

27 February 2023

**Private and Confidential**

Jason Romano

**By email only:** [foi+request-9864-b66ff2f8@righttoknow.org.au](mailto:foi+request-9864-b66ff2f8@righttoknow.org.au)

Dear Mr Romano

**Decision about your request for documents**

I am writing about your request for documents<sup>1</sup> which we received on 30 January 2023.

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

- 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, the Australian Health Practitioner Regulation Agency (**Ahpra**) wrote to you on 2 February 2023 to provide you with information about the Freedom of Information process and to acknowledge that the agency would consider your request for the following documents:

*I would like to request list of all Australian health services (public and private) that employed IMGs directly in 2022 not through national matching for PGY2 with limited and provisional registration. I also would like to know how many were of those through standard RMO/HMO campaigns and how many were out of RMO/HMO campaign?*

At the time, we explained that Ahpra was legally required to make a decision about your request within 30 days. In your case, this means that a decision must be made by close of business on **1 March 2023**.

**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;
- the nature of information ordinarily held by Ahpra;

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<sup>1</sup> Made under the *Freedom of Information Act 1982* (Cth).

<sup>2</sup> Under section 23 of the *Freedom of Information Act 1982* (Cth).

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

- internal consultation with relevant officers;
- the *Freedom of Information Act 1982* (Cth) (**FOI Act**);
- the Health Practitioner Regulation National Law, as enforced in each state and territory (the National Law);
- FOI Guidelines issued by the Australian Information Commissioner.

## Decision

The FOI Act regulates requests to access information contained within documents that already exist or could easily be produced by computerised means (such as by generating a pre-programmed report).

Under section 24A(1) of the FOI Act, an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document does not exist or cannot be located.

In response to your request, Ahpra conducted a search of its information holdings and did not identify any existing documents that would meet the scope of your request. As all reasonable searches have been conducted by Ahpra and no document within the scope of your request can be located, it is my decision to refuse access under section 24A(1) of the FOI Act.

Although a discrete document within the scope of your request does not exist, or cannot otherwise be reasonably located, 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 an 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*<sup>4</sup> (referenced in the Australian Information Commissioner's FOI Guidelines),<sup>5</sup> the Full Federal

<sup>4</sup> *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67.

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

Court of Australia has held that the reference in section 17(1)(c)(i) to a 'computer or other equipment that is ordinarily available' means:<sup>6</sup>

*'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.'*

In that case, 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'.<sup>7</sup>

Following my enquiries into the practicality of producing a document in accordance with section 17, I understand that our systems and dataset are such that to produce a report or other discrete document detailing the information you seek would not be easily practicable without significant manual intervention and data validation. Consequently, I find that the system is not capable of functioning independently to collate or retrieve the stored information or produce the requested document. Further, production of a document in the terms you have requested would require manual intervention in a manner which, under the FOI Act, constitutes 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 the FOI Act does not require the creation of a new document to satisfy the request.

#### *Data requests to Ahpra*

Although this information cannot be created pursuant to section 17 of the FOI Act, to assist you further, I advise that requests for data and statistics can be made to Ahpra's Data Requests team for their consideration.

This team can be contacted at [datarequests@ahpra.gov.au](mailto:datarequests@ahpra.gov.au). More information about making data requests to Ahpra can be found at <https://www.ahpra.gov.au/About-AHPRA/What-We-Do/Data-access-and-research/Data-not-publicly-available.aspx>.

#### **Charges**

No charges have been imposed for processing your request.

#### **Review rights**

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

#### [Review of this decision by Ahpra](#)

You may apply to Ahpra for a review of this decision.<sup>8</sup> 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:

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

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

<sup>8</sup> Under section 54 of the *Freedom of Information Act 1982* (Cth).

**Mailing address:**

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

**Email address:** [foi@ahpra.gov.au](mailto: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.<sup>9</sup> 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. Their details are:

**Mailing address:**

National Health Practitioner Ombudsman  
GPO Box 2630  
MELBOURNE VIC 3001

**Email address:** [complaints@nhpo.gov.au](mailto:complaints@nhpo.gov.au)

**Telephone enquiries:** 1300 795 265

**Contact**

If you have any questions about anything in this letter, please contact us at [foi@ahpra.gov.au](mailto:foi@ahpra.gov.au).

Yours sincerely



**Matthew Reghenzani**

Senior Freedom of Information Officer  
National Information Release Unit

**Reference Number:** FOI41325

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<sup>9</sup> Under section 54L of the *Freedom of Information Act 1982* (Cth).