

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



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

Applicant	'BC'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/05142025
Decision date	8 April 2026
Catchwords	FREEDOM OF INFORMATION – 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. 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 section 55K, I affirm Ahpra's decision of 21 February 2025.

Background

2. The Applicant made a notification to Ahpra and the Medical Board of Australia (the Medical Board) about the performance of a medical practitioner (the Practitioner). After assessing the Applicant's notification, the Medical Board decided to take no further action.
3. The Applicant made a request to Ahpra for access to the following documents:
 1. **Notification material:**

All documents, statements and materials included in the notification, including my original statement
 2. **Allianz Workers Compensation Report:**

The complete report that outlines the [incident] on [date].
 3. **Witness Statements:**

Any witness statements related to this matter.

4. Records:

All written statements related to this matter.

The Independent Medical Report submitted to Allianz.

Any referrals made by [the Practitioner] in relation to this case.

All correspondence to and from Allianz Insurance and [others].

5. [Medical] Board's Deliberation Records:

Minutes or notes from the [Medical] Board's meetings where my case was discussed.

Any internal communications related to the review and decision of my complaint.

6. Specific Inquiry on Examination Scope:

Any documents or notes explaining the scope of [the Practitioner's] examination, particularly why the upper respiratory tract was not examined, if discussed.

7. All Documents Considered by the [Medical] Board

All documents considered by the [Medical] Board in relation to notification reference [number], including but not limited to internal communications, notes, meeting minutes, or reports.

4. In its decision dated 18 September 2024, Ahpra identified 9 documents that fell within the scope of the Applicant's request. Ahpra decided that 7 documents could be released to the Applicant in full. Of the remaining 2 documents, Ahpra decided that:
 - Document 7, a notification report, was exempt in full under ss. 47C and 47E(d)
 - Document 8, the attachments to the above notification report, was exempt in part under ss. 47E(d) and 47F.
5. On 24 January 2025 the Applicant requested an internal review of Ahpra's decision.
6. In its internal review decision letter dated 21 February 2025, Ahpra affirmed its decision.
7. On 21 February 2025, the Applicant sought a review of Ahpra's decision under s. 54L.

Scope of the review

8. The issues to be decided in this review are:
 - whether the document that Ahpra found exempt under s. 47C 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 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 document that Ahpra found exempt under s. 47F is conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest.
9. Where I have found that one exemption applies to a document, I have not considered whether any additional exemptions apply.

10. In a review of an access refusal decision, Ahpra bears the onus of establishing that its decision is justified or that I should give a decision adverse to the Applicant.¹ However, it is open to me to obtain any information from any person, make any inquiries that I consider appropriate, and change the basis on which the decision is made.²
11. The Applicant and Ahpra were invited to make a written submission as part of this review. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
12. I have had regard to the object of the FOI Act, which is to give the Australian community access to information held by the Government by requiring agencies to publish that information and by providing for a right of access to documents.³

Review of the exemptions

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

13. Ahpra found Documents 7 and 8 to be exempt from release in full and in part under s 47E(d).
14. A document is conditionally exempt under s. 47E(d) if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
15. The Office of the Australian Information Commissioner's FOI Guidelines (the FOI Guidelines) explain that the predicted effects need to be reasonably expected to occur, and that there must be more than merely an assumption or allegation that damage may occur if the document were to be released.⁴
16. The term 'substantial adverse effect' broadly means an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person.
17. A decision-maker should describe the expected effect and its impact on usual operations or activities in the statement of reasons.⁵

Ahpra's operations

18. Under the *Health Practitioner Regulation National Law* in force in all states and territories of Australia (the National Law), Ahpra and the National Boards exercise functions including:⁶
 - registering suitably qualified and competent persons in the health professions and, if necessary, imposing conditions on the registration of persons in the professions
 - deciding the requirements for registration or endorsement of registration in the health professions, including the arrangements for supervised practice in the professions
 - overseeing the receipt, assessment and investigation of notifications about persons who are or were registered as health practitioners under the National Law

¹ s. 55D(1).

² ss. 55 and 55K.

³ s. 3(1).

⁴ FOI Guidelines, [6.90].

⁵ FOI Guidelines [6.92].

⁶ For more information about the Board's functions see [s.35 of 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 submissions

19. In its original decision dated 18 September 2024, Ahpra said the following with respect to s. 47E(d):

...Amongst other things, Ahpra (on behalf of the National Boards) manages the investigation of notifications made about the health, professional conduct and/or performance of registered health practitioners. The cooperation of, and provision of comprehensive information by practitioners (as well as other third parties as relevant), is essential to ensuring that a robust investigation and decision-making process is carried out.

Documents comprising of correspondence with a health practitioner including their submission in response to a notification and the notification report, are in this instance conditionally exempt from release under section 47E(d) of the FOI Act, because the disclosure of that information would, or could reasonably be 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;*⁷
- 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 applies;⁸
- Practitioner submissions 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 investigation 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."*⁹ ...
- If these documents or parts of the documents were released under the FOI Act, without the express consent of the relevant party, this would likely have a significant adverse impact on the future flow of information from practitioners. Pertinently, this may inhibit individuals from expressing freely

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

⁸ *Health Practitioner Regulation National Law (as in force in each state and territory)* s 216.

⁹ *YJI v Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [66].

and providing complete and frank information out of concern that their communications may be subject to disclosure under the FOI Act. This would reduce the effectiveness of practitioner participation in the regulatory process and in turn make the investigation of notifications less effective, slower and more costly;

- Given the importance of Ahpra receiving as much relevant information as possible when investigating a notification and providing information to a Board to assist in its decision-making, this impact could reasonably be expected to be a substantial adverse effect on the proper and efficient conduct of the operations of the agency.¹⁰

The Applicant's submissions

20. The Applicant provided the following submission in response to a preliminary view outlined during the review:

Your preliminary decision relies heavily on s.47E(d) FOI Act, suggesting disclosure could have a substantial adverse effect on AHPRA's and the Medical Board's ability to obtain frank information in the future. However, the reasoning cannot be sustained where there is evidence of suspected criminal conduct. In such circumstances:

The public interest in transparency and accountability is heightened, not diminished. Confidence in regulation is undermined when relevant material is withheld, particularly where it may conceal evidence of misconduct.

Non-disclosure may impede or delay a criminal investigation, which is contrary to the purpose of both the FOI Act and public confidence in the regulatory oversight.

The FOI Act expressly requires that exemptions be applied in light of the public interest. Where the material relates to suspected offending, the balance must favour disclosure.

The matter is no longer a routine administrative complaint. It is now part of a criminal investigation into whether [Independent Medical Examiners] were misled by the provision of incomplete or false material. Withholding documents on the basis that secrecy protects confidence in the regulatory system is, in these circumstances, counterproductive and inconsistent with the public interest.

Application of the agency operations conditional exemption

24. I have considered whether Documents 7 and 8 are conditionally exempt under s. 47E(d).

25. After inspecting Documents 7 and 8, I am of the view that the material in these documents was created by, or provided to Ahpra, while Ahpra was undertaking its functions under the National Law, namely to:

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

26. The information Ahpra exempted in Documents 7 and 8 consisted of correspondence with the Practitioner including their submission in response to the notification made by the Applicant, and the notification report prepared by Ahpra for the Medical Board's consideration.

¹⁰ *YJI v Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [69].

27. Practitioners and Ahpra officers must be willing to provide information necessary to facilitate Ahpra and the Medical Board's assessment and investigation of a notification. This allows the Medical Board to determine whether regulatory action is required to manage any risks posed by the relevant medical 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', 'AU' and 'AV', 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 Medical 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 Medical Board in the future may not be treated confidentially. This in turn could reasonably be expected to affect how effectively Ahpra and the Medical 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 7 and 8 could reasonably be expected to affect the future flow of information from

practitioners to Ahpra and from Ahpra to the Medical Board. Ahpra and the Medical Board rely on candid communication from practitioners and Ahpra officers 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. I consider that release of the information exempted in Document 7 and 8 could reasonably be expected to reduce confidence in Ahpra's ability to maintain the confidentiality of protected information.
33. I consider that disclosure of the exempted information in 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 Medical Board.
34. Accordingly, I am satisfied that Documents 7 and 8 are conditionally exempt in full and in part under s. 47E(d).
35. 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

21. 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.
22. 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

23. 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.¹¹
24. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.¹²
25. In forming its decision, Ahpra identified the following factors in favour of disclosure:

¹¹ s. 11B(3).

¹² FOI Guidelines, [6.231]

- 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.
 - Revealing information that informed a decision-making process.
26. I agree that disclosure of the 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 Medical Board.
27. While I agree there are public interest factors that favour disclosure of Documents 7 and 8, 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

28. Ahpra put forward the following factors against disclosure relevant to s. 47E(d):
- The public interest in protecting and maintaining the integrity of Ahpra and the Medical 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,¹³ and that only suitable practitioners in various fields of the health profession are able to provide services to the public.¹⁴
 - The public interest in Ahpra and the National Boards being able to carry out their statutory functions as efficiently and effectively as possible. Disclosure of the conditionally exempt documents could reasonably be expected to deter health practitioners from disclosing this kind of highly sensitive personal information in response to a notification, despite it being relevant to Ahpra’s evaluation of the notification, and a Board’s decision about whether any action is required.¹⁵ This would have a significant adverse impact on the integrity and robustness of Ahpra’s regulatory processes, and the ability of Ahpra and the National Boards to carry out their functions and duties in an effective manner.
 - That disclosure could reasonably be expected to prejudice the conduct of future investigations, by discouraging staff from keeping detailed records of their deliberations,¹⁶ or being more circumspect in their preliminary findings that are expressed to Ahpra because of public scrutiny.¹⁷
29. *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

¹³ *Ah Teo v Pacific Media Group* [2016] VSC 626 [30].

¹⁴ *Hanes v Ahpra* [2013] VCAT 1270 [67] quoting *Hulls and Victorian Casino and Gaming Authority* (1998) 12 VAR 483.

¹⁵ *YJI v Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [76].

¹⁶ See *Hanes* at [30].

¹⁷ See *Hassan v Ahpra* [2014] QCAT 414 at [26].

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.

30. 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 medical services. I consider this to be a persuasive point.

Balancing the public interest factors

31. 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.
32. The factors against disclosure include the public interest in protecting and maintaining the integrity of Ahpra and the Medical 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 Medical Board being able to carry out their statutory functions as efficiently and effectively as possible.
33. While I acknowledge the Applicant's interest and reasons for obtaining access to the documents, I accept there is a stronger public interest in Ahpra and the Medical Board's ability to perform their functions in a way that is consistent with their statutory duties and legislative framework.
34. 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

35. I am satisfied that Documents 7 and 8 are conditionally exempt in full and in part under s. 47E(d).

Section 47C: Documents subject to deliberative processes

36. Ahpra found Document 7 to be conditionally exempt in full under s. 47C.
37. I have found Document 7 to be exempt in full under s. 47E(d). I will therefore not consider whether the document is also exempt under s. 47C.

Section 47F: Documents affecting personal privacy

38. Ahpra found Document 8 to be conditionally exempt in part under s. 47F.
39. I have found Document 8 to be exempt in part under s. 47E(d). I will therefore not consider whether Document 8 is also exempt under s. 47F.

Conclusion

40. Under s. 55K of the FOI Act, I affirm Ahpra's decision of 21 February 2025.

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.¹⁸

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.¹⁹

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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¹⁸ s. 57A.

¹⁹ s. 60(3).