

# 'BB' and Australian Health Practitioner Regulation Agency (Ahpra)



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

Applicant	'BB'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/00072025
Decision date	7 April 2026
Catchwords	FREEDOM OF INFORMATION – Whether disclosure could cause damage to relations between the Commonwealth and a State – Whether documents contain deliberative matter prepared for a deliberative purpose – Whether disclosure could 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. 47B, 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 vary Ahpra's decision of 13 December 2024. Document 31 is released in full and Document 80 is released in part to the Applicant.

## Background

2. The Applicant is a psychologist.
3. 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.
4. A person (the Notifier) made a notification to the Office of the Health Ombudsman (OHO) about the performance of the Applicant. The OHO referred the notification to Ahpra and the Psychology Board.
5. The Psychology Board decided to take regulatory action in relation to the Applicant.

6. The Applicant made the following request for access to documents:
1. *Minutes of meetings held by the Psychology Board of Australia in relation to the notification [Reference number] made by [the Notifier] against [the Applicant];*
  2. *Memorandums held by AHPRA and/or the Psychology Board of Australia in relation to the notification [Reference number] made by [the Notifier] against [the Applicant];*
  3. *All file notes made by [Name], AHPRA Regulatory Advisor (Notifications), in relation to the notification [Reference number] made by [the Notifier] in relation to [the Applicant], including, but not limited to, the file note of 18 January 2024 and the file note of 5 February 2024;*
  4. *All letters sent to AHPRA from [the Notifier] in relation to the notification [Reference number] made by [the Notifier] against [the Applicant], including, but not limited to, the letter of 24 January 2024;*
  5. *The record by the Office of the Health Ombudsman (OHO) of the initial phone complaint by [the Notifier] dated 29 November 2023*
  6. *Emails held by AHPRA and the Psychology Board of Australia in relation to notification [Reference number] including but not limited to, emails received by AHPRA from [the Notifier] emails of members of the Psychology Board of Australia in relation to notification (Ref no. [x]); emails of [Name], AHPRA Regulatory Advisor (Notifications) and [their] supervisor(s) in relation to notification [Reference number];*
  7. *All Microsoft Teams, Skype/Zoom messages held by AHPRA in relation to the notification (Ref no. [x]) made by [the Notifier] against [the Applicant].*
  8. *All reports held by AHPRA, in relation to the notification [Reference number] made by [the Notifier] against [the Applicant], including, but not limited to, reports produced by [Name], AHPRA Regulatory Advisor (Notifications) and/or [their] supervisor(s); and*
  9. *Any audio recordings of telephone calls, or transcripts of audio recordings (telephone calls), held by AHPRA in relation to the notification [Reference number] made by [the Notifier] against [the Applicant].*
7. In its decision dated 13 December 2024, Ahpra identified 84 documents that fell within the scope of the Applicant’s request. Ahpra decided to:
- release 49 documents in full
  - exempt 13 documents in part
  - exempt 22 documents in full.
8. On 2 January 2025, the Applicant sought a review of Ahpra’s decision under s. 54L in relation to the following documents:

<b>Document number</b>	<b>Document description</b>	<b>Ahpra’s decision</b>
31	Email from OHO – Further information provided	<b>Exempt in full</b> [Not specified which exemptions were applied]
32	Notification report	<b>Exempt in full</b>

		ss. 47C, 47E(d) and 47F
33	Notification report attachments	<b>Released in full</b> The document contained pre-existing redactions
34	Internal email – [Regulatory Advisor] email to Regulatory Secretariat	<b>Exempt in full</b> ss. 47C, 47E(d) and 47F
37	Psychology Board of Australia – Meeting outcomes	<b>Exempt in full</b> ss. 47C and 47E(d)
62	Show cause agenda paper	<b>Exempt in full</b> ss. 47C, 47E(d) and 47F
70	Internal email – Regulatory Secretariat to [Senior Regulatory Advisors]	<b>Exempt in full</b> ss. 47C and 47E(d)
71	Internal email – Regulatory Secretariat to [Senior Regulatory Advisors]	<b>Exempt in full</b> ss. 47C and 47E(d)
72	Internal email – [Senior Regulatory Advisor] email to Regulatory Secretariat	<b>Exempt in full</b> ss. 47C and 47E(d)
73	Internal email – Regulatory Secretariat to [Senior Regulatory Advisors] – Unconfirmed for review	<b>Exempt in full</b> ss. 47C and 47E(d)
80	Email to OHO – Outcome notice	<b>Exempt in full</b> ss. 47C and 47E(d)
Various	Correspondence with the Notifier	<b>Exempt in full</b> ss. 47E(d) and 47F
Various	Complaint material received from the OHO	<b>Exempt in full</b> ss. 47B, 47E(d) and 47F

## Scope of the review

9. The issues to be decided in this review are:

- whether the document that Ahpra found to be exempt under s. 47B is 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. 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 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.
10. During the review, Ahpra submitted that it no longer maintains that Document 31 is exempt and Document 80 is exempt in full.
  11. Having examined Documents 31 and 80, I accept Ahpra's submissions on these points.
  12. Documents 31 and 80 are also contained in the document that Ahpra referenced as 'Various – Complaint material received from the OHO', which Ahpra exempted from release in full.
  13. Also contained within the document 'Various – Complaint material received from the OHO' was Document 30. Document 30 was released to the Applicant in part and the Applicant did not seek a review of Ahpra's decision in relation to this document.
  14. Given the above, I have excluded from my review an assessment of the material found in Documents 30, 31 and 80 in relation to the document named 'Various – Complaint material received from the OHO'.
  15. I also examined Document 33 and can confirm that this document was released to the Applicant in full but contained redactions that existed within the document when it was provided to Ahpra. Given no exemptions were applied by Ahpra to this document, I have also excluded Document 33 from my review.
  16. Where I have found that one exemption applies to a document, I have not considered whether any additional exemptions apply.
  17. 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.<sup>1</sup> 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.<sup>2</sup>
  18. The Applicant and Ahpra were invited to make written submissions about this review. I have considered all communications and submissions received from the Applicant and Ahpra.
  19. I have had regard to the objects 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.<sup>3</sup>

## Review of the exemptions

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

20. Ahpra found documents 32, 34, 37, 62, 70, 71, 72, 73, 80, 'Various – Correspondence with the Notifier' and 'Various – Complaint material received from the OHO') to be exempt from release in full under s. 47E(d). As noted above, I accept that Ahpra considers Document 80 is now exempt in part under s. 47E(d).

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<sup>1</sup> s. 55D(1).

<sup>2</sup> ss. 55 and 55K.

<sup>3</sup> s. 3(1).

21. 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.
22. 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.<sup>4</sup>
23. 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.
24. A decision-maker should describe the expected effect and its impact on usual operations or activities in the statement of reasons.<sup>5</sup>

## Ahpra's operations

25. Under the *Health Practitioner Regulation National Law Act 2009* (in force in all states and territories of Australia) (the National Law), Ahpra and the National Boards exercise functions including the following:<sup>6</sup>
  - 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.
26. In general, Ahpra supports the Psychology Board by collecting and assessing relevant information. Ahpra provides this information to the Psychology Board and the Psychology Board is the regulatory decision-maker.

## Ahpra's submissions

27. In its decision dated 13 December 2024, Ahpra said the following with relation to s. 47E(d):

The information in the FOI documents that [Ahpra has] found to be conditionally exempt from disclosure under section 47E(d) consist of:

- Correspondence from the OHO to Ahpra that was provided in the context of referring a complaint raised about [the Practitioner].
- Information comprising of correspondence with the [N]otifier and third parties, including correspondence recorded in email and file notes, and personal information such as contact details, observations and opinion.

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<sup>4</sup> FOI Guidelines, [6.90].

<sup>5</sup> Ibid, [6.92]

<sup>6</sup> For more information about the Board's functions see [s.35 of the National Law](#).

- Internal correspondence between Ahpra staff and the members of the Psychology Board during the management of the notification.
- The Ahpra Notification reports containing risk assessments and recommendations provided by the Ahpra officers.

[Ahpra is] satisfied that disclosure of the exempt information in the 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 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'*.<sup>7</sup>
- Section 216 of the National Law creates a reasonable expectation that information provided by other entities to Ahpra or the National Boards in the course of exercising its functions, will be treated confidentially.
- If documents pertaining to Ahpra's communication with the OHO were released under the FOI Act without express consent of the OHO, this would likely have a significant adverse impact on the future flow of information between Ahpra and the OHO. Pertinently, this may prevent health complaints entities from engaging in meaningful cooperation and sharing of information to assist with investigations and enquiries by agencies like Ahpra and the Board.
- Documents obtained or generated by Ahpra that contain risk analyses and recommendations on the management of notifications, are made on the understanding they will be treated in a confidential manner and will only be used to assist Ahpra in undertaking its functions under the National Law. Should this information be released under the FOI Act, staff from Ahpra and other agencies may be more circumspect in their risk assessment and recommendations due to the potential for public scrutiny. This in turn could be detrimental to the National Boards' robust and informed consideration of notifications, and to the National Boards' decision-making processes.
- Documents containing third party personal information were obtained on the understanding that the material would be used by Ahpra and the Board in certain contexts only and for the purposes of assisting in the assessment / investigation of matters raised. If the relevant documents were released under the FOI Act, without the express consent of the relevant parties, it would likely have a significant adverse impact on the future flow of information from parties to Ahpra. Pertinently, this may inhibit parties from providing robust and detailed information out of concern their communications may be subject to disclosure under the FOI Act. This would reduce the effectiveness of practitioner submissions and in turn, make the investigation of notifications less effective and more costly.
- Notifiers correspond with Ahpra in the context of communicating their concerns raised in a notification. Correspondence is 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:

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<sup>7</sup> *Meschino and Centrelink* [2002] AATA 627 [23],

*“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.”<sup>8</sup>*

## The Applicant’s submissions

28. The Applicant provided the following submission:

...It is submitted that any condition placed on a health practitioner are as a result of serious findings. The conditions are placed on a publicly available website. It follows that the person who has had findings made against them, in this case myself, must be afforded the fundamental right to know how and who made the decision and findings.

This is confirmed in AHPRA’s correspondence of 13 December 2024, where under Factors in favour of disclosure at point (c) it says, one of the factors is ‘Revealing information that a decision-making process and further at (d) ‘Allowing a person access to their personal information, or information relating to matters that otherwise concern them’.

AHPRA has also referred to **Factors against disclosure**. It is submitted that these factors are not relevant to this matter and are discussed below:

### **1. The public interest in protecting and maintaining the integrity of AHPRA and the Board’s processes.**

It is submitted that the processes of AHPRA and the Board and how they arrive at a decision which effects all aspects of a person’s life should be allowed to be scrutinised. The reasons given by AHPRA provided no evidentiary value and how they arrived at their decision is fundamental to accountability and transparency that underpins the FOI Act.

### **2. Potential damage to the relationship between Ahpra and the OHO**

To the best of my knowledge, OHO has merely passed on information and documents to AHPRA in this matter. How the release of these communications damages the relationship between the two agencies is something that AHPRA has failed to provide any evidence of.

### **3. Personal Privacy Exemption**

A person’s right to privacy is important, however must be questioned when serious allegations without foundation are made. As discussed, the findings made against me are serious and have affected every aspect of my life including my employment (I am currently unemployed); my physical health and my personal relationships with friends and family.

### **4. Discouraging AHPRA staff from keeping complete records of their deliberations**

AHPRA staff are subject to legislation and policies governing the performance of public servants. They should act with impartiality and held to account if they do not perform their role to the requisite standard. Any suggestion that this is a consideration is quite simply nonsensical and not the expectation of the public.

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<sup>8</sup> *YJI V Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [66].

## 5. Disclosure of an officer's preliminary analysis may undermine confidence

When initially contacted by AHPRA I was not told my conversation (and subsequent file note) would be used as a document to make the findings against me. This was never made clear to me. Full and frank disclosure underpins a legal process. AHPRA's behaviour in not advising me that their initial conversation with me would be used was underhanded and unprofessional.

## 6. AHPRA's ability to obtain information from third parties

AHPRA has significant legislative power to obtain information and undertake its investigations including obtaining information from third parties. The release of documents in this matter will not undermine this ability. What AHPRA needs is legally trained officers and investigators, not 'Regulatory Officers' who have absolutely no understanding of the evidentiary standard required in relation to the matters under its care.

## Application of the agency operations of agencies exemption

24. I have considered whether Documents 32, 34, 37, 62, 70, 71, 72, 73, 80, 'Various – Correspondence with the notifier' and 'Various – Complaint material received from the OHO' are conditionally exempt under s. 47E(d).
25. After inspecting the above documents, I am of the view that these documents were either created by Ahpra, or provided to Ahpra, while Ahpra was undertaking its functions under the National Law, namely to:
- assess the notification made about the Applicant
  - provide information to the Psychology Board to support the Psychology Board's decision-making in relation to the notification.
26. Notifiers, Ahpra officers and other agencies such as the OHO 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 psychologist's health, conduct and performance.
27. 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.

28. 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.
29. Taking all relevant factors into consideration, I am satisfied that disclosing the information exempted in the documents could reasonably be expected to affect the future flow of information from notifiers, Ahpra officers and other agencies such as the OHO to Ahpra, and from Ahpra to the Psychology Board. Ahpra and the Psychology Board rely on candid communication from notifiers, Ahpra officers and other agencies such as the OHO to carry out their role in ensuring public safety.
30. 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.<sup>9</sup>
31. 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.
32. 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.
33. Accordingly, I am satisfied that Documents 32, 34, 37, 62, 70, 71, 72, 73, 80, 'Various – Correspondence with the notifier' and 'Various – Complaint material received from the OHO' are conditionally exempt in full or in part under s. 47E(d).
34. 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

29. 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.
30. 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

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<sup>9</sup> National Law, s. 216.

31. 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.
32. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.
33. 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. Public scrutiny of documents relevant to deliberations of Ahpra and the National Boards may improve the quality of advice and decision-making processes
  - facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the agency (including assessment processes of Ahpra and the [Psychology] Board)
  - revealing information that informed a decision-making process
  - allowing a person to access their personal information, or information relating to matters that otherwise concern them.
34. I agree that disclosure of documents 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 Psychology Board.
35. While I agree there are public interest factors that favour disclosure of 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**

36. Ahpra put forward the following factors against disclosure:
- The public interest in protecting and maintaining the integrity of Ahpra and the Psychology Board's 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,<sup>10</sup> and that only suitable practitioners in various fields of the health profession are able to provide services to the public.<sup>11</sup>
  - The potential damage to the relationship between Ahpra and the OHO in circumstances where it was understood the communications were confidential and generated solely for the purpose of carrying out Ahpra's regulatory functions as required by the National Law.
  - That disclosure could reasonably be expected to prejudice the conduct of future regulatory operations, by discouraging staff from Ahpra and other agencies from keeping complete records of

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<sup>10</sup> Ah Teo v Pacific Media Group [2016] VSC 626, [30].

<sup>11</sup> Hanes v Ahpra [2013] VCAT 1270 [67] quoting Hulls and Victorian Casino and Gaming Authority (1998) 12 VAR 483.

their deliberations<sup>12</sup> or being more circumspect in their preliminary findings that are expressed to Ahpra because of public scrutiny.<sup>13</sup>

- 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 public interest in Ahpra and the National Boards 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.

37. *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.

38. 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**

39. 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.

40. 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.

41. 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.

42. 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.

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<sup>12</sup> See *Hanes* at [30].

<sup>13</sup> See *Hassan v Ahpra* [2014] QCAT 414 at [26].

## Finding

43. I am satisfied that Documents 32, 34, 37, 62, 70, 71, 72, 73, 80, 'Various – Correspondence with the notifier' and 'Various – Complaint material received from the OHO' are conditionally exempt in full and in part under s. 47E(d).

### Section 47C: Documents subject to deliberative processes

44. Ahpra found documents 32, 34, 37, 62, 70, 71, 72, 73 and 80 to be conditionally exempt in full or in part under s. 47C.
45. I have found these documents to be exempt in full or in part under s. 47E(d). I will therefore not consider whether the documents are also exempt under s. 47C.

### Section 47F: Documents affecting personal privacy

46. Ahpra found documents 32, 34, 62, 'Various – Correspondence with the notifier' and 'Various – Complaint material received from the OHO' to be conditionally exempt in full under s. 47F.
47. I have found the documents to be exempt in full under s. 47E(d). I will therefore not consider whether the documents are also exempt under s. 47F.

### Section 47B: Documents affecting Commonwealth-State relations

48. Ahpra found document 'Various – Complaint material received from the OHO' to be conditionally exempt in full under s. 47B.
49. I have found the document to be exempt in full under s. 47E(d). I will therefore not consider whether the documents are also exempt under s. 47B.

## Conclusion

50. Under s. 55K of the FOI Act, I vary Ahpra's decision 13 December 2024. Document 31 is released in full and Document 80 is released in part to the Applicant.

### Richelle McCausland

National Health Practitioner Privacy Commissioner

## 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.<sup>14</sup>

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.<sup>15</sup>

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<sup>14</sup> s. 57A.

<sup>15</sup> s. 60(3).

## 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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