of Ahpra dated 2 May 2024 and in substitution for that decision, decide that s. 26(2) does not apply.
41. The effect of this decision is that Ahpra must identify the documents sought and make a decision on their release under the FOI Act.
42. In doing so, I acknowledge that ss. 47E(c) and 47F may apply to (some or all of) the information in documents located in response to the request.

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.⁵

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.⁶

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.

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

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

GPO Box 2630

Melbourne VIC 3001

Phone 1300 795 265

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

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

© National Health Practitioner Ombudsman, Australia, September 2025.

⁵ s. 57A.

⁶ s. 60(3).