‘BG’ and Australian Health Practitioner Regulation Agency (Freedom of Information)

National Health Practitioner Privacy Commissioner

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

Applicant	‘BG’
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/05582025
Decision date	2 September 2026
FOI request	FREEDOM OF INFORMATION – Whether disclosure could cause damage to relations between the Commonwealth and a State – Whether disclosure would have 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, 47E(d) and s 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 set aside Ahpra’s decision of 19 March 2025.
2. I substitute my decision that Documents 2 to 8 and 14 are exempt in full under s. 47E(d), Document 15 is exempt in part under s. 47E(d) and Documents 9, 11 to 13 are not exempt.

Background

3. 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.
4. The Applicant made a notification to Ahpra and the Medical Board about a medical practitioner (the Practitioner).
5. On 18 January 2025, the Applicant made an FOI request for the following documents:

   Emails, discussion and notes taken between:

- *Ahpra*
- *HSC [Health Services Commissioner]*
- *NHPO [National Health Practitioner Ombudsman]*
- *HCCC [Health Care Complaints Commissioner]*
- *[practitioners]*
- *[Ahpra staff members]*

between the dates of 01/01/2022 and 31/12/2024

Context of the emails: [the Applicant]

6. In an email dated 30 January 2025, Ahpra sought clarification of the scope of the request, and the applicant replied on the same date.
7. On 3 February 2025, Ahpra confirmed the terms of the request to be for the following documents:

   Emails, SMS, records of Tribunal hearings, meeting notes (including records of meetings) to do with ALL the cases [the Applicant has] initiated with Ahpra regarding [the Applicant's] mother's diagnosis that involve Ahpra and the following agencies and third parties;

   - *HSC (ACT Health Services Commissioner…)*
   - *NHPO*
   - *HCCC*
   - *[practitioners]*

   Which were sent, received or recorded by [named] Ahpra staff members on behalf of Ahpra and the National Board…

   Which took place between the dates on 01/01/2022 and 31/12/2024; and

   That include [the Applicant's name].
8. While making its decision, Ahpra consulted with the HCCC, the Australian Capital Territory Human Rights Commission (HRC)/HSC and the Practitioner about whom the Applicant had made a notification.
9. In its decision dated 19 March 2025, Ahpra identified 15 documents that fell within the scope of the Applicant's request. Ahpra decided to:
   - release in full 2 documents
   - release in part 3 documents under ss. 47E(d) and 47F
   - exempt in full 10 documents under ss. 47B and 47E(d).
10. The Applicant did not seek an internal review of the Ahpra's decision.
11. On 26 March 2025, the Applicant sought a review of Ahpra's decision under s. 54L in relation to the documents outlined in Table 1.

Table 1: Summary of documents for review

Document number	Ahpra's document description	Ahpra's decision
2	Email to HRC – Advise of Notification – Ahpra to Retain	**Exempt** Section 47B, 47E(d)
3	Email from HRC – Ahpra to Retain	**Exempt** Sections 47B, 47E(d)
4	Email to HRC – Joint consideration	**Exempt** Sections 47B, 47E(d)
5	Internal email re Joint consideration	**Exempt** Sections 47B, 47E(d)
6	Email to HRC – Follow up seeking JC	**Exempt** Sections 47B, 47E(d)
7	Email from HRC – Agree with JC	**Exempt** Sections 47B, 47E(d)
8	Email to HRC – Notice of Closure of Notification (NFA)	**Exempt** Sections 47B, 47E(d)
9	Email to [the Practitioner] – FOI Consultation	**Partially Exempt** Sections 47E(d), 47F
11	Email to [the Practitioner] – FOI consultation	**Partially Exempt** Sections 47E(d), 47F
12	Email from [the Practitioner] – FOI consultation	**Partially Exempt** Sections 47E(d), 47F
13	Third Party Consultation - HRC	**Exempt** Sections 47B, 47E(d)
14	Email from HSC – RE: Third Party Consultation	**Exempt** Sections 47B, 47E(d)
15	Email to HSC – RE Third Party Consultation	**Exempt** Sections 47B, 47E(d)

Scope of the review

12. The issues I have decided in this review are:

- whether the documents that Ahpra found to be exempt in full under s 47B are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest
- whether the documents Ahpra found to be exempt in full or in part 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 in part under s 47F are conditionally exempt under that provision, and if so, whether giving access would be contrary to the public interest.

13. Where I have found one exemption applies to the document, I have not considered whether any additional exemptions ought to also apply.
14. In a review of an access refusal decision, Ahpra bears the onus of establishing that its decision is justified or that I should give a decision adverse to the applicant.[1] However, it is open to me to obtain any information from any person, make any inquiries that I consider appropriate, and change the basis on which the decision is made.[2]
15. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
16. I have had regard to the object of the FOI Act, which is to give the Australian community access to information held by the Government by requiring agencies to publish that information and by providing for a right of access to documents.[3]

Review of the exemptions

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

17. Ahpra found Documents 2 to 8 and 13 to 15 to be exempt in full, and Documents 9, 11 and 12 to be exempt in part, under s. 47E(d).
18. A document is conditionally exempt under s. 47E(d) if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
19. 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]
20. 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.

[1] s 55D(1)

[2] ss 55 and 55K

[3] s 3(1)

[4] FOI Guidelines [6.90].

21. A decision-maker cannot merely assert that an effect will occur following disclosure. The particulars of the predicted effect should be identified during the decision-making process, including whether the effect could reasonably be expected to occur.[5]

Ahpra's operations

22. Under the *Health Practitioner Regulation National Law Act 2009* (as it applies in each State and Territory) (the National Law), Ahpra and National Boards exercise functions including the following:[6]

    - registering suitably qualified and competent persons in the health profession and, if necessary, imposing conditions on the registration of persons in the profession
    - deciding the requirements for registration or endorsement of registration in the health profession, including the arrangements for supervised practice in the profession
    - 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 profession, including monitoring conditions, undertakings and suspensions imposed on the registration of the practitioners or students.

23. In general, Ahpra supports the Medical Board by collecting and assessing relevant information. Ahpra provides this information to the Medical Board. The Medical Board is the regulatory decision-maker.

Ahpra's submissions

24. In its decision dated 19 March 2025, Ahpra said the following with respect to s. 47E(d):

    [Ahpra is] satisfied that disclosure of this information 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 [Medical] Board 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 or otherwise held by Ahpra and the [Medical] Board 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;[8]

[5] FOI Guidelines [6.92].

[6] For more information about the Medical Board's functions refer to s 35 of the National Law.

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

[8] National Law, s 216.

- The conditionally exempt correspondence was provided to, or was written by, Ahpra staff in the context of responding to the issues raised in the notification and on the understanding that the material would be used by Ahpra and the [Medical] Board only for the purposes of assisting the assessment of the matters raised. In *YJI v Australian Health Practitioner Regulation Agency* at [66], the Tribunal remarked that:

  > *"It is important that third parties such as notifiers, practitioners and other government bodies be willing to provide information necessary to facilitate Ahpra and the [Medical] Board's efficient assessment of a notification. This allows the [Medical] 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."*

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

  > *"The proper and efficient conduct of the operations of the agency are assisted by the circumstance that information provided to it by a registered health practitioner under compulsion is protected information and its disclosure is prohibited. The agencies operations are advanced when a registered health practitioner is forthright and frank in providing information when required. The Tribunal finds that the prospects of a forthright and frank answer are considerably enhanced in circumstances where the practitioner has confidence that the information provided is protected information."*

- The Commissioner has considered these issues in several of its review decisions. In these 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 while exercising their functions will be treated confidentially.

- In its role as a regulator, Ahpra receives and holds private information relating to health practitioners. This information is held and relied upon for the primary purpose of regulating the health professions. Disclosure of personal information relating to an individual practitioner through the FOI process would frustrate the operations of the agency by undermining individuals' faith in Ahpra's ability to maintain confidence over the conditionally held information it possesses. This would in turn cause individuals to be more cautious in their disclosures and dealings with Ahpra out of concern that their information could be released more broadly; and

- As it is a core function of Ahpra under the National Law to regulate health professionals, damage to Ahpra's ability to conduct such regulation properly and efficiently would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

25. In the course of this review, Ahpra provided a further submission. Its submission noted that the HRC/HSC responded to Ahpra's consultation request, both at the time Ahpra was making its decision on the initial FOI request and following notification of this review. That response objected to disclosure of documents related to its complaint-handling functions.

26. Ahpra provided the following submission specifically in relation to documents 13 and 15:

…Documents 13 and 15 are conditionally exempt from release in full under sections 47E(d) of the FOI Act on the basis that its release would, or could reasonably be expected be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The functions of the National Boards are set out in section 35 of the National Law, which includes:

> (q) to do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme

Ahpra's functions are set out in section 25 of the National Law, which includes:

> (a) committees, in exercising their functions
>
> (ka) to do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme.

Section 215(1) of the National Law establishes that:

> (1) The FOI Act applies as a law of a participating jurisdiction for the purposes of the national registration and accreditation scheme.

Ahpra is of the view that carrying out its obligations under the FOI Act is a function under the National Law. In the circumstances, [Ahpra] submit[s] that release of Documents 13 and 15 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:

- information received, generated or otherwise held by Ahpra and the National Board is on the understanding that it will be treated in a confidential manner and used in accordance with the National Law. 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[9]
- in carrying out its functions, Ahpra is required to communicate with various third parties, including health complaints entities, law enforcement agencies, practitioners, notifiers and patients, among others. Disclosure of protected information through the FOI process in which the affected third party objected to the release would:
  - undermine third parties faith in Ahpra's ability to maintain confidence over the conditionally held information it possesses; and
  - cause third parties to be more cautious in their dealings with Ahpra out of concern that protected information held by Ahpra could be released more broadly.
- Maintenance of effective working relationships with the HRC and other health complaints entities is essential for Ahpra and the Boards to carry out their functions under the National Law. This includes in relation to consultation under the FOI Act, as well as full and frank information sharing for the purpose of joint consultation. [10] Damage to the relationship between Ahpra and the HRC, or the full and frank sharing of information between the entities, would impact Ahpra's ability to efficiently carry out its functions under the National Law

[9] National Law, s 216.

[10] Under section 150 of the National Law, Ahpra is required to jointly consult with the various health complaints entities about notifications in certain circumstances.

- Release of the relevant information, in the absence of consent from relevant persons, would likely have a significant adverse impact on the future flow of information to Ahpra and the National Boards from members of the public, health complaints entities and other third parties. As noted by the Tribunal:

  > "If Ahpra discloses the document requested by the applicant, a reasonable person could conclude that highly sensitive information prepared for Ahpra/the Board in the future may not be treated confidentially"[11] and

- Whilst [Ahpra] acknowledges that the material may not be considered "highly sensitive" [Ahpra is] of the view that its release, in the circumstance, would, or could reasonably be expected to, damage Ahpra's working relationship with the HRC and impact its ability to efficiently carry out its functions.

27. Ahpra provided the following submission in relation to documents 9, 11 and 12:

    …. Ahpra maintains its view that the information [the practitioner's personal email address] is also exempt under section 47E(d) of the FOI Act on the basis that:

    - Ahpra hold[s] practitioner contact information for the purposes of exercising its functions under the Health Practitioner Regulation National Law Act 2009 (as in force in each state and territory) (the National Law), including its functions to provide administrative support of the National Boards[12];
    - The information held by Ahpra, including practitioners' contact information, is protected information, within the meaning of section 214 of the National Law. It is an offence to disclose protected information, unless an exemption applies[13];
    - The personal information held by Ahpra, which includes practitioners' contact information, is held for the primary purpose of regulating health practitioners. It is held on the understanding that it will be used in accordance with the Privacy Act 1988 (Cth) (the Privacy Act). We consider that release personal information under the FOI Act would be considered a disclosure of the information for a secondary purpose under the Privacy Act[14];
    - [Ahpra] note[s] that practitioners are required to provide Ahpra with their contact details. In that respect [Ahpra] submit[s] that Tribunals comments in Spragg are relevant, namely:

      > "*The proper and efficient conduct of the operations of the agency are assisted by the circumstance that information provided to it by a registered health practitioner under compulsion is protected information and its disclosure is prohibited. The agencies operations are advanced when a registered health practitioner is forthright and frank in providing information when required. The Tribunal finds that the prospects of a forthright and frank answer are considerably enhanced in circumstances where the practitioner has confidence that the information provided is protected information"*[15]

[11] *YJI v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2023] VCAT 206, [67].

[12] National Law, s 25(a).

[13] National Law, s 216.

[14] *Privacy Act 1988* (Cth), Schedule 1, [6.1].

[15] *Spragg v Australian Health Practitioner Regulation Agency, [78].*

- Broadly speaking, Ahpra relies on practitioners to provide full and frank information to efficiently and effectively carry out its functions. Further practitioner's personal contact details are required to be provided to the agency under the National Law, to assist in its core function to assist the National Boards to regulate health professionals;
- [Ahpra] also note that, if s 47F were the only exemption applied to this information, Ahpra would be required to undertake third-party consultation in relation to the proposed release of the practitioner's personal email address;
- More fundamentally, the disclosure of practitioner's personal contact details has the potential to prejudice Ahpra's ability to obtain and maintain accurate contact information from registered practitioners. Practitioners provide personal contact details to Ahpra with an expectation that it is used for a regulatory function and such information will be protected and used only for legitimate regulatory purposes. If personal contact details were routinely subject to disclosure, this could reasonably be expected to undermine practitioner's confidence in providing complete and accurate information to Ahpra.

Applicant's submissions

28. The Applicant is seeking all documents in full. In doing so, the Applicant noted that the Practitioner did not oppose disclosure as part of the consultation process.
29. The Applicant also submitted that:

    …For the record. [The practitioner's] work address, office phone number and email address are available on the web.

Application of the agency operations conditional exemption

30. I have considered whether the documents are conditionally exempt under s. 47E(d). It is my view that, taking all relevant factors and submissions into consideration, release of some of the documents that are the subject of this review would, or could be reasonably expected to, have a substantial adverse impact on the proper and efficient conduct of the operations of Ahpra. However, there is also some information where I am not satisfied this would be the case.
31. In particular, it is my decision that Documents 2 to 8 and 14 are conditionally exempt in full under s. 47E(d) and Document 15 is conditionally exempt in part under s. 47E(d). However, Documents 9, 11, 12 and 13 are not exempt under s. 47E(d).
32. Documents 2 to 8 concern correspondence between Ahpra and the HRC/HSC in relation to their joint decision-making regarding a notification about the Practitioner. I am satisfied that the correspondence was exchanged on a premise or expectation of confidentiality and that its disclosure would, or could be reasonably expected to, have a substantial adverse impact on the proper and efficient conduct of the operations of Ahpra with respect to its ongoing working relationship with the HRC/HSC. I am therefore satisfied that Documents 2 to 8 are conditionally exempt in full under s. 47E(d).
33. Document 13, as well as part of Document 15, relate to the third-party consultation process regarding a request for access to documents under the FOI Act. In general, before making a decision about the release of a document it is good practice for the decision-maker to consult other relevant agencies, and in some circumstances, consultation is required under the FOI Act. I do not consider that disclosure of Ahpra's consultation correspondence to the HRC/HSC in Documents 13 and 15 would, or could be

reasonably expected to, have a substantial adverse impact on its operations, as this simply concerns Ahpra exercising its functions under the FOI Act. The contents of the documents describe Ahpra's typical FOI consultation process and legislative background to FOI consultation. The letter is in a standard format and does not appear to be tailored to the specific circumstances. Further, the Applicant is already aware that the HRC/HSC and the Practitioner were consulted about the FOI request. I note that Ahpra has already released similar correspondence to the Applicant in relation to its FOI consultation between it and the practitioner contained in documents 9, 11 and 12.

34. However, I contrast this with Document 14 and part of Document 15, which contain the consultation response provided by the HRC/HSC to Ahpra. I consider these documents contain information communicated in confidence to Ahpra. I am satisfied that disclosure of this information could have a substantial adverse impact on the future flow of information to Ahpra and therefore on its operations. On this basis, I consider that Document 14 is conditionally exempt in full, and Document 15 is conditionally exempt in part, under s. 47E(d).

35. Documents 9, 11 and 12 are correspondence between Ahpra and the Practitioner also in relation to the third-party consultation process. Ahpra released these documents to the Applicant, except the Practitioner's personal email address which Ahpra found to be exempt from release under ss. 47E(d) and 47F. I am not satisfied that the release of this information would, or could be reasonably expected to, have a substantial adverse impact on Ahpra's operations. This is because, as submitted by the Applicant, the Practitioner's personal email address is publicly available on the internet. The existing availability of this information to the world at large undermines the argument that the information was provided to Ahpra on the understanding it would be treated in a confidential manner or that disclosure of the information would undermine practitioners' confidence in providing information to Ahpra. I do, however, consider the application of the personal privacy conditional exemption to this information below.

36. Given my findings above, I am required to consider whether it would be contrary to the public interest to give the applicant access to the information I have found to be conditionally exempt.

Section 11A(5): The public interest test

37. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed unless in the circumstances access to the document at this time would on balance be contrary to the public interest.[16]

38. In *Seven Network (Operations Limited) and Australian Competition and Consumer Commission (Freedom of Information)* [2019] AICmr 29 (6 June 2019) the Australian Information Commissioner explained that:

> …the public interest test does not require a decision-maker to consider whether disclosure of conditionally exempt material would be in the public interest. Rather, a decision-maker must start from the position that access to a conditionally exempt document must be given, unless giving access to the document, at the time of the decision would, on balance, be contrary to the public interest.[17]

[16] s 11A(5).

[17] *Seven Network (Operations Limitd) and Australian Competition and Consumer Commission (Freedom of Information)* [2019] AICmr 29 (6 June 2019), [47].

Factors favouring disclosure

39. The FOI Act provides public interest factors to be considered, including that disclosure would:
    - promote the objects 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.[18]
40. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.[19]
41. In forming its decision, Ahpra considered 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
    - allowing a person to access information relating to matters that concern them.

Factors against disclosure

42. The FOI Act does not list any factors weighing against disclosure but the conditional exemptions themselves recognise that harm may result from disclosure in certain circumstances, for example, where disclosure could prejudice an investigation.
43. Some factors against disclosure include whether disclosure could reasonably be expected to:
    - prejudice public health or safety
    - impede the flow of information to a regulatory authority
    - prejudice the ability of officers to express frank and fearless opinions and have their recommendations protected from scrutiny given they are recommendations only and it is for the Medical Board to make the decision that applies to the practitioner under investigation
    - prejudice Ahpra or the Medical Board's ability to obtain confidential or similar information in the future.
44. In making its decision, Ahpra stated the following factors as weighing 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.
    - The public interest in Ahpra and the Medical Board being able to carry out their statutory functions as efficiently and effectively as possible. Disclosure could reasonably be expected to affect Ahpra's ability to obtain information from third parties in the future, thereby making the assessment and

[18] s 11B(3)

[19] FOI Guidelines, [6.231].

investigation of notifications more difficult. This is a factor that weighs heavily against release of the conditionally exempt documents.

45. Under s. 11B(4), there are certain factors that must not be taken into account, namely whether:
    - disclosure could result in embarrassment to the Commonwealth Government;
    - disclosure would result in any person misinterpreting or misunderstanding the document;
    - the author of the document was of high seniority in the agency; and
    - access to the document could result in confusion or unnecessary debate.

Balancing the public interest factors for and against disclosure

46. In balancing the public interest in this case, I have considered the factors for and against disclosure.
47. The factors favouring disclosure include that the disclosure of the documents would promote the objects of the FOI Act, reveal information that informed a decision-making process and allow the Applicant access to information relating to matters that concern them.
48. The factors against disclosure include the prejudice that could flow to Ahpra's operations. There is a public interest in the HRC/HSC and Ahpra being able to communicate in confidence as part of their joint consideration of notifications about health practitioners. I consider there is a public interest in protecting and maintaining the integrity of Ahpra's investigative processes and the HRC/HSC and Ahpra's joint decision-making processes.
49. Further, the disclosure of confidential information exchanged in response to third-party consultation regarding an FOI request could have a substantial adverse impact on the future flow of information to Ahpra.
50. Every FOI request must be considered on its merits at the time the decision is made. I have considered the specific circumstances, the nature of the relevant information and the submissions from Ahpra and the Applicant.
51. In relation to the information I consider conditionally exempt under s. 47E(d), I am satisfied the public interest factors against disclosure outweigh those in favour of disclosure.

Finding

52. I am of the view that s. 47E(d) applies to Documents 2 to 8 and 14 in full, and to Document 15 is part.
53. Documents 9, 11, 12 and 13 are not exempt under s. 47E(d).

Section 47B: Documents affecting Commonwealth-State relations

54. Ahpra found Documents 2 to 8 and 13 to 15 to be conditionally exempt in full under s. 47B.
55. I have found that Documents 2 to 8 and 14 are exempt in full under s. 47E(d) and so I do not need to consider those documents further. I have also found that part of Document 15 is exempt in part under s. 47E(d).
56. I now consider whether the part of Document 15 that I did not find exempt under s. 47E(d) is conditionally exempt under s. 47B and whether Document 13 is conditionally exempt under s. 47B.

57. Section 47B, as modified by s. 14(f) of the Health Practitioner Regulation National Law Regulation 2018, provides that a document is conditionally exempt if it would divulge information or matters communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of another State, to an authority of the State or to a person receiving the communication on behalf of the State or of an authority of the State.

Ahpra's submissions

58. In its decision 19 March 2025, Ahpra said the following with respect to s. 47B:

> Ahpra is a state agency established under the Health Practitioner Regulation National Law, as enacted in each state and territory (the National Law). The ACT Human Rights Commission (HRC) handles complaints about the provision of health services in the ACT. The Health Services Commissioner works with AHPRA to handle complaints about the 16 registered health professions including doctors, nurses, radiologists, physiotherapists. The Health Services Commissioner and Ahpra and the relevant National Boards are obliged to jointly discuss complaints and reach agreement as to how matters are to be dealt with.
>
> 'Working relations' encompasses all interactions between states, including any working arrangements undertaken as part of their day-to-day functions. [Ahpra is] therefore satisfied that section 47B(a) applies in the context of working relations between Ahpra and the HRC.
>
> The information to which this exemption applies is correspondence between Ahpra and the HRC relating to the joint consideration of the notification that [the Applicant] made about [the Practitioner]….
>
> [Ahpra is] satisfied that disclosure of this information would, or could reasonably be expected to, damage the working relations between the HRC and Ahpra. In particular, [Ahpra is] satisfied that disclosure of the information may adversely affect the continued level of trust or co-operation in existing office relationships between Ahpra and the HRC and consequently may also impair or prejudice the flow of information between these agencies.
>
> To determine whether the information in the documents was communicated in confidence, Ahpra must consider whether the information was confidential at the time it was communicated, and the circumstances of the communication, which includes:
>
> - whether the communication was routine or an administrative matter ; and
> - the manner in which the information was subsequently handled.
>
> [Ahpra has] given regard to the nature of the information, the context in which it was provided, that being the investigation and resolution of a notification, the existing relationship between Ahpra and the HRC, that the documents do not relate to routine or administrative matters and that the information is not already in the public domain.
>
> [Ahpra is] satisfied that there was an expectation on the part of the HRC that its communications with Ahpra would be subject to the confidentiality obligations under section 214 of the National Law, and that this was mutually understood by both parties.

59. During this review, Ahpra provided a further submission, stating:

The Health Practitioner Regulation National Law Regulation 2018 (as in force in each State and Territory) (the Regulation) modifies the FOI Act to apply to Ahpra and the National Boards.[20] The Regulation modifies section 47B of the FOI Act, as it applies to Ahpra, so that a document is conditionally exempt if disclosure would, or could reasonably be expected to, cause damage to relations between states/territories.

Ahpra is a state agency established under the National Law. The ACT Human Rights Commission handles complaints about the provision of health services in the ACT.[21] The conditionally exempt material is information exchanged between Ahpra and the HRC as part of the third-party consultation process under the FOI Act.

Ahpra submits that Documents 13 and 15 are conditionally exempt from release in full under section 47B(a) of the FOI Act in circumstances where:

- Relations between states includes working relationships between agencies, that is, Ahpra and the HRC. In this context, the term "relations" refers to the total working relationships between the agencies, both formal and informal.[22] [Ahpra] consider that "relations" extends to the FOI consultation process
- Ahpra followed the process under the FOI Act with respect to third-party consultation with the HRC. The HRC did not consent to the release of the documents. In their consultation response, they indicated that "I note that decision making documents exchanged between the HSC and Ahpra are generally exchanged on a premise or expectation they are confidential. Given the above I am of the view to disclose the documents exchanged between HSC and Ahpra would have a prejudicial effect on Commonwealth/territory relations." and
- Ahpra submits that release in these circumstances would, or could reasonably be expected to, cause damage to relations between Ahpra and the HRC by impeding the future flow of full and frank information to Ahpra, out of concern that confidential information exchanged with Ahpra may later be disclosed under the FOI Act. We submit that that by extension, this could cause damage to Ahpra's relationship with other agencies.

Ahpra acknowledges that the communication was required under section 26A of the FOI Act, which is factor that favours release. [Ahpra] also acknowledges [the Commissioners] view that "*The letter is in a standard format and does not appear to be tailored to the specific circumstances*" and that the correspondence is therefore administrative in nature, which is a factor that favours release.

However, the HRC, as the affected third party in this matter, advised Ahpra during the consultation process that its correspondence with Ahpra was provided on the express understanding, or at the very least the reasonable expectation, that such communication would be treated confidentially. The HRC objected to the release of the documents on that basis. The circumstances in which the information was exchanged support that expectation of confidentiality. The documents consist of correspondence exchanged directly between Ahpra and the HRC in the course of their respective functions and have remained confidential at all times. Neither Ahpra nor the HRC has disclosed, published or otherwise made the contents of the documents publicly available. The continued preservation of that

[20] *Health Practitioner Regulation National Law Regulation 2018,* Part 4.

[21] https://www.hrc.act.gov.au/health

[22] *Arnold v The State of Queensland* [1987] FCA 223, [32].

confidentiality is consistent with, and reinforces, the understanding that the information was communicated in confidence.

While [Ahpra] acknowledged that [the Applicant] is aware of the existence of the correspondence, knowledge of the existence of a document is not equivalent to knowledge of its contents.

Although these are factors favouring disclosure, those factors must be weighed against the significant public interest in preserving confidences and maintaining the integrity of information-sharing arrangements between regulatory agencies and external bodies. The information was communicated in confidence, the confidentiality has been maintained, and the HRC has expressly objected to disclosure. [Ahpra] submit that these matters weigh strongly against release and should be afforded substantial weight.

Applicant's submissions

60. The Applicant's submissions have been set out above at paragraph [28] to [29].

Application of the Commonwealth-State relations conditional exemption

61. I have considered whether part of Document 15 is conditionally exempt under s. 47B and whether Document 13 is conditionally exempt in full under s. 47B. I have determined that s. 47B does not apply to these documents.

62. Put simply, s. 47B applies in this context if release of the document would divulge information or matters communicated in confidence by or on behalf of the Government of a State to the Government of another State.

63. The FOI Guidelines note that, when assessing whether the relevant information was communicated in confidence, the test is whether the communication was considered to be confidential at the time of the communication. The circumstances of the communication may also need to be considered, such as:

    - whether the communication was ad hoc, routine, or required
    - whether there were any existing, implied or assumed arrangements or understandings concerning the exchange or supply of information
    - how the information was subsequently handled, disclosed or otherwise published.[23]

64. As noted above, Documents 13 and 15 relate to the third party consultation process regarding a request for access to documents under the FOI Act. The contents of the documents describe Ahpra's typical FOI consultation process and legislative background to FOI consultation. Documents 13 and 15 contain a letter which is in a standard format and does not appear to be tailored to the specific circumstances. I consider that Ahpra's correspondence to the HRC/HSC therefore relates to routine or administrative matters and would not be considered to have been communicated in confidence.

Finding

65. I am of the view that s. 47B does not apply to Documents 13 or 15.

[23] FOI Guidelines, [6.36].

Section 47F: Documents affecting personal privacy

66. Ahpra found Documents 9, 11 and 12 to be conditionally exempt in part under s. 47F.

67. 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).

68. 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;[24]
    - it would be contrary to the public interest to release the material at the time of the decision.[25]

Unreasonable disclosure of personal information

69. 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; and
    - any other matters that the agency or minister considers relevant.

70. 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.[26]

71. The FOI Guidelines explain that the test of 'unreasonableness' under s. 47F 'implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals'.[27]

[24] s. 47F(1).

[25] s. 11A(5).

[26] FOI Guidelines, [6.138].

[27] FOI Guidelines, [6.133].

Ahpra's submissions

72. In its decision dated 19 March 2025, Ahpra said the following with respect to s. 47F:

    …[O]ther matters [Ahpra has] considered include:

    - the nature of the information
    - the circumstances in which Ahpra and the [Medical] Board were given or obtained the information
    - the reasonable expectation of confidentiality of the individual to whom the information relates
    - the intrusion into the individual's privacy and any potential harm that may occur if the information were to be more widely disseminated, particularly in circumstances where they understood that their confidentiality would be maintained; and
    - consultation responses obtained from third parties.

    [Ahpra is] satisfied from [their] own enquiries that the conditionally exempt information described above is not well known or publicly available.

    [Ahpra is] also satisfied that the conditionally exempt personal information was provided to Ahpra on the understanding that it would not be made publicly available. Ahpra obtained this information in order to undertake its functions under the National Law. There is an expectation, reinforced by the confidentiality provisions of section 216 of the National Law, that personal information contained within the documents would be used by Ahpra and the [Medical] Board in this context only and only in a manner consistent with the Privacy Act and the Australian Privacy Principles.

73. During this review, Ahpra provided a further submission which noted the Practitioner was consulted and only their personal email address was redacted.

Applicant's submissions

74. The Applicant's submission has been set out above at paragraphs [28] to [29].

Application of personal privacy exemption

75. After reviewing the documents, I am of the view that the information in dispute is not conditionally exempt under s. 47F.

76. I find that the Practitioner's personal email address can be considered personal information.

77. However, I am not satisfied that disclosure of this information would be unreasonable because, as submitted by the Applicant, the Practitioner's personal email address is publicly available on the internet.

Finding

78. I am satisfied that the Practitioner's personal email address in Documents 9, 11 and 12 is not exempt under s. 47F.

Conclusion

79. Under s 55K, I set aside Ahpra's decision of 19 March 2025.

80. I substitute my decision that Documents 2 to 8 and 14 are exempt in full under s. 47E(d), Document 15 is exempt in part under s. 47E(d), Documents 9 and 11 to 13 are not exempt.

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.[28]

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.[29]

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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[28] s. 57A

[29] s. 60(3).