

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



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

Applicant	'BE'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/01982025
Decision date	2 June 2026
Catchwords	FREEDON OF INFORMATION – 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 unreasonable – Whether it is contrary to the public interest to release conditionally exempt documents – Freedom of Information Act 1982 ss. 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 10 December 2024.

Background

2. The Medical Board of Australia (the Medical Board) has responsibilities relating to the regulation of medical practitioners. Ahpra provides administrative assistance and support to the Medical Board in exercising its functions.
3. The Applicant is a medical practitioner who was the subject of notifications made to Ahpra and the Medical Board.
4. On 22 October 2024, Ahpra advised the Applicant that it would consider the following request for access to documents:
 - a. All documents considered by the [Medical] Board for notifications [notification number] and [notification number];

- b. *Decision and actions papers outlining the reasons for the [Medical] Board’s decision in relation to notifications [notification number] and [notification number];*
- c. *File notes of discussions between Ahpra investigators and any person or party relevant to notifications [notification number] and [notification number];*
- d. *Witness statements obtained from any person or party relevant to notifications [notification number] and [notification number];*
- e. *File notes of discussions between the Ahpra investigators and the Medical Board of Australia relating to notifications [notification number] and [notification number];*
- f. *Minutes of [Medical] Board meetings relating to notifications [notification number] and [notification number];*
- g. *Correspondence (including emails) between Ahpra and any other agency including the Department of Health or any other hospital, including [hospital], in relation to notifications [notification number] and [notification number].*
5. In its decision letter 10 December 2024, Ahpra identified 115 documents that fell within the Applicant’s request. Ahpra decided to:
- release 39 documents in full
 - release 6 documents in part under a combination of ss. 47C, 47E(d) and 47F
 - refuse access to 70 documents in full under a combination of ss. 37(1)(a), 47C, 47E(d) and 47F.
5. It is noted that Ahpra made several references to the application of s. 47E(c) in the schedule of documents attached to its decision letter dated 10 December 2024. During the course of the review, Ahpra confirmed that these were typographical errors and any references to s. 47E(c) should be read as references to s. 47C. This decision is made on that basis.
6. On 4 February 2025, the Applicant sought a review of Ahpra’s decision under s. 54L in relation to the following documents:

Document number	Document description	Ahpra’s decision
1.	Briefing paper	Exempt in full ss. 37(1)(a), 47C and 47E(d)
3.	Email to a health complaints entity (HCE)	Exempt in part s. 47C
4.	Email from HCE	Exempt in part s. 47C
7.	Investigation report	Exempt in full ss. 37(1)(a), 47C and 47E(d)
8.	Investigation report attachments	Exempt in part ss. 47E(d) and 47F
11.	Agenda paper	Exempt in full ss. 37(1)(a), 47C and 47E(d)

12.	Agenda paper attachments	Exempt in part ss. 47E(d) and 47F
17. to 30.	Correspondence with third parties	Exempt in full ss. 37(1)(a), 47C and 47E(d)
31.	Briefing paper	Exempt in full ss. 37(1)(a), 47C and 47E(d)
40.	Agenda paper – Immediate action part 1	Exempt in full ss. 37(1)(a), 47C and 47E(d)
45.	Agenda paper – Immediate action part 2	Exempt in full ss. 37(1)(a), 47C and 47E(d)
50.	Agenda paper – Immediate action part 3	Exempt in full ss. 37(1)(a), 47C and 47E(d)
54.	Agenda paper – Immediate action part 4	Exempt in full ss. 37(1)(a), 47C and 47E(d)
58.	Agenda paper – Immediate action part 5	Exempt in full ss. 37(1)(a), 47C and 47E(d)
63.	Agenda paper – Immediate action part 6	Exempt in full ss. 37(1)(a), 47C and 47E(d)
68.	Email to HCE	Exempt in part ss. 47E(d) and 47F
69.	Email from HCE	Exempt in part ss. 47E(d) and 47F
70. to 72.	Internal correspondence	Exempt in full s. 37(1)(a)
73. to 115.	Correspondence with third parties	Exempt in full ss. 37(1)(a), 47C and 47E(d)

Scope of the review

6. The issues I decided in this review are:
- whether the information Ahpra found to be exempt under s. 37(1)(a) is exempt under that provision
 - 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 information Ahpra found to be exempt under s. 47E(d) is 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.

7. Where I have found one exemption applied to a document, I have not considered whether any additional exemptions ought to also apply.
8. 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
9. The Applicant and Ahpra were invited to make written submissions about this review. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
10. 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 exemptions

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

11. Ahpra found documents 1, 7, 11, 17 to 30, 31, 40, 45, 50, 54, 58, 63 and 73 to 115 to be conditionally exempt in full under s. 47E(d) and documents 8, 12, 68 and 69 to be conditionally exempt in part.
12. 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
13. 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.⁵
14. 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.⁶
15. A decision-maker should clearly describe the expected effect and its impact on usual operations or activities in the statement of reasons.⁷

Ahpra's operations

16. Under the *Health Practitioner Regulation National Law Act 2009* (as it applies in each State and Territory) (the National Law), the Medical Board oversees the receipt, assessment and investigation

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]

of notifications about persons who are or were registered as medical practitioners under the National Law.⁸

17. During the notification process, Ahpra supports the Medical Board by collecting and assessing relevant information. Ahpra provides this information to the Medical Board and the Medical Board is the regulatory decision-maker.
18. Under the National Law, all 'protected information' must be treated confidentially, subject to specific exceptions.⁹ 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.¹⁰ This includes when handling notifications.

Ahpra's submission

19. In its decision dated 10 December 2024, Ahpra said the following with respect to s. 47E(d):

Documents containing information relating to any third party's interactions with Ahpra in relation to notifications raised about [the Applicant], 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*';¹¹
- 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 considered protected information within the meaning of section 214 of the National Law. It is an offence to disclose protected information unless an exception applies;¹²
- third parties correspond with Ahpra and the [Medical] Board in the context of responding to the issues raised in relation to the investigations and registration applications. Certain material is provided to Ahpra on the understanding that it will be used by Ahpra and the [Medical] Board in certain contexts only and for the purposes of assisting the management of the matters raised;
- it is integral for the efficient management of registrations, notifications, and compliance that Ahpra can continue to meet an individual's expectation of confidentiality over certain communications and documents, which are provided to Ahpra to assist in with these matters. This maintenance of confidentiality is critical to ensuring that the regulatory functions of Ahpra

⁸ For more information about the Medical Board's functions, see s. 35 of the National Law.

⁹ National Law, s. 216.

¹⁰ National Law, s. 214 (definition of 'protected information')

¹¹ *Meschino and Centrelink* [2002] AATA 627 [23].

¹² *Health Practitioner Regulation National Law* (as in force in each state and territory) s 216.

are carried out both efficiently and effectively... [T]he Commissioner has well considered these issues in several of its review decisions. In these review decisions, the Commissioner noted the strict confidentiality obligations imposed by section 216 of the National Law and commented on the reasonable expectation that correspondence shared with Ahpra or the National Boards in the course of exercising their investigative functions will be treated confidentially;

- if the conditionally exempt documents or parts of the documents were released under the FOI Act, without the express consent of the relevant parties, this would likely have a significant adverse impact on the future flow of information from notifiers and third parties. Pertinently, this may inhibit individuals from expressing freely 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 third-party participation in the regulatory process and in turn make Ahpra's regulatory processes less effective, slower and more costly; and
- given the importance of Ahpra receiving as much relevant information as possible when conducting its regulatory operations 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.

The Applicant's submission

20. In their application for review, the Applicant explained:

I am seeking access to the documents for multiple reasons as follows:

- a. There have been innumerable cases published in a public sphere in which AHPRA and the Medical Board have wrongly destroyed a health practitioner's life and/or livelihood without any need or adequate reason
- b. AHPRA investigations have on many occasions been exposed as having been conducted very poorly
- c. I myself have been subject to Medical Board decision that have inexplicitly given no weight to important facts and evidence and do not appear to follow the regulatory principles of the National Law
- d. Like the majority of doctors in Australia, I do not have confidence that AHPRA and the Medical Board are only acting to protect the public and are always acting impartially and in good faith
- e. Considering that there are many parts of this country where there are real difficulties with accessing GP's and medical specialists, the Australian public needs to know that AHPRA and the Medical Board are fulfilling their mandate while not unduly or wrongfully destroying the careers of doctors who have done no wrong
- f. My medical registration fees contribute towards funding AHPRA and the Medical Board so I need to know that my money is being well spent.

I dispute the FOI decision because I disagree with the reliance upon section 47C and 47E(d) and perhaps also section 47F, considering the particular circumstances of my case. I also do not believe the public interest test has been properly applied by the AHPRA FOI officer.

Application of the agency operations conditional exemption

21. I have considered whether documents 1, 7, 11, 17 to 30, 31, 40, 45, 50, 54, 58, 63 and 73 to 115 are conditionally exempt in full under s. 47E(d) and documents 8, 12, 68 and 69 are conditionally exempt in part.
22. After inspecting the documents, it is my view that the documents were provided to or created by Ahpra while Ahpra was undertaking its functions under the National Law, namely to:
 - assess and investigate notifications about health practitioners
 - provide information to the Medical Board to support the Medical Board's decision-making in relation to the notifications.
23. Notifiers, third parties 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 practitioner's health, conduct or performance.
24. As outlined in my decisions of 'AA', 'AC', 'AD', 'AE', 'AF', 'AG', 'AI', 'AM', 'JH', 'MS', 'AN', 'AO', 'AP', 'AQ', 'AR', 'AS', 'AT', 'AU', 'AZ' and 'BA', 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.¹³
25. 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.
26. 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)

¹³ Graham Mahony and Australian Charities and Not-for-profits Commission (Freedom of information) [2019] AICmr 64 (31 August 2019), [22].

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:¹⁴ 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...¹⁵

27. Taking all relevant factors into consideration, I am satisfied that disclosing the information exempted in the relevant documents could reasonably be expected to affect the future flow of information from third parties and notifiers to Ahpra and the Medical Board and from Ahpra officers to the Medical Board. Ahpra and the Medical Board rely on candid communication to carry out their role in ensuring public safety.
28. In addition, the National Law imposes a duty of confidentiality in relation to protected information. I consider the 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.
29. I consider that disclosure of the exempted information in the relevant 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.
30. Accordingly, I am satisfied that documents 1, 7, 8, 11, 12, 17-30, 31, 40, 45, 50, 54, 58, 63, 69, 73 to 115 are conditionally exempt in full or in part under s 47E(d).
31. 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

32. 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.
33. 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.

¹⁴ Spragg and Australian Health Practitioner Regulation Agency [2017] WASAT 103 (26 July 2017), [35], [75]

¹⁵ Ibid [78].

Factors favouring disclosure

34. 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.¹⁶

35. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.¹⁷

36. 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
- 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.

37. I agree that disclosure of the relevant 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.

38. While I agree there are public interest factors that favour disclosure of the relevant 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

39. 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,¹⁸ and that only suitable practitioners in various fields of the health profession are able to provide services to the public.¹⁹
- 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 relevant third parties from disclosing this kind

¹⁶ s. 11B(3)

¹⁷ FOI Guidelines, [6.231]

¹⁸ Ah Teo v Pacific Media Group [2016] VSC 626, [30].

¹⁹ Hanes v Ahpra [2013] VCAT 1270 [67] quoting Hulls and Victorian Casino and Gaming Authority (1998) 12 VAR 483.

of highly sensitive personal information in response to an Ahpra regulatory process, despite it being relevant to Ahpra's evaluation of the matter, and a National Board's decision about whether any action is required.²⁰ 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

- disclosure of the investigation reports could reasonably be expected to prejudice the conduct of future investigations, by discouraging staff from keeping complete records of their deliberations,²¹ or being more circumspect in their preliminary findings that are expressed to Ahpra because of public scrutiny.

40. *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.

41. 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 for and against disclosure

42. 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.

43. 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.

44. 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 Medical Board's ability to perform their functions in a way that is consistent with their statutory duties and legislative framework.

45. 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.

²⁰ *YJI v Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [76].

²¹ See *Hassan v Ahpra* [2014] QCAT 414 at [26].

Finding

46. I am satisfied that documents 1, 7, 11, 17 to 30, 31, 40, 45, 50, 54, 58, 63 and 73 to 115 are exempt in full and documents 8, 12, 68 and 69 are exempt in part under s. 47E(d).

Section 47F: Documents affecting personal privacy

47. Ahpra found documents 17 to 30, 31 and 73 and 115 to be conditionally exempt in full and documents 4, 8, 12 to be conditionally exempt in part under s. 47F.

48. I have found documents 8, 12 17 to 30, 31 and 73 to 115 to be exempt in full or in part under s. 47E(d). I will therefore not consider whether these documents are also exempt under s. 47F.

49. The remaining document is document 4, which Ahpra found to be conditionally exempt in part under s. 47F. I will therefore consider whether document 4 is conditionally exempt in part under s. 47F.

50. Document 4 is an email from the HCE to Ahpra consulting on which entity should retain carriage of a notification made about the Applicant. The exempted information in document 4 is the surname of an officer of the HCE.

51. A document is conditionally exempt under s. 47F if its disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person).

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

- a document contains ‘personal information’
- disclosure in response to the applicant’s FOI request would be unreasonable’²²
- it would be ‘contrary to the public interest’ to release the material at the time of the decision.²³

53. The FOI Guidelines explain:

The information needs to be ‘about’ an individual – there must be a connection between the information and the person. This is a question of fact and depends on the context and circumstances. Some information is clearly about an individual – for example, name, date of birth, occupation details and medical records. A person’s signature, home address, email address, telephone number, bank account details and employment details will also generally constitute personal information. Other information may be personal information if it reveals a fact or opinion about the person in a way that is not too tenuous or remote. Invoices related to the purchase of alcohol for Prime Ministerial functions do not disclose personal information about the Prime Minister if it is possible that a staff member made the purchases based on something other than the Prime Minister’s preferences. Examples of when information is not ‘about’ a person and therefore the information is not personal information for the purposes of s 6 of the Privacy Act, include the colour of a person’s mobile phone or their network type (e.g., 5G).²⁴

²² s. 47F(1).

²³ s. 11A(5).

²⁴ FOI Guidelines, [6.131]

Unreasonable disclosure of personal information

54. In determining whether the disclosure of the information would involve an unreasonable disclosure of personal information, s. 47F(2) provides that a decision-maker must have regard to:
- the extent to which the information is well known
 - whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
 - the availability of the information from publicly accessible sources
 - any other matters that the agency or minister considers relevant.
55. The FOI Guidelines explain that other relevant factors include:
- the nature, age and current relevance of the information
 - any detriment that disclosure may cause to the person to whom the information relates
 - any opposition to disclosure expressed or likely to be held by that person
 - the circumstances of an agency's collection and use of the information
 - the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
 - any submission an applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information
 - whether disclosure of the information might advance the public interest in government transparency and integrity.²⁵

Ahpra's submission

56. In its decision dated 10 December 2024, Ahpra said the following with respect to s. 47F:

[Ahpra is] satisfied from [its] own enquiries [that the exempted personal information of the relevant individuals is not well known or publicly available. Ahpra obtained this information in conducting its regulatory activities and in undertaking its functions under the National Law. There is an expectation, reinforced by the confidentiality provisions of section 216 of the National Law, that the personal information provided would be used by Ahpra and the Board within this context only and only in a manner consistent with the Privacy Act and Australian Privacy Principles.

[Ahpra has] also considered section 47F(3) of the FOI Act which provides that a document cannot be conditionally exempt where it contains only information about [the Applicant]. [Ahpra has] not found any documents to be conditionally exempt on this basis. Where documents contain joint-personal information, [Ahpra has] considered whether or not it would be possible to exempt the conditionally exempt material and release the remainder. In the present circumstances, certain information is so interconnected and intertwined with the personal information of third parties that this would not be possible or would otherwise not be possible without rendering the information meaningless.

²⁵ FOI Guidelines, [6.138].

Accordingly, after considering the above factors, [Ahpra has] concluded that disclosure of the relevant information would be unreasonable and that the relevant documents identified and referred to in the enclosed schedule are conditionally exempt either in full or in part under section 47F of the FOI Act.

The Applicant's submission

57. The Applicant's submission is outlined at paragraph [20].

Application of personal privacy exemption

58. The exempted information in document 4 is the surname of an officer of the HCE. I am of the view that this information says something about a person and this constitutes personal information for the purposes of s. 47F.

59. I will now determine whether access to the identified personal information would involve unreasonable disclosure.

60. From my examination of the information available, it is apparent that the identified personal information is not known to the Applicant and is not publicly available.

61. Given this, I am of the view that disclosure of the identified personal information would be unreasonable in these circumstances.

62. In coming to this view, I considered the recent decision of the Administration Appeals Tribunal (AAT): *Warren; Chief Executive Officer, Services Australia and (Freedom of Information)* [2020] AATA 4557 (Warren).²⁶ The information under review in this decision comprised the names and telephone numbers of various officers of Services Australia contained in a Risk Management Plan, Open Issues Summary, Progress Report and Issues Summary. The AAT found such information to be exempt under s. 47F.

63. In particular, the AAT found when determining whether access would involve unreasonable disclosure, the factors listed above at paragraphs [54] and [55] must be considered.²⁷

64. Other relevant factors the AAT considered included:

- whether the individual is responsible for the matters canvassed in the documents
- whether disclosure would contribute to increased scrutiny or whether the public interest has been met in the form of the disclosure of the substance of the documents
- any public interest in transparency and accountability is outweighed by public interests in the rights of individuals not to have personal information unreasonably disclosed.

65. On the facts of Warren, the personal information in the documents was conditionally exempt under s. 47F on the basis that there was no suggestion that the individuals' names are well-known outside the agency, the individuals were not those responsible for the matters noted, and disclosure would not contribute to increased scrutiny of the program.²⁸

²⁶ (9 November 2020)

²⁷ Warren; Chief Executive Officer, Services Australia and (Freedom of Information) [2020] AATA 4557 (9 November 2020), [43].

²⁸ Ibid, [112]-[116].

66. The facts of Warren are analogous to this case on the basis that:
- the identified personal information is not known to the Applicant
 - disclosure would not contribute to increased scrutiny.
67. For these reasons, I am satisfied that disclosure of the identified personal information in document 4 would be an unreasonable disclosure of personal information for the purposes of s. 47F.
68. I am now required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time.

Section 11A(5): The public interest test

Factors favouring disclosure

69. Regarding the public interest factors for disclosure, I note the factors described at paragraphs [34] to [36] above in relation to the application of s. 47E(d).
70. I agree with the public interest factors identified by Ahpra.
71. 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 a conditionally exempt document.

Factors against disclosure

72. Regarding the public interest factors against disclosure, I note the factors described at paragraph [39] to [41] above in relation to the application of s. 47E(d). Ahpra also identified the following factor against disclosure that relates specifically to s. 47F:

[Disclosure would cause] ... prejudice to an individual's right to privacy, particularly where the information is not well known, or publicly available and in circumstances where there is an expectation, reinforced by statute, that their personal information would be confidential. The personal privacy exemption is designed to prevent the unreasonable invasion of a third party's privacy.

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

Balancing the public interest factors

74. I have considered the nature of the conditionally exempt information and the circumstances in which it was provided to Ahpra. In these circumstances, I find that greater weight should be given to the factors against disclosure. As such, I find that disclosure at this time would on balance be contrary to the public interest.

Finding

75. Accordingly, I am satisfied that the personal information identified in document 4 is exempt under s. 47F.

Section 47C: Documents subject to deliberative processes

76. Ahpra found documents 1, 7, 11, 31, 40, 45, 50, 54, 58, 63 to be conditionally exempt in full, and documents 3 and 4 to be conditionally exempt in part, under s. 47C.
77. I have found documents 1, 7, 11, 31, 40, 45, 50, 54, 58, 63 to be exempt in full under s. 47E(d). I will therefore not consider whether these documents are also exempt under s. 47C.
78. The remaining documents are documents 3 and 4, which Ahpra found to be conditionally exempt in part under s. 47C. I will therefore consider whether documents 3 and 4 are conditionally exempt in part under s. 47C.
79. Documents 3 and 4 are correspondence between the HCE and Ahpra regarding consultation on which entity should retain carriage of a notification made about the Applicant. The exempted information is advice or recommendations made by Ahpra regarding a notification about the Applicant.
80. A document is conditionally exempt under s. 47C if its disclosure would disclose deliberative matter in the nature of, or relating to, either:
- an opinion, advice or recommendation that has been obtained, prepared or recorded
 - a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister.²⁹
81. The main requirements of this conditional exemption are that:
- the document contains or relates to ‘deliberative matter’³⁰
 - the document was prepared for a ‘deliberative purpose’³¹
 - the document contains material that is not ‘purely factual’ or non-deliberative³²
 - it would be contrary to the public interest to give access at the time of the decision.³³
82. The term ‘deliberative matter’ is a shorthand term for opinion, advice, recommendation, consultation and deliberation that is recorded or reflected in a document.³⁴
83. In the Administrative Appeals Tribunal decision of *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945, Deputy President Forgie explained that:
- ... the meanings of the words ‘opinion’, ‘advice’ and ‘recommendation’ all involve consideration, followed by the formation of a view either about a certain subject or about a course of action and the subsequent transmission of that view.³⁵

²⁹ s. 47C(1).

³⁰ Ibid.

³¹ Ibid.

³² s. 47C(2)

³³ s. 11A(5).

³⁴ Parnell and Attorney-General’s Department [2014] AICmr71, [38].

³⁵ *Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information)* [2015] AATA 945 [39]

84. The FOI Guidelines explain:

In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.³⁶

Ahpra's submission

85. In its decision dated 10 December 2024, Ahpra said the following with respect to s. 47C:

...that the information exempt under section 47C would, if disclosed, disclose opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the deliberative processes of Ahpra and the Board. This claim is made in respect of the investigation reports containing the Ahpra officers' summary, risk assessments and recommendations generated as part of the agency's functions in preparing material for decision-making by the statutory decision makers, the Board. [Ahpra has] also exempted information relating to Ahpra recommendations provided to the Health Complaints entity under this section.

The deliberative material [Ahpra has] identified does not contain operational information (as defined in section 8A). To the extent that the documents may contain some purely factual information, such information is so connected to the deliberative nature of the documents that its separation would not be practicable. The documents do not include reports of scientific or technical experts, reports of prescribed bodies or organizations, or the record or reasons for a final decision given in the exercise of a power or adjudicative function.

The Applicant's submission

86. The Applicant's submission is outlined at paragraph [20].

Application of the deliberative processes' exemption

87. I am of the view that document 3 and 4 contains deliberative matter in the form of opinion, advice, recommendation, consultation and deliberation in relation to the functions of Ahpra and the Medical Board under the National Law.

88. In the case of *Hassan v Australia Health Practitioner Regulation Agency* [2014] QCAT 414 (Hassan), the Queensland Civil and Administrative Tribunal (QCAT) found an investigation report and other documents to be exempt under the former s. 36 (internal working documents exemption). This exemption provided that an exempt document is a document that would disclose matter in the nature of or relating to opinion, advice, recommendation, consultation or deliberation occurring or recorded as part of the deliberative processes involved in the functions of an agency and release would be contrary to the public interest.

89. In Hassan, the applicant was a registered medical practitioner whose conduct had been investigated after a number of complaints were received. The investigation was undertaken by the then Health Quality Complaints Commissioner, who ultimately referred the matter to the Medical Board of Queensland (which subsequently became the Medical Board). The applicant in that case sought documents related to the investigation of their conduct, including an investigation report prepared

³⁶ FOI Guidelines, 6.54

by an investigation officer for consideration by a committee of the Board. It contained an analysis of evidence and other factual information, as well as the investigator's findings and recommendations. In finding the document to be exempt, the QCAT stated:

...The investigator's findings are not the Committee's findings and it is up to the Committee to come to its own conclusions about the investigation. Similarly, the recommendation made by the investigator does not necessarily have to be adopted by the Committee it is a matter for it to consider with all of the other relevant information.

90. In Hanes, the Victorian Civil and Administrative Tribunal (VCAT) noted the tribunal had on many occasions found documents exempt under the internal working documents exemption when they concerned the investigation of a complaint.
91. Considering the nature of the exempt information in documents 3 and 4 which relates to Ahpra's deliberations with the HCE, I am satisfied that the relevant information is conditionally exempt under s. 47C.
92. I am now required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time.

Section 11A(5): The public interest test

Factors favouring disclosure

93. I consider paragraphs [34] to [36] to be of relevance here.
94. I agree that disclosure of the exempted material in document 3 and 4 would:
 - promote the objects of the FOI Act, particularly in increasing scrutiny, discussion, comment and review of Ahpra's activities³⁷
 - facilitate access to information to members of the public that allows them to be satisfied that proper processes have been followed by an agency
 - allow a person to access information relating to matters that concern them.

Factors against disclosure

95. I consider paragraphs [39] to [41] to be of relevance here.
96. In particular, I consider there is a strong public interest in protecting and maintaining the integrity of Ahpra and the Medical Board's assessment and investigative processes. Disclosure of the exempted information in documents 3 and 4 could have a significant adverse impact on the integrity and robustness of assessment and investigation processes, and the ability of Ahpra and the Medical Board to carry out their functions and duties in an effective manner.

Balancing the public interest factors for and against

97. The proper and efficient management and investigation of health practitioners is an integral function of Ahpra and the Medical Board under the National Law. It would be contrary to the public interest if

³⁷ s. 3(2)(b).

these processes (and by extension, the core function to ensure the protection of the public) were prejudiced as a result of the disclosure of exempted information in documents 3 and 4.

98. Based on the available information, I am satisfied that the public interest factors against disclosure outweigh those in favour of disclosure.
99. 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

100. I am satisfied that documents 3 and 4 are exempt in part under s. 47C.

Section 37(1)(a): Documents affecting law enforcement and public safety

101. Ahpra found documents 1, 7, 11, 17 to 30, 31, 40, 45, 50, 54, 58, 63, 70 to 72 and 73 to 115 to be conditionally exempt in full under s. 37(1)(a).
102. I have found documents 1, 7, 11, 17 to 30, 31, 40, 45, 50, 54, 58, 63 and 73 to 115 to be exempt in full under s. 47E(d). I will therefore not consider whether these documents are also exempt under s. 37(1)(a).
103. The remaining documents are documents 70 to 72, which Ahpra found to be conditionally exempt in full under s. 37(1)(a).
104. Documents 70 to 72 are internal file notes.
105. Section 37(1)(a) provides that a document is exempt from release if its disclosure would, or could reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach of the law.
106. The FOI Guidelines explains that:

Section 37(1)(a) applies to documents only where there is a current or pending investigation and release of the document would, or could reasonably be expected to prejudice the conduct of that investigation. Because of the phrase 'in a particular instance' it is not sufficient that prejudice will occur to other or future investigations: it must relate to the particular investigation at hand. In other words, the exemption does not apply if the prejudice is about investigations in general.³⁸

The exemption is concerned with the conduct of an investigation. For example, it would apply where disclosure would forewarn the FOI applicant about the direction of the investigation, as well as the evidence and resources available to the investigating body – putting the investigation in jeopardy.³⁹

Whether prejudice will occur is a question of fact to be determined on the evidence. The fact that a document is relevant to an investigation is not, however, sufficient.⁴⁰

³⁸ FOI Guidelines, 5.102

³⁹ Ibid at 5.103

⁴⁰ Ibid at 5.105

Ahpra's submission

107. In its decision dated 10 December 2024, Ahpra said the following with respect to s. 37(1)(a):

A document is exempt under section 37(1)(a) of the FOI Act if its disclosure would, or could reasonably be expected to:

...prejudice the conduct of an investigation of a breach, or possible breach, of the law...

To establish exemption under section 37(1)(a), [Ahpra] must be satisfied that the disclosure of the documents or parts of the documents would or could reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach of the law based on reasonable grounds. There is no separate public interest test for section 37(1)(a).

Section 37 generally, relates to the investigative or compliance activities of an agency and the enforcement or administration of the law, including the protection of public safety. It is not concerned with an agency's own obligations to comply with the law. The exemption applies where an agency has a function connected with investigating breaches of the law, its enforcement or administration.⁴¹

The documents over which section 37(1)(a) is claimed relate to Ahpra and the Medical Board of Australia's (the Board) investigation and ongoing regulatory action relating to [the Applicant]. At the time of making my decision, such regulatory action (including the notification with reference number 00522916 and 00535660) is still open and ongoing, and a determinative decision has not been made.

To disclose information that comprises parts of Ahpra's files in relation to these matters would at this point in time have a prejudicial impact on Ahpra and the Board's regulatory process by disclosing information before it has been considered and tested. In the course of an investigation, Ahpra obtains information in order to assist the Board to address the issues raised and consider what action is appropriate in order to manage any risk to the public. The material you have requested is directly relevant to these regulatory matters and forms part of the documentary corpus that is being relied upon by Ahpra and the Board in carrying out their statutory functions under the National Law. Disclosure of the relevant documents would in this instance, and at this point in time, potentially impact the direction of the investigation, as well as forewarn what evidence and resources are available to Ahpra. This would in turn expose the investigation to a real risk of subversion.⁴²

There is an established process, in the context of Ahpra investigations, for Ahpra to gather information and report its findings to the [Medical] Board for the purposes of the [Medical] Board to carry out its decision-making functions under the National Law. The release of this information under the FOI Act, in the present circumstances, would or could reasonably be expected to, subvert the established processes of Ahpra and the [Medical] Board to investigate and otherwise manage regulatory matters related to health practitioners. This subversion would in turn amount to a real possibility of prejudice to the maintenance or enforcement of lawful methods for the protection of public safety under the National Law.

⁴¹ See *Re Gold and Australian Federal Police and National Crime Authority* [1994] AATA 382.

⁴² See *News Corporation v National Companies and Securities Commission* [1984] 5 FCR 88.

Accordingly, [Ahpra has] decided that the relevant documents or parts of the documents relating to Ahpra's ongoing regulatory matters about you, are exempt under section 37(1)(a) of the FOI Act. As section 37(1)(a) provides an absolute exemption not subject to a separate public interest test, further application of exemptions is not necessary.

The Applicant's submission

108. The Applicant's submission is outlined at paragraph [20].

Application of the exemption

109. Documents 70 to 72 are internal Ahpra correspondence about active regulatory matters and outline information that is not in the public domain.

110. I consider that the disclosure of documents 70 to 72 would prejudice the conduct of active investigations and regulatory matters. This is because when Ahpra made its decision there were ongoing regulatory matters relating to the Applicant. This remained true at the time of commencing this review. The premature release of these documents could reasonably be expected to prejudice its active investigation by disclosing material that is not known to the Applicant or the public.

Finding

111. Accordingly, I am satisfied that documents 70 to 72 are exempt in full under s. 37(1)(a).

Conclusion

112. I affirm Ahpra's decision of 10 December 2024.

Richelle McCausland

National Health Practitioner Ombudsman and Privacy Commissioner

Rights

Review rights

If a review party is not satisfied with a review decision of the Commissioner, the party may apply to a relevant tribunal to have the decision reviewed. The application must be made within 28 days after the day the party receives the Commissioner's decision.⁴³

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.⁴⁴

⁴³ s. 57A

⁴⁴ 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 either:

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

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

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