

FREEDOM OF INFORMATION CASE NOTES

A substantial, adverse effect on management of employees - s53(c)

The Complainant was a medical practitioner directed to cease all clinical duties because 9 cases of clinical concern had been identified. On the same day, the Respondent wrote to the Australian Health Practitioner Regulation Agency (AHPRA) to notify concerns about the clinical performance of the Complainant and the cessation of clinical duties. AHPRA advised the Complainant of its intention to impose conditions on the Complainant's registration in order to "protect public health or safety" and invited submissions in response. The Complainant opted to provide certain undertakings to AHPRA rather than receive registration conditions. Those undertakings were published on AHPRA's medical practitioner register.

At a subsequent meeting with the Respondent, the Complainant was provided with 9 patient case notes and related medical records, but was not advised of the nature of any allegations, or to what the Complainant was being asked to respond. The following day, AHPRA wrote to the Complainant to advise that the Medical Board of Australia had decided to investigate "issues identified" as *"Whether or not the knowledge, skill or judgement possessed, or care exercised by, the practitioner in the practice of the...practitioner's health profession is, or may be, below the standard reasonably expected"* and seeking a written response. The Complainant's solicitor wrote to AHPRA setting out the substantial difficulties faced in attempting to ascertain and respond to the allegations against the Complainant and requesting a further opportunity to respond should the guesswork as to the nature of the allegations differ from the actual allegations.

The Complainant submitted an FOI application to the Respondent which decided that, of a total of 44 documents within scope of the application, 2 pages would be released in part and 2 pages in full and the others were exempt from disclosure under sections 53(c), 55(3)(a) and 55(3)(b)(ii) of the Act. The Complainant applied for Review of that decision, the result of which was to release 18 of the pages previously claimed to be exempt, and to exempt the remainder on the basis of section 53(c) of the Act. The Complainant subsequently lodged a complaint with this Office.

The Commissioner's delegate indicated that it did not appear reasonably likely that the disclosure of some further pages would have any effect on the management by the Respondent of its officers or employees, and that while parts of the remaining information potentially attracted the exemption it was unclear whether the effect on the management of the Respondent's employees would be substantial or adverse. In relation to public interest factors in favour of disclosure, the delegate considered that natural justice requires that the Complainant know what allegations have been made in order to respond to them. The delegate found there was sufficient *prima facie* evidence to substantiate the matter complained of and referred it to mediation.