Aboriginal and Torres Strait Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Freedom of Information Policy

Introduction

Background

The Health Practitioner Regulation National Law Act 2009 (QLD), as enacted in each State and Territory (the National Law) established a national regulatory system for health practitioners.

The National Law established entities (**the National Law entities**) including:

- the Australian Health Practitioner Regulation Agency (AHPRA),
- the Agency Management Committee; and
- National Boards for ten regulated health professions.

AHPRA is governed by the Agency Management Committee appointed by the Ministerial Council and supports the operations of the National Boards for each profession covered by the national regulatory scheme. The ten professions regulated by the scheme are:

- Aboriginal and Torres Strait Islander Health Practice
- Chinese Medicine
- Chiropractic
- Dentistry
- Medical Radiation Practice
- Medical
- Nursing and Midwifery
- Occupational Therapy
- Optometry
- Osteopathy
- Podiatry
- Pharmacy
- Physiotherapy
- Psychology

This policy applies to AHPRA, the Agency Management Committee and National Boards. AHPRA administers the national regulatory scheme and is responsible for processing FOI requests.

AHPRA and the application of the Commonwealth Freedom of Information Act

AHPRA is established by the National Law. Section 215 of the National Law sets out that the Commonwealth *Freedom of Information Act* 1982 ("**FOI Act**") is the relevant legislation to be applied with respect to the National Law entities.

According to the *Health Practitioner Regulation National Law Regulation* 2010 ("**National Law Regulation**"), the regulations made pursuant to the FOI Act, aside from the provisions relating to fees and charges, do not apply. The National Law Regulation also amends the FOI Act as it applies to the National Law.

Purpose of the FOI Act and AHPRA's FOI Policy

The purpose of this policy is to provide information and direction to enable and support members of the public to effectively exercise their rights under the FOI Act in relation to documents held by AHPRA, the Agency Management Committee and National Boards. It also outlines the types of documents which may be released or exempt under the FOI Act, as well as procedures for processing FOI requests.

Documents Available Under FOI

The FOI Act applies to all documents in the possession of AHPRA. 'Document' in relation to a FOI request is broadly defined and includes but is not limited to paper documents, electronic documents, audio recordings, pictures, plans, photographs and emails. However, not all documents are required to be released on request as some documents are exempt from disclosure.

Some documents held by AHPRA are made available to the public through the AHPRA website. These can be accessed at www.ahpra.gov.au.

Documents generally held by AHPRA

AHPRA holds documents relating to its corporate governance, and documents relating to its regulatory functions. This list is an indication only and is not intended to be a comprehensive list of all types of documents held by AHPRA.

The following documents relate to AHPRA's corporate governance:

- internal administration documents relating to staff management and AHPRA's organisation and operation, including personnel records, organisational and staffing records, financial and resource management records, audit records, internal operating procedures, Requests for Tender, instructions and indexes;
- instruments of appointment;
- inter-departmental and general correspondence and papers;
- agreements, memoranda of understanding and contracts between AHPRA and other bodies and organisations;
- records of meetings and teleconferences both internal to AHPRA and with external stakeholders, including agendas and minutes;
- agenda papers and minutes of National Board meetings; and,
- financial reports, expenditure estimates and expenditure reports.

The following documents relate to AHPRA's regulatory functions:

- policy documents;
- recommendations and decisions;
- documents relating to notifications in relation to health practitioners made under the National Law, and files and papers relevant to the investigation of those notifications;
- legal documents, including legislation, instruments of delegation, legal advices and court documents;
- requests for information under the FOI Act and files and papers relevant to the consideration of those requests;
- standard operating procedures and fact sheets;
- correspondence with non-government parties;
- statistics and databases;
- documents prepared by international agencies;
- documents submitted by third parties;
- training materials;
- media releases;
- committee records;
- health information; and,

- mailing lists.

In addition, a number of AHPRA documents can be accessed at www.ahpra.gov.au without lodging a FOI request. National Board documents can be accessed at the websites of the National Boards. A list of the National Boards for each of the regulated health professions, together with links to the websites of the National Boards is available at www.ahpra.gov.au/Health-Professions.aspx.

Documents available on the websites include:

- registration standards for each of the regulated health professions;
- codes and guidelines; and,
- factsheets.

Potentially exempt documents under FOI Act

Certain categories of documents may be exempt from release in accordance with the FOI Act, these categories include, but are not limited to:

- Cabinet documents and Ministerial briefings (s 34)
- Internal working documents (s 36)
- Documents subject to secrecy provisions in other legislation (s 38)
- Documents affecting the personal affairs of another person (s 41)
- Documents subject to legal professional privilege (s 42)

AHPRA may also decline to provide information that is available for public access by other means including public registers, libraries, and documents available for purchase.

However, in some circumstances it may be possible to copy a document in such a way as to render it non-exempt. See section entitled “Rendering a Document Non-Exempt” below for further discussion.

FOI Applications

Requirements for valid application

For a FOI request to be valid the request must:

- be in writing;
- provide sufficient information to enable AHPRA to identify the requested documents;
- give an Australian address to which notices can be sent;
- be sent or delivered to the address of the National office of AHPRA; and
- be accompanied by the relevant application fees (see section 0 below)

Provided the above requirements are satisfied, the applicant is entitled to be provided with access to the documents sought in accordance with the FOI Act.

Where an applicant wishes to make a request but has not complied with the above requirements, AHPRA is obliged to take reasonable steps to assist the applicant to make a request in a manner that complies with the requirements under the FOI Act.

Directing the FOI request to the appropriate entity

The National Law establishes several entities and the FOI request should be directed to the appropriate entity.

- In the case of the Ministerial Council, the FOI request should be addressed to a member of the Ministerial Council nominated by the Ministerial Council,

- in the case of the Australian Health Workforce Advisory Council, the chairperson of the Advisory Council,
- in the case of the National Health Practitioner Boards established for the health professions, the chairperson of the National Board for the profession; and
- in the case of AHPRA, the chief executive officer of AHPRA.

The FOI request should be emailed, or sent to the FOI Officer. The contact details are included under 'Contact details' at the end of this policy.

If the applicant has made a request to AHPRA which should have been directed to another agency AHPRA is obliged to assist the applicant to direct their request to the appropriate agency.

Process upon Receipt of FOI Request

Notification

Upon receipt of a valid FOI request, AHPRA must notify the applicant in writing within 14 days that the request has been received.

Identification of relevant documents and document examination

The decision-maker, usually the FOI Officer at first instance, will review the request and identify the relevant documents.

Once the relevant documents have been identified they will be assessed to determine whether or not they are exempt documents, or whether consultation with any third parties is required (see 'Consultation with third parties' below). The decision-maker will also assess other matters relevant to determining whether or not to grant the request such as whether the work involved in processing the request would substantially and unreasonably divert the resources of AHPRA from its other operations. The decision-maker must make their decision within 30 days of the request, unless an extension of time is provided for in the FOI Act.

Consultation with third parties

Consultation with a third party is usually required where the requested document(s) contain information about that third party. Once a decision has been made following consultation with a third party, the decision-maker must notify the third party and the applicant in writing of its decision and the options for appealing the decision.

If AHPRA is required to consult a third party in relation to the documents, the time for making a decision and notifying the applicant of its decision may be extended by a further 30 days.

A third party may seek internal review in relation to a decision to release documents containing information about them. They may also appeal directly to the relevant tribunal in the participating jurisdiction.

No access to the documents may be granted until either the period in which the third party may appeal to the relevant tribunal has expired, or the relevant tribunal has dismissed or ruled against such an appeal.

If a FOI request is made to AHPRA which relates to documents containing information about National Boards or the Agency Management Committee, AHPRA will consult with the Board or Committee prior to making a decision on the request.

Rendering a document non-exempt

The objects of the FOI Act make it clear that the ability to access information must be extended as far as possible. This principle applies even where a document is potentially an exempt document.

Where a document is determined to be exempt by virtue of certain information being present in the document, and that document may be copied with exempt or irrelevant information deleted so as to render the document non-exempt, AHPRA must make such a copy and grant access to the copied document where it is reasonably practicable to do so.

In this instance, the applicant must be told that the document has been copied in such a way, the grounds for the deletions, and the provision under which the deleted information was deemed exempt.

Decision

The FOI Officer and the CEO of AHPRA are authorised under the FOI Act to make decisions regarding FOI applications.

The FOI Officer, within 30 days of receipt of a FOI request, must make a decision about access to documents and advise the applicant in writing.

The notification of the decision must contain the reasons for the decision (where access to a document or documents is refused), the name and position of the person making the decision, and details of how the applicant may seek internal review of the decision or make a complaint to the National Health Practitioners Ombudsman ("**Ombudsman**").

Process Following Decision

Upon receipt of the decision regarding a FOI request, the applicant may do one or more of the following:

Payment of fees by applicant and release of documents

If a decision is made to grant access to the documents sought, the applicant will be asked to pay any applicable fees and charges prior to access being provided.

Access to documents sought may be provided either by the giving the applicant a copy of the documents, or by allowing the applicant to inspect the documents. Access to documents may be provided through an AHPRA office in a State or Territory or the National office.

Request for internal review

Upon receiving the decision in relation to a FOI application, the applicant has the option to seek an internal review of the decision within 30 days.

The internal review will be carried out by a person, not being the original decision-maker, from the start of the decision-making process.

A request for internal review may be made with respect to the documents being sought, and/or the fees and charges payable by the applicant. However, decisions made by the CEO of AHPRA in relation to FOI requests are not eligible for internal review.

Complaint to National Health Practitioners Ombudsman

A person may make a complaint to the Ombudsman in relation to actions taken by AHPRA under the FOI Act, including decisions, delays, and refusals or failure to act.

The Ombudsman does not have the power to change a decision, but can recommend that this be done.

Further Review

If the applicant is not satisfied with the decision on internal review or from the Ombudsman, the applicant may appeal to the relevant tribunal in the participating jurisdiction for a merits review of the internal review decision.

The following are the relevant tribunals for each participating jurisdiction:

- In the Australian Capital Territory, the ACT Civil and Administrative Tribunal is the relevant tribunal;
- in New South Wales the Administrative Decisions Tribunal of New South Wales is the relevant tribunal;
- in South Australia, the Administrative and Disciplinary Division of the District Court of South Australia is the relevant tribunal;
- in the Northern Territory, the Local Court is the relevant tribunal;
- in Tasmania, the Magistrates Court (Administrative Appeals Division) is the relevant tribunal;
- in Queensland, the Queensland Civil and Administrative Tribunal is the relevant tribunal;
- in Western Australia, the State Administrative Tribunal is the relevant tribunal; and,
- in Victoria, the Victorian Civil and Administrative Tribunal is the relevant tribunal.

The timeframe for applying to the relevant tribunal for merits review will be the period set out in the legislation and regulations governing the relevant tribunal. For example, the relevant legislation in Victoria is the *Victorian Civil and Administrative Tribunal Act 1998* (VIC). Applicants should refer to clause 17 of the National Law Regulation for the governing legislation of each tribunal.

Following a merits review by the relevant tribunal, a person may apply for judicial review by the Supreme Court of the participating jurisdiction. Appeals of this kind may only be made on points of law.

Fees and Charges

Application fees

- A fee of $30 apples for an FOI request
- A fee of $40 applies for an internal review request

Processing/decision making charges

An applicant will in most cases be required to pay charges to have their FOI request processed. The charges which may apply are as follows:

- Searching for and retrieving documents: $15 per hour
- Decision-making and consultation time with third parties: $20 per hour
- Various charges related to the provision of access, for example:
    - 10c per photocopy
    - $6.25 per half hour of supervised inspection

Where the applicant is liable to pay a charge (not being an application fee) in relation to a request for access to a document, AHPRA must notify the applicant in writing of their liability to pay a charge, the preliminary assessment of the cost, and that the applicant may challenge the cost being imposed.

The applicant is required to respond within 30 days to a notification that a charge is payable with respect to their request for access, either agreeing to pay the charge, or contesting the charge. If no response is made, the FOI request is taken to be withdrawn.

For a complete list of fees and charges and for further information see the Freedom of Information (Fees and *Charges) Regulations* 1982.

Remission/waiver of fees

An applicant may apply for a waiver or 'remission' of the fees, either wholly or in part. Such applications are usually made on the grounds of financial hardship or public interest.

Transfer of FOI Applications between Agencies

An FOI request made to AHPRA may be transferred by AHPRA to another agency where:

- AHPRA is not in possession of the document(s) sought; and
- AHPRA is aware of the agency which is in possession of the document, or the subject-matter of the request is more closely connected to another agency; and
- The other agency consents to the transfer of the request.

Requests to Amend Documents Held by AHPRA

An applicant, who has had lawful access to documents held by AHPRA which contain personal information about them, may request that the relevant record be amended or annotated where the personal information is incomplete, incorrect, out of date or misleading.

No application fee applies for requests to amend documents. A decision and notification about the request for the amendment must be made within 30 days of receipt of the request.

Publication of Released Documents

To improve and enhance transparency AHPRA may when releasing documents to an applicant also publish the same documents on its website for public access. AHPRA will not release documents if it is not in the public interest or for other appropriate reasons such as privacy.

Changes to FOI Policy

AHPRA reserves the right to review and revise its FOI Policy from time to time as necessary. Changes to the policy will be publicised on the AHPRA website www.ahpra.gov.au.

Contact Details

Postal Address
The FOI Officer
AHPRA
G.P.O. Box 9958
In your Capital City

foi@ahpra.gov.au

Postal Address
The FOI Officer
The National Board for the health profession (Chiropractic, Dentistry, Medical, Nursing and Midwifery, Optometry, Osteopathy, Podiatry, Pharmacy, Physiotherapy or Psychology Board of Australia)
G.P.O. Box 9958
In your Capital City

Postal Address
The FOI Officer
Agency Management Committee
G.P.O. Box 9958
In your Capital City

foi@ahpra.gov.au

Further Information

Legislation/Regulations

- *Health Practitioner Regulation National Law Act* 2009
- *Health Practitioner Regulation National Law Regulation* 2010

- *Freedom of Information Act* 1982
- *Freedom of Information (Fees and Charges) Regulations* 1982