

Private and Confidential

Our Ref: FOI34931

11 February 2022

Private and Confidential

Mr Julian Fidge

By email only: foi+request-8207-cc8013f0@righttoknow.org.au

Dear Mr Fidge

Internal review decision about your request for documents

I refer to your email received 15 January 2022 seeking an internal review of a decision refusing access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) made on 11 January 2022.

Under section 23 of the FOI Act, I am an authorised decision maker. This letter sets out my decision in response to your request for internal review.

Background and original decision

On 30 December 2021 the Australian Health Practitioner Regulation Agency (**Ahpra**) wrote to you to provide information about the FOI process and to acknowledge that we would consider your request for the following documents:

'Please provide an overview of the amounts of money you have spent on training in the financial years ending in 2017, 2018, 2019, 2020 and 2021, and the subject areas in which training was provided in those years.'

We also explained that we were legally required to make a decision in response to your request by 17 January 2022.

On 11 January 2022 Mr Matthew Reghenzani, Freedom of Information Officer, made a decision under the FOI Act in response to your application. Mr Reghenzani conducted searches of Ahpra's information holdings and did not identify a document containing the information you seek.

Mr Reghenzani also considered whether a document containing the information you seek could be produced by computerised means under section 17 of the FOI Act. Mr Reghenzani concluded that it was not possible to produce a document via computerised means without significant manual intervention and that section 17 of the FOI Act was therefore not applicable in the context of your application.

As a consequence, Mr Reghenzani made an access refusal decision on the grounds that the document(s) sought do not exist.

Your request for internal review

Your request for internal review of Mr Reghenzani's access refusal decision was received on 15 January 2022.

In summary, your application for internal review submits that:

Australian Health Practitioner Regulation Agency | National Boards

GPO Box 9958 Melbourne VIC 3001 Ahpra.gov.au 1300 419 495

Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

1. Ahpra is in possession or control of one or more documents that contain the information you seek; and
2. The information sought must be contained on a computer and should therefore be produced under section 17 of the FOI Act

In undertaking an internal merits review of an administrative decision, I am required to stand in the shoes of the original decision-maker to remake the decision afresh. I have approached the review on this basis.

Materials Relevant to Making of Decision

In reaching my decision I referred to:

- the terms of your request;
- the documents relevant to the request;
- Ahpra's original FOI decision dated 11 January 2022;
- your request for internal review dated 15 January 2022;
- the FOI Act;
- the National Law; and
- FOI Guidelines issued by the Australian Information Commissioner.

Internal review decision

I have carefully considered your application for access to documents, the original FOI decision and your correspondence in response to that decision.

I have decided to affirm the original access refusal decision on the same basis and reasons that are set out in the original decision.

I am satisfied that no document is currently in the possession or control of Ahpra that provides an overview of monies spent on training broken down by the subject matter of the training for the years specified in your application.

I am also satisfied that producing a document containing that information would require each individual invoice to be described by the subject matter of the training in order to produce the figures you seek. This would require significant time, expense and manual intervention. Consequently Ahpra is not obliged to produce a document under section 17 of the FOI Act.

Review Rights

Review by the National Health Practitioner Privacy Commissioner

Under section 54L of the FOI Act, you may seek review of this decision by the Commissioner. Your application must be made within 60 days of you receiving this notice.

The Commissioner is an independent office holder who may review decisions of Ahpra under the FOI Act. You can contact the Commissioner to seek review of this decision at the details listed below. An FOI review application form is available on the Commissioner's website.

Complaints to the National Health Practitioner Ombudsman (the Ombudsman)

You may complain to the Ombudsman about action taken by Ahpra in relation to your request via the following contact details:

Mailing address:
National Health Practitioner Ombudsman
GPO Box 2630

MELBOURNE VIC 3001

Email address: complaints@nhpo.gov.au

Telephone enquiries: 1300 795 265

To make a complaint to the Ombudsman, you can either call the contact number above or fill out a complaint form that is available on the Ombudsman website: <https://nhpo.gov.au/>. When making a complaint, you should set out the grounds on which it is considered the action taken by Ahpra in relation to the request should be investigated.

Contact

If you have any questions, please do not hesitate to contact us via reply email to foi@ahpra.gov.au

Yours sincerely



Robert Green

Senior Legal Advisor

National Information Release Unit

Reference Number: FOI34931

Enc. Original decision dated 11 January 2022

11 January 2022

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Mr Julian Fidge

By email only: foi+request-8207-cc8013f0@righttoknow.org.au

Dear Mr Fidge

Decision about your request for documents

I am writing about your request for documents¹ which we received on 17 December 2021.

As an authorised decision maker,² this letter sets out a summary of my decision and outlines:³

- a summary of your request;
- a list of the materials used to reach the decision;
- the reasons for the decision; and
- information about your review rights.

Your request

As you'll know, we wrote to you on 30 December 2021 to provide you with information about the FOI process and to acknowledge that we would consider your request for the following documents:

Please provide an overview of the amounts of money you have spent on training in the financial years ending in 2017, 2018, 2019, 2020 and 2021, and the subject areas in which training was provided in those years.

At this time, we explained that we are legally required to make a decision about your request within 30 days. In your case, this means that we are required to make a decision by 17 January 2022.

How I made my decision

In reaching my decision I referred to:

- the terms of your request;
- searches conducted in relation to the scope of your request;
- internal consultation with relevant business units;

¹ Made under under the *Freedom of Information Act 1982* (Cth).

² Under section 23 of the *Freedom of Information Act 1982* (Cth).

³ In accordance with section 26 of the *Freedom of Information Act 1982* (Cth).

- the FOI Act;
- the Health Practitioner Regulation National Law, as enforced in each state and territory (the National Law); and
- FOI Guidelines issued by the Australian Information Commissioner.

Decision

I have conducted searches of Ahpra's information holdings and have sought internal consultation with relevant business units in relation to your request for '*an overview of the amounts of money you have spent on training in the financial years ending in 2017, 2018, 2019, 2020 and 2021, and the subject areas in which training was provided in those years*'.

Following these searches and consultations, I have concluded that there are no discrete documents available that meet the terms of your request. It is important to understand that primarily, the FOI Act is concerned with documents that already exist.

Although a discrete document within the scope of your request does not exist, I am also required to consider whether a document could be produced by Ahpra in accordance with section 17 of the FOI Act:

17 Requests involving use of computers etc.

(1) *Where:*

- (a) *a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;*
- (b) *it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and*
- (ba) *it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and*
- (c) *the agency could produce a written document containing the information in discrete form by:*
 - (i) *the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or*
 - (ii) *the making of a transcript from a sound recording held in the agency;*

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) *An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.*

Production of a document under section 17 is dependent on the agency being able to produce a written document containing the requested information in discrete form by using a computer in a manner that is 'ordinarily available' to it to retrieve or collate stored information. In *Collection Point Pty Ltd v Commissioner of Taxation*⁴ (referenced in the Australian Information Commissioner's FOI

⁴ [2013] FCAFC 67.

Guidelines),⁵ the Full Federal Court of Australia held that the reference in section 17(1)(c)(i) to a 'computer or other equipment that is ordinarily available' means:⁶

'a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available ... [T]he computer or other equipment ... must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.'

The Court found that this will be a question of fact in the individual case and may require consideration of 'the agency's ordinary or usual conduct and operations'.⁷

Following my enquiries into the practicality of producing a document in accordance with section 17, I have been advised by the relevant internal business unit that Ahpra's computer systems do not currently enable us to easily produce a report or other discrete document detailing the information you seek at the level of specificity requested.

Ahpra's financial data is captured and reported at an aggregate level, without delineation by specific subject area of training. To create a document sourcing data across multiple financial years that would meet your request would require significant manual intervention in reviewing historical expense items and classifying them according to a taxonomy that does not already apply at a systems level.

In addition to this, over the period requested, Ahpra has undergone major systems changes and account restructuring that would make the meaningful comparison and reporting of the requested data across financial years impractical, without significant manual intervention and labour expenditure.

Having considered all of the information available to me, I am of the view that the production of a document in the terms you have requested would require the use of a computer in a manner that is not ordinarily available to Ahpra and is outside of Ahpra's ordinary or usual conduct and operations. Accordingly, I find that section 17(1) does not apply to your request, and consequently there is no obligation for Ahpra to create a document to satisfy your request.

Even if section 17(1) did apply, I would find that the work involved in creating the document would amount to an unreasonable diversion of Ahpra's resources under section 17(2). I make this finding based on the description of the time and resources that would need to be expended to create the document and undertake the processes under the FOI Act. I consider that the time and effort required to produce the information to you would substantially and unreasonably divert Ahpra's resources away from the achievement of its statutory objectives and functions.

Further information

Although I have found that no existing document would meet your request and that Ahpra would be unable to create such a document for you under the FOI Act, I would like to draw to your attention to Ahpra's annual report which does record the cost of 'Staff development and amenities' as an aggregated item⁸. Ahpra publishes a considerable amount of financial information in line with its reporting obligations and this can be found publicly through our website.

Charges

No charges have been imposed for processing your request.

⁵ Australian Information Commissioner, *FOI Guidelines* (combined June 2020) 3.204-3.210.

⁶ *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 [43]-[44].

⁷ *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 [48].

⁸ See for example, *Ahpra Annual Report 2020/21* at page 123.

Review rights

If you disagree with my decision, you can ask for the decision to be reviewed.

Review of this decision by Ahpra

You may apply to Ahpra for a review of this decision.⁹ Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice, or
- 15 days of you receiving the documents to which you have been granted access.

This review would not be conducted by me. To apply, it would help your case to explain why you believe the original decision is not correct.

An application for a review of the decision should be addressed to:

Mailing address:

Mr Robert Green
Senior Legal Adviser
Ahpra
GPO Box 9958
MELBOURNE VIC 3001

Email address: foi@ahpra.gov.au

If you choose to seek a review and disagree with that decision, you would subsequently have a right to apply to the National Health Practitioner Privacy Commissioner (the Commissioner) for a review of our decision. However, if you wish, you may choose to instead apply directly for review of this decision to the Commissioner, as I describe below.

Review by the Commissioner

You can apply to the Commissioner to review an FOI decision made by Ahpra.¹⁰ Your application must be made within 60 days of receiving our decision.

The Commissioner is an independent office holder who may review decisions of Ahpra under the FOI Act. You can contact them to seek review of this decision at the details listed below. An FOI review application form is available on the National Health Practitioner Ombudsman (the Ombudsman) website: <https://nhpo.gov.au/>.

Complaints about the way we've managed your matter

If you want to provide feedback or make a complaint about Ahpra or a National Board then you can contact our Complaints and Feedback team. Information about how to do this can be found on our website: <https://www.ahpra.gov.au/About-AHPRA/Complaints.aspx>.

If you're unhappy with our response to your complaint, you can contact the Ombudsman. The details are:

Mailing address:

National Health Practitioner Ombudsman
GPO Box 2630
MELBOURNE VIC 3001

⁹ Under section 54 of the *Freedom of Information Act 1982* (Cth).

¹⁰ Under section 54L of the *Freedom of Information Act 1982* (Cth).

Email address: complaints@nhpo.gov.au

Telephone enquiries: 1300 795 265

Contact

If you have any questions about anything in this letter please contact us at xxx@xxxxx.xxx.xx quoting the reference number below.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matthew Reghenzani', with a long horizontal flourish extending to the right.

Matthew Reghenzani

Senior Freedom of Information Officer
National Information Release Unit

Reference Number: FOI34931