

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



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

Applicant	'AZ'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/01172025
Decision date	13 March 2026
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(d) and 47F – Whether disclosure would prejudice the conduct of an investigation – 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 reasonable – Whether it is contrary to the public interest to release conditionally exempt documents – Freedom of Information Act 1982 ss. 26(2), 37(1)(a), 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

1. Under s. 55K, I affirm Ahpra's decision of 20 January 2025.

Background

2. The Psychology Board of Australia (the Psychology Board) has responsibilities relating to the regulation of psychologists. Ahpra provides administrative assistance and support to the Psychology Board in exercising its functions.
3. The Applicant made a notification to Ahpra and the Psychology Board about a psychologist (the Practitioner).
4. The Psychology Board decided to take no further action in relation to the notification.
5. On 30 October 2024 the Applicant made the following request for access to documents:
 1. *Any and all correspondence between your agency (Ahpra) and [the Practitioner]*

2. *All board decisions made related to [the Practitioner] and my complaint*
3. *All board decision submitted to the (Psychology) Board about my complaint*
4. *All reasons to be highlighted about any evidence in the form or written or verbal communication to be included in the FOI request.*

All board decisions and reasons for decisions is requested as part of my FOI release and the evidence whether written, verbal or any form of correspondence or communication in which the board has relied to make any decision related to my complaint.

5. *I do not require any copies of correspondence or communication between your agency and I. Separately, I do request the evidence your agency has relied upon to lodge my complaint, accept it, and any details of my complaint related to the board decision.*
6. *I request all copies of correspondence shared and distributed by the board in relation to my complaint.*

I request an FOI release for any information not restricted to emails, telephone calls, submissions or responses, request for time extensions, engagement with your staff and record keeping related to [the Practitioner], not limited to diary notes, record keeping and any submissions or information you received from [the Practitioner] either verbal or written, by herself or solicitors.

6. In its decision dated 20 December 2024, Ahpra identified 11 documents that fell within the scope of the Applicant's request:
 - Document 1 – Notification report
 - Document 2 – Notification report attachments
 - Document 3 – Decision and Actions of the Psychology Board
 - Documents 4-11 – Correspondence with practitioner.
7. Ahpra decided to release Document 2 to the Applicant in part and exempt the remaining 10 documents in full under ss. 37(1)(a), 47C, 47E(d) and 47F. Ahpra also 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(d) and 47F.
8. On 20 December 2024 the Applicant requested an internal review of Ahpra's decision.
9. In its internal review decision letter dated 20 January 2025, Ahpra affirmed its decision.
10. On 21 January 2025 the Applicant sought a review of Ahpra's decision under s. 54L.

Scope of the review

11. The issues I have decided in this review are:
 - whether including in the decision notice matter in response to the request under s. 26(2) would cause the reasons for the decision to be an exempt document
 - whether the information Ahpra found to be exempt under s. 47C is 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 information Ahpra found to be exempt under s. 47F is exempt under that provision, and if so, whether giving access would be contrary to the public interest.
12. Ahpra confirmed during the review that it no longer maintains that s. 37(1)(a) is applicable to the relevant exempt documents. However, Ahpra maintained that these documents remain conditionally exempt from release in full under ss. 47E(d) and 47F.
 13. Where I have found that one exemption applies to a document, I have not considered whether any additional exemptions apply.
 14. 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
 15. The Applicant and Ahpra were invited to make a written submission as part of this review. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
 16. 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

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

17. Ahpra found Documents 1, 3 and 4-11, to be conditionally exempt in full under s. 47E(d), and Document 2 to be conditionally exempt in part under s. 47E(d).
18. 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.⁴
19. The Office of the Australian Information Commissioners FOI Guidelines (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.⁵
20. The term 'substantial adverse effect' broadly means an adverse effect which is sufficiently serious or significant to cause concern to a properly considered reasonable person.⁶
21. A decision-maker should clearly describe the expected effect and its impact on usual operations or activities in the statement of reasons.⁷

¹ s. 55D(1).

² ss. 55 and 55K.

³ s. 3(1).

⁴ s. 47E(d).

⁵ FOI Guidelines [6.90]

⁶ *Ibid*, [6.18]

⁷ *Ibid*, [6.92]

Ahpra's operations

22. Under the Health Practitioner Regulation National Law as in force in all states and territories of Australia (the National Law), Ahpra and the Psychology Board exercise functions including the following:⁸

- 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 practitioners or students.

Ahpra's submission

23. In the reasons for its decision dated 20 December 2024 (which were later also adopted as the reasons for the internal review decision dated 20 January 2025), Ahpra said the following with respect to s. 47E(d):

The information in the documents that I have found to be conditionally exempt from disclosure in [sic] under section 47E(d) consists of the Notification report containing risk assessment and recommendations prepared by Ahpra officers. The information is part of the deliberative processes of Ahpra and the Board. The information conditionally exempt under section 47E(d) also relates to the submissions and personal information of [the Practitioner], including [their] contact details and biographical information.

I am satisfied that the disclosure of the information in the relevant documents would, or could be reasonably expected to have a 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 identify 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'*⁹
- information received, generated 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 protected information within the meaning of section 214 of the National Law. It is an offence to disclose protected information unless an exception applies¹⁰

⁸ For more information about the Board's functions see [s. 35 of the National Law](#).

⁹ *Meschino and Centrelink* [2002] AATA 627, at para [23].

¹⁰ *Health Practitioner Regulation National Law (as in force in each state and territory)* s 216.

- practitioner submissions and correspondence are provided to Ahpra and the Board in the context of responding to the issues raised in the notification. Submissions are provided on the understanding that the material would be used by Ahpra and the Board in certain contexts only and for the purposes of assisting the assessment of the matters raised. In *YJI v Australian Health Practitioner Regulation Agency* at [66], the Tribunal remarked that:

*“it is important that third parties such as notifiers, practitioners and other government bodies be willing to provide information necessary to facilitate Ahpra and the Board’s efficient assessment of a notification. This allows the Board to determine whether regulatory action is required to manage any risks posed by the relevant health practitioner’s health, conduct or performance on the basis of all relevant information.”*¹¹

It is integral for the efficient management of complaints that Ahpra can continue to meet an individual practitioner’s expectation of confidentiality over the communications and documents comprising their correspondence and submissions, which are provided to Ahpra to assist in the assessment of notifications. This maintenance of confidentiality is critical to ensuring that the investigation process is carried out both efficiently and effectively. In *Spragg v Australian Health Practitioner Regulation Agency* at [78], the Tribunal remarked that:

*“the proper and efficient conduct of the operations of the agency are assisted by the circumstance that information provided to it by a registered health practitioner under compulsion is protected information and its disclosure is prohibited. The agencies 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.”*¹²

- in its role as a regulator, Ahpra receives and holds private information relating to health practitioners and their registration, employment, and education history. This information is held and relied upon for the primary purpose of regulating the health professions. Disclosure of personal information relating to an individual through the FOI process would frustrate the operations of the agency by undermining individuals’ faith in Ahpra’s ability to maintain confidence over the conditionally held information it possesses. This would in turn cause individuals to be more cautious in their disclosures and dealings with Ahpra out of concern that their information could be released more broadly
- similarly, Ahpra staff may be discouraged from keeping detailed and fulsome records of their deliberations or being more circumspect in their preliminary findings that are expressed to other officers or the Board because of public scrutiny. The maintenance of confidentiality over deliberative documents and communications is essential to ensure that staff are able to thoroughly discuss and deliberate on relevant issues in order to provide robust and defensible information to the decision makers; and
- as it is a core function of Ahpra under the National Law to regulate health professionals, damage to Ahpra’s ability to properly and efficiently conduct such regulation would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

¹¹ *YJI v Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [66]

¹² *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 at [78]

The Applicant's submissions

24. The Applicant provided the following submission:

It is your role to release the relevant documents not determine the impact on an agency that had ample opportunity to reply to simply refused referencing to FOI Act without any substance to their claims to refuse.

It appears that you may rely on – In addition, I consider that disclosure of the exempt documents would be contrary to the public interest. It should not be your role to determine that impact but the agency itself, you do not work with AHPRA, it appears AHRA (and now your agency) are confusing [the Practitioners] reputation and any adverse affect on the management of my FOI claim is providing a reason to refuse. [The Practitioner] has since retired and remains disqualified, so any substantial adverse effect on AHPRA, your agency or [the Practitioner] is negated, and does not justify a reason not to release. This has never changed since I applied, so any reason.

Application of the agency operations of agencies exemption

25. I have considered whether Documents 1, 2, 3, and 4-11 are conditionally exempt under s. 47E(d).

26. After inspecting the documents, I am of the view that the documents were either created by Ahpra, or provided to Ahpra, while Ahpra was undertaking its functions under the National Law, namely to:

- assess the Applicant's notification about the Practitioner
- provide information to the Psychology Board to support the Psychology Board's decision-making in relation to the notification.

27. Practitioners must be willing to provide information necessary to facilitate Ahpra and the Psychology Board's assessment and investigation of a notification. This allows the Psychology Board to determine whether regulatory action is required to manage any risks posed by the relevant practitioner's health, conduct or performance.

28. As outlined in my decisions of 'AA', 'AC', 'AD', 'AE', 'AF', 'AG', 'AI', 'AM', 'JH', 'MS', 'AN', 'AO', 'AP', 'AQ', 'AR', 'AS', 'AT' and 'AU', 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 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.

29. 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 Psychology Board in relation to a notification will be treated confidentially. If Ahpra discloses the documents requested by the Applicant, a reasonable person could conclude that information provided to Ahpra and the Psychology Board in the future may not be treated confidentially. This in turn could reasonably be expected to affect how effectively Ahpra and the Psychology Board can carry out their functions, as the information they are able to access may be less readily provided or more difficult to obtain.
30. 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 (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. In making its 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...
31. Taking all relevant factors into consideration, I am satisfied that disclosing the information exempted in documents could reasonably be expected to affect the future flow of information from practitioners and other relevant bodies to Ahpra and the Psychology Board. Ahpra and the Psychology Board rely on candid communication from practitioners and other relevant bodies to carry out their role in ensuring public safety.
32. In addition, the National Law imposes a duty of confidentiality in relation to protected information. 'Protected information' means any information that comes to a person's knowledge in the course of, or because of, the person exercising functions under the National Law. This includes when handling notifications.¹³
33. Release of the information exempted in the documents could reasonably be expected to reduce confidence in Ahpra's ability to maintain the confidentiality of protected information.
34. I consider that disclosure of the exempted information in the documents 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 Psychology Board.
35. Accordingly, I am satisfied that documents 1, 2, 3 and 4-11 are conditionally exempt in full and in part under s. 47E(d).
36. 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.

¹³ National Law, s. 216.

Section 11A(5): The public interest test

37. 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.
38. 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.

Factors favouring disclosure

39. The FOI Act provides public interest factors to be considered where relevant, including that disclosure would:
- promote the object 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.
40. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.
41. In forming its decision, Ahpra identified 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; and
 - allowing a person to access their personal information, or information relating to matters that otherwise concern them.
42. I agree that disclosure of documents would promote the objects of the FOI Act and provide an opportunity for members of the public to be satisfied that a proper decision-making process has been followed.
43. While I agree there are public interest factors that favour disclosure of the documents, these factors must be balanced against any public interest factors opposing disclosure when determining whether access should be given to the conditionally exempt information.

Factors against disclosure

44. Ahpra put forward the following factors against disclosure:
- the public interest in protecting and maintaining the integrity of Ahpra's investigative processes. Ahpra's ability to receive, assess and investigate notifications in respect of the health, performance and/or conduct of registered health practitioners is integral to the maintenance and

enforcement of the National Law. There is a strong public interest in ensuring proper processes for consumer protection,¹⁴ and that only suitable practitioners in various fields of the health profession are able to provide services to the public.¹⁵

- that disclosure of an officer's preliminary analysis, before it has been considered and tested, may generally undermine confidence in the health regulation system and health practitioners
- the prejudice to an individual's right to privacy, particularly where the relevant material is not well known nor publicly available, and in circumstances where the individual understood their personal information would be confidential. The personal privacy exemption is designed to prevent the unreasonable invasion of a third parties' privacy.¹⁶
- the public interest in Ahpra and the [Psychology] Board being able to carry out their statutory functions as efficiently and effectively as possible. Disclosure could reasonably be expected to affect Ahpra's ability to obtain information from third parties in the future, thereby making the assessment and investigation of notifications more difficult.

45. *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2013) (Hanes) is also relevant when considering factors against disclosure. In that case, the Tribunal accepted Ahpra's submissions that disclosure of the relevant material would be contrary to the public interest. Ahpra's submissions included that there is a public interest in protecting and maintaining the integrity of its investigative processes in relation to notifications and in ensuring its ability to investigate notifications is not hampered by the disclosure of confidential information.

46. In Hanes, the Tribunal noted how disclosure of information relating to notifications would make investigations more difficult and suggested that the broad public interest centres around Ahpra's role in protecting the public in terms of regulating the provision of health services. I consider this to be a persuasive point.

Balancing the public interest factors

47. In balancing the public interest in this case, I have considered the factors for and against disclosure, including relevant factors favouring disclosure set out in s. 11B(3). In particular, I consider that releasing the documents would promote the objects of the FOI Act by facilitating access to documents generally, as well as facilitating access to information that allows individuals to be satisfied that proper processes have been followed, revealing information that informed a decision-making process, and allowing a person to access information relating to matters that concern them.

48. The factors against disclosure include the public interest in protecting and maintaining the integrity of Ahpra and the Psychology Board's processes for receiving, assessing and investigating notifications about the health, performance and/or conduct of registered health practitioners. There is a strong public interest in Ahpra and the Psychology Board being able to carry out their statutory functions as efficiently and effectively as possible.

¹⁴ *Ah Teo v Pacific Media Group* [2016] VSC 626, [30].

¹⁵ *Hanes v Ahpra* [2013] VCAT 1270 [67] quoting *Hulls and Victorian Casino and Gaming Authority* (1998) 12 VAR 483.

¹⁶ *Re Veale and Town of Bassendean* [1994] WAICmr 4.

49. While I acknowledge the Applicant's interest in obtaining access to the documents, I accept there is a stronger public interest in Ahpra and the Psychology Board's ability to perform their functions in a way that is consistent with their statutory duties and legislative framework.
50. 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

51. I am satisfied that Documents 1, 3 and 4-11 are exempt in full under s. 47E(d), and Document 2 is exempt in part under s. 47E(d).

Section 47F: Documents affecting personal privacy

52. Ahpra found Documents 1, 3 and 4-11 to be conditionally exempt in full under s. 47F and Document 2 to be conditionally exempt in part under s. 47F.
53. I have found these documents to be exempt in full and in part under s. 47E(d). I will therefore not consider whether the documents are also exempt under s. 47F.

Section 47C: Documents subject to deliberative process

54. Ahpra found Document 1 to be conditionally exempt in full and under s. 47C.
55. I have found this document to be exempt in full under s. 47E(d). I will therefore not consider whether the document is also exempt under s. 47C.

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

56. 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.
57. 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 international relations), 37(1) (documents affecting enforcement of law and protection of public safety) or 45A (Parliamentary Budget Office documents).¹⁷
58. Here, Ahpra has relied on s. 26(2) in conjunction with ss. 47E(d) and 47F.

¹⁷ FOI Guidelines, [3.182] and [3.184].

59. Section 47E(d) provides that a document is conditionally exempt 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.¹⁸
60. 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 submission

61. In its decision dated 20 December 2024, Ahpra stated that the FOI Act permits agencies to refuse access without confirming or denying the existence of documents in certain circumstances. This includes where identifying the existence or non-existence of certain documents would, in itself, cause a notice issued by an agency under the FOI Act to become an exempt document.¹⁹
62. Ahpra explained that, to the extent the Applicant requested documents related to the Practitioner that may exist outside of the notifications that the Applicant made about the Practitioner, to confirm or deny the existence or non-existence of these documents would cause Ahpra's decision notice to become an exempt document under the FOI Act. This is because it would disclose information relating to the Practitioner in circumstances where that information is confidential and its disclosure not permitted by law.
63. In its internal review decision dated 20 January 2025, Ahpra noted the Applicant's comments about the extent to which matters involving the Practitioner may already be publicly known or otherwise available. Ahpra reiterated that whilst certain information may be known to the Applicant through public fora, the existence of specific documents is not known to the Applicant. Ahpra explained that, in the absence of a verifiable indication that specific documents are known to already exist, it considers that to confirm or deny the existence of documents within the class requested would cause the decision notice to become an exempt document with reference to ss. 47E(d) and 47F.

Application of s. 26(2)

64. 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. While Ahpra relied on s. 26(2) in conjunction with ss. 47E(d) and 47F, my analysis here is limited to the application of s. 26(2) in conjunction with s. 47E(d).
65. Taking all relevant factors and submissions into consideration, it is my view that s. 26(2) does apply. This is because I am satisfied that identifying the documents in response to the Applicant's request would reveal exempt matter in and of itself.
66. 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

¹⁸ s. 47E(d).

¹⁹ *Chemical Trustee Ltd v Federal Commissioner of Taxation* [2013] AATA 623 at [79]

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.

67. 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.
68. Similarly, I consider that, to the extent the Applicant requested documents related to the Practitioner that may exist outside of the notifications that the Applicant made about the Practitioner, disclosing information about the existence of any such documents could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of Ahpra and the Board's operations under s. 47E(d) and, further, that it would be contrary to the public interest to provide details about the existence of such documents. This is because providing further details may disclose information relating to the Practitioner in circumstances where that information is confidential and its disclosure not permitted by law.
69. In particular, I note that the disclosure of the relevant information could reasonably be expected to affect the future flow of information from parties relevant to a notification, particularly from a practitioner to Ahpra. Ahpra and the Psychology Board rely on candid communication from parties relevant to a notification and practitioners to carry out their role in ensuring public safety.
70. Further, as outlined above at paragraph 32, the National Law imposes a duty of confidentiality in relation to protected information. I consider that confirming or denying the existence of documents that relate to other regulatory matters which do not involve the Applicant could reasonably be expected to reduce confidence in Ahpra's ability to maintain the confidentiality of protected information.
71. I am therefore satisfied that s. 26(2) applies here to the extent that confirming or denying the existence of documents requested by the Applicant in Ahpra's decision letter would cause that letter to become exempt under s. 47E(d).

Finding

72. I am satisfied that s. 26(2) applies to the Applicant's request in conjunction with s. 47E(d).

Conclusion

73. Under s. 55K of the FOI Act, I affirm Ahpra's decision of 20 January 2025.

Richelle McCausland

National Health Practitioner Privacy Commissioner

Rights

Review rights

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

- 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.

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

²⁰ s. 57A.

²¹ s. 60(3).

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

GPO Box 2630

Melbourne VIC 3001

Phone 1300 795 265

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

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

© National Health Practitioner Ombudsman, Australia, March 2026.