133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

[redacted]

[redacted]
Ref: H202102878

[redacted]

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) transferred to the Ministry of Health (the Ministry) on 12 March 2021 for:

> *"All studies and/or reports in the possession, custody or control of The Department of the Prime Minister and Cabinet describing the purification of "SARS-COV-2" said to have caused disease in humans (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum)."*

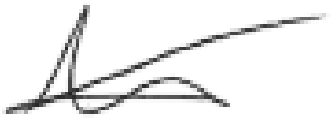
The Ministry does not hold any information relating to your request. Therefore, your request is refused under section 18(g) of the Act, as the information requested is not held by the Ministry, and I have no reason to believe that this information is held by another agency subject to the Act. However, further information that may be of use has been previously provided to you below (refers H202100057 & H202100059):

- There are several examples of the virus being isolated and cultured in a laboratory setting. One example provided by the Centers for Disease Control and Prevention (CDC) describes the isolation and culture of SARS-CoV-2. This information and research on SARS-CoV-2 can be found at the following link: https://wwwnc.cdc.gov/eid/article/26/6/20-0516 article.
- A research paper, isolation and rapid sharing of the 2019 novel coronavirus (SARS-CoV-2) from the first patient diagnosed with COVID-19 in Australia, describes the first isolation and sequencing of SARS-CoV-2 in Australia. It is available at: www.mja.com .au/journal/2020/212/10/isolation-and-rapid-sharing-2019-novel-coronavirus-sarscov-2-first-patient

Under section 28(3) of the Act you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Yours sincerely



Nick Allan
Manager, OIA Services
Office of the Director-General

30 March 2021

[redacted]

[redacted]

I write in response to your Official Information Act request of 2 March 2021, which sought: "All studies and/or reports in the possession, custody or control of the University of Otago describing the purification of "SARS-COV-2" said to have caused disease in humans (via maceration, filtration and use of ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum)".

Thank you for clarifying in your email precisely what is out of scope for this request.

I can confirm that the University holds no records which fall within the scope of your request. Accordingly, we decline your request pursuant to section 18(g) of the Act on the basis that the information requested is not held by the University.

If you are not satisfied with our response to your information request, you have the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.

Yours sincerely

Mayhaka Mendis
Manager, Policy and Compliance
Office of the Registrar

Rebecca Ewert <r.ewert@auckland.ac.nz>
To: [redacted]

Wed, Sep 9, 2020 at 2:31 PM

Dear [redacted]

I refer to your request of 7 September 2020 below. I understand you have made similar requests to other units within the University. For the purposes of the Official Information Act, the University is one organisation and accordingly all requests for official information are managed centrally. Could you send all your requests for official information under the Official Information Act to my email address, r.ewert@auckland.ac.nz, or to the generic address legal@auckland.ac.nz. The University will respond to your requests as soon as reasonably practicable, but no longer than 20 working days after receipt, in accordance with the Act.

Yours sincerely,

Rebecca Ewert

General Counsel

University of Auckland

From: [redacted]
Sent: Monday, 7 September 2020 12:54 PM
To: Peter Hunter <p.hunter@auckland.ac.nz>
Subject: OIA Request re Isolation of SARS-COV-2

This is an Official Information Act Request to Auckland University's "Auckland Bioengineering Institute".

Description of Requested Records:

All records in the possession, custody or control of Auckland Bioengineering Institute describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells, lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word: *the act of separating a thing(s) from everything else*. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- the culturing of something, or
- the performance of an amplification test (i.e. a PCR test), or
- **the sequencing of something.**

Please also note that my request is not limited to records that were authored by Auckland Bioengineering Institute or that pertain to work done by Auckland Bioengineering Institute. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that Auckland Bioengineering Institute has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).

I will accept PDFs or links to PDFs.

Kind Regards

—

Rebecca Ewert <r.ewert@auckland.ac.nz> Thu, Sep 17, 2020 at 2:34 PM
To: [redacted]

Dear [redacted]

I refer to your requests of 7 September 2020. The University's response follows.

"All records in the possession, custody or control of Auckland Bioengineering Institute describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient)."

"Please also note that my request is not limited to records that were authored by Auckland Bioengineering Institute or that pertain to work done by Auckland Bioengineering Institute. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that Auckland Bioengineering Institute has downloaded or printed."

No such records have been authored by Auckland Bioengineering Institute staff or pertain to work done by Auckland Bioengineering Institute staff. Your request for these documents is refused under section 18(e) of the Official Information Act 1982, as the requested documents do not exist. Your request for any other such records – including published studies by third parties that Auckland Bioengineering Institute staff have downloaded or printed – would require substantial collation or research to provide, and unless this part of your request is amended or withdrawn the University would likely refuse it under section 18(f) of the Official Information Act. Please advise by 24 September 2020 whether you wish to amend or withdraw this part of your request.

"All records in the possession, custody or control of Auckland University's Science Department describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient)."

"Please also note that my request is not limited to records that were authored by Auckland University's Science Department or that pertain to work done by Auckland University's Science Department. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that Auckland University's Science Department has downloaded or printed."

No such records have been authored by University staff in the Faculty of Science or pertain to work done by staff in the Faculty of Science. Your request for these documents is refused under section 18(e) of the Official Information Act 1982, as the requested documents do not exist. Your request for any other such records – including published studies by third parties that University staff in the Faculty of Science have downloaded or printed – would require substantial collation or research to provide, and unless this part of your request is amended or withdrawn the University would likely refuse it under section 18(f) of the Official Information Act. Please advise by 24 September 2020 whether you wish to amend or withdraw this part of your request.

You have the right to make a complaint to an Ombudsman if you are dissatisfied with this response.

[Quoted text hidden]

[redacted]

Fri, Sep 18, 2020 at 8:25 AM

Reply-To: [redacted]
To: Rebecca Ewelt <r.ewelt@auckland.ac.nz>

Dear Rebecca

"Your request for any other such records – including published studies by third parties that Auckland Bioengineering Institute staff have downloaded or printed – would require substantial collation or research to provide..."
"Your request for any other such records – including published studies by third parties that University staff in the Faculty of Science have downloaded or printed – would require substantial collation or research to provide..."

The first sentence of my request reads "*All records **in the possession, custody or control of Auckland Bioengineering Institute**...*" and "***All records in the possession, custody or control of Auckland University's Science Department describing the isolation of a SARS-COV-2 virus***".
I have clearly **not** requested the University of Auckland to conduct research or do a literature search on the topic.

Given that:

- devastating lockdown measures have been imposed based on reports of "confirmed COVID-19 cases" and "COVID-19 deaths" said to be caused by a novel coronavirus called "SARS-COV-2", and
- isolation is one of the essential steps in determining scientifically whether a suspected pathogen causes any disease, and
- The Bioengineering Lab claims to have designed "face shields that "...provide another layer of protection, to be worn over surgical face masks, to reduce the viral load that healthcare workers can be exposed to." (https://www.auckland.ac.nz/en/abi/our-research/covid-19-research/face-shield-first-effective-protection/about-our-face-shields.html), and
- The Bioengineering Lab are researching the modeling of transmission and infection which would require background research (https://www.auckland.ac.nz/en/abi/our-research/covid-19-research/covid-19-modelling-at-abi.html), and
- The Bioengineering Lab is actively recruiting staff to research SARS-COV-2/COVID-19 (https://www.auckland.ac.nz/en/abi/our-research/covid-19-research/join-abi.html)

I would expect scientists and engineers at the University who are doing COVID-19 research to have all responsive records at their fingertips.

Thus I am **not** amending my request, and I look forward to the University's final, formal response.

Can I also please have the University's response in a signed PDF?

Thank you

[Quoted text hidden]

Rebecca Ewert <r.ewert@auckland.ac.nz> Fri, Sep 18, 2020 at 4:10 PM
To: [redacted]

Dear [redacted]

I refer to your email of 18 September 2020.

"The first sentence of my request reads "*All records* ***in the possession, custody or control of Auckland Bioengineering Institute*** ..." and ***"All records in the possession, custody or control of Auckland University's Science Department describing the isolation of a SARS-COV-2 virus"***.

I have clearly **not** requested the University of Auckland to conduct research or do a literature search on the topic."

Section 18(f) of the Official Information Act allows requests for official information to be refused where "the information requested cannot be made available without substantial collation or research". "Research" here means the work in finding the requested information held by the University; it does not mean conducting research to obtain new information (as the Official Information Act only applies to official information held by organisations). "Collation" refers to bringing the requested information together.

I note that you have identified particular projects which are of interest to you. If you wish to amend your request to be limited to records held by staff carrying out specified projects, so that we can narrow the search to a small number of staff, rather than records held by the Science Faculty and the Bioengineering Institute, then we may be able to proceed with your request rather than refuse it under section 18(f) as requiring substantial collation or research. Please advise whether you wish to amend your request in this way.

You should be aware, however, that if the substantial collation or research issue is addressed there are other potential issues which may result in all or part of your request being refused. For example:

1. The definition of "official information" excludes library material held for reference purposes, and this may exclude material obtained from our Library databases by our researchers.
2. Providing the requested material may breach agreements under which the material was supplied, for example, journal articles are copyright material and it may breach the University's licensing agreements with publishers to provide these to you.

Yours sincerely,

Rebecca Ewert

General Counsel

University of Auckland

[redacted]

Fri, Sep 18, 2020 at 4:44 PM

Reply-To: [redacted]
To: Rebecca Ewart <r.ewart@auckland.ac.nz>

Greetings Rebecca,

> "Section 18(f) of the Official Information Act allows requests for official information to be refused where "the information requested cannot be made available without substantial collation or research". "Research" here means the work in finding the requested information held by the University; it does not mean conducting research to obtain new information (as the Official Information Act only applies to official information held by organisations). "Collation" refers to bringing the requested information together.
> I note that you have identified particular projects which are of interest to you. If you wish to amend your request to be limited to records held by staff carrying out specified projects, so that we can narrow the search to a small number of staff, rather than records held by the Science Faculty and the Bioengineering Institute, then we may be able to proceed with your request rather than refuse it under section 18(f) as requiring substantial collation or research. Please advise whether you wish to amend your request in this way."

I have submitted and received responses from many organizations from the UK, Australia, and New Zealand. None of these organizations had any problem with responding. For instance, I submitted an OIA to the New Zealand Ministry of Health. Not only did the Ministry respond but they also inquired with ESR. ESR responded that they too did not have any responsive records.

I assume that each university department has an email list; it surely doesn't require 'research' to send an email to such lists. I hardly think that 'substantial collation' is required for reading the email responses and summarizing those responses. But maybe you can ask The Ministry of Health for help in responding to this request?

> You should be aware, however, that if the substantial collation or research issue is addressed there are other potential issues which may result in all or part of your request being refused. For example:
> 1. The definition of "official information" excludes library material held for reference purposes, and this may exclude material obtained from our Library databases by our researchers.
> 2. Providing the requested material may breach agreements under which the material was supplied; for example, journal articles are copyright material and it may breach the University's licensing agreements with publishers to provide these to you.

I understand that my OIA is for publicly available information.

I would be extremely surprised if the most important research of our lifetime is hidden away behind a paywall. Again, none of the other organizations mentioned paywalls or IP issues when responding to my requests.

I won't be modifying my OIA as the Ministry of Health had no trouble providing a response of 18(e) as they had no records. I will certainly object to a response with an 18(f) rejection with the Ombudsmen as The Ministry of Health responded which has already set the precedence for this OIA request if you decide to go this route.

Regards
[redacted]

Landon Watt <landon.watt@auckland.ac.nz>
To: [redacted]

Tue, Oct 6, 2020 at 8:40 PM

Dear [redacted]

I refer to your email of 18 September 2020, which clarifies that your Official Information Act request is for publicly available information. Accordingly, to the extent that the University holds the requested information, your request is refused under section 18(d) of the Official Information Act, on the basis that the information requested is publicly available. You have the right to make a complaint to an Ombudsman if you are dissatisfied with this response.

Yours sincerely,

Landon Watt
Legal Advisor

Office of the Vice Chancellor

University of Auckland

[redacted]

Tue, Oct 6, 2020 at 8:51 PM

To: Landon Watt <landon.watt@auckland.ac.nz>

Greeting Landon Watt,
Can you please provide links to the publicly available information according to 18(d) that satisfies my OIA request?
If you fail to provide this information, then I will be left with no other choice but to file against the university for fraudulently refusing my request.

Thank you
[Quoted text hidden]

Gmail

Official Information Act Request: re Isolation of SARS-COV-2

5 messages

Mon, Nov 2, 2020 at 12:03 PM

To: oiarequest@bopdhb.govt.nz

This is an Official Information Act Request to the Bay of Plenty District Health Board.

Description of Requested Records:

All records in the possession, custody or control of the Bay of Plenty District Health Board describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word: *the act of separating a thing(s) from everything else*. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- the culturing of something, or
- the performance of an amplification test (i.e. a PCR test), or
- the sequencing of something.

Please also note that my request is not limited to records that were authored by the Bay of Plenty District Health Board or that pertain to work done by the Bay of Plenty District Health Board. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the Bay of Plenty District Health Board has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).

I will accept PDFs or links to PDFs.

Kind Regards

--

Gmail

OIA Request - Isolation of SARS-COV-2

Maria Moller <Maria.Moller@bopdhb.govt.nz> Fri, Nov 13, 2020 at 4:34 PM

On behalf of Debbie Brown, Senior Advisor Governance and Quality

Dear [redacted]

I refer to your request of 2 November 2020.

Pursuant to clause 18(e) of the Official Information Act, the BOPDHB cannot provide this information on the grounds that the question refers to a practice that is not undertaken by our DHB, therefore the information does not exist at the BOPDHB.

Kind regards.

Maria Moller

PA to Senior Advisor Governance & Quality

Governance & Quality / CEO Office

Bay of Plenty District Health Board| Tauranga Hospital | Cameron Road | Private Bag 12024 | Tauranga 3143

T: 07 579 8545 | E: maria.moller@bopdhb.govt.nz **| W:** www.bopdhb.govt.nz

E/S/R
Science for Communities

9 March 2021

[redacted]

[redacted]

Official Information Act Request: Purification of SARS-CoV-2

On 2 March 2021 you sent a request under the Official Information Act 1982 ("Act") to ESR as follows:

"All studies and/or reports in the possession, custody or control of ESR describing the purification of "SARS-COV-2" said to have caused disease in humans (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" and instead:

- *cultured an unpurified sample or other unpurified substance, and/or*
- *performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or*
- *sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or*
- *produced electron microscopy images of unpurified things.*

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of other small things).

Please also note that my request is not limited to records that were authored by ESR or that pertain to work done at/by ESR. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed by ESR and possibly (but not necessarily) relied on as evidence of a disease-causing "virus".

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible."

Our response to your request:

Using the definition of ‘purification’ that you refer to in your request, ESR does not hold any records describing ‘purification’ of SARS-CoV-2.

We cannot provide papers that staff in ESR have downloaded or printed which may apply to your request using your definition of ‘purification’ as the information cannot be made available without substantial collation or research pursuant to section 18(f) of the Act. We have considered section 18A of the Act and consider that even if we were to charge you for the time to check and collate any relevant materials and extend the timeframe of the request, this would still unduly affect our team who are supporting New Zealand’s COVID-19 response work.

Your right to seek a review

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Thank you for your request.

Yours sincerely

Jill Vintiner
Joint General Manager Health and Environment Group – Health
ESR

Hon Julie Anne Genter

Minister for Women
Associate Minister of Transport
Associate Minister of Health

Minita mō ngā Wāhine
Minita Tuarua mō ngā Take Waka
Minita Tuarua mō te Manatū Hauora

[redacted]

[redacted]

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the office of the Associate Minister of Health on 15 October 2020 for:

> *"All records in the possession, custody or control of the Associate Minister of Health Hon Julie Anne Genter describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
> *· the culturing of something, or*
> *· the performance of an amplification test (i.e. a PCR test), or*
> *· the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by the Associate Minister of Health Hon Julie Anne Genter or that pertain to work done by the Associate Minister of Health Hon Julie Anne Genter. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the Associate Minister of Health Hon Julie Anne Genter has downloaded or printed.*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it)."*

This office does not hold any information pertaining to your request. For this reason, I am refusing your request under section 18(e) of the Act, as the information requested does not exist.

Under section 28(3) of the Act you have the right to ask the Ombudsman to review my decision to refuse your request.

Yours sincerely

Hon Julie Anne Genter

Associate Minister of Health

+64 4 817 6726 | Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand | j.genter@ministers.govt.nz | beehive.govt.nz

Office of Hon Peeni Henare

MP for Tāmaki Makaurau
Minister of Civil Defence
Minister for Whānau Ora
Minister for Youth
Associate Minister of Health (Māori Health)
Associate Minister of Tourism

[redacted]

By email: [redacted]
Ref: H202007852

[redacted]

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the office of the Associate Minister of Health on15 October 2020 for:

"All records in the possession, custody or control of the Associate Minister of Health Hon Peeni Henare describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something, or*
- *the performance of an amplification test (i.e. a PCR test), or*
- *the sequencing of something."*

This office does not hold any information pertaining to your request. For this reason, I am refusing your request under section 18(e) of the Act, as the information requested does not exist.

Under section 28(3) of the Act you have the right to ask the Ombudsman to review my decision to refuse your request.

Yours sincerely

Elly Amiri
Senior Private Secretary
Office of Hon Peeni Henare

Hon Jenny Salesa

MP for Manukau East

Minister for Building and Construction
Minister of Customs
Minister for Ethnic Communities
Associate Minister of Education
Associate Minister of Health

20 October 2020

[redacted]

Ref: 20-317

[redacted]

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the office of the Associate Minister of Health on 15 October 2020 for:

> *"All records in the possession, custody or control of the Associate Minister of Health Hon Jenny Salesa describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
> *· the culturing of something, or*
> *· the performance of an amplification test (i.e. a PCR test), or*
> *· the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by the Associate Minister of Health Hon Jenny Salesa or that pertain to work done by the Associate Minister of Health Hon Jenny Salesa. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the Associate Minister of Health Hon Jenny Salesa has downloaded or printed.*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it)."*

This office does not hold any information pertaining to your request. For this reason, I am refusing your request under section 18(e) of the Act, as the information requested does not exist.

Under section 28(3) of the Act you have the right to ask the Ombudsman to review my decision to refuse your request.

Yours sincerely

Hon Jenny Salesa
Associate Minister of Health

+64 4 817 8714 | Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand | j.salesa@ministers.govt.nz | beehive.govt.nz

DEPARTMENT OF THE
PRIME MINISTER AND CABINET
TE TARI O TE PIRIMIA ME TE KOMITI MATUA

9 November 2020

[redacted]

Reference: OIA-2020/21-0182

[redacted]

Official Information Act request relating to the Isolation of the SARS-COV-2 virus

Thank you for your Official Information Act 1982 (the Act) request received on 10 October 2020. You requested:

> *"All records in the possession, custody or control of the Department of the Prime Minister and Cabinet describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
> *• the culturing of something, or*
> *• the performance of an amplification test (i.e. a PCR test), or*
> *• the sequencing of something.*
> *Please also note that my request is not limited to records that were authored by the Department of the Prime Minister and Cabinet or that pertain to work done by the Department of the Prime Minister and Cabinet. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the Department of the Prime Minister and Cabinet has downloaded or printed.*
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).*
> *I will accept PDFs or links to PDFs."*

No specific information has been identified as being held by the Department of the Prime Minister and Cabinet (DPMC) relevant to your request. Accordingly, your request is refused under section 18(e) Act - *"that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found."*

I would note that the COVID-19 Response Group in DPMC has accessed a large volume of studies since the start of the pandemic and it is possible that some may have had information relevant to the request. However, these would be in public domain and to attempt to identify any such studies would involve substantial collation and research as records of all studies and research accessed by the group have not been retained. Although you may wish to search for this information yourself, for instance using Google Scholar.

Executive Wing, Parliament Buildings, Wellington, New Zealand 6011
☎ 64 4 817 9699 www.dpmc.govt.nz

Your request was for information in possession, custody or control of DPMC. If you have not done so already, you may wish to pursue your request with the Institute of Environmental Science and Research (ESR) (enquiries@esr.cri.nz) and/or the Ministry of Health (oiagr@health.govt.nz).

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

We do not intend to publish this response on the Department of the Prime Minister and Cabinet's website.

Yours sincerely

Cheryl Barnes

Cheryl Barnes
Deputy Chief Executive,
COVID-19 Group

Cabinet Office

Room 405
70 Whitehall
London, SW1A 2AS

foi-team@cabinetoffice.gov.uk
www.cabinet office.gov.uk

Marc Horn
By email :Request-679848-f291cd75@whatdotheyknow.com

FOI Reference: FOI2020/10121
18/08/2020

Dear Marc Horn

I refer to your request where you asked:

"Freedom of Information request - Full, accurate and complete disclosure of SARS-COV-2 virus isolation records

Dear Cabinet Office,

Please provide a full, accurate and complete list of records held within your office, and or under your authority, describing the isolation of a SARS-COV-2 virus, directly taken from a symptomatic patient of COVID-19 where the sample was not first combined with any other source of genetic material (not limited but by way of example monkey kidney cells, aka vero cells, liver cancer cells) thereby eliminating contamination as a possible alternative source of sampling.

Please note isolation is used in the normally understood meaning of the word – the act of separating a thing from another. I am not referring, and hence not requesting, to isolation meaning the culture of something else, the performance of an amplification test (eg PCR test which only detect mRNA or DNA) or the sequencing of "something".
If any records match the above description and are available to the public elsewhere,

please provide enough information so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, and weblink or location where the public may access it).
I remind you full, accurate and complete disclosure is required."

I am writing to advise you that following a search of our paper and electronic records, I have established that the information you requested is not held by the Cabinet Office.

You may wish to try contacting Public Health England, who may be able to help you with your request. at FOI@phe.gov.uk

With respect to your request we have been advised on the following:
Coronavirus Disease, or Covid-19, is caused by a new virus called SARS-CoV-2. Most infectious diseases are caused by viruses, bacteria or fungi. Some bacteria or fungi have the capacity to grow on their own in isolation, for example in colonies on a petri dish. Viruses are different in that they are what we call "obligate pathogens" – that is, they cannot survive or reproduce without infecting a host. An explainer of these different types of pathogen (disease causing agents) can be found from *BMC Biology* here: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5648414/

For some diseases, it is possible to establish causation between a microorganism and a disease by isolating the pathogen from a patient, growing it in pure culture and reintroducing it to a healthy organism. These are known as "Koch's postulates", and were developed in 1884. However, as our understanding of disease and different disease-causing agents has advanced, these are no longer the method for determining disease causation. It has long been known that viral diseases cannot be identified in this way as viruses cannot be grown in 'pure culture'. When a patient is tested for a viral illness, this is normally done by looking for the presence of antigens, or viral genetic code in a host with molecular biology techniques.

If you have any queries about this letter, please contact the FOI Team quoting the reference number above.

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to:

Eirian Walsh Atkins
Cabinet Office
70 Whitehall
London
SW1A 2AS

email: foi-team@cabinetoffice.gov.uk

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued. If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Cabinet Office. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

FOI Team
Cabinet Office

Government
Office for Science

Government Office for Science
10 Victoria Street
London
SW1H 0NN

+44 (0)20 7215 5000 - Public enquiries
+44 (0)20 7215 6740 - Textphone
(for those with hearing impairment)

[redacted]

Date 2/10/20
Ref no: GOS-COV-040920-0068

[redacted]

Thank you for your email of 4/9/20 where you requested the following information:

"All records in the possession, custody or control of the Government Office for Science describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something, or*
- *the performance of an amplification test (i.e. a PCR test), or*
- *the sequencing of something.*

Please also note that my request is not limited to records that were authored by the Government Office for Science or that pertain to work done by the Government Office for Science. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the Government Office for Science has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it"

Response

We do not hold the information you have requested. This information may be available from DHSC (contact) or PHE (contact).

Appeals procedure

If you are dissatisfied with the handling of your request, you have the right to ask for an internal

review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be addressed to:

Government Office for Science Internal Reviews
Government Office for Science
10 Victoria Street
London
SW1H 0NN
Email: foi.reviews@go-science.gov.uk

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours Sincerely

Government Office for Science

— Marc Horn 23 July 2020 Delivered

Dear House of Commons,

Please provide a full, accurate and complete list of records held within your office, and or under your authority, describing the isolation of a SARS-COV-2 virus, directly taken from a symptomatic patient of COVID-19 where the sample was not first combined with any other source of genetic material (not limited but by way of example monkey kidney cells, aka vero cells, liver cancer cells) thereby eliminating contamination as a possible alternative source of sampling.
Please note isolation is used in the normally understood meaning of the word – the act of separating a thing from another. I am not referring, and hence not requesting, to isolation meaning the culture of something else, the performance of an amplification test (eg PCR test which only detect mRNA or DNA) or the sequencing of "something".
If any records match the above description and are available to the public elsewhere, please provide enough information so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, and weblink or location where the public may access it).
I remind you full, accurate and complete disclosure is required.

Yours faithfully,

Marc Horn

– FOI Commons, House of Commons 12 August 2020

1 Attachment

image001.png
18K Download

Dear Mr Horn,

Freedom of Information Request F20-347

Thank you for your request for information as copied below. You have asked for information describing the isolation of a SARS-COV-2 virus.

This information is not held by the House of Commons.

It may help you to understand that the House of Commons is an organisation that forms part of the UK's legislature. Our role it is to make and debate laws, scrutinise the work of the Government and debate the issues of the day. Whilst this may involve carrying out research into those issues, it does not extend to practical scientific investigation. You are seeking information which might instead be held by the Department of Health and Social Care or Public Health England, and therefore you may wish to consider submitting your request under the Freedom of Information Act to them. Contact details can be found at
[1]https://www.gov.uk/government/organisati...
and [2]https://www.gov.uk/government/organisati...

However, it may interest you to know that the House of Commons Library and the Parliamentary Office of Science and Technology have undertaken research on the Covid-19 outbreak, for the purpose of informing Members of Parliament. This has information on the subject in general which you may find helpful and is publicly available at [3]https://commonslibrary.parliament.uk/cor... and [4]https://post.parliament.uk/category/anal...

You may, if dissatisfied with the handling of your request, complain to the House of Commons. Alternatively, if you are dissatisfied with the outcome of your request you may ask the House of Commons to conduct an internal review of any decision regarding your request. Complaints or requests for internal review should be addressed to: Information Rights and Information Security Service, Research & Information Team, House of Commons, London SW1A 0AA or [5][House of Commons request email]. Please ensure that you specify the full reasons for your complaint or internal review along with any arguments or points that you wish to make.

If you remain dissatisfied, you may appeal to the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, [6]www.ico.gov.uk.

Yours sincerely,

[R1] Officer
Information Rights and Information Security

House of Commons, London SW1A 0AA
[7][IMG]

Marc Horn 25 July 2020 — Delivered

Dear House of Lords,

Please provide a full, accurate and complete list of records held within your office, and or under your authority, describing the isolation of a SARS-COV-2 virus, directly taken from a symptomatic patient of COVID-19 where the sample was not first combined with any other source of genetic material (not limited but by way of example monkey kidney cells, aka vero cells, liver cancer cells) thereby eliminating contamination as a possible alternative source of sampling.
Please note isolation is used in the normally understood meaning of the word - the act of separating a thing from another. I am not referring, and hence not requesting, to isolation meaning the culture of something else, the performance of an amplification test (eg PCR test which only detect mRNA or DNA) or the sequencing of "something".
If any records match the above description and are available to the public elsewhere, please provide enough information so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, and weblink or location where the public may access it).
I remind you full, accurate and complete disclosure is required.

Yours faithfully,

Marc Horn

HL FOI & Information Compliance, House of Lords 11 August 2020

1 Attachment

FOI 3462 Response.pdf

198K Download View as HTML

Dear Mr Horn,

Please find attached our response to your request (copied below) to the House of Lords Administration.

You may, if dissatisfied with the treatment of your request, ask the House of Lords to conduct an internal review. This should be addressed to [1][email address] and explain clearly the nature of your complaint in terms of compliance with the Freedom of Information Act 2000. Arrangements will be made for someone who has not been involved in dealing with your request to conduct an internal review within 20 working days.

You should note that we will not normally accept an application for internal review if it is received more than two months after the date our response was sent. Any such request received after this time will only be considered in exceptional circumstances.

If, following this review, you remain dissatisfied with the House's treatment of your request for information you may then take your complaint to the Information Commissioner using the contact details available [2]here.

Please note that due to the Covid-19 pandemic our office is temporarily closed, and the FOI team are currently unable to receive correspondence sent by post.

The Information Commissioner's Office has also advised that their office is closed for the foreseeable future and that they are currently unable to receive correspondence by post.

Yours sincerely,

Kimberley Swift

Information Compliance Team

House of Lords

FOI 3462 Date requested: 27/07/2020

List of records describing the isolation of a SARS-COV-2 virus

Request:

Please provide a full, accurate and complete list of records held within your office, and or under your authority, describing the isolation of a SARS-COV-2 virus, directly taken from a symptomatic patient of COVID-19 where the sample was not first combined with any other source of genetic material (not limited but by way of example monkey kidney cells, aka vero cells, liver cancer cells) thereby eliminating contamination as a possible alternative source of sampling.

Please note isolation is used in the normally understood meaning of the word – the act of separating a thing from another. I am not referring, and hence not requesting, to isolation meaning the culture of something else, the performance of an amplification test (eg PCR test which only detect mRNA or DNA) or the sequencing of "something".

If any records match the above description and are available to the public elsewhere, please provide enough information so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, and weblink or location where the public may access it).

Response:

The Freedom of Information Act 2000 ("the FOIA") provides a right of access, subject to specified exemptions, to recorded information held by a public authority. In the case of the House of Lords, the rights of access apply to recorded information held by the House of Lords Administration.

The House Administration does not hold any information matching the description set out in your request.

Outside the scope of your request, you may be interested in the House of Lords Science and Technology Committee's current inquiry into the science of COVID-19. Information relating to the inquiry, including oral and written evidence that has been submitted to the Committee, is published on our website here:

https://committees.parliament.uk/work/293/the-science-of-covid19/

Freedom of Information request re "SARS-COV-2" isolation, IMPFOI-21-85

Christine Massey <[redacted]> Fri, Mar 12, 2021 at 12:55 PM
To: IMPFOI <foi@imperial.ac.uk>

Dear "Team",

Thank you for your response, however it is insufficient and I require further assistance in accordance with the *Freedom of Information Act, 2000.*

Be advised that all responses/nonresponses from the "Team" will be made public.

The response you have provided thus far reflects very poorly on your institution and your "Team" because it either feigns misunderstanding of a perfectly clear and reasonable request (that has already been understood quite perfectly by dozens of institutions around the world), or it demonstrates gross incompetence and utter lack of intelligence.

In case of the latter: I have **only** requested **existing records** held by public authorities ("*All records **in the possession, custody or control of Imperial College London*...").

There are no separate "*parts*" to my request. The remainder of my **Description of Requested Records** was clarification of my 1 request.

I did not request a "*directory*" or a "*document listing every resource on this topic produced by "anyone, ever, anywhere"*", or "*a record of every document that has ever been downloaded or printed by staff or students of the College*", or that anyone "*create information"* for me.

As you acknowledge, the Act provides a right to access existing records held by public authorities and exempts information **if it is already reasonably accessible to the requester**. To my knowledge, no responsive records exist; obviously a requester **cannot** reasonably access records when, to their knowledge, those records do not even exist.

Further, I remind you that Section 1 of the Act states:

> ***General right of access to information held by public authorities.***
>
> *(1) Any person making a request for information to a public authority is entitled—*
> *(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
> *(b) if that is the case, to have that information communicated to him.*

Thus the College has a "***duty to confirm or deny***" and you are presently in violation of that duty.

Therefore, I look forward to a response from the College that is in accordance with *the Act*.

Thank you and best wishes,
Christine

On Fri, Mar 12, 2021 at 12:07 PM IMPFOI <foi@imperial.ac.uk> wrote:

> Dear Ms Massey,
>
> Thank you for your Freedom of Information Act request, which was as follows:
>
> > *All records in the possession, custody or control of Imperial College London describing the isolation of **any variant** ("new" or "old") of the alleged "SARS-COV-2" / "COVID-19 virus", directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).*
> >
> > *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
> >
> > - *the culturing of something, and/or*
> > - *the performance of an amplification test (i.e. a PCR test), and/or*
> > - *the sequencing of something.*
> >
> > *Please also note that my request is **not limited** to records that were authored by Imperial College London or that pertain to work done at/by Imperial College London. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed by Imperial College London.*
> >
> > *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.*
>
> Part of your request is asking Imperial College to locate for you and then compile a directory of all scientific papers on the isolation of the COVID-19 virus where the patient sample was not first combined with any other source of genetic material. In addition, you have asked the college for details of "*any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed by Imperial College London*". Imperial College does not hold a directory or document listing every resource on this topic produced by "anyone, ever, anywhere". Neither do we hold a record of every document that has ever been downloaded or printed by staff or students of the College. The Freedom of Information Act provides a right to access existing records held by public authorities; it

does not extend to a right to have public authorities create information in order to respond to requests.

Scientific papers on this topic produced by Imperial College or others are generally in the public domain and thus already accessible to you. Information is exempt from the Freedom of Information Act (Section 21) if it is already reasonably accessible to the requester. You can view Imperial College COVID-19 publications (which will contain references to other published papers where relevant) on our website.

If you are unhappy with the way that we have handled your request, you can ask us to conduct a review. Please make your representation in writing within 40 days of the date you received this response. If you remain dissatisfied with how Imperial College has handled your request, you may then approach the Information Commissioner's Office.

Yours,

Freedom of Information Team
Imperial College London

→ Marc Horn 25 July 2023 Delivered

Dear Prime Minister's Office,

Please provide a full, accurate and complete list of records held within your office, and or under your authority, describing the isolation of a SARS-COV-2 virus, directly taken from a symptomatic patient of COVID-19 where the sample was not first combined with any other source of genetic material (not limited but by way of example monkey kidney cells, aka vero cells, liver cancer cells) thereby eliminating contamination as a possible alternative source of sampling.
Please note isolation is used in the normally understood meaning of the word – the act of separating a thing from another. I am not referring, and hence not requesting, to isolation meaning the culture of something else, the performance of an amplification test (eg PCR test which only detect mRNA or DNA) or the sequencing of "something".
If any records match the above description and are available to the public elsewhere, please provide enough information so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, and weblink or location where the public may access it).
I remind you full, accurate and complete disclosure is required.

Yours faithfully,

Marc Horn

Dear Mr Horn
You request - FOI2020/10121 - was replied to on the 18/8/2020 - on behalf of the Cabinet Office as a whole.
Regards

FOI Team

Room 405

70 Whitehall,

London, SW1A 2AS

E-mail -[1][Number 10 request email]

On Sat, 22 Aug 2020 at 06:50, Marc Horn <[2][FOI #679701 email]> wrote:

Dear Prime Minister's Office,

You are in breach of your legal duties and obligations of providing the required information by the 21 August 2020 to allow full accountability of your actions to the public.

Please immediately correct your breach within the next 3 working days.

Yours faithfully,

Marc Horn

Department of Health & Social Care

Freedom of Information Team
Department of Health and Social Care
39 Victoria Street
London SW1H 0EU

www.gov.uk/dhsc

[redacted]

4 September 2020

Dear [redacted]

Freedom of Information Request Reference FOI-1247803

Thank you for your request dated 9 August, in which you asked the Department of Health and Social Care (DHSC):

"All records in the possession, custody or control of The Department of Health and Social Care describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

** the culturing of something,*
** or the performance of an amplification test (i.e. a PCR test),*
** or the sequencing of something.*

Please also note that my request is not limited to records that were authored by the The Department of Health and Social Care or that pertain to work done by The Department of Health and Social Care. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the Department of Health and Social Care has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).

Format:
Pdf documents sent to me via email; I do not wish for anything to be shipped to me."

Your request has been handled under the Freedom of Information Act (FOIA).

DHSC does not hold the information you have requested.

You may wish to direct your request to Public Health England (PHE) and the Government Office for Science (Go-Science). FOI requests can be submitted to PHE at FOI@phe.gov.uk, and to Go-Science at contact@go-science.gov.uk.

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be submitted within two months of the date of this letter and sent to FreedomOfInformation@dhsc.gov.uk, or to the address at the top of this letter.

Please remember to quote the reference number above in any future communication.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a decision unless you have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

The ICO can be contacted at:

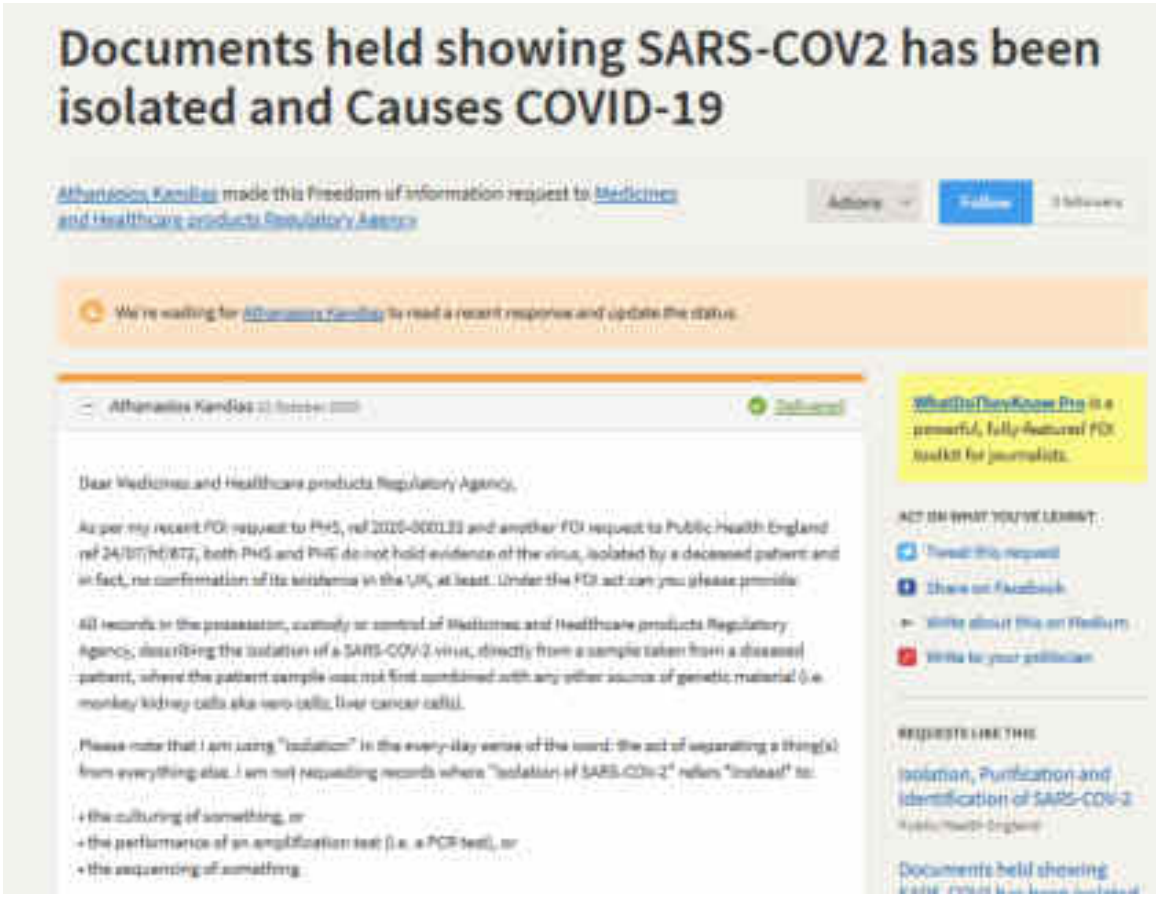
The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

https://ico.org.uk/concerns/

Yours sincerely,

Lauren Der
Freedom of Information Officer
FreedomOfInformation@dhsc.gov.uk

https://www.whatdotheyknow.com/request/documents_held_showing_sars_cov2_2 -incoming-1670059



Documents held showing SARS-COV2 has been isolated and Causes COVID-19

Athanasios Kandias made this Freedom of information request to Medicines and Healthcare products Regulatory Agency

Actions Follow 0 followers

We're waiting for Athanasios Kandias to read a recent response and update the status.

Athanasios Kandias 22 October 2020 Delivered

Dear Medicines and Healthcare products Regulatory Agency,

As per my recent FOI request to PHS, ref 2020-000133 and another FOI request to Public Health England ref 24/07/NE/872, both PHS and PHE do not hold evidence of the virus, isolated by a deceased patient and in fact, no confirmation of its existence in the UK, at least. Under the FOI act can you please provide

All records in the possession, custody or control of Medicines and Healthcare products Regulatory Agency, describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a deceased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells, liver cancer cells).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers "instead" to:

- the culturing of something, or
- the performance of an amplification test (i.e. a PCR test), or
- the sequencing of something

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Isolation, Purification and Identification of SARS-COV-2

Public Health England

Documents held showing

• the sequencing of something.

Please also note that my request is not limited to records that were authored by the MHRA or that pertain to work done by the MHRA . My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the MHRA has downloaded or printed.

Please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it.

Yours faithfully,
Athanasios Kandias

MHRA Customer Services, Medicines and Healthcare products Regulatory Agency 13 October 2020

Thank you for your email. This auto-response is to inform you that your email has been received and will be reviewed by our Customer Service Team shortly.

You can expect a reply from us within a few days for a straightforward request. Where a more detailed response or contribution from a specialist is required this is likely to take longer but we will inform you of this.

If your request is urgent, please call us on 020 3080 6000

Our opening hours are Mon – Fri 9am to 5pm (excluding UK Public Holidays)

Our opening hours are Mon - Fri 9am to 5pm (excluding UK Public Holidays)

Medicines and Healthcare products Regulatory Agency
10 South Colonnade,
Canary Wharf,
London
E14 4PU

[1]gov.uk/mhra

[2]Stay connected

For information on how the Agency uses your personal data and your data protection rights, please see our three centres' Privacy Notices: [3]MHRA, [4]CPRD and [5]NIBSC.

References

Visible links
1. https://www.gov.uk/government/organisati...
2. https://www.gov.uk/government/organisati...
3. https://www.gov.uk/government/publicatio...
4. https://www.cprd.com/transparency-inform...
5. https://www.nibsc.org/about_us/privacy_n...

– MHRA Customer Services, Medicines and Healthcare products Regulatory Agency 13 October 2020

Our Ref: FOI 20/404

Our Ref: FOI 20/404

Dear Athanasios Kandias,

RE: REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

Thank you for your enquiry which we received on 12 October 2020.

I confirm that your request is now being handled under the Freedom of Information Act and you should receive a reply within 20 working days from our date of receipt.

If you need to contact us again about this request, please quote the reference number above.

Kind Regards,

MHRA Customer Service Centre

Medicines and Healthcare products Regulatory Agency
10 South Colonnade, Canary Wharf, London E14 4PU
Telephone 020 3080 6000

show quoted sections

— MHRA Customer Services, Medicines and Healthcare products Regulatory Agency 5 November 2020

Our ref: FOI 20/404

MHRA Customer Services, Medicines and Healthcare products Regulatory Agency

Our ref: FOI 20/404

Dear Athanasios Kandias,

Thank you for your email of 12 October 2020, in which you requested the following information under the Freedom of Information (FOI) Act 2000:

As per my recent FOI request to PHS, ref 2020-000133 and another FOI request to Public Health England ref 24/07/hf/872, both PHS and PHE do not hold evidence of the virus, isolated by a deceased patient and in fact, no confirmation of its existence in the UK, at least. Under the FOI act can you please provide:

All records in the possession, custody or control of Medicines and Healthcare products Regulatory Agency, describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased (we assume this is meant to say deceased as in sentence above) patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells, liver cancer cells).
Response: There are no divisions in the Medicines and Healthcare products Regulatory Agency working on isolation of viruses directly from patients, and we therefore hold no records describing this activity.

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers "instead" to:

• the culturing of something, or
• the performance of an amplification test (i.e. a PCR test), or • the sequencing of something.

• the performance of an amplification test (i.e. a PCR test), or • the sequencing of something.

Please also note that my request is not limited to records that were authored by the MHRA or that pertain to work done by the MHRA. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the MHRA has downloaded or printed. Response: this request is for information that is already in the public domain and therefore exempt under section 21 of the FOI Act.

Please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it.

If you have a query about the information provided, please reply to this email.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date you receive this response and addressed to: [1][MHRA request email]

Please remember to quote the reference number above in any future communications.

If you were to remain dissatisfied with the outcome of the internal review, you would have the right to apply directly to the Information Commissioner for a decision. Please bear in mind that the Information Commissioner will not normally review our handling of your request unless you have first contacted us to conduct an internal review. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire

Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

MHRA Customer Services

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI Request - University of Warwick - F352.20-21

infocompliance, Resource <infocompliance@warwick.ac.uk> Tue, May 4, 2021 at 9:01 AM
To: Christine Massey <cmssyc@gmail.com>

Christine

Thank you for your email dated 03 April 2021 requesting information from the University of Warwick under the Freedom of Information Act 2000. Please find below your request and the University's response.

FOI Request

Description of Requested Records:

*All studies or reports **in the possession, custody or control of University of Warwick Postdoctoral Researcher Joseph Healey, or Dr. Nick Waterfield (Warwick Medical School), or any health or science department / administrator at the University of Warwick** describing the purification of "SARS-COV-2" aka "COVID-19 virus" (including any "variants") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of **genetic** material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).*

*Please note that I am not requesting studies/reports where researchers failed to **purify** the suspected "virus" and instead:*

- *cultured an unpurified sample or other unpurified substance, and/or*
- *performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or*
- *sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or*
- *produced electron microscopy images of unpurified things.*

Clarifications re the above Request

*For clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am **not** requesting records describing the **replication** of a "virus" without host cells.*

*Further, I am **not** requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its **purification** (**separation** from everything else in the patient sample, as per standard laboratory practices for the purification of other small things).*

*Please also note that my request is **not limited** to records that were authored by someone at the University of Warwick or that pertain to work done at/by the University of Warwick. Rather, my request includes any record **matching the above description**, for example (but not limited to) a published peer-reviewed study (authored by anyone, anywhere) that has been downloaded or printed by a scientist or administrator at the University of Warwick and relied on as evidence of a disease-causing "virus".*

An appropriate time-frame for the records search would be from the date of the first "COVID-19 cases" in China until

the day on which the records search is commenced.

Please note that to my knowledge no such records exist, and I am unable to access records that to my knowledge do not exist. Therefore, if any records matching the above description of requested records are in the possession, custody or control of Joseph Healey or Dr. Waterfield or any ***health or science*** *department or administrator at the University of Warwick and are currently available to the public, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.*

Response

Section 1(1)(a) of the Freedom of Information Act 2000 imposes a duty on public authorities to inform the requester whether or not the information requested is held. The University can confirm that neither Joseph Healey nor Dr Nick Waterfield have worked on eukaryotic viruses in the way you describe, specifically SARS-COV-2. As such, the University does not hold the requested information.

I trust that this information will be helpful to you, however, should you be dissatisfied with the way in which your request has been handled you can request an internal review within one month of our response and, in the first instance, you are advised to follow the procedure outlined here: http://www2.warwick.ac.uk/services/legalservices/freedomofinformation/foi/publicguidelines

If you remain dissatisfied with how your request has been handled, you have a right to appeal to the Information Commissioner at: The Information Commissioner's Office, Wycliffe House, Walter Lane, Wilmslow, Cheshire, SK9 5AF (0303 123 1113) (https://ico.org.uk/).

Yours sincerely,

Jane Furze
Director, Marketing and Communications, Regional Strategy and Warwick Institute of Engagement
University House | Kirby Corner Road | CV4 8UW | Coventry | UK | Strategy Group

Natural Sciences and Engineering
Research Council of Canada

Conseil de recherches en sciences
naturelles et en génie du Canada

350 Albert Street
Ottawa, Canada
K1A 1H5

350, rue Albert
Ottawa, Canada
K1A 1H5

Access to Information and Privacy
Accès à l'information et protection des renseignements personnels
Tel: 613-995-6214

PROTECTED
Your File Votre référence

Our File Notre référence
A-2020-03029

December 10, 2020

[redacted]

Dear [redacted]

This is in response to your access to information request received by our office on December 8, 2020, made pursuant to the *Access to Information Act* (the *Act*) which reads as follows:

> ***"All records describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to: - the culturing of something, or - the performance of an amplification test (i.e. a PCR test), or - the sequencing of something. To clarify, I am requesting all such records that are in the possession, custody or control of your institution Canada (for example: downloaded to a computer, printed in hard copy, etc.). The known or estimated error rate (both false positives and false negatives), of PCR testing to test for SARS-COV-2. This can include reference to any studies The known or estimated error rate (both false positives and false negatives), of antibody testing to check for immunity to SARS-COV-2. This can include references to any studies Whether vaccine manufacturers have been indemnified (rendered legally immune from lawsuit), for any vaccines they provide related to SARS-COV-2 Whether any vaccine injury compensation plan will be established (or has been established), for people who are injured or killed by vaccines to treat SARS-COV-2"***

Please be advised that the Natural Sciences and Engineering Research Council of Canada (NSERC) does not have any records that respond to your request.

Please note that you are entitled to file a complaint with the Information Commissioner of Canada within sixty days of receipt of this response. Notice of complaint should be addressed to:

Information Commissioner of Canada
30 Victoria Street, Gatineau, QC K1A 1H3
Telephone: (613) 995-2410 (National Capital Region) 1-800-267-0441 (Toll-free)

Should you require additional information concerning your request, do not hesitate to contact me at 343-571-9689 or by email at Julie.Bourbonnais@nserc-crsng.gc.ca.

Sincerely,

Julie Bourbonnais

Digitally signed by Julie Bourbonnais
DN: cn=Julie Bourbonnais, o=NSERC, ou=Scholarships & Fellowships, email=julie.bourbonnais@nserc-crsng.gc.ca, c=CA
Date: 2020.12.10 11:32:08 -05'00'

Julie Bourbonnais
Manager, ATIP & Governance | Gestionnaire, AIPRP et gouvernance
Secretariat | Secrétariat
Natural Sciences and Engineering Research Council of Canada | Conseil de recherches en sciences naturelles et en génie du Canada

Newfoundland Labrador

ATIPP Request

Confirmation Code: **4LY7EX**
Submitted Date: **February 3rd 2021**

Applicant Information

First Name:	[redacted]
Last Name:	aoe
Email:	[redacted]
Daytime Phone:	[redacted]
Fax:	[Value Not Supplied]
Mailing Address:	[redacted]

Information Being Requested

Type of Request:	General Information
Government Department:	Health and Community Services
Information / Records Description:	All records and communications in the possession, custody or control of the Public Health NL, Health department, Health and Community Services, describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material(i.e monkey kidney cells, aka VERO cells, liver cancer cells). Please note that Iam using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. Iam NOT requesting records where "isolation" of SARS-COV-2 refers instead to: -the culturing of something -the performance of an amplification test(i.e a PCR test), or - the sequencing of something My request includes any sort of records , for example(but not limited to) any published peer reviewed study that Public health NL considered , downloaded or printed about the isolation of Sars-Cov2.
Requested Filetype:	pdf b y email

Government of Newfoundland and Labrador
Department of Health and Community Services

February 12, 2021 COR/2021/140051

Dear Applicant:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: HCS/015/2021**]**

On February 3, 2021, the Department of Health and Community Services (the Department) received your request for access to the following records:

> "*All records and communications in the possession, custody or control of the Public Health NL, Health department, Health and Community Services, describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material(i.e monkey kidney cells, aka VERO cells, liver cancer cells). Please note that Iam using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. Iam NOT requesting records where "isolation" of SARS-COV-2 refers instead to: -the culturing of something -the performance of an amplification test(i.e a PCR test), or - the sequencing of something My request includes any sort of records , for example(but not limited to) any published peer reviewed study that Public health NL considered , downloaded or printed about the isolation of Sars-Cov2.*"

Please be advised that the Department does not have records responsive to your request.

The *Access to Information and Protection of Privacy Act*, *2015* (the "Act") requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed prior to day 10, this letter also serves as our Advisory Response.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the *Act*. A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information

Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online. If you have any further questions, please contact the undersigned.

Sincerely,

Departmental Liaison
/Enclosures

National Research Council
Canada

Conseil national de recherches
Canada

ATIP Office
1200 Montreal Road
Building M-55
Ottawa, Canada
K1A 0R6
ATIP.AIPRP@nrc-cnrc.gc.ca

Bureau de l'AIPRP
1200 chemin Montréal
Édifice M-55
Ottawa, Canada
K1A 0R6

NRC · CNRC

July 14, 2020

Our file: A2020-0010
PROTECTED

Christine Massey, M.Sc.
#221 - 93 George St. S.
Brampton, ON
L6Y 1P4

Dear Christine Massey:

This letter is in response to the request you made to the National Research Council (NRC) under the *Access to Information Act* for records pertaining to:

> ***"All records in the possession, custody or control of the National Research Council of Canada (NRC) describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).***
>
> ***Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:***
> - ***the culturing of something, or***
> - ***the performance of an amplification test (i.e. a PCR test), or***
> - ***the sequencing of something.***
>
> ***Please also note that my request is not limited to records that were authored by the NRC or that pertain to work done by the NRC. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the NRC has downloaded or printed.***
>
> ***If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).***"

Your request was received by the NRC on June 13, 2020, and your application fee was received and processed on June 19, 2020.

A thorough search of NRC's records has now been completed, and we regret to inform you that no records responsive to your request were identified.

Please note that in the processing of your request, NRC's Access to Information and Privacy (ATIP) Office confirmed that it was not possible to generate a list of publications as specified within the above-cited text. Specific details regarding access to publications by NRC researchers have not been centrally documented by NRC's Human Health Therapeutics Research Centre, nor by the Library team responsible for NRC's electronic collections and journal subscriptions.

If you are not satisfied with this response, you are entitled to file a complaint with the Information Commissioner of Canada within 60 days (https://www.oic-ci.gc.ca/en/submitting-complaint) after the day on which you will have received this letter.

Yours sincerely,

2020-07-14

X Maria Krioutchkova

Signed by: Krioutchkova, Maria

Maria Krioutchkova
ATIP Coordinator

Ministry of Health
Ministry of Long-Term Care

Access, Privacy & Corporate Information
Corporate Services Division
99 Adesso Drive, Floor 1
Concord, ON L4K 3C7

Telephone : 416-327-7040
Facsimile : 416-327-7044

Ministère de la Santé Ministère des Soins de longue durée

Accès à l'information, protection de la vie privée et l'information ministérielle
Division des services ministériels
99, conduire Adesso, 1e etage
Concord, ON L4K 3C7

Téléphone : 416-327-7040
Télécopieur : 416-327-7044

Ontario

Our File – Notre référence
A-2020-00064 / RK
Your File – Votre référence

October 8, 2020

Ms. Christine Massey
221 - 93 George St. S.
Brampton, ON L6Y 1P4

Dear Ms. Massey:

I am replying to your access request made under the *Freedom of Information and Protection of Privacy Act* (*the Act*), for the following information:

> All records describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).
>
> Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to
> •the culturing of something (i.e. the culturing of supernatant in vero cells), or
> •the performance of an amplification test (i.e. a PCR test on a patient sample adulterated with an enzyme to release genetic material from cells), or
> •the sequencing of something.
> [If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that the public may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).]
>
> Format:
> Pdf documents sent to me via email; I do not want anything shipped to me.

This is to inform you that no responsive records were located. A reasonable search of the ministry was conducted, and no responsive records were found. Dr. David C. Williams, Chief Medical Officer of Health, is responsible for this decision.

…/2

The cost for the search in accordance to Regulation 460 are minimal and have been waived under section 57(4) of *the Act*.

You may wish to contact Public Health Ontario and Sunnybrook Hospital as they may have records responsive to your request. They may be reached at:

Public Health Ontario
661 University Avenue, Suite 1701
Toronto, ON M5G 1M1
privacy@oahpp.ca

Sunnybrook Hospital
Chief Privacy Officer
Sunnybrook Privacy Office
2075 Bayview Avenue, Room G326
Toronto, Ontario M4N 3M5
privacy@sunnybrook.ca

You may request a review of this decision by the Information and Privacy Commissioner 2 Bloor Street East, Suite 1400, Toronto ON M4W 1A8. Please note that you have 30 days from the date of this letter to request a review. In the event that you do seek a review, please provide the Commissioner's Office with:

1. The request file number: A-2020-00064 / RK
2. A copy of this decision letter.
3. A copy of your original request.
4. A cheque or money order in the amount of $25.00 payable to the Minister of Finance.

If you have any questions, please contact me at 647-201-3015.

Sincerely,

Rachel Kukulewich
Consultant, Access and Privacy

Gmail **Christine Massey <cmssyc@gmail.com>**

Salvaterra MFIPPA request - you have 30 days to respond - failure to respond will be interpreted as "no records" and made public

Larry Stinson <lstinson@peterboroughpublichealth.ca> Tue, May 18, 2021 at 5:10 PM
To: "cmssyc@gmail.com" <cmssyc@gmail.com>

Dear Ms. Massey,

I am in receipt of your MFIPPA Request sent via email to Dr. Rosana Salvaterra on May 16, 2021. As the Privacy Officer responsible for MFIPPA at Peterborough Public Health, I provide the following response.

Peterborough Public Health has no records in relation to your request. Local public health agencies in Ontario are responsible for adherence to the Health Protection and Promotion and implementation of the Ontario Public Health Standards and related protocols as set by the Ministry of Health. Scientific advice is provided by Public Health Ontario. We do not work directly with patient samples related SARS-COV-2 or analysis of these samples.

Larry Stinson, Hons. B.Sc., MPA
Director of Operations
Jackson Square, 185 King Street Peterborough, ON K9J 2R8
P: 705-743-1000, ext. 255 7F: 705-743-2897
www.peterboroughpublichealth.ca
Follow us on Twitter, Facebook & Instagram @Ptbohealth

-----Original Message-----
From: Christine Massey <cmssyc@gmail.com>
Sent: Sunday, May 16, 2021 12:28 PM
To: Rosana Salvaterra <rsalvaterra@peterboroughpublichealth.ca>; Info Mail <info@peterboroughpublichealth.ca>
Cc: mayordtherrien@peterborough.ca
Subject: Salvaterra MFIPPA request - you have 30 days to respond - failure to respond will be interpreted as "no records" and made public

May 16, 2021

To:
Freedom of Information and Privacy Coordinator and Dr. Rosana Salvaterra Peterborough Public Health
10 Hospital Drive
Peterborough, ON K9J 8M1

and/or
Jackson Square,

185 King Street
Peterborough, ON K9J2R8

Submitted via email to: info@peterboroughpublichealth.ca <mailto:info@peterboroughpublichealth.ca> ; info@peterboroughpublichealth.ca <mailto:info@peterboroughpublichealth.ca>

Dear Freedom of Information and Privacy Coordinator and Dr. Rosana Salvaterra,

This is a formal request for access to general records, made under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) due to COVID-19-related harassment of the public by agents of Peterborough Police Service and the City of Peterborough.

A failure to respond within 30 days as required under MFIPPA will be interpreted as "no records" and made public.

Description of Requested Records:

All studies and/or reports in the possession, custody or control of Dr. Rosana Salvaterra, or any Peterborough Public Health staff member responsible for "COVID-19" research/monitoring/decisions/policies/recommendations, describing the purification of any "COVID-19 virus" (aka "SARS-COV-2", including any alleged "variants" i.e. "B.1.1.7", "B.1.351", "P.1") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" from a patient sample and instead:

* cultured an unpurified sample or other unpurified substance, and/or
* performed an amplification test (i.e. a PCR test) on the total RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or

* fabricated a genome based on alignment/assembly/trimming/editing of thousands/millions of PCR-detected sequences in the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or

* produced electron microscopy images of unpurified things in a cell culture.

Clarification of Request

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of other very small things).

Please also note that my request includes any study/report matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere since December 2019 and relied on by Dr. Rosana Salvaterra and/or Peterborough Public Health as evidence of a disease-causing "virus" circulating in humans.

Please note that despite the fact that purification is an essential <https://www.torstenengelbrecht.com/en/home/> (but not sufficient) step in proving the existence of a disease-causing "virus", as of today 58 institutions globally have all failed to provide or cite any such records, therefore to my knowledge no such records exist and if they do exist I cannot access them until I am provided a citation or URL.

Therefore in the interest of transparency and in accordance with the purposes of MFIPPA, if any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Gmail **Christine Massey <cmssyc@gmail.com>**

Salvaterra MFIPPA request - you have 30 days to respond - failure to respond will be interpreted as "no records" and made public

Christine Massey <cmssyc@gmail.com> Thu, May 20, 2021 at 9:39 PM
To: Larry Stinson <lstinson@peterboroughpublichealth.ca>

Thank you Mr. Stinson.

Would it be possible for you to please provide the response in a formal dated and signed letter with a file number?

Thank you and best wishes,
Christine
[Quoted text hidden]

FOI request to Chief Scott Gilbert / Peterborough Police re: "COVID-19 virus" purification

Christine Massey <cmassey@gmail.com>
To: FOI@peterborough.ca
Cc: Randy Hillier <info@randyhillier.com>, Maxime Bernier - People's Party of Canada <info@peoplespartyofcanada.ca>, sgilbert@peterborough.ca

Wed, Apr 28, 2021 at 11:18

April 28, 2021

To

Peterborough Police Service
Freedom of Information
P.O. Box 2050
Peterborough, Ontario
K9J 7H4

Dear Freedom of Information Officer:

This is a formal request for access to general records, made under the *Municipal Freedom of Information and Protection of Privacy Act* due to enforcement by members of Peterborough Police Service of unlawful "COVID-19" restrictions.

Description of Requested Records:

All studies and/or reports in the possession, custody or control of Chief Scott Gilbert or the Peterborough Police Service leadership describing the **purification** of any "COVID-19 virus" (aka "SARS-CoV-2", including any alleged "variants" i.e. "B.1.1.7", "B.1.351", "P.1") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" from a patient sample and instead:

- cultured an unpurified sample or other unpurified substance, and/or
- performed an amplification test (i.e. a PCR test) on the total RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or
- fabricated a genome based on PCR-detected sequences in the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or
- produced electron microscope images of unpurified things in a cell culture.

Clarification of Request

For further clarity, please note I am sincerely aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard

Clarification of Request

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am **not** requesting records describing the **replication** of a "virus" without host cells.

Further, I am **not** requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its **purification** (**separation** from everything else in the patient sample, as per standard laboratory practices for the purification of other very small things).

Please also note that my request includes any study/report matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere since December 2019 and relied on by Chief Scott Gilbert or Peterborough Police Service leadership as evidence of a disease-causing "virus" circulating in humans.

Please note that despite the fact that purification is an essential (but not sufficient) step in proving the existence of a disease-causing "virus", as of today 54 institutions globally have all failed to provide or cite any such records, therefore to my knowledge no such records exist and if they do exist I cannot access them until I am provided a citation or URL.

Therefore, if any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:
Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Application Fee
I will mail the $5 application fee to the address listed above.

Contact Information:
Last name: Massey
First name: Christine

Scott Gilbert, Chief of Police
Timothy Farquharson, Deputy Chief of Police

Peterborough Police Service
500 Water Street, PO Box 2050
Peterborough, Ontario, K9J 7Y4
Main Phone 705 876-1122
Executive Fax 705 876-6005
Operations Fax 705 743-1540
Website – www.peterboroughpolice.com

June 03, 2021

Christine Massey
[redacted]

File: 21-069

Ms. Massey:

I am writing regarding your access request under the Municipal Freedom of Information and Protection of Privacy Act (hereafter, 'the Act') received (with payment) by our office on May 04, 2021.

A search has been conducted and no responsive records were located.

You may request a review of this decision by the Information and Privacy Commissioner,

2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8, telephone number (416) 326-3333. There is an appeal fee of $25.00 for general information or $10.00 for personal information. Please make your cheque or money order payable to the Minister of Finance. You have 30 days to make this appeal. You may also wish to notify our institution of your intent to appeal.

The Municipal Freedom of Information and Protection of Privacy Act is available online at www.ontario.ca or can be found through a link on the Peterborough Police Service FOI webpage.

I am responsible for this decision. Should you have any questions or concerns, please do not hesitate to contact me at (705) 876-1122, ext. 213. Thank you.

Regards,

Marie Laslavich

Marie Laslavich
FOI Analyst

Provincial Health Services Authority
Province-wide solutions. Better health.

February 4, 2021

Via email to [redacted]

Dear [redacted]

Re: Response & Time Extension Letter
Freedom of Information and Protection of Privacy Act
Our File No: PHSA F20-0844; F21-0903

I write in response to your December 21, 2020 request for records made under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, (the "Act").

Request

You requested the following records (the "Request"):

1) All records in the possession, custody or control of "Provincial Health Services Authority" describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was NOT first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am NOT requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something, and/or*
- *the performance of an amplification test (i.e. a PCR test), and/or*
- *the sequencing of something*

Please note also that my request is not limited to records that were authored by anyone at "Provincial Health Services Authority" or that pertain to work done by "Provincial Health Services Authority." My request includes any sort of record, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that the "Provincial Health Services Authority" has downloaded or printed. If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it.

2) All records in the possession, custody or control of "Provincial Health Services Authority" describing the cycle thresholds used in PCR testing protocols (for determining negative vs. indeterminate vs. positive) throughout British Columbia for "COVID-19."

3) All records in the possession, custody or control of "Provincial Health Services Authority" that describe or list or explain the gold standard(s) used in assessments of "COVID-19" PCR tests used in British Columbia.

*4) All records in the possession, custody or control of "Provincial Health Services Authority" that describe or list or explain the **gold standard(s)** used in assessments of "COVID-19" **antibody tests** used in British Columbia.*

*5) All records in the possession and custody of "Provincial Health Services Authority" detailing the PCR testing and subsequent **cycle threshold used to conduct PCR** testing throughout British Columbia.*

Phase One Response

Concerning part 1 of the Request:

After consulting with individuals at BC Centre for Disease Control no records were found in response to this part of your request.

Phase Two & Notice of Time Extension

The remainder of the Request, parts 2 through 5, will follow under separate cover under this file #: **F21-0903.**

Phase Two requires searching through a large number of records and doing so within the current time limits of your Request would unreasonably interfere with the operations of PHSA. Section 10(1)(b) of the Act allows for a public body to extend the time limit for its response by an additional 30 business days in a circumstance like this.

The revised response date for your request is **March 19, 2021.**

Section 10(1)(b) of the Act states:

Extending the time limit for responding
10 (1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply:

[…]

(b) a large number of records are requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body;

A copy of the Act is available online at:
http://www.bclaws.ca/Recon/document/ID/freeside/96165_00

Office of the Information and Privacy Commissioner for British Columbia

The Office of the Information and Privacy Commissioner for British Columbia (the "OIPC") is the regulator of access and privacy laws in the province. If you have a concern with any decision in the processing of the Request you have the right to request a review of PHSA's decision from the OIPC. For ease of reference, information about the OIPC is included in Appendix A of this letter.

Additionally, should you have any questions about this letter, please contact the author at Megan.Williams@phsa.ca or (604) 317-0955.

Sincerely,

Megan Williams
Freedom of Information Advisor
Information Access & Privacy Services
Provincial Health Services Authority

Appendix A: How to Request a Review

Under section 52 of the Act, you may request a review by the Office of the Information and Privacy Commissioner (OIPC) of any decision, action or failure to act by PHSA in responding to your request.

If you wish to request a review, you must contact the OIPC in writing within 30 business days of your receipt of this letter and provide the OIPC with:

1. Your name, address and telephone number;
2. A copy of the original request that you sent;
3. A copy of this letter; and
4. The reasons or grounds upon which you are requesting the review.

All inquiries should be directed to:

By Mail:
Office of the Information and Privacy Commissioner for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC
V8W 9A4

By Email: info@oipc.bc.ca

By Tel: (250) 387-5629
By Fax: (250) 387-1696

Callers outside Victoria can contact the office toll-free by calling Enquiry BC at 1-800-663-7867 and requesting a transfer to (250) 387-5629.

Freedom of Information Request SARS-COV-2 New Virus Variant

[redacted] Thu, Dec 31, 2020 at 6:33 PM
To: privacyandfoi@phsa.ca

December 31, 2020

To: Provincial Health Services Authority - **Email:** **privacyandfoi@phsa.ca**
Provincial Health Services,
200 - 1333 West Broadway,
Vancouver, BC
V6H 4C1

Attn: Senior Director, Information Access & Privacy Services

This is a formal request made under

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

[RSBC 1996] CHAPTER 165

Description of Requested Records:

All records in the possession, custody or control of Provincial Health Services Authority that:

- describe the isolation of the [alleged] *genetic variant of the* [alleged] *virus that* [allegedly] *causes* [the alleged disease referred to as] *COVID-19* [allegedly] *identified in the United Kingdom,* directly from a sample taken from a diseased patient, where the patient sample was **not** first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; fetal bovine serum).

  Please note that I am using "isolation" in the every-day sense of the word: *the act of separating a thing(s) from everything else*. I am **not** requesting records where "isolation" refers instead to:

  - the culturing of something, or
  - the performance of an amplification test (i.e. a PCR test), or
  - the sequencing of something.

- describe the **discovery** (**not manufacture / fabrication / creation / assembly / alignment / trimming / mapping**) of the alleged genome for this alleged particular *new variant of coronavirus*;

- describe how this alleged *new variant of coronavirus* relates to the alleged "SARS-COV-2";

- include **any** additional analysis/investigation into this alleged "*new variant*".

Please note that my request **is not** limited to records that were authored by agents of Provincial Health Services Authority, or to records that pertain to work done by agents of the Provincial Health Services Authority; it includes **any** sort of record, authored by anyone, anywhere, ever.

If any records match the above descriptions of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. author; title; date; publisher); please provide URLs where possible.

Format:

URLs and/or pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:

Last Name: [redacted]
First Name: [redacted]
Address: [redacted]

Email: [redacted]

Thank you in advance and best wishes.

Happy New Year

Provincial Health Services Authority
Province-wide solutions. Better health.

February 11, 2021

Via email to [redacted]

[redacted]

Dear [redacted]

Re: **Response Letter**
Freedom of Information and Protection of Privacy Act
Our File No: PHSA F20-0855

I write in response to your December 31, 2020 request for records made under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, (the "Act").

Request

You requested the following records (the "Request"):

All records in the possession, custody or control of Provincial Health Services Authority that:

- *describe the isolation of the [alleged] genetic variant of the [alleged] virus that [allegedly] causes [the alleged disease referred to as] COVID-19 [allegedly] identified in the United Kingdom, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; fetal bovine serum).*

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation" refers instead to:

- *the culturing of something, or*
- *the performance of an amplification test (i.e. a PCR test), or*
- *the sequencing of something*

- *describe the discovery (not manufacture / fabrication / creation / assembly / alignment / trimming / mapping) of the alleged genome for this alleged particular new variant of coronavirus;*

- *describe how this alleged new variant of coronavirus relates to the alleged "SARS-COV-2";*

- *include any additional analysis/investigation into this alleged "new variant".*

Phase One Response

BC Centre of Disease Control confirms that there are no records that describe the isolation of the SARS-CoV-2 variant identified in the United Kingdom, directly taken from a symptomatic patient, where the patient sample was not first combined with any other

source of genetic material, because in order to cultivate a virus it has to replicate in a cell, as a DNA or RNA virus can never be cultivated on its own.

A copy of the Act is available online at:
http://www.bclaws.ca/Recon/document/ID/freeside/96165_00

Phase Two

The remainder of the Request will follow in the next phase of this request under our file # F21-0912.

Office of the Information and Privacy Commissioner for British Columbia

The Office of the Information and Privacy Commissioner for British Columbia (the "OIPC") is the regulator of access and privacy laws in the province. If you have a concern with any decision in the processing of the Request you have the right to request a review of PHSA's decision from the OIPC. For ease of reference, information about the OIPC is included in Appendix A of this letter.

Additionally, should you have any questions about this letter, please contact the author at glimongelli@phsa.ca or 604-829-2514.

Sincerely,

Genevieve Limongelli
Freedom of Information Advisor
Information Access & Privacy Services
Provincial Health Services Authority

Public Health Agency of Canada | Agence de la santé publique du Canada
Access to Information and Privacy Division
7th Floor, Suite 700, Holland Cross - Tower B
1600 Scott Street, (Mail Stop: 3107A)
Ottawa, Ontario K1A 0K9

Our file: PHAC-A-2020-000110 / TTL

February 2, 2020

Christine Massey
21 Keystone Avenue
Toronto, Ontario
M4C 1G9

Dear Christine Massey:

This is in follow-up to our response, December 28, 2020 to your request made under the *Access to Information Act* (the Act) for the following information:

> **All records in the possession, custody or control of the Public Health Agency of Canada (PHAC) describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).**
>
> **Please note that {I am} using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. {I am} not requesting records where "isolation of SARS-COV-2" refers instead to:**
> - **the culturing of something, or**
> - **the performance of an amplification test (i.e. a PCR test), or**
> - **the sequencing of something.**
>
> **Please also note that {my} request is not limited to records that were authored by the PHAC or that pertain to work done by PHAC. {My} request includes any sort of record, for example (but not limited to) any published peer-reviewed study that PHAC has downloaded or printed.**
> **Clarification:**
> **Date range of request is January 1, 2020 until June 15, 2020**

As requested, The Public Health Agency of Canada has further discussed with the program area and requested clarification of the records that were provided in response to the request above.

Your request has resulted in a “No Records Exist”, because of the way that you have formulated your request. The isolation of the virus is not completed without the use of another medium, therefore we have no records that would show this process taking place. It is important to understand the following: The gold standard assay used to determine the presence of intact virus in patient samples is viral isolation in cell culture. With this

assay, if virus is present in the patient sample, it will multiply and produce visible cytopathic effects, which means that infected cells demonstrate visible changes. Additionally, the detection of an increase in the genetic viral material by PCR further confirms that intact virus is present in the patient sample, since increasing viral genetic material necessitates replication of the viral within the cell culture. This technique was successfully used to confirm that intact SARS-COV-2 was present in Canadian patient samples as evidenced in the material provided. In the case of SARS-COV-2 isolation, Vero cells combined with minimal essential medium (MEM) were used because they are essential to support viral replication and cell growth. This combination supports the growth of other coronavirus types and was successful in the case of SARS-CoV-2 as well

Should you have any questions or concerns about the processing of your request, please do not hesitate to contact Tammy Turpin-Loyer, the analyst responsible for this file, by email at tammy.turpin-loyer@canada.ca with reference to our file number cited above.

Please be advised that you are entitled to complain to the Office of the Information Commissioner of Canada concerning the processing of your request within 60 days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint can be made online at: https://www.oic-ci.gc.ca/en/submitting-complaint or by mail to:

Office of the Information Commissioner of Canada
30 Victoria Street
Gatineau, Quebec K1A 1H3

Yours sincerely,

Smith, Christine N

Digitally signed by Smith, Christine N
DN: C=CA, O=GC, OU=HC-SC, CN="Smith, Christine N"
Reason: I am the author of this document
Location: your signing location here
Date: 2021-02-02 07:13:42
Foxit PhantomPDF Version: 9.7.0

Christine Smith
Team Leader
Access to Information and Privacy Division

Sunnybrook
HEALTH SCIENCES CENTRE

Sunnybrook Health Sciences Center
FOI & Privacy Office
2075 Bayview Avenue
Toronto, ON Canada M4N 3M5
www.sunnybrook.ca

Decision to the Requester Regarding an Access Request

VIA EMAIL

July 14, 2020

Request Number 2020-0004

Christine Massey
#221 – 93 George St. S.
Brampton, ON L6Y 1P4

Dear Ms. Massey:

I am responding to your request for access to records under *the Freedom of Information and Protection of Privacy Act* as submitted to the University of Toronto on May 18, 2020. On June 2, 2020, the University transferred the request to Sunnybrook Health Sciences Centre (Sunnybrook) after determining that Sunnybrook had a greater interest in the responsive records. We received the $5.00 application fee on July 8, 2020.

You requested access to the following information:

> *All records in the possession, custody or control of the Dalla Lana School of Public Health or any other department of the University of Toronto (for example: downloaded to a computer, printed in hard copy, etc.) describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead only to:*
>
> - *the culturing of something, and/or*
> - *the performance of an amplification test (i.e. a PCR test), and/or*
> - *the sequencing of something.*
>
> *[If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that the public may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).]*

Sunnybrook
HEALTH SCIENCES CENTRE

Sunnybrook Health Sciences Center
FOI & Privacy Office
2075 Bayview Avenue
Toronto, ON Canada M4N 3M5
www.sunnybrook.ca

A search has been conducted by Sunnybrook's Freedom of Information and Privacy Office for records responsive to your request. No records corresponding to your request were identified. Consequently, the file is closed.

You may request this decision be reviewed by the Information and Privacy Commissioner of Ontario within 30 days of receipt of this letter. The Commissioner can be reached at:

Information and Privacy Commissioner/Ontario
Suite 1400, 2 Bloor Street East
Toronto, ON M4W 1A8
Telephone: 416 326-3333, 1-800-387-0073 (within Ontario).

The Commissioner will require a copy of your original request, a copy of this decision letter and an appeal fee in the amount of $25.00, payable to the Minister of Finance.

Please contact me at 416-480-6100 ext. 85046 with any questions.

Sincerely,

Jeffrey Cutler
Privacy and Freedom of Information Coordinator

April 16, 2021

To:
Toronto Police Service
Access & Privacy Section, RMS
40 College Street
Toronto ON M5G 2J3

Dear Freedom of Information Officer,

This is a formal request for access to general records, made under the *Municipal Freedom of Information and Protection of Privacy Act* due to enforcement by members of Toronto Police Service of unlawful "COVID-19" restrictions.

Description of Requested Records:

All studies and/or reports in the possession, custody or control of Toronto Police Service describing the **purification** of any **"COVID-19 virus**" (including "B.1.1.7", "B.1.351", "P.1" and any other "variant") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of **genetic** material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to **purify** the suspected "virus" from a patient sample and instead:

- cultured an unpurified sample or other unpurified substance, and/or
- performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or
- sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or
- produced electron microscopy images of unpurified things.

Clarification of Request

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am **not** requesting records describing the **replication** of a "virus" without host cells.

Further, I am **not** requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its **purification** (**separation** from everything else in the patient sample, as per standard laboratory practices for the purification of other small things).

Please also note that my request includes any study/report matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere since December 2019 and relied on as evidence of a disease-causing "virus".

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:
Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:
Last name: Massey
First name: Christine
Address: [redacted]
Phone: [redacted]
Email: cmssyc@gmail.com

Application Fee
I will submit the $5 application fee by mail.

Thank you in advance and best wishes,
Christine Massey, M.Sc.

Toronto Police Service

40 College Street, Toronto, Ontario, Canada, M5G 2J3
TEL 416-808-2222 FAX 416-808-8202
Website: www.TorontoPolice.on.ca

Office of the Chief of Police

File Number _____

May 25, 2021

Christine Massey
[redacted]

Dear Christine Massey:

RE: **"All studies and/or reports in the possession, custody or control of Toronto Police Service describing the purification of any 'COVID-19 virus' (including B.1.1.7, B.1.351, P.1 and any other variant)(via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as 'isolation'), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetus bovine serum)..."**

I am responding to your request for access to information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) our file number 21-1052.

Please be advised that based on the parameters of your request, correspondence was received from the relevant stakeholders indicating that the information you are seeking access is not in the possession, custody or control of the Toronto Police Service . Access cannot be provided as we are unable to locate any records responsive to your request.

You may wish to contact Toronto Public Health, for any information in their care and control related to COVID-19.

If you have any questions regarding your file, please contact Analyst J. Madaleno at (416) 808-7846.

You may request a review of this decision* by writing to: The Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Ontario, M4W 1A8, telephone (416) 326-3333 or toll free 1-800-387-0073. You have 30 days to make this appeal.

In addition, you must send an appeal fee to the Commissioner's office. If your request was for your personal information, the appeal fee is $10.00. The appeal fee for all other requests for information is $25.00. Please include the fee in your letter of appeal in the form of either a cheque or a money order made payable to the Minister of Finance.

If you would like to appeal this decision, please provide the Commissioner's office with the following:

(a) the file number listed at the beginning of this letter;
(b) a copy of this decision letter;
(c) a copy of the original request for information which you sent to this institution; and
(d) the reasons why you believe the records exist. (if the decision was that no records exist).

Yours truly,

Mr. P. McGee
Coordinator
Access and Privacy Section
Toronto Police Service

PM:jm

(File No.: 21-1052)

***NOTE:** 'Decision' in this context does not refer to a review of the opinions/contents/conclusions of records examined or material contained in the documents provided, but to the determination to grant or withhold access to all or portions of records.

December 31, 2020

To: Vancouver Coastal Health Authority - **Email: foi@vch.ca**
VCH Freedom of Information Office
11th Floor, 601 West Broadway,
Vancouver, BC
V5Z 4C2

Dear Access to Information Clerk,

This is a formal request made under

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

[RSBC 1996] CHAPTER 165

Description of Requested Records:

All records in the possession, custody or control of Vancouver Coastal Health Authority that:

1. describe the isolation of the [alleged] *genetic variant of the* [alleged] *virus that* [allegedly] *causes* [the alleged disease referred to as] *COVID-19* [allegedly] *identified in the United Kingdom,* directly from a sample taken from a diseased patient, where the patient sample was **not** first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; fetal bovine serum).

   Please note that I am using "isolation" in the every-day sense of the word: *the act of separating a thing(s) from everything else*. I am **not** requesting records where "isolation" refers instead to:

   - the culturing of something, or
   - the performance of an amplification test (i.e. a PCR test), or
   - the sequencing of something.

1. describe the **discovery** (**not manufacture / fabrication / creation / assembly / alignment / trimming / mapping**) of the alleged genome for this alleged particular *new variant of coronavirus*;

2. describe how this alleged *new variant of coronavirus* relates to the alleged "SARS-COV-2";

3. include **any** additional analysis/investigation into this alleged "*new variant*".

Please note that my request **is not** limited to records that were authored by agents of

Vancouver Coastal Health Authority, or to records that pertain to work done by agents of the Vancouver Coastal Health Authority; it includes **any** sort of record, authored by anyone, anywhere, ever.

If any records match the above descriptions of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. author; title; date; publisher); please provide URLs where possible.

Format:

URLs and/or pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:
Last Name: [redacted]
First Name: [redacted]
[redacted]

Email: [redacted]

Happy New Year

LEGAL SERVICES
11TH FLOOR, 601 WEST BROADWAY
VANCOUVER, BC V5Z 4C2
TEL: 604-875-4859
FAX: 604-875-4593

March 4, 2021

Dear [redacted]

Re: BC *Freedom of Information and Protection of Privacy Act* (the "Act")
Freedom of Information Request: VCH File No. 2020-F-183

We are writing in response to your request dated December 31, 2020.

We have not been able to find any records that are responsive to your request.

You may request a review of VCH's response within 30 working days of receiving this email by writing to the following address:

Office of the Information and Privacy Commissioner for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC V8W 9A4
Telephone: (250) 387-5629
Fax: (250) 387-1696

If you choose to request a review by the Office of the Information and Privacy Commissioner, you should include with your request:

1. a copy of your original request for records; and
2. a copy of this response.

For your reference, a copy of FIPPA can be found online:
www.bclaws.ca/Recon/document/ID/freeside/96165_00

Yours truly,

Melissa Donnett
Coordinator, Freedom of Information
Vancouver Coastal Health Authority

UNIVERSITY OF SASKATCHEWAN
Office of the Vice-President
Finance and Resources
EXECUTIVELEADERSHIP.USASK.CA

204 Peter MacKinnon Building, 107 Administration Place
Saskatoon SK S7N 5A2
306-966-6631
Fax: 306-966-8676

September 4, 2020

Christine Massey
221-93 George St. S.
Brampton ON L6Y 1P4

via email: cmssyc@gmail.com

Dear Ms. Massey,

Re: Access to Information Request 2020-006

Thank you for your access to information request received DATE, requesting access to:

> *All records in the possession, custody or control of the Vaccine and Infectious Disease Organization-International Vaccine Centre (VIDO-InterVac) describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
>
> - *the culturing of something, or*
> - *the performance of an amplification test (i.e. a PCR test), or*
> - *the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by the VIDO-InterVac or that pertain to work done by the VIDO-InterVac. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the VIDO-InterVac has downloaded or printed.*

This is to advise you that the record(s) you wish to access do not exist. For your information, this notification has been provided pursuant to clause 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act*. If you would like to request a review of this decision, you may do so by completeing a "Request for Review" form and forwarding it to the Saskatchewan Information and Privacy Commssioner within one year of this notice. Your completed form can be sent to 503-1801 Hamilton Street, Regina, Saskatchewan, S4P 4B4 or webmaster@oipc.sk.ca. This form is available from this office or online at www.oipc.sk.ca.

If you have questions or concerns, please contact the writer at rayelle.johnston@usask.ca.

Sincerely,

Rayelle Johnston
Access and Privacy Officer

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI request to Chief Zvonko Horvat / Alymer Police re: "COVID-19 virus" purification

Christine Massey <cmssyc@gmail.com> Sun, May 16, 2021 at 10:38 AM
To: zhorvat@aylmerpolice.com

May 16, 2021

To:

Zvonko Horvat
Alymer Chief of Police
Alymer Police Station
20 Beech St. E
Aylmer, ON N5H 3H6

Dear Chief Horvat,

This is a formal request for access to general records, made under the *Municipal Freedom of Information and Protection of Privacy Act*.

Description of Requested Records:

All studies and/or reports in the possession, custody or control of yourself, Chief Zvonko Horvat, or Alymer Police Services describing the **purification** of any **"COVID-19 virus"** (aka "SARS-COV-2", including any alleged "variants" i.e. "B.1.1.7", "B.1.351", "P.1") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of **genetic** material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to **purify** the suspected "virus" from a patient sample and instead:

- cultured an unpurified sample or other unpurified substance, and/or
- performed an amplification test (i.e. a PCR test) on the total RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or
- fabricated a genome based on PCR-detected sequences in the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or
- produced electron microscopy images of unpurified things in a cell cuture.

Clarification of Request

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am **not** requesting records describing the **replication** of a "virus" without host cells.

Further, I am **not** requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its **purification** (**separation** from everything else in the patient sample, as per standard laboratory practices for the purification of other very small things).

Please also note that my request includes any study/report matching the above description, for example (but not limited to) any published peer-reviewed study **authored by anyone, anywhere** since December 2019 and relied on by yourself, Chief Zvonko Horvat, as evidence of a disease-causing "virus" circulating in humans and justifying the closure of the Church of God.

Please note that despite the fact that purification is an essential (but not sufficient) step in proving the existence of a disease-causing "virus", as of today 58 institutions globally (including Health Canada and the Public Health Agency of Canada) have all failed to provide or cite any such records, therefore to my knowledge no such records exist and if they do exist I cannot access them until I am provided a citation or URL.

Therefore in the interest of transparency and in accordance with the purposes of MFIPPA, if any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:
Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Application Fee
I will mail the $5 application fee to the address listed above.

Contact Information:
Last name: Massey
First name: Christine
Address: [redacted]
Phone: [redacted]
Email: cmasyc@gmail.com

Thank you in advance and best wishes,
Christine Massey, M.Sc.

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI request to Chief Zvonko Horvat / Alymer Police re: "COVID-19 virus" purification

Chief Zvonko Horvat <zhorvat@aylmerpolice.com> Mon, May 17, 2021 at 9:52 AM
To: Christine Massey <cmssyc@gmail.com>

Your request is better suited to go to the medical experts! They will have all the medical data you need to educate yourself on the harm, test studies, variances and where you can get vaccination to protect yourself from harm!

[Quoted text hidden]

May 16, 2021

[Quoted text hidden]

[Quoted text hidden]

Format:

[Quoted text hidden]

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI request to Chief Zvonko Horvat / Alymer Police re: "COVID-19 virus" purification

Christine Massey <cmssyc@gmail.com> Tue, May 18, 2021 at 11:10 AM
To: Chief Zvonko Horvat <zhorvat@aylmerpolice.com>

Dear Chief Horvat,

Thank you, I realize this, but I have already FOI'd **20 Canadian institutions** (including 5 that had publicly claimed to have "isolated the virus") and none of them had any record of isolation/purification of this alleged virus from a patient sample by anyone in the world. Their responses are here:

Thus far (May 7, 2021) 20 Canadian institutions have provided their responses: **Public Health Agency of Canada**, **Health Canada**, the **National Research Council of Canada**, **Vaccine and Infectious Disease Organization-International Vaccine Centre** (VIDO-InterVac), **Canadian Institutes of Health Research**, **Natural Sciences and Engineering Research Council of Canada**, **Ontario Ministry of Health**, **Institut National de Sante Publique du Quebec**, **British Columbia's Provincial Health Services Authority** (2 responses, 1 re "SARS-COV-2, 1 re "the UK variant"), **Vancouver Coastal Health Authority** (re "the UK variant"), **Newfoundland Labrador Department of Health & Community Services**, **McGill University**, the **City of Toronto**, the **Region of Peel** (Ontario), **KFL&A Public Health** (Kingston, Frontenac, Lennox and Addington, Ontario, re "any variant"), **Grey Bruce Health Services**, the **University of Toronto**, **Sunnybrook Health Sciences Centre**, **McMaster University** and **Mount Sinai Hospital** (Toronto) (note that researchers from the last 4 institutions had publicly claimed to have "isolated the virus", as had VIDO-Intervac).

Thirty-eight FOI'd institutions in 14 other countries also all failed to provide or cite any such record.

The typical excuses are that "the virus" is there, but there's too little of it to find, even with an electron microscope! Of course, if they cannot find "the virus" in any patient sample they are only assuming that "it" is there. They say that it's necessary to let "the virus" replicate again, by adding a patient sample to malnourished, poisoned monkey kidney cells that are also contaminated with fetal bovine serum. And when the monkey cells exhibit cytopathic effects, they say that this is proof of "the virus", and they call their man-made concoction "virus isolate".

They also say that viruses can only be found within a cell, which contradicts the claim that "the virus" is transmitted from person to person.

I can tell you with 100% confidence that there is no logical, scientific evidence that this alleged virus actually exists; the tests and diagnoses are 100% fraudulent; people have gotten sick and died as they do every year but not because of a "COVID-19 virus". Hence I am especially concerned about the worldwide harm that is being caused by lockdowns, social distancing, masking, etc.

I'm sorry to bother you, but I do require a proper response to my MFIPPA request. You could either transfer the request to another institution or state that you and Alymer Police Services have no responsive records - I believe those are your only 2 options that are in accordance with MFIPPA.

Thank you and best wishes,

Christine

[Quoted text hidden]

Zvonko Horvat
Chief of Police

Nick Novacich
Deputy Chief of Police

AYLMER POLICE SERVICE
20 Beech St. E, Aylmer, Ontario, Canada N5H3H6
Ph: 519-773-3146 · Fax 519-765-1580 · Website: www.aylmerpolice.com

[redacted]

2021-05-26

Christine Massey
[redacted]

Christine,

Please find enclosed cheque #027 that you sent the Aylmer Police. As mentioned in an email this information can be obtained by Public Health or medical experts.

Sincerely,

Erica Campbell 558
Aylmer Police Service
ecampbell@aylmerpolice.com
519-773-3146

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI request to Chief Zvonko Horvat / Alymer Police re: "COVID-19 virus" purification

Christine Massey <cmssyc@gmail.com> Fri, Jun 4, 2021 at 3:35 PM
To: Chief Zvonko Horvat <zhorvat@aylmerpolice.com>, ecampbell@aylmerpolice.com

Dear Chief Horvat and Ms. Campbell,

Regarding Ms. Campbell's letter to me dated May 26, 2021, which was mailed to my home (see attached) along with my cheque for the *MFIPPA* application fee:

As noted in my last email to Chief Horvat, I do require a proper response to my *MFIPPA* request, and I believe that your only 2 options *that are in accordance with MFIPPA* are to either transfer the request to another institution or state that Aylmer Police Service has no responsive records.

Simply returning an applicant's cheque doesn't appear to be one of your options.

> ***18*** *...*
>
> ***Request to be forwarded***
>
> *(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control* ***shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,***
>
> > ***(a) forward the request to the other institution****; and*
> >
> > *(b) give written notice to the person who made the request that it has been forwarded to the other institution.*
>
> ***Notice by head***
>
> ***19*** *Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,*
>
> > *(a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and*
> >
> > *(b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced. R.S.O. 1990, c. M.56, s. 19; 1996, c. 1, Sched. K, s. 15.*
>
> ***Contents of notice of refusal***
>
> ***22*** *(1) Notice of refusal to give access to a record or part under section 19 shall set out,*
>
> > *(a)* ***where there is no such record,***
> >
> > > ***(i) that there is no such record****, and*
> > >
> > > *(ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or*
> >
> > *(b) where there is such a record,*

(i) the specific provision of this Act under which access is refused,

(ii) the reason the provision applies to the record,

(iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. M.56, s. 22 (1).

Therefore, I will be re-mailing the cheque to you and look forward to your cooperation in this matter.

Best wishes,
Christine

[Quoted text hidden]

Aylmer Police return cheque.jpg
387K

Gmail **Christine Massey <cmssyc@gmail.com>**

FOIA - 21-02

Erica Campbell <ecampbell@aylmerpolice.com> Thu, Jun 17, 2021 at 9:50 AM
To: "cmssyc@gmail.com" <cmssyc@gmail.com>

Christine,

Please find attached the response letter regarding your FOIA request.

Erica Campbell 558
Aylmer Police Service

massey.pdf
104K

Zvonko Horvat
Chief of Police

Nick Novacich
Deputy Chief of Police

AYLMER POLICE SERVICE
20 Beech St. E, Aylmer, Ontario, Canada N5H3H6
Ph: 519-773-3146 · Fax 519-765-1580 · Website: www.aylmerpolice.com

16 June 2021

Christine Massey
[redacted]

File:21-02

Ms.Massey,

This letter is in response to your access request under the Municipal Freedom of Information & Protection of Privacy Act received by our office.

A search has been conducted and no responsive records were located.

You may request a review of this decision by the Information & Privacy Commissioner, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. Phone number 416-326-3333. There is an appeal fee of $25.00 for general information or $10.00 for personal information. Please make your cheque or money order payable to the Minister of Finance. You have 30 days to make this appeal.

I am responsible for this decision. Should you have any questions or concerns, please do not hesitate to contact me via email or at 519-773-3146.

Sincerely,

Erica Campbell 558
FOIA

Christine Massey
cmssyc@gmail.com

Sent by Email

October 16, 2020

Dear Ms. Massey:

Re: Decision on Access and Fee Request
***MFIPPA* Access Request 20.121**

I am writing further to your request for access to records under the provisions of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).* Your request seeks access to: **A copy of all agendas, minutes, notes, audio and/or video recordings, and any other records (regardless of format) of the April 16, 2020 conference call between Mississauga Mayor Bonnie Crombie, Bill Gates, Mike Bloomberg and Mayors from across Canada, the United States & Earth in the possession, custody or control of the City of Brampton.**

A thorough search for records responsive to your access request has been completed. No responsive records were identified as a result of the search.

Decision on Access
No responsive records exist.

Right of Appeal
You may appeal this decision on access to the Ontario Information and Privacy Commissioner's Office within 30 days of receipt of this letter. If you decide to appeal, please provide the Ontario Information and Privacy Commissioner's Office with the following:

- The request number listed at the beginning of this letter;
- A copy of this decision letter;
- A copy of the original request for information you sent to our institution; and,
- The appeal fee, which is $25.00 (cheque or money order, made payable to the Minister of Finance).

The Commissioner can be reached at:

Information and Privacy Commissioner
2 Bloor Street East, Suite 1400
Toronto, Ontario
M4W 1A8
Tel: 1-800-387-0073

Please note that you have 30 days from the date of this letter to respond. If we have not heard from you within 30 days, we will close your file.

Yours truly,
The City of Brampton

Janice Adshead
Deputy Clerk, Information Management On behalf of
Easa Thurairajah, Senior Manager HR Integration and Innovation
CAO's Office
905-874-2109
Janice.adshead@brampton.ca

Provincial Health Services Authority
Province-wide solutions. Better health.

May 17, 2021

Via email to fevancouver@outlook.com

Mak Parhar

Dear Mak Parhar:

Re: Response Letter
Freedom of Information and Protection of Privacy Act
Our File No: PHSA F21-0998

I write in response to your April 26, 2021 request for records made under the *Freedom of Information and Protection of Privacy Act,* RSBC 1996, (the "Act").

Request

You requested the following records (the "Request"):

> *All records describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
>
> *· the culturing of something, or*
> *· the performance of an amplification test (i.e. a PCR test), or*
> *· the sequencing of something.*
>
> *To clarify, I am requesting all such records that are in the possession, custody or control of British Columbia Centre for Disease Control (for example: downloaded to a computer, printed in hard copy, etc.).*
> *If the BCCDC has a access to any other agencies record, please forward them as well.*

Response

The BC Centre for Disease Control confirms that there are no records that describe the isolation of the SARS-CoV-2 virus directly taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material, because in order to cultivate a virus it has to replicate in a cell, as a DNA or RNA virus can never be cultivated on its own.

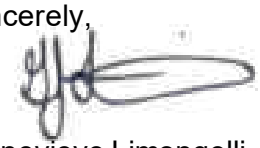
A copy of the Act is available online at:
http://www.bclaws.ca/Recon/document/ID/freeside/96165_00

Office of the Information and Privacy Commissioner for British Columbia

The Office of the Information and Privacy Commissioner for British Columbia (the "OIPC") is the regulator of access and privacy laws in the province. If you have a concern with any decision in the processing of the Request you have the right to request a review of PHSA's decision from the OIPC. For ease of reference, information about the OIPC is included in Appendix A of this letter.

Additionally, should you have any questions about this letter, please contact the author at glimongelli@phsa.ca or 604-829-2514.

Sincerely,



Genevieve Limongelli
Freedom of Information Advisor
Information Access & Privacy Services
Provincial Health Services Authority

Appendix A: How to Request a Review

Under section 52 of the Act, you may request a review by the Office of the Information and Privacy Commissioner (OIPC) of any decision, action or failure to act by PHSA in responding to your request.

If you wish to request a review, you must contact the OIPC in writing within 30 business days of your receipt of this letter and provide the OIPC with:

1. Your name, address and telephone number;
2. A copy of the original request that you sent;
3. A copy of this letter; and
4. The reasons or grounds upon which you are requesting the review.

All inquiries should be directed to:

By Mail:
Office of the Information and Privacy Commissioner for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC
V8W 9A4

By Email: info@oipc.bc.ca

By Tel: (250) 387-5629
By Fax: (250) 387-1696

Callers outside Victoria can contact the office toll-free by calling Enquiry BC at 1-800-663-7867 and requesting a transfer to (250) 387-5629.

Canadian Institutes of Health Research
160 Elgin Street, 9th Floor
Address Locator 4809A
Ottawa, Ontario K1A 0W9

Instituts de recherche en santé du Canada
160, rue Elgin, 9e étage
Indice de l'adresse 4809A
Ottawa (Ontario) K1A 0W9

December 15, 2020 Ref: A-2020-0029

[redacted]

By Email

[redacted]

On December 8, 2020, the Canadian Institutes of Health Research received your request for information made under the *Access to Information Act* for the following:

"All records describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to: · the culturing of something, or · the performance of an amplification test (i.e. a PCR test), or · the sequencing of something. To clarify, I am requesting all such records that are in the possession, custody or control of your institution Canada (for example: downloaded to a computer, printed in hard copy, etc.). The known or estimated error rate (both false positives and false negatives), of PCR testing to test for SARS-COV-2. This can include reference to any studies The known or estimated error rate (both false positives and false negatives), of antibody testing to check for immunity to SARS-COV-2. This can include references to any studies Whether vaccine manufacturers have been indemnified (rendered legally immune from lawsuit), for any vaccines they provide related to SARS-COV-2 Whether any vaccine injury compensation plan will be established (or has been established), for people who are injured or killed by vaccines to treat SARS-COV-2"

I regret to inform you that The Canadian Institutes of Health Research does not have any records under our control relating to your request. COVID-19 academic publications resulting from CIHR-funded research can be found on our website at https://cihr-irsc.gc.ca/e/51948.html and Information on the publication of research findings can be found in the Tri-Agency Open Access Policy on Publications here.

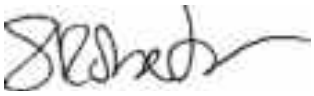
Please be advised that you are entitled to complain to the Information Commissioner concerning the processing of your request within 60 days after the day that you become aware that grounds for a complaint exist. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to:

The Information Commissioner of Canada
30 Victoria Street, 7th Floor
Gatineau, Quebec K1A 1H3

You may obtain additional information on the complaint process by visiting the website of the Office of the Information Commissioner at www.oic-ci.gc.ca/en/submitting-complaint.

This completes our processing of your request. If you have any questions concerning your request, please contact me, by email at ATIPCoordinator@cihr-irsc.gc.ca.

Sincerely,



Sharon Robertson
ATIP Coordinator

Last Name*:	Massey
Organization Name (optional):	
Address line 1*:	[redacted]
Address line 2 (optional):	
City / Town*:	Toronto
Province/State*:	Ontario
Postal/ZIP Code*:	[redacted]
Country*:	Canada
Telephone No.*:	[redacted]
Alternate No. (optional):	
E-Mail (optional):	[redacted]

Description

Freedom Of Information Request	**$5.00**

Base Amount:$5.00

Records Requested*:

Description of Requested Records: All records in the possession, custody or control of Dr. Eileen de Villa, Toronto Public Health or any Department or Staff Member of the City of Toronto, describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to: -the culturing of something, and/or -the performance of an amplification test (i.e. a PCR test), and/or -the sequencing of something. Please also note that my request is not limited to records that were authored by Dr. de Villa or the City of Toronto or that pertain to work done by Dr. de Villa or the City of Toronto. My request includes any sort of record authored at any time by anyone, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that Dr. de Villa or anyone working for the City of Toronto has downloaded or

TORONTO

Kristie Pratt
Deputy City Clerk

City Clerk's Office
John Elvidge, Interim City Clerk

Corporate Information Management Services
City Hall, West Tower, 13th Floor
100 Queen Street West
Toronto, Ontario M5H 2N2

Tel: 416-392-9683
Fax: 416-392-4900
e-mail: Kristie.Pratt@toronto.ca

FOR FURTHER INFORMATION
Zoë Cliff
416-392-9692

December 21, 2020

Ms. Christine Massey
[redacted]

Dear Ms. Massey:

Subject: City of Toronto Access Request Number 2020-01757

I am replying to your access request under the *Municipal Freedom of Information and Protection of Privacy Act*.

You have requested access to all records in the possession, custody or control of Dr. Eileen de Villa, Toronto Public Health or any Department or Staff Member of the City of Toronto, describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Staff of Toronto Public Health has conducted a search for the requested records. This decision reflects the results of their search.

Decision

Toronto Public Health staff has advised that despite a thorough search, they were unable to locate any records related to your request. Access therefore, cannot be granted as the records do not exist.

Staff further advised that they do not have records related to the process of testing samples, as this is a function of Public Health Ontario. If you have not already, you may wish to reach out to staff of Public Health Ontario for further information.

Right to appeal our decision

You may ask for a review within 30 days as of the date of this decision by contacting: The Registrar, Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8, telephone: 416-326-3333, or toll free 1-800-387-0073.

.../2

Ms. Christine Massey December 21, 2020

If you choose to appeal, please provide the Commissioner with the following:

- the request number assigned to your request;
- a copy of this decision letter;
- a copy of your original request;
- the appeal fee for general records is $25, payable by cheque or money order to the Minister of Finance.

For more information, you may wish to visit the IPC's website:
http://www.ipc.on.ca/english/Home-Page/

Should you have any questions, please contact **Zoë Cliff, Access and Privacy Officer, at 416-392-9692** or **zoe.cliff@toronto.ca**.

Yours truly,

John Elvidge
Interim City Clerk

FOI request to Grey Bruce Health Services re: "SARS-COV-2" purification

Christine Massey <cmssyc@gmail.com> Wed, Apr 7, 12:01 PM

to FIPPA

April 7, 2021

To:
Grey Bruce Health Services
1800 8th Street East
Owen Sound, Ontario
N4K 6M9

Submitted via email to: FIPPA@gbhs.on.ca

Dear Freedom of Information Officer,

This is a formal request for access to general records, made under the *Freedom of Information and Protection of Privacy Act.*

Since your FOI webpage does not provide any special instructions on how to submit the $5 application fee during the "pandemic", I will mail a cheque to the address listed there.

Description of Requested Records:

All studies and/or reports in the possession, custody or control of Grey Bruce Health Services describing the **purification** of any **"SARS-COV-2**" aka "COVID-19 virus" (including any "variants") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of **genetic** material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to **purify** the suspected "virus" and instead:

- cultured an unpurified sample or other unpurified substance, and/or

- performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or
- sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or
- produced electron microscopy images of unpurified things.

Clarifications re my request

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am **not** requesting records describing the **replication** of a "virus" without host cells.

Further, I am **not** requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its **purification** (**separation** from everything else in the patient sample, as per standard laboratory practices for the purification of other small things).

Please also note that my request is **not limited** to records that were authored by Grey Bruce Health Services or that pertain to work done at/by Grey Bruce Health Services. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere that has been downloaded or printed by Administration or Staff at Grey Bruce Health Services and relied on as evidence of a disease-causing "virus".

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:
Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:
Last name: Massey
First name: Christine
Address: [redacted]
Phone: [redacted]
Email: cmssyc@gmail.com

Thank you in advance and best wishes,
Christine Massey, M.Sc.

GREY BRUCE Health SERVICES
Quality Health Care Right Here

Grey Bruce
Health Services

1800 8th Street East
Owen Sound, ON
N4K 6M9

(519) 376-2121
www.gbhs.on.ca

Thursday, April 15, 2021

Christine Massey
[redacted]

Dear Christine Massey:

This letter is in response to your recent Freedom of Information request.

You requested the information below (insert below is from your written request) within Grey Bruce Health Services

"All studies and/or reports in the possession, custody or control of Grey Bruce Health Services describing the purification of any "SARS-COV-2" aka "COVID-19 virus" (including any "variants") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" and instead:

- **cultured an unpurified sample or other unpurified substance, and/or**
- **performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or**
- **sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or**
- **produced electron microscopy images of unpurified things."**

We investigated whether anyone in our hospital had conducted research in the areas that you described in your request, or performed any of the procedures and processes that you described. We have concluded that Grey Bruce Health Services has not conducted any research in these areas, and we have not produced any of the studies or reports that you have requested.

If you have any questions or require further assistance, please do not hesitate to contact me.

Sincerely,

Julie Frazer, Manager Health Information & Privacy Officer
Phone (519) 376 2121 ext 2548 jfrazer@gbhs.on.ca

Christine Massey <cmssyc@gmail.com> 1:01 PM (5 minutes ago)
to jfrazer

Dear Mr. Frazer,

Thank you for your letter dated April 15, 2021 in response to my FIPPA request shown below.

Your response requires some clarification. You've stated that "*we have not produced any of the studies or reports that you have requested*". However my request explicitly stated:

> *Please also note that my request is* ***not limited*** *to records that were authored by Grey Bruce Health Services or that pertain to work done at/by Grey Bruce Health Services. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere that has been downloaded or printed by Administration or Staff at Grey Bruce Health Services and relied on as evidence of a disease-causing "virus".*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.*

Does Grey Bruce Health Services have *any* responsive records, and if not would you please provide a revised letter that states this explicitly in accordance with the Act?

Thank you and best wishes,
Christine

Grey Bruce Health Services
Quality Health Care Right Here

Grey Bruce
Health Services

[redacted]

Thursday, May 6, 2021

Christine Massey
[redacted]

Dear Christine Massey:

This letter is in response to your recent email dated Tuesday April 20, 2021 message. Thank-you for your requested clarification. We have consulted all areas of the hospital that would be engaged in this type of activity and confirmed with them that Grey Bruce Health Services has not downloaded or printed any of the types of records that you've described, authored by anyone, or anywhere, and has not relied on them as evidence of a disease-causing "virus".

If you have any questions or require further assistance, please do not hesitate to contact me.

Sincerely,

David Merkley, Chief Privacy Officer
Phone (519) 376-2121 ext 2909 [redacted]
CC: Julie Fraser, Privacy Officer

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI request to Grey Bruce Health Services re: "SARS-COV-2" purification

Christine Massey <cmssyc@gmail.com> Fri, May 7, 2021 at 1:40 PM
To: dmerkley@gbhs.on.ca
Cc: jfrazer@gbhs.on.ca

Dear Mr. Merkley,

Thank you for your clarification letter dated May 4, 2021 in response to my *FIPPA* request re "SARS-COV-2" purification.

Your clarification requires further clarification. You stated that "*Grey Bruce Health Services has not downloaded or printed any of the types of records you've described.....*". However my request explicitly stated:

> *Please also note that my request is **not limited** to records that were authored by Grey Bruce Health Services or that pertain to work done at/by Grey Bruce Health Services. Rather, my request includes **any record matching the above description, for example (but not limited to)** any published peer-reviewed study authored by anyone, anywhere that has been downloaded or printed by Administration or Staff at Grey Bruce Health Services and relied on as evidence of a disease-causing "virus".*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.*

Does Grey Bruce Health Services have *any* responsive records, and would you please provide a revised letter that states this explicitly in accordance with section 29 (1) of the Act?

> **Contents of notice of refusal**
>
> **29** (1) Notice of refusal to give access to a record or a part thereof under section 26 shall set out,
>
> (a) where there is no such record,
>
> (i) that there is no such record, and
> (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
>
> (b) where there is such a record,
>
> (i) the specific provision of this Act under which access is refused,
> (ii) the reason the provision applies to the record,
> (iii) the name and position of the person responsible for making the decision, and
> (iv) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. F.31, s. 29 (1).

Thank you and best wishes,
Christine
[Quoted text hidden]

Gmail

Christine Massey <cmssyc@gmail.com>

FOI request to Grey Bruce Health Services re: "SARS-COV-2" purification

Merkley, David L. <dmerkley@gbhs.on.ca> Mon, May 10, 2021 at 10:56 AM
To: Christine Massey <cmssyc@gmail.com>
Cc: "Frazer, Julie" <jfrazer@gbhs.on.ca>

Hi Christine,

Grey Bruce Health Services does not have any records matching your request. I was responsible for making this decision as the Chief Privacy Officer, and my title and contact information is in my signature below. You may appeal this decision to the Commissioner. The file number is GBHS202104.2.

David Merkley

Director & CPO | Health Information Management & Decision Support

Grey Bruce Health Services | Owen Sound

T: 519.376.2121 x2803 | **C:** 905.424.1135 | **E:** dmerkley@gbhs.on.ca

www.gbhs.on.ca

GBHS Lion's Head | GBHS Markdale | GBHS Meaford | GBHS Owen Sound | GBHS Southampton | GBHS Wiarton

---

From: Christine Massey <cmssyc@gmail.com>
Sent: Friday, May 7, 2021 13:46
To: Merkley, David L. <dmerkley@gbhs.on.ca>
Cc: Frazer, Julie <jfrazer@gbhs.on.ca>
Subject: Re: FOI request to Grey Bruce Health Services re: "SARS-COV-2" purification

[Quoted text hidden]

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI request to Hastings Prince Edward Public Health re: "SARS-COV-2" purification

Christine Massey <cmssyc@gmail.com> Wed, Apr 21, 2021 at 10:38 AM
To: poglaza@hpeph.ca, info@hpeph.ca

April 21, 2021

To:
Information Officer
Hastings Prince Edward Public Health
179 North Park Street
Belleville, Ontario
K8P 4P1
613-966-5500 or 1-800-267-2803

Submitted via email to: info@hpeph.ca, poglaza@hpeph.ca

Dear Dr. Piotr Oglaza,

This is a formal request for access to general records, made under the *Municipal Freedom of Information and Protection of Privacy Act.*

I did not find information on your website re how to submit the $5 application fee during the "pandemic". Please advise ASAP, otherwise I will mail a cheque payable to Hastings Prince Edward Public Health, to the address listed above.

Description of Requested Records:

All studies and/or reports in the possession, custody or control of yourself or Hastings Prince Edward Public Health describing the **purification** of any **"SARS-COV-2**" aka "COVID-19 virus" (including any "variants") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of **genetic** material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to **purify** the suspected "virus" and instead:

- cultured an unpurified sample or other unpurified substance, and/or
- performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or
- sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or
- produced electron microscopy images of unpurified things.

Clarifications re my request

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am **not** requesting records describing the **replication** of a "virus" without host cells.

Further, I am **not** requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its **purification** (**separation** from everything else in the patient sample, as per standard laboratory practices for the purification of other small things).

Please also note that my request is **not for private patient information and not limited** to records that were authored by yourself or Hastings Prince Edward Public Health or that pertain to work done at/by Hastings Prince Edward Public Health. Rather, my request includes any record **matching the above description**, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere that has been downloaded or printed by yourself and relied on as evidence of a disease-causing "virus".

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:
Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:
Last name: Massey
First name: Christine
Address: [redacted]
Phone: [redacted]
Email: cmrsyo@gmail.com

Thank you in advance and best wishes,
Christine Massey, M.Sc.

Gmail **Christine Massey <cmssyc@gmail.com>**

FOI Request

Dr. Piotr Oglaza <POglaza@hpeph.ca> Fri, Jul 9, 2021 at 4:41 PM
To: cmssyc@gmail.com
Cc: Nancy McGeachy <NMcGeachy@hpeph.ca>

Ms. Massey,

Please find attached a letter regarding your FOI request received in April, 2021.

As you will see in the letter, we do not have the information you are looking for so we will shred the cheque you sent in the amount of $5.00. The cheque will not be cashed.

Apologies for the lateness of this response.

Thank you
Piotr

Piotr Oglaza MD, CPHI(C), MPH, CCFP, FRCPC
Medical Officer of Health and CEO
Hastings Prince Edward Public Health
179 North Park Street, BELLEVILLE, ON K8P 4P1
Ph: 613-966-5500 Ext 200, Fax: 613-966-4290
Email: poglaza@hpeph.ca
Website: hpePublicHealth.ca

HASTINGS PRINCE EDWARD Public Health

Please note our offices are now open for clinical services by appointment only. Check out our website for the latest information.

Sent from HPEPH Mail Services

CM-FOI-Request-Response-Letter-July9-2021.pdf

105K

HASTINGS PRINCE EDWARD
Public Health

Main Office – Belleville
179 North Park Street, Belleville, ON K8P 4P1
T: 613-966-5500 | 1-800-267-2803 | F: 613-966-9418
TTY: 711 or 1-800-267-6511
hpePublicHealth.ca

July 09, 2021

Ms. Christine Massey
[redacted]

Via email: cmassyc@gmail.com

Dear Ms. Massey:

Re: Information Inquiry Submitted on April 29, 2021

I am unable to provide a response to your inquiry as we are not in possession of the information you have requested. You may wish to contact the Public Health Lab of Ontario to inquire whether they can provide you with the information you are seeking.

I apologize for the significant delay in responding to this request. As you can imagine, there are significant competing pressures on staff time as we work to respond to numerous inquiries from the public, deliver vaccine clinics throughout the community, continue to manage cases and contacts, and deliver regular public health programs. Your patience is appreciated.

Sincerely,

Piotr Oglaza, MD, CPHI(C), CCFP, MPH, FRCPC
Medical Officer of Health and CEO
Hastings Prince Edward Public Health

PO/MMical

Health Canada Santé Canada
Access to Information and Privacy Division
7th Floor, Suite 700, Holland Cross - Tower B
1600 Scott Street, (Mail Stop: 3107A)
Ottawa, Ontario K1A 0K9

Our file: A-2020-000208 / BH

Christine Massey
221 - 93 George St. S
Brampton, Ontario
L6Y 1P4

Dear Christine Massey:

This is in response to your request made under the *Access to Information Act* (the Act) for the following information:

> **All records describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).**
>
> **Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:**
> - **the culturing of something, or**
> - **the performance of an amplification test (i.e. a PCR test), or**
> - **the sequencing of something.**
>
> **To clarify, I am requesting all such records that are in the possession, custody or control of Health Canada (for example:downloaded to a computer, printed in hard copy, etc.).**

Having completed a thorough search, we regret to inform you that we were unable to locate any records responsive to your request.

Should you have any questions or concerns about the processing of your request, please do not hesitate to contact Barbara Haase, the analyst responsible for this file, either by phone at 613-859-9073, by email at barbara.haase@canada.ca or by fax at 613-941-4541, with reference to our file number cited above.

Please be advised that you are entitled to complain to the Office of the Information Commissioner of Canada concerning the processing of your request within 60 days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint can be made online at: https://www.oic-ci.gc.ca/en/submitting-complaint or by mail to:

Office of the Information Commissioner of Canada
30 Victoria Street
Gatineau, Quebec K1A 1H3

Yours sincerely,

Christine Smith

Team Leader, Access to Information and Privacy
Health Canada and the Public Health Agency of Canada / Government of Canada
christinen.smith@canada.ca / Tel: 613-862-6063

Chef d'équipe, Accès à l'information et de la protection des renseignements personnels
Santé Canada et Agence de la santé publique du Canada / Gouvernement du Canada
christinen.smith@canada.ca / Tél: 613-862-6063

November 23, 2020

SANTÉ ET SERVICES SOCIAUX

Daniel Desharnais
Sous-ministre adjoint de la coordination et des relations institutionnelles
1075, ch. Sainte-Foy, 3e étage
Québec (QC) G1S 2M1
Tél. : 418 266-8850, Téléc. : 418 266-8855

responsable.acces@msss.gouv.qc.ca

AND/OR

INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC
Madame Julie Dostaler
Secrétaire générale
945, av. Wolfe, 3e étage
Québec (QC) G1V 5B3
Tél. : 418 650-5115 #5302, Téléc. : 418 646-9328

julie.dostaler@inspq.qc.ca

SUBJECT : Request for document access

Dear Sir, Dear Madam,

I write to request access to information from :

le ministre de la Santé et des Services sociaux du Québec, and/or

Institut national de santé publique du Québec (INSPQ), and/or

Laboratoire de santé publique du Québec

As found on the Québec government website https://www.inspq.qc.ca/institut/nous-joindre;

> *Le rôle de l'Institut national de santé publique du Québec est de soutenir le ministère de la Santé et des Services sociaux (MSSS), les directions régionales de santé publique, ainsi que les établissements de santé dans l'exercice de leurs responsabilités, en émettant des avis et des recommandations basés sur les connaissances scientifiques disponibles.*

Therefore, under section 9 of the Act respecting access to documents held by public bodies and the protection of personal information, I hereby request a copy of the following document(s):

All records describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- the culturing of something, or
- the performance of an amplification test (i.e. a PCR test), or
- the sequencing of something.

To clarify, I am requesting all such records that are in the possession, custody or control of SANTÉ ET SERVICES SOCIAUX and or INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC (for example: downloaded to a computer, printed in hard copy, etc.).

Thank you for your assistance in this matter and kindly confirm receipt of this request via return email.

Sincerely,

Institut national
de santé publique
Québec

Secrétariat général

PAR COURRIEL

Québec, le 26 novembre 2020

[redacted]

OBJET : Réponse – Demande d'accès aux documents
N/Réf. (dossier) : 6410/2020-58

[redacted]

En réponse à votre demande d'accès aux documents datée du 23 novembre 2020 relative à "All records describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells)", nous vous informons que l'Institut national de santé publique du Québec ne détient aucun document.

Par ailleurs, vous trouverez ci-annexée une note explicative concernant l'exercice du droit de recours en révision devant la Commission d'accès à l'information.

Veuillez agréer, [redacted] l'expression de nos sentiments les meilleurs.

La responsable de l'accès aux documents,

Julie Dostaler
Secrétaire générale

p. j. Avis de recours

N/Réf. (correspondance) : 2020-7626

945, avenue Wolfe, 3e étage
Québec (Québec) G1V 5B3

Téléphone : (418) 850-5115 poste 5304
Télécopieur : (418) 646-9328
Courriel : julie.dostaler@inspq.qc.ca
Internet : http://www.inspq.qc.ca

AVIS DE RECOURS EN RÉVISION

RÉVISION

a) Pouvoir

L'article 135 de la Loi prévoit qu'une personne peut, lorsque sa demande écrite a été refusée en tout ou en partie par le responsable de l'accès aux documents ou de la protection des renseignements personnels ou dans le cas où le délai prévu pour répondre est expiré, demander à la Commission d'accès à l'information de réviser cette décision.

La demande de révision doit être faite par écrit; elle peut exposer brièvement les raisons pour lesquelles la décision devrait être révisée (art. 137).

L'adresse de la Commission d'accès à l'information est la suivante :

QUÉBEC

Bureau 2.36
525, boul. René-Lévesque Est
Québec (Québec) G1R 5S9

Tél : (418) 528-7741
Téléc : (418) 529-3102

MONTRÉAL

Bureau 18.200
500, boul. René-Lévesque Ouest
Montréal (Québec) H2Z 1W7

Tél : (514) 873-4196
Téléc : (514) 844-6170

b) Motifs

Les motifs relatifs à la révision peuvent porter sur la décision, sur le délai de traitement de la demande, sur le mode d'accès à un document ou à un renseignement, sur les frais exigibles ou sur l'application de l'article 9 (notes personnelles inscrites sur un document, esquisses, ébauches, brouillons, notes préparatoires ou autres documents de même nature qui ne sont pas considérés comme des documents d'un organisme public).

c) Délais

Les demandes de révision doivent être adressées à la Commission d'accès à l'information dans les 30 jours suivant la date de la décision ou de l'expiration du délai accordé au responsable pour répondre à une demande (art. 135).

La loi prévoit spécifiquement que la Commission d'accès à l'information peut, pour motif raisonnable, relever le requérant du défaut de respecter le délai de 30 jours (art. 135).

APPEL DEVANT LA COUR DU QUÉBEC

a) Pouvoir

L'article 147 de la loi stipule qu'une personne directement intéressée peut porter la décision finale de la Commission d'accès à l'information en appel devant un juge de la Cour du Québec sur toute question de droit ou de compétence.

L'appel d'une décision interlocutoire ne peut être interjeté qu'avec la permission d'un juge de la Cour du Québec s'il s'agit d'une décision interlocutoire à laquelle la décision finale ne pourra remédier.

b) Délais

L'article 149 prévoit que l'avis d'appel d'une décision finale doit être déposé au greffe de la Cour du Québec, dans les 30 jours qui suivent la date de réception de la décision de la Commission par les parties.

c) Procédure

Selon l'article 151 de la loi, l'avis d'appel doit être signifié aux parties et à la Commission dans les dix jours de son dépôt au greffe de la Cour du Québec.

14 juin 2006
Mise à jour le 16 septembre 2016

MFIPPA request to KFL&A PH re "SARS-COV-2" isolation

Christine Massey <cmassey@gmail.com>
To: kfloran.moore@kflaph.ca, dansdoyle@kos.net

Sun, Jan 31, 2021 at 3:10

January 31, 2021

To
Dr. Kieran Moore
KFL&A Public Health
221 Portsmouth Avenue
Kingston, ON
K7M 1V5
kfloran.moore@kflaph.ca

Dear Dr. Moore and and Mayor Doyle,

This is an email follow-up of a formal request for access to general records that I just submitted via your online portal (as shown in the attached screenshot), made under the *Municipal Freedom of Information and Protection of Privacy Act*, 1990.

Please advise how I may submit the $5 application fee, as the online portal provided no payment options.

Description of Requested Records:

All records in the possession, custody or control of Dr. Kieran Moore or KFL&A Public Health describing the isolation of any variant ("new" or "old") of the alleged "SARS-COV-2" ("COVID-19 virus" (including the alleged "B.1.1.7" alleged to have been detected in KFL&A), directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells and/or cells fetal bovine serum).

Please note that I am using "isolation" in the every day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- the culturing of something, and/or
- the performance of an amplification test (i.e. a PCR test), and/or
- the sequencing of something.

Please also note that my request is not limited to records that were authored by Dr. Kieran Moore or KFL&A Public Health or that pertain to work done by Dr. Kieran Moore or KFL&A Public Health. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer reviewed study authored by anyone, anywhere, ever that Dr. Kieran Moore or KFL&A Public Health has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format
Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:

Request for General Records from KFL&A Public Health

Taggart, Suzette <Suzette.Taggart@kflaph.ca>

to CMSSYC@gmail.com

February 12, 2021

Request Number (M001-21)

Christine Massey

[redacted]

[redacted]

Dear Christine Massey,

This letter is written in response to your request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to general records in the possession, custody or control of Dr. Kieran Moore describing the isolation of any variant of the alleged SARS-COV-2 directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material.

This request is denied in its entirety pursuant to personal privacy section 14 (1) of the Act.

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates.

You may request that this decision be reviewed by the Information and Privacy Commissioner. The Commissioner can be reached at:

2 Bloor Street East

Suite 1400 Toronto, Ontario M4W 1A8

1-800-387-0073

Sincerely,

Suzette Taggart, RD, MBA
Manager, Communications

Phone: 613-549-1232, ext. 1262
Toll-Free: 1-800-267-7875
Fax: 613-549-7896

suzette.taggart@kflaph.ca

KFL&A Public Health

221 Portsmouth Avenue

Kingston, Ontario K7M 1V5

www.kflaph.ca

Request for General Records from KFL&A Public Health

Christine Massey <cmssyc@gmail.com> Fri, Feb 19, 2021 at 3:24 PM
To: "Taggart, Suzette" <Suzette.Taggart@kflaph.ca>, kieran.moore@kflaph.ca, denisdoyle@kos.net

Dear Ms. Taggart, Dr. Moore and Mayor Doyle,

Thank you for your response, however **my request (attached) is not for personal information**.

I explicitly stated in my follow up email to Mayor Doyle and Dr. Moore that my request is for **general records**.

I would be very surprised if a description of methodology used to (allegedly) "*isolate SARS-COV-2*" is entered into any patient record, anywhere. One would expect such a description to be found in a scientific study, or perhaps a government report.

Further, I explicitly stated the following in my request:

> *...my request includes any record matching the above description, **for example (but not limited to) any published peer-reviewed study** authored by anyone, anywhere, ever that Dr. Kieran Moore or KFL&A Public Health has downloaded or printed.*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.*

It's unclear to me how anyone could interpret such a request as a request for personal information.

Regardless, 14 (1) of the Act does not apply to my request.

Note that we now have formal responses to the same records request from 17 other Canadian institutions (yielding in total zero responsive records). I don't recall any other institution interpreting the request as a request for personal information:

Public Health Agency of Canada, **Health Canada**, the **National Research Council of Canada**, **Vaccine and Infectious Disease Organization-International Vaccine Centre** (VIDO-InterVac), **Canadian Institutes of Health Research**, **Natural Sciences and Engineering Research Council of Canada**, **Ontario Ministry of Health**, **Institut National de Sante Publique du Quebec**, **British Columbia's Provincial Health Services Authority**, **Newfoundland Labrador Department of Health & Community Services**, **McGill University**, the **City of Toronto**, the **Region of Peel** (Ontario), the **University of Toronto**, **Sunnybrook Health Sciences Centre**, **McMaster University** and **Mount Sinai Hospital** (Toronto) (note that researchers from the last 4 institutions had publicly claimed to have "isolated the virus", as had VIDO-Intervac).
https://www.fluoridefreepeel.ca/fois-reveal-that-health-science-institutions-around-the-world-have-no-record-of-sars-cov-2-isolation-purification/

Thus, I look forward to KFL&A Public Health's response to my request, which will be made public in the public interest.

Thank you and best wishes,
Christine

Request for General Records from KFL&A Public Health

Taggart, Suzette <Suzette.Taggart@kflaph.ca> Sun, Feb 21, 2021 at 9:46 AM
To: Christine Massey <cmssyc@gmail.com>
Cc: "Moore, Kieran" <kieran.moore@kflaph.ca>, "denisdoyle@kos.net" <denisdoyle@kos.net>

February 21, 2021

Request Number (M001-21)

Christine Massey
[redacted]

Dear Christine Massey,

This follow up letter is written in response to your email on February 19, 2021 regarding your request for access to general records under the *Municipal Freedom of Information and Protection of Privacy Act* in the possession, custody or control of Dr. Kieran Moore describing the isolation of any variant of SARS-COV-2 directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material. The request includes any record matching the description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that anyone at KFL&A Public Health has downloaded or printed.

KFL&A Public Health conducted a search for the requested records but did not locate any records related to your request. This request will not be granted as the records do not exist at our agency.

KFL&A Public Health do not have records related to the process of testing COVID-19 samples. If you haven't already, it is recommended that you seek information from Public Health Ontario as they are the lead agency on the process of COVID-19 testing in Ontario.

You may request that this decision be reviewed by the Information and Privacy Commissioner. The Commissioner can be reached at:

2 Bloor Street East
Suite 1400 Toronto, Ontario M4W 1A8
1-800-387-0073

Sincerely,

Suzette Taggart, RD, MBA
Manager, Communications

Phone: 613-549-1232, ext. 1262

Toll-Free: 1-800-267-7875
Fax: 613-549-7896

suzette.taggart@kflaph.ca

KFL&A Public Health

221 Portsmouth Avenue

Kingston, Ontario K7M 1V5

www.kflaph.ca

Connect with us on Facebook | Twitter | YouTube

McGill
Secretariat
845 Sherbrooke Street West, Room 313
Montreal, Quebec H3A 0G4
Tel.: (514) 398-3948 / Fax.: (514) 398-4758

October 23, 2020

[redacted]

Sent by email

Subject: Access to documents request – Response

Dear [redacted]

This letter is in response to your request submitted October 5, 2020 under the *Act respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* (the Act), for the following:

> **All records in the possession, custody or control of the McGill Secretariat or any other department of McGill University (for example, downloaded to a computer, printed in hard copy etc. describing the isolation of SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was NOT first combined with any other source of genetic material (ie monkey kidney cells, aka vero cells, liver cancer cells etc.)**
>
> **Please note that I am using the term "isolation" in the everyday sense of the word; the act of separating a thing from everything else. I am NOT requesting records where "isolation of SARS-COV-2" refers instead only to:**
>
> - **the culturing of something and/or**
> - **the performance of an amplification test (RT-PCR test) and/or**
> - **the sequencing of something**
>
> **If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that the public may identify and access each record with certainty (ie: title, author, date, journal, where the public may access it).**

Please be advised that McGill University does not hold any documents responsive to your request.

Please be advised that pursuant to article 135 of the Act (appended below) you may ask the Commission d'accès à l'information to review this decision within a period of 30 days from the date of this letter.

Sincerely,

Edyta Rogowska
Secretary-General

An Act respecting Access to Documents Held by Public Bodies and the Protection of Personal Information, CQLR c A-2.1

135. Every person whose request has been denied, in whole or in part, by the person in charge of access to documents or of protection of personal information may apply to the Commission for a review of the decision.

Every person who has made a request under this Act may apply to the Commission for a review of any decision of the person in charge concerning the time prescribed for processing the request, the mode of access to a document or information, the application of section 9 or the fee payable.

The application must be made within thirty days of the date of the decision or of the time granted by this Act to the person in charge for processing a request. However, the Commission may, for any serious cause, release the applicant from a failure to observe the time limit.

1982, c. 30, s. 135.

McMaster University

UNIVERSITY SECRETARIAT
• Freedom of Information and Protection of Privacy

Gilmour Hall, Room 210
1280 Main Street West
Hamilton, Ontario L8S 4L8

905.525.9140, ext. 24337
privacy@mcmaster.ca

Ms Christine Massey
221-93 George St. St.
Brampton, Ont. L6Y 1P4

August 13, 2020

cmssyc@gmail.com

Dear Christine:

Re: Freedom of Information Request 2020-GR-010 (the "Request")
Freedom of Information and Protection of Privacy Act (RSO 1990)

1. The Request

I am writing regarding your access request under the *Freedom of Information and Protection of Privacy Act* (hereafter, 'the Act') received by our office on July 7, 2020.

We confirm your Request provided as follows:

> For the period November 1, 2019 to July 17, 2020:
>
> *All records in the possession, custody or control of McMaster University describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient; fetal bovine serum).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
> *-the culturing of something, or*
> *-the performance of an amplification test (i.e. a PCR test), or*
> *-the sequencing of something.*
>
> *Please also note that my request is not limited to records that:*
> *-were authored by McMaster University researchers, or*
> *-pertain to work done by McMaster University researchers, or*
> *-pertain to work done at McMaster University.*
>
> *My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that McMaster University has downloaded or printed. If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).*

2. Responsive Record

A search has been conducted, and we have found no responsive records to your request. At this time, the research related to this request is in progress, and so no records have been produced at McMaster University.

3. Decision

While our search resulted in no responsive records, we have identified a publication that may be of interest to you:

Banerjee A, Nasir JA, Budylowski P, et al. Isolation, Sequence, Infectivity, and Replication Kinetics of Severe Acute Respiratory Syndrome Coronavirus 2 [published online ahead of print, 2020 Jun 19]. *Emerg Infect Dis*. 2020;26(9):10.3201/eid2609.201495. doi:10.3201/eid2609.201495

In compliance with the terms of McMaster's subscription to this journal, we cannot provide you with the article. You can find this article here: https://pubmed.ncbi.nlm.nih.gov/32558639/

4. Fees

There are no further fees required to complete this process.

5. Party Responsible for Decision

The official responsible for making final access decisions on your request is Ms Andrea Thyret-Kidd, University Secretary and Privacy Officer.

6. Appeal

You may request the Information and Privacy Commissioner to review this decision and fee within thirty days from the date of this letter. The Commissioner's address is Suite 1400, 2 Bloor Street East, Toronto, Ontario, M4W 1A8. A request for appeal must be accompanied by a $25.00 fee and should include the following:

- the file number assigned to this request (2020-GR-010)
- a copy of this decision letter
- a copy of the original request for information

Sincerely,

Ms Andrea Thyret-Kidd
University Secretary and Designated Head of Institution

cc: File

[redacted] <[redacted]@gmail.com> Dec 31, 2020, 6:22 PM

to BC

December 31, 2020

To: BC Ministry of Health
Freedom of Information Office

Email: FOI.Requests@gov.bc.ca

Dear Access to Information Clerk,

This is a formal request made under

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

[RSBC 1996] CHAPTER 165

Description of Requested Records:

All records in the possession, custody or control of the BC Ministry of Health that:

- describe the isolation of the [alleged] *genetic variant of the* [alleged] *virus that* [allegedly] *causes* [the alleged disease referred to as] *COVID-19* [allegedly] *identified in the United Kingdom,* directly from a sample taken from a diseased patient, where the patient sample was **not** first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; fetal bovine serum).

  Please note that I am using "isolation" in the every-day sense of the word: *the act of separating a thing(s) from everything else*. I am **not** requesting records where "isolation" refers instead to:

  - the culturing of something, or
  - the performance of an amplification test (i.e. a PCR test), or

- the sequencing of something.

- describe the **discovery** (**not manufacture / fabrication / creation / assembly / alignment / trimming / mapping**) of the alleged genome for this alleged particular *new variant of coronavirus*;

- describe how this alleged *new variant of coronavirus* relates to the alleged "SARS-COV-2";

- include **any** additional analysis/investigation into this alleged "*new variant*".

Please note that my request **is not** limited to records that were authored by agents of BC Ministry of Health, or to records that pertain to work done by agents of the BC Ministry of Health; it includes **any** sort of record, authored by anyone, anywhere, ever.

If any records match the above descriptions of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. author; title; date; publisher); please provide URLs where possible.

Format:

URLs and/or pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:

Last Name: [redacted]
First Name: [redacted]
Address: [redacted]

Email: [redacted]

Thank you in advance and best wishes.

Happy New Year

BRITISH COLUMBIA

File: 292-30/HTH-2020-07437

May 21, 2021

Sent via email: [redacted]

[redacted]

Dear [redacted]

Re: Request for Access to Records
***Freedom of Information and Protection of Privacy Act* (FOIPPA)**

I am writing further to your request received by the Ministry of Health. Your request is for:

All records in the possession, custody or control of the BC Ministry of Health that: Describe the isolation of the [alleged] genetic variant of the [alleged] virus that [allegedly] causes [the alleged disease referred to as] COVID-19 [allegedly] identified in the United Kingdom, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; fetal bovine serum); Describe the discovery (not manufacture / fabrication / creation / assembly / alignment / trimming / mapping) of the alleged genome for this alleged particular new variant of coronavirus; Describe how this alleged new variant of coronavirus relates to the alleged 'SARS-COV-2'; Include any additional analysis/investigation into this alleged 'new variant'.

Although a thorough search was conducted, no records were located in response to your request. The Ministry advises that detection of variants, as well as testing and approval of vaccines and test kits, is not something that the Ministry has any role in.

Your file is now closed.

If you have any questions regarding your request, please contact Kelly Morita, the analyst assigned to your request, at 250 356-2030. This number can be reached toll-free by calling from Vancouver, 604 660-2421, or from elsewhere in BC, 1 800 663-7867 and asking to be transferred to 250 356-2030.

../2

Ministry of Citizens' Services Information Access Operations
Mailing Address:
PO Box 9569 Stn Prov Govt
Victoria BC V8W 9R4
Website:
www.gov.bc.ca/FreedomOfInformation
Telephone: 250 387-1321
Fax: 250 387-9843

You have the right to ask the Information and Privacy Commissioner to review this decision. I have enclosed information on the review and complaint process.

Sincerely,

Kelly Morita, FOI Specialist
On behalf of Justine Nisbet, Manager
Justice / Health Team, Information Access Operations

Enclosure

How to Request a Review with the Office of the Information and Privacy Commissioner

If you have any questions regarding your request please contact the analyst assigned to your file. The analyst's name and telephone number are listed in the attached letter.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under FOIPPA.

A complete copy of FOIPPA is available online at:

http://www.bclaws.ca/civix/document/id/complete/statreg/96165_00

Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:

Information and Privacy Commissioner
PO Box 9038 Stn Prov Govt
4th Floor, 947 Fort Street
Victoria BC V8W 9A4
Telephone 250 387-5629 Fax 250 387 1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response; and
3. The reasons or grounds upon which you are requesting the review.

Jesstina McFadden
Director, Privacy & Information Access (Interim)
600 University Avenue, Room 1291
Toronto, ON M5G 1X5
T 416-586-4800 x 5886 F 416-586-5280
Jesstina.McFadden@sinaihealth.ca

September 18, 2020

Christine Massey
#221 - 93 George St. S.
Brampton ON L6Y 1P4
via e-mail: cmssyc@gmail.com

Dear Christine:

RE: Freedom of Information Request # 20-03 – Decision Letter

I am writing regarding your access request under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), received on July 17, 2020, as follows:

> *All records in the possession, custody or control of Mount Sinai Hospital describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
> - *the culturing of something, or*
> - *the performance of an amplification test (i.e. a PCR test), or*
> - *the sequencing of something.*
>
> *Please also note that my request is **not limited** to records that:*
> - *were authored by Mount Sinai Hospital researchers, or*
> - *pertain to work done by Mount Sinai Hospital researchers, or*
> - *pertain to work done at Mount Sinai Hospital.*
>
> *My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that Mount Sinai Hospital has downloaded or printed.*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it.*

Sinai Health

I have again reviewed your request, as well as your e-mail of August 26, 2020 clarifying the records that you are seeking, with experts at Sinai Health who have significant knowledge and experience in respect of the isolation of viruses as well as SARS-CoV-2. We do not interpret the clarification that you have provided to change the substance of your request.

As set out in my letter of August 25, 2020, isolation of a virus in the manner that you have described is not possible for any virus, including SARS-CoV-2; it is not within the scope of current scientific processes. For this reason, and based on a reasonable search for responsive records, Sinai Health is satisfied that the records you are seeking do not exist.

You may request the Information and Privacy Commissioner to review this decision. The Commissioner can be reached at:

Information and Privacy Commissioner/Ontario
1400 - 2 Bloor Street East
Toronto, Ontario, M4W 1A8

The appeal fee is $25.00, payable by cheque or money order to the Minister of Finance and must be included with your correspondence. Please note that you have 30 days from the receipt of this letter to request a review by the Commissioner.

Yours very truly,

Jesstina McFadden
Director, Privacy and Information Access (Interim)
416-586-4800 x 5886
Jesstina.McFadden@sinaihealth.ca

Alex Holmstedt
alex@panteon.dk

STATENS SERUM INSTITUT

J. nr.: 20/08162
10. september 2020

Anmodning om aktindsigt

Kære Alex Holmstedt

Du har den 10. august 2020 via e-mail anmodet om aktindsigt på følgende måde:

" *I forlængelse af Statens Serum Instituts aktindsigtsbesvarelse af 8. juli 2020 hvor styrelsen har meddelt den "ikke er ibesiddelse " af:*

"Litteraturlister, ... hvori der forekommer artikler hvor man har separeret og oprenset SARS-CoV-2.

Som "oprenset" forstås efter principper som beskrevet her: https://www.news-medical.net/life-sciences/Virus-Purification-Methods.aspx "

Søges i henhold til lov om offentlighed i forvaltningen fuld aktindsigt i flg.:

Dokumentation der har overbevist Statens Serum Institut om den reelle eksistens af SARS-CoV-2, den påståede årsag til COVID-19 – da det må antages at der må foreligge uomtvisteligt bevis til grund for de tiltag der er blevet påført det danske samfund."

Statens Serum Institut kvitterede den 11. august 2020 for modtagelse af din anmodning og anførte i den forbindelse, at vi under hensyn til de særlige omstændigheder, der gjorde sig gældende for Statens Serum Instituts vedkommende, ikke kunne oplyse, hvornår der ville blive truffet endelig afgørelse i din sag.

Den 25. august 2020 oplyste Statens Serum Institut, at vi forventede at kunne besvare din henvendelse inden for 14 arbejdsdage.

Vi beklager meget, at vi under hensyn til de særlige omstændigheder, der gør sig gældende for Statens Serum Institut, ikke formåede at træffe endelig afgørelse i din sag før nu.

Statens Serum Institut har nu gennemgået sagen.

1. AFGØRELSE

Statens Serum Instituttet kan oplyse, at vi nu har fortaget en journalsøgning efter dokumentation der har overbevist Statens Serum Institut om den reelle eksistens af SARS-CoV-2, den påståede årsag til COVID-19 og desuden har vi på anden vis forsøgt, at lokalisere relevante dokumenter. Statens Serum Institut kan

konstatere, at vi ikke er i besiddelse af de ønskede dokumenter. Statens Serum Institut kan derfor ikke imødekomme din anmodning om aktindsigt, jf. offentlighedslovens § 7, stk. 1, modsætningsvist.

2. KLAGEVEJLEDNING

Klage over denne afgørelse om aktindsigt kan ske til Sundheds- og Ældreministeriet. Du skal dog indledningsvis sende din klage til Statens Serum Institut, Direktionssekretaria@ssi.dk. Hvis din klage ikke giver Statens Serum Institut anledning til at ændre afgørelsen, sender Statens Serum Institut klagen samt sagens dokumenter og herunder afgørelsen til Sundheds- og Ældreministeriet snarest og som udgangspunkt senest syv arbejdsdage efter modtagelsen af klagen ved Statens Serum Institut, jf. offentlighedslovens § 37, stk. 1 og 2.

Med venlig hilsen

Søren Østergaard

Senior Legal Counsel

Direktionssekretariatet

T (direct) +45 3268 8266 | E SOEG@ssi.dk| B 33/201 | W ssi.dk

Address: Artillerivej 5 | 2300 Copenhagen S | Denmark

SALUD

SALUD

SALUD

[redacted] 2-9-2020 08:55

document request SARS-CoV-2

Aan access.to.documents@ecdc.europa.eu <access.to.documents@ecdc.europa.eu>

Dear sir/madam,

Please provide me with the following:

1) A single document that proves, scientifically, that SARS-CoV-2 exists and that proves that the genetic sequence of SARS-CoV-2, used in the RT-PCR tests is specific for SARS-CoV-2 only.

2) A document (name, number, date) that describes the scientific procedure, or methodology that is required to be followed by the ECDC as part of the quality standard to prove that a virus exists.

3) A document that provides an assessment by the ECDC that shows that 1) complies with 2) for SARS-CoV-2

kind regards,

[redacted]

[redacted]

Stockholm, 16 September 2020
Our ref.: DPR-2020-OUT-3176-KEEIKh

Dear Mr [redacted],

Re: Your application for access to documents – Ref 20-3696

We refer to your email dated 31 August 2020 in which you make a request for access to documents, registered on 1 September 2020 under the above mentioned reference number, and your follow up email on 2 September 2020 that has been handled under the same reference number as well.

We regret to inform you that no documents were found that would correspond to the description given in your application.

Indeed, as specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that Regulation applies only to existing documents in the possession of the institution.

Given that no such documents have been identified, ECDC is not in a position to handle your request.

However, in the spirit of The European Code of Good Administrative Behaviour, we take the liberty of suggesting the following links to some information on this topic that you might find useful:

- Regarding the "aetiology of SARS: Koch's postulates fulfilled":
https://covid19.elsevierpure.com/de/publications/the-aetiology-of-sars-kochs-postulates-fulfilled

- About how to detect and show the sequence phylogeny:
https://www.ecdc.europa.eu/en/novel-coronavirus/laboratory-support

Additionally, among others, we would like to refer to two relevant seminal papers; on the virus discovery and on the first RT-PCR development, which also includes an investigation of specificity, which excludes unspecific detection of e.g. seasonal coronaviruses. Please see the links below:

https://www.nature.com/articles/s41586-020-2012-7

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6988269/

European Centre for Disease Prevention and Control (ECDC)
Gustav Adolfs Torg 8 Boulevard 40, 169 73 Solna, Sweden
Phone: +46 (0)8 58 60 10 00 - Fax: +46 (0)8 58 60 10 01
www.ecdc.europa.eu

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting ECDC's Director to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the following address:

ECDC
Legal Services
Gustav III:s Boulevard 40
16973 Solna
Sweden

or by email to: confirmatory.requests@ecdc.europa.eu.

Yours faithfully,

Karl Ekdahl
Head of Unit Disease Programmes

European Centre for Disease Prevention and Control (ECDC)
Gustav III:s Boulevard 40, 169 73 Solna, Sweden
Phone: +46 (0)8 58 60 10 00 - Fax: +46 (0)8 58 60 10 01
www.ecdc.europa.eu

[redacted] 1-10-2020 09:25

confirmatory application Ref 20-3696

Aan confirmatory.requests@ecdc.europa.eu <confirmatory.requests@ecdc.europa.eu>

Dear sir/madam,

In your response to my information request, which has been registered under reference number Ref.20-3696, i would like to ask for a confirmatory application and request the ECDC's Director to review the position stated in you letter with reference DPR-2020-OUT-3176-KEEIKh.

First, you have not answered any of my questions and have send me references to research papers that do not answer any of my questions. I would like therefore to ask you for a truthful answer to the following.

In question 1) I have asked for a single document that proves, scientifically, that SARS-CoV-2 exists and that proves that the genetic sequence of SARS-CoV-2, used in the RT-PCR tests is specific for SARS-CoV-2 only.

A) Can you please confirm that at present, the ECDC does not have any scientific proof of the existence of SARS-CoV-2?

B) If you do have the opinion that SARS-CoV-2 exists, please provide me with a reference from which the ECDC considers that this has been proven. Please also provide a thorough assessment, based on the quality standards of the ECDC, why this scientific paper fulfills the requirements of having discovered a new virus.

In question 2) I ask for a document (name, number, date) that describes the scientific procedure, or methodology that is required to be followed by the ECDC as part of the quality standard to prove that a virus exists.

C) Please confirm that the ECDC does not have a quality standard in which the methodology of proving the existence of a virus and the procedures to quantify the biochemical properties of the new virus has been defined. If you do have a quality standard, please send it to me.

3) A document that provides an assessment by the ECDC that shows that 1) complies with 2) for SARS-CoV-2

D) If not available, please confirm that the ECDC has not executed an assessment to verify whether or not SASRS-CoV-2 exists.

Kind regards,

[redacted]

[redacted]

Stockholm, 21 October 2020
Our ref.: DIR-2020-OUT-3783-AAEIKh

Dear Mr [redacted],

Re: Your confirmatory application for access to documents – Ref 20-3696-1

We refer to your email dated 1 October 2020 registered on the same day under the above mentioned reference number. In your email you make a confirmatory application with regards to our letter DPR-2020-OUT-3176-KEEIEKh of 16 September 2020, replying to your initial application of 31 August and 2 September 2020.

I can confirm that ECDC does not hold any document corresponding to the description you made in your initial application.

In your confirmatory application, you also ask ECDC to provide additional information to you, or to confirm certain assumptions that you make (points A, B, C and D of your email). Such request falls outside the scope of the confirmatory application and in general of Regulation 1049/2001, and I will deal with them instead as a request for information, processed in accordance with the ECDC Code on Good Administrative Behaviour.

On this respect, I bring your attention to the fact that, in accordance with paragraph 76 of the Judgment of the Court of first Instance of 25 April 2007 in case T-264/04, WWF European Policy Programme v Council,

The public's right of access to the documents of the institutions covers only documents and not information in the wider meaning of the word and does not imply a duty on the part of the institutions to reply to any request for information from an individual

The same paragraph explicitly states that access to information *may be granted only if that information is contained within documents, which presupposes that such documents exist.*

While ECDC strives to be close to the European citizens, in line with the Code of Good Administrative Behaviour, the principle of sound administration obliges me, in particular in this time of pandemic, to focus all the resources of the Agency to tasks that I believe can have a significant impact for public health, in accordance with the ECDC mission.
In view of all the above, and taking into account that ECDC already provided you with relevant information in our letter of 16 September, I decided that ECDC will not reply to the further questions that you included in your email of 1 October 2020, and that ECDC shall discontinue any further correspondence with you

European Centre for Disease Prevention and Control (ECDC)
Gustav den IIIs Boulevard 40, 169 73 Solna, Sweden
Phone: +46 (0)8 58 60 10 00 - Fax: +46 (0)8 58 60 10 01
www.ecdc.europa.eu

related to the issues that you mention, as I consider that any further correspondence would be repetitive and pointless.

Remedies

You can bring an action to the Court of Justice of the European Union against the part of this decision concerning the confirmatory application, in accordance with art. 263 of the Treaty on the Functioning of the European Union. You also can lodge a complaint to the European Ombudsman, in accordance with art. 228 of the Treaty on the Functioning of the European Union.

Yours faithfully,

Andrea Ammon

Director

European Centre for Disease Prevention and Control (ECDC)
Gustav Adolfs Torg 8, 171 73 Solna, Sweden
Phone: +46 (0)8 58 60 10 00 · Fax: +46 (0)8 58 60 10 01
www.ecdc.europa.eu

January 6, 2021

To:
Dr. Fernando Ruiz Gomez
Minister of Health and Social Protection of the Republic of Colombia
Carrera 13 No. 32-76 piso 1,
Bogota, COLOMBIA

Dr. Fernando Ruiz Gomez,

This is a formal request made under the *Ley de transperencia y del derecho de acceso a la informacion publica (Law on Transparency and the Right to Access Public Information)* from March 6, 2014.

Description of Requested Records:

All records in the possession, custody or control of the Ministry of Health and Social Protection of the Republic of Colombia describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am using "isolation" in the every-day sense of the word: *the act of separating a thing(s) from everything else*. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- the culturing of something, and/or
- the performance of an amplification test (i.e. a PCR test), and/or
- the sequencing of something.

Please also note that my request is not limited to records that were authored by someone at the Ministry of Health and Social Protection of the Republic of Colombia or that pertain to work performed by someone at the Ministry of Health and Social Protection of the Republic of Colombia. My request includes **any** sort of record, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that anyone at the Ministry of Health and Social Protection of the Republic of Colombia has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, URL).

Format:
URLs and/or pdf documents sent to me via email; I do not wish for anything to be shipped to me.

Contact Information:
Last name: [redacted]
First name: [redacted]
Address: [redacted]
Phone: [redacted]
Email: [redacted]

Application Fee:

Thank you in advance and best wishes,

[redacted]

11:32

AA orfeo.minsalud.gov.co

Información seguimiento

TIPO PETICION		FECHA MAX DE RESPUESTA	2021/05/13
FECHA RADICADO	2021-01-07 18:45:58.108554	ESTADO ACTUAL	En Tramite

ESTADO DEL DOCUMENTO

Radicación | En tramite | Finalizado

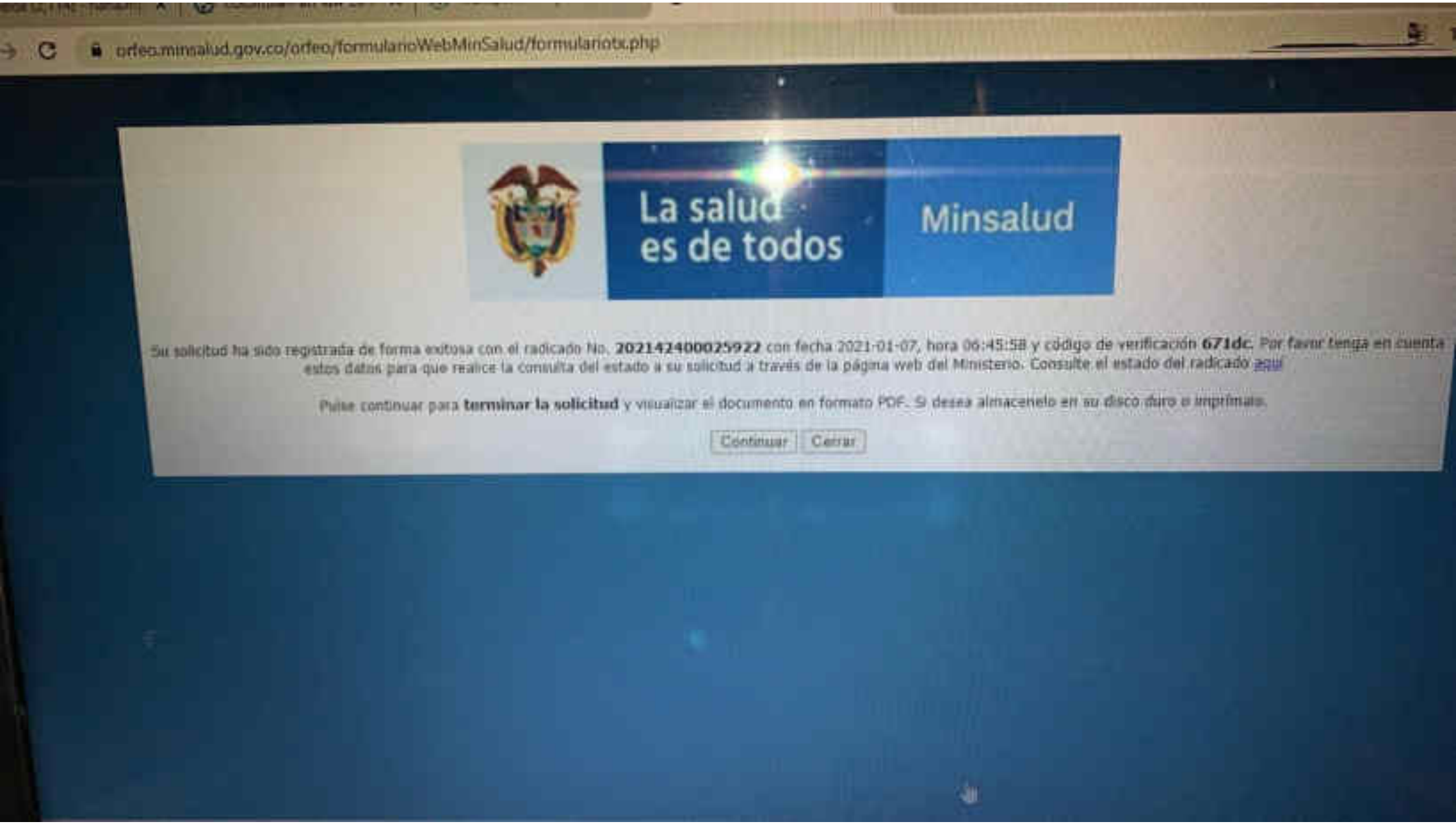
Salir

Versión Completa

www.minsalud.gov.co

Atención al ciudadano: Lunes a viernes, de 8:00 a.m. a 5:00 p.m., en jornada continua

Punto de atención presencial: Carrera 13 No. 32-


orfeo.minsalud.gov.co/orfeo/formularioWebMinSalud/formularioIx.php
La salud es de todos
Minsalud
Su solicitud ha sido registrada de forma exitosa con el radicado No. 20214240002592 2 con fecha 2021-01-07, hora 06:45:58 y código de verificación 671dc. Por favor tenga en cuenta estos datos para que realice la consulta del estado a su solicitud a través de la página web del Ministerio. Consulte el estado del radicado aquí
Pulse continuar para terminar la solicitud y visualizar el documento en formato PDF. Si desea almacenelo en su disco duro o imprímalo.
Continuar
Cerrar

From: Envios Ministerio de Salud <envios@minsalud.gov.co>
Date: May 24, 2021 at 3:57:44 PM EDT
To: [redacted]
Subject: Tramite a la solicitud del Ciudadano [redacted] **Radicado No. 202142400025922 Ministerio de Salud y Proteccion**

NOTIFICACIÓN DE GESTIÓN

Fecha:2021-05-24

Referencia: Tramite a la solicitud del Ciudadano [redacted]

El Ministerio de Salud y Protección Social se permite gestionar la solicitud en referencia, radicada con el número 202124000800281; para lo cual se envia el enlace para visualizar su respuesta.

Le informamos que esta dirección de e-mail es utilizada solamente para los envíos de la información solicitada. Por favor no responda con nuevas consultas ya que éstas no podrán ser atendidas dentro del procedimiento. Si requiere consultar nuevamente realícelo a través del link contáctenos en la página web del ministerio Servicios al Ciudadano o a la cuenta: correo@minsalud.gov.co **para asuntos de notificaciones judiciales al Ministerio de Salud y Protecciósn Social, enviar a la cuenta: notificacionesjudiciales@minsalud.gov.co.**

Ver Documentos Adjuntos

(AUTO TRANSLATION BY GMAIL)

From: Shipping Ministry of Health < envios@minsalud.gov.co >
Date: May 24, 2021 at 3:57:44 PM EDT
To: [redacted]
Subject: Processing the request of the Citizen [redacted] **File No. 202142400025922 Ministry of Health and Protection**

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MANAGEMENT NOTICE

Date: 2021-05-24

Reference: Processing of the request of the Citizen [redacted]

The Ministry of Health and Social Protection is allowed to process the request in reference, filed with the number 202124000800281; for which the link is sent to view your response.

We inform you that this e-mail address is used only for sending the requested information. Please do not respond with new inquiries as these cannot be answered within the procedure. If you need to consult again, do it through the link contact us on the website of the Ministry of Citizen Services or to the account: Correo@minsalud.gov.co **for matters of legal notifications to the Ministry of Health and Social Protection, send to the account: legal notifications @ minsalud.gov.co.**

See Attached Documents

Al contestar por favor cite estos datos:
Radicado No.: **202124000800281**
Fecha: **22-05-2021**

Bogotá D.C.,

[redacted]

ASUNTO: Derecho de Petición. Rad.2021424000025922

Respetada [redacted]

En atención al radicado del asunto, en el que solicita "Todos los registros en posesión, custodia o control del Ministerio de Salud y Protección Social de la República de Colombia que describan el aislamiento de un virus SARS-COV-2 y / o cualquiera de sus variantes, directamente de una muestra tomada de un paciente enfermo, donde no se combinó la muestra del paciente primero con ninguna otra fuente de material genético (es decir, células de riñón de mono, también conocidas como células Vero; suero fetal bovino)", para lo cual este Ministerio se permite precisar lo siguiente:

Conforme al Decreto 4107 de 2011 el Ministerio de Salud y Protección Social tiene como objetivo, dentro del marco de sus competencias, formular, adoptar, dirigir, coordinar, ejecutar y evaluar la política pública en materia de salud, salud pública, y promoción social en salud, y participar en la formulación de las políticas en materia de pensiones, beneficios económicos periódicos y riesgos profesionales, lo cual se desarrollará a través de la institucionalidad que comprende el sector administrativo.

De otra parte, informarle que conforme a nuestras competencias no contamos con registros que describan el aislamiento de un virus SARS-COV-2 y / o cualquiera de sus variantes, directamente de una muestra tomada de un paciente enfermo, donde no se combinó la muestra del paciente primero con ninguna otra fuente de material genético.

Cordialmente,

Leonardo Arregoces Castillo
Director de Medicamentos y Tecnologías en Salud

Elaboró: Lhernandez

Revisó/Aprobó: Lamegocas

SUBJECT: Right of Petition. Rad .202142400212

Respected

In attention to the file of the matter, in which it requests "All records in possession, custody or control of the Ministry of Health and Social Protection of the Republic of Colombia that describe the isolation of a SARS-COV-2 virus and / or any of its variants, directly from a sample taken from a sick patient, where the patient's sample was not combined first with any other source of genetic material (i.e. monkey kidney cells, also known as Vero cells; bovine fetal serum)" for which this Ministry is allowed to specify the following:

In accordance with Decree 4107 of 2011, the Ministry of Health and Social Protection's objective, within the framework of its competencies, is to formulate, adopt, direct, coordinate, execute and evaluate public policy on health, public health, and social promotion in health, and to participate in the formulation of policies on pensions, periodic economic benefits and occupational risks, which will be developed through the institutional framework comprising the administrative sector.

On the other hand, to inform you that to the best of our knowledge we have no records describing the isolation of a SARS-COV-2 virus and/or any of its variants directly from a sample taken from a sick patient, where the patient sample was not first combined with any other source of genetic material.

Cordially yours.

Leonardo Arregoces Castillo

Director of Medicines and Health Technologies

Prepared by: Lhernandez

आई सी एम आर - राष्ट्रीय विषाणु विज्ञान संस्थान
भारतीय आयुर्विज्ञान अनुसंधान परिषद
स्वास्थ्य अनुसंधान विभाग
स्वास्थ्य एवं परिवार कल्याण मंत्रालय, भारत सरकार
I C M R - NATIONAL INSTITUTE OF VIROLOGY
Indian Council of Medical Research
Department of Health Research
Ministry of Health & Family Welfare, Govt. of India
20-ए, डॉ. बी. आंबेडकर मार्ग, पोस्ट बॉक्स संख्या 11, पुणे - 411 001, भारत. 20-A, Dr. Ambedkar Road, Post Box No. 11, Pune 411 001, India.
Tel. : NIV Camp +91-020-26127301, 26006200, Fax : 26122660, 26126663 / NIV Pashan +91-020-26006380 Fax : No. 25671865 / 25670640
E-mail : director.niv@icmr.gov.in Website : www.niv.co.in

No. 1/8/2005/RTI/Admn./XVII- 669

28th June 2021

To

Sh. Trinayan Das
Kamarchuburi,
NT Road, Tezpur,
Sonitpur, Assam – 784001

Sub.: Online Application under Right to Information Act 2005
Ref.: Registration No. NIOVP/R/E/21/00038 dated 16/06/2021

Sir,

This is in reference to your above online application no. NIOVP/R/E/21/00038 dated 16th June 2021, seeking information under Right to Information Act 2005. The information sought by you is furnished below.

1. Any proof of isolation/purification of SARS-CoV-2 (COVID-19) virus?	Please find the below mentioned publications for the SARS-CoV-2 isolations by ICMR-National Institute of Virology. a. Sarkale P., Patil, S., Yadav, P.D., Nyayanit, D.A., Sapkal, G., Baradkar, S., Lakra, R., Shete-Aich, A., Prasad, S., Basu, A. and Dar, L., 2020. First isolation of SARS-CoV-2 form clinical samples in India. The *Indian Journal of Medical Research*, 11(2-3), p.244. b. Yadav, P., Sarkale, P., Razdan, A., Gupta, N., Nyayanit, D., Sahay, R., Potdar, V., Patil, D., Baradkar, S., Kumar, A. and Aggarwal, N., 2021. Isolation and characterization of SARS-CoV-2 VOC, 20H/501Y. V2, from UAE travelers. bioRxiv. c. Yadav, P.D., Nyayanit, D.A., Sahay, R.R., Sarkale, P., Pethani, J., Patil, S., Baradkar, S., Potdar, V. and Patil, D.Y., 2021. Isolation and characterization of the new SARS-CoV-2 variant in travelers from the United Kingdom to India: VUI-202012/01 of the B. 1.1. 7 lieage. *Journal of Travel Medicine*, 28(2),

	p.taab009. d. Yadav, P.D., Nyayanit, D.A., Sahay, R.R., Shete, A.M., Majumdar, T., Patil, S., Patil, D.Y., Gupta, N., Kaur, H., Aggarwal, N. and Vijay, N., 2021. Imported SARS-CoV-2 V501Y. V2 variant (B. 1.351) detected in travelers from South Africa and Tanzania to India. *Travel Medicine and Infectious Disease.*
2. What are the methods used for isolation/purification of SARS-CoV-2 virus?	Virus isolation is being performed in Vero cell lines using the tissue culture techniques.
3. Is the RT-PCR test approved for diagnostic of infectious disease like SARS-CoV-2 (COVID-19) virus?	Yes, Real Time Reverse Transcription Polymerase Chain Reaction (Real Time RT-PCR) is the gold standard test for detection of SARS-CoV-2. For more details on molecular testing of SARS-CoV-2 please refer to ICMR advisory available at https://www.icmr.gov.in/pdf/covid/labs/ICMR_Advisory_Testing_System_v_10112020.pdf and the WHO guidelines available at https://www.who.int/docs/default-source/coronaviruse/protocol-v2-1.pdf
4. Was the RT-PCR test used earlier to diagnose any infectious disease? What is the accuracy of the test?	Yes, RT-PCR test is a widely used test to detect many infectious diseases such as Influenza viruses, Hepatitis viruses, HIV, Dengue chikungunya etc. it is widely used in biomedical science research. The test is highly sensitive and detects specific targets very accurately.
5. How does the PCR test help in diagnosing SARS-CoV-2 virus genetic sequence?	Real-Time PCR offers sensitivity, specificity and wide dynamic range for detecting target nucleic acids. For the SARS-CoV-2 detection variety of RT-PCR kits are available. The RT-PCR of SARS-CoV-2 detects more than two genes of SARS-CoV-2 such as E, N, ORF, S, RDRP along with human housekeeping genes as sample quality targets. The positive results in RT PCR are confirming the presence of SARS-CoV-2 virus infection.
6. What is the false positive rate of PCR test on CT-35?	The RT-PCR kit has a cut off range to determine positivity in tests. Majority kits have the set Cut off values ranging from 35 to 40 ct value. As mentioned above SARS-CoV-2 kits use multiple targets for detection and the decision of the sample as positive is dependent on the targets used in the test. If a single gene showed ct value 35 then the sample is inconclusive and recommended to

	repeat after four days. The main reason for this kind of report may be improper timing of specimen collection e.g. early phase of infection or recovery phase of infection. Any specimen that has a Ct below the cut off for the test is most likely a true positive. Ct values can differ immensely between a poorly collected specimen to a well-collected specimen. Other factors than can impact Ct values include improper specimen transport, specimen storage temperatures, how many times the specimen has been frozen, and the instrument on which testing is performed. Each test is different, with different sensitivities based on things like how the test was designed.
7. Can a N95 face mask prevent the transmission of SARS-CoV-2 virus?	An N95 mask is a respiratory protective device designed to achieve a very close facial fit and very efficient filtration of airborne particles. N95 masks without gaps can filter 99.9 percent particles larger than 0.3um and 85 percent particles smaller than 0.3um.
8. Any proof of isolation/purification of the Delta variant or any other variants of SARS-CoV-2?	Please find the below mentioned publications for the SARS-CoV-2 isolations by ICMR-National Institute of Virology. a. Sarkale P., Patil, S., Yadav, P.D., Nyayanit, D.A., Sapkal, G., Baradkar, S., Lakra, R., Shete-Aich, A., Prasad, S., Basu, A. and Dar, L., 2020. First isolation of SARS-CoV-2 form clinical samples in India. The *Indian Journal of Medical Research*, 11(2-3), p.244. b. Yadav, P., Sarkale, P., Razdan, A., Gupta, N., Nyayanit, D., Sahay, R., Potdar, V., Patil, D., Baradkar, S., Kumar, A. and Aggarwal, N., 2021. Isolation and characterization of SARS-CoV-2 VOC, 20H/501Y. V2, from UAE travelers, bioRxiv. c. Yadav, P.D., Nyayanit, D.A., Sahay, R.R., Sarkale, P., Pethani, J., Patil, S., Baradkar, S., Potdar, V. and Patil, D.Y., 2021. Isolation and characterization of the new SARS-CoV-2 variant in travelers from the United Kingdom to India: VUI-202012/01 of the B. 1.1. 7 lieage. *Journal of Travel Medicine*, 28(2),

	p.taab009. d. Yadav, P.D., Nyayanit, D.A., Sahay, R.R., Shete, A.M., Majumdar, T., Patil, S., Patil, D.Y., Gupta, N., Kaur, H., Aggarwal, N. and Vijay, N., 2021. Imported SARS-CoV-2 V501Y. V2 variant (B. 1.351) detected in travelers from South Africa and Tanzania to India. *Travel Medicine and Infectious Disease.*
9. Was there any tissue culture done on the SARS-CoV-2 virus?	Yes, virus was cultured for development of indigenous inactivated vaccine and for development of ELISA and neutralization assays.

The Appellate Authority in respect of the information furnished above is, Prof. Priya Abraham, Director, ICMR-National Institute of Virology, Pune. If you are not satisfied with this reply, you may appeal within 30 days of receipt of this letter.

Thanking you,

Yours sincerely,

Dr. Paresh Shah
CPIO & Scientist-E

Department of Health and Social Care

Rheynn Slaynt as Kiarail y Theay

Isle of Man Government

Mr Steven Gardner
39 Princes Street
Douglas
Isle of Man
IM1 1BB

Interim Chief Executive: Kathryn Magson
Freedom of Information Team
Crookall House
Demesne Road
Douglas
Isle of Man
IM1 3QA

Tel: (01624) 642621
Email: dhsc@foi.gov.im
Website: www.gov.im/dhsc

Our ref: 1646813

18th February 2021

Dear Mr Gardner

We write further to your request which was received on the 26th January 2021 and states:

Question 1:
Has Covid 19/21 been isolated?

Question 2:
Has covid 19/21 been purified?

Question 3:
Has there been a risk assessment on masks?

Question 4:
Have all places of business who have mandatory masks done a risk assessment or should they do a risk assessment, in regards to masks? For their employees and customers.

Question 5:
Is the sequence in the PCR test SarsCov2?

Question 6:
What amplifications has the PCR test been run at?

Question 7:
Can you provide the season flu death numbers for 2019 & 2020?

Clarification sought:
Regarding questions 1 & 2 when you say 'Has Covid 19/21 been isolated' do you mean has SARS-CoV-2 been isolated? If you don't please can you clarify what you are referring to?

Clarification received:
Yes, SarsCov2 has it been isolated and purified.

Our response:

Clarification sought:
Regarding questions 1 & 2 when you say 'Has Covid 19/21 been isolated' do you mean has SARS-CoV-2 been isolated? If you don't please can you clarify what you are referring to?

Clarification received:
Has the SarsCov2 been isolated and purified. To be proven scientifically and proven the virus causes disease.

Question 1:
Has Covid 19/21 been isolated?
Regarding SARS-CoV-2 the virus is not isolated.

Question 2:
Has covid 19/21 been purified?
Regarding SARS-CoV-2 it is not purified.

Question 3:
Has there been a risk assessment on masks?
The Department has and does risk assessments on masks.

Question 4:
Have all places of business who have mandatory masks done a risk assessment or should they do a risk assessment, in regards to masks? For their employees and customers.
While our aim is to provide information whenever possible, in this instance the Department of Health and Social Care ("the Department") is unable to provide the information that you have requested. This is in line with Section 11(3)a of the Act, as a practical refusal reason applies; namely we do not hold or cannot, after taking reasonable steps to do so, find the information that you have requested.

Places of business are responsible for undertaking their own risk assessments and setting their own policies for wearing masks.

To provide further advice and assistance guidance on face coverings, including 'face coverings at work' is available within the public domain at:
https://covid19.gov.im/general-information/guidance-on-face-coverings/

Question 5:
Is the sequence in the PCR test SarsCov2?
Yes, the sequence in the PCR test is SARsCov2

Question 6:
What amplifications has the PCR test been run at?
The amplification is 45 cycles.

Question 7:
Can you provide the season flu death numbers for 2019 & 2020?
While our aim is to provide information whenever possible, in this instance the Department of Health and Social Care ("the Department") is unable to provide the information that you have requested. This is in line with Section 11(3)a of the Act, as a practical refusal reason applies; namely we do not hold or cannot, after taking reasonable steps to do so, find the information that you have requested.

However you may wish to re-submit your request to Public Health within the Cabinet Office who may be able to help you. The information you have requested is held by Public Health.

Please quote the reference number 1646813 in any future communications.

Your right to request a review

If you are unhappy with this response to your freedom of information request, you may ask us to carry out an internal review of the response, by completing a complaint form and submitting it electronically or by delivery/post.

An electronic version of our complaint form can be found by going to our website at https://services.gov.im/freedom-of-information/Review . If you would like a paper version of our complaint form to be sent to you by post, please contact me and I will be happy to arrange for this. Your review request should explain why you are dissatisfied with this response, and should be made as soon as practicable. We will respond as soon as the review has been concluded.

If you are not satisfied with the result of the review, you then have the right to appeal to the Information Commissioner for a decision on;

1. Whether we have responded to your request for information in accordance with Part 2 of the Freedom of Information Act 2015; or
2. Whether we are justified in refusing to give you the information requested.

In response to an application for review, the Information Commissioner may, at any time, attempt to resolve a matter by negotiation, conciliation, mediation or another form of alternative dispute resolution and will have regard to any outcome of this in making any subsequent decision.

More detailed information on your right to a review can be found on the Information Commissioner's website at www.inforights.im.

Should you have any queries concerning this letter, please do not hesitate to contact me.

Further information about freedom of information requests can be found at www.gov.im/foi.

I will now close your request as of this date.

Yours sincerely

Debbie Hay
FOI Coordinator

Translated sections:

FOI request

1) With this FOI request I would like you to provide me with the following information: A scientific research (no review document) that shows that the virus SARS-CoV-2 exists. The research should comply with the “state-of-the-art” isolation of the virus and prove that the coronavirus has a unique structure and consists of a unique viral genetic substance / genetic sequence. Control experiments must have been executed and documented in accordance with the scientific guidelines, to prove that non-typical cellcomponents have not been misinterpreted as viral components.

Response to FOI request

2) The obligation to publish documents according to the FOI act does not apply to information that is already public. The requested information has already been published and can be found on different websites such as:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7159086/ and
https://pubmed.ncbi.nlm.nih.gov/31978945

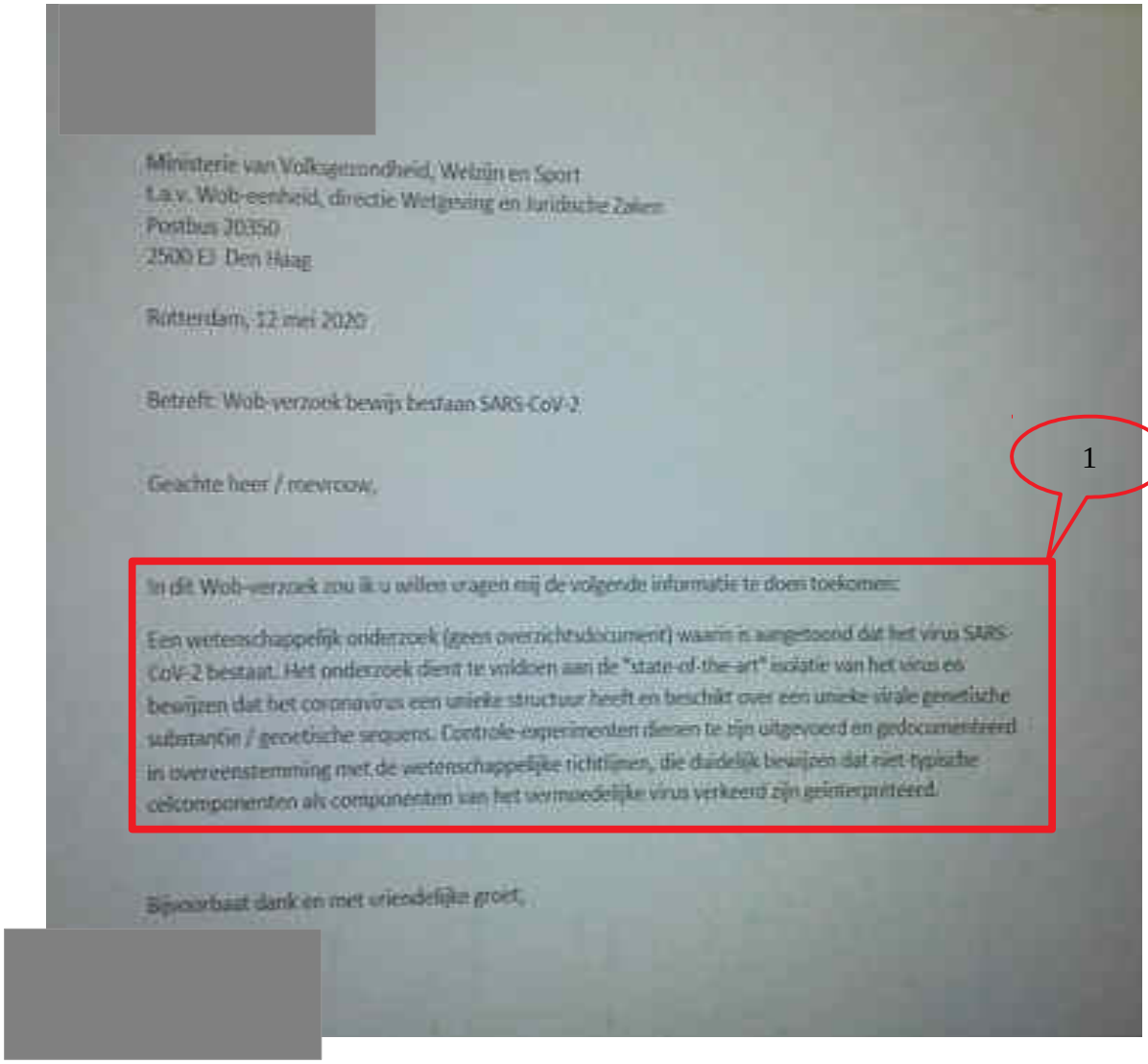
Objection letter

3) However, none of the 2 scientific publications provide proof of the existence of SARS-CoV-2. There is no report of purification of the virus and control experiments have not been executed.

Response to objection letter

4) Following your request I have inquired with the RIVM. From this inquiry it follows that the RIVM relies on public information resources, of which the two in my letter of the 2nd of juli 2020 are examples. According to the RIVM these two publications provide proof of the existence of the virus SARS-CoV-2.

FOI request proof of the existence of sars-cov-2



[redacted]

Ministerie van Volksgezondheid, Welzijn en Sport
t.a.v. Wob-eenheid, directie Wetgeving en Juridische Zaken
Postbus 20350
2500 EJ Den Haag

Rotterdam, 12 mei 2020

Betreft: Wob-verzoek bewijs bestaan SARS-CoV-2

Geachte heer / mevrouw,

1

In dit Wob-verzoek zou ik u willen vragen mij de volgende informatie te doen toekomen:

Een wetenschappelijk onderzoek (geen overzichtsdocument) waarin is aangetoond dat het virus SARS-CoV-2 bestaat. Het onderzoek dient te voldoen aan de "state-of-the-art" isolatie van het virus en bewijzen dat het coronavirus een unieke structuur heeft en beschikt over een unieke virale genetische substantie / genetische sequens. Controle-experimenten dienen te zijn uitgevoerd en gedocumenteerd in overeenstemming met de wetenschappelijke richtlijnen, die duidelijk bewijzen dat niet-typische celcomponenten als componenten van het vermoedelijke virus verkeerd zijn geïnterpreteerd.

Bijvoorbaat dank en met vriendelijke groet,

[redacted]

Response to FOI

Ministerie van Volksgezondheid,
Welzijn en Sport

[redacted]

Directie Wetgeving en
Juridische Zaken
[redacted]

Datum: 2 juli 2020
Betreft: Verzoek om informatie

[redacted]

Geachte [redacted]

Op 14 mei 2020 ontving ik uw brief van 12 mei 2020. De ontvangst hiervan heb ik bevestigd bij brief van 19 mei 2020 met kenmerk 2020.089/001.

Met een beroep op de Wet openbaarheid van bestuur (hierna: Wob) verzoekt u om wetenschappelijke informatie waaruit het bestaan van SARS-CoV-2 blijkt.

De plicht tot openbaarmaking op grond van de Wob heeft geen betrekking op informatie die reeds openbaar is. De door u gevraagde informatie is al openbaar en terug te vinden op verschillende websites zoals bijvoorbeeld https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7159086/ en https://pubmed.ncbi.nlm.nih.gov/31978945/.

Nu de door u gevraagde informatie reeds openbaar is, kan ik deze niet opnieuw openbaar maken.

Mocht u nog vragen hebben over deze brief, neemt u dan gerust contact op met het Wob-cluster. De contactgegevens staan bovenaan deze brief.

Hoogachtend,

de Minister van Volksgezondheid,
Welzijn en Sport,
namens deze,
de directeur Wetgeving en Juridische Zaken,

[redacted]

Uw kenmerk:
2020.089
[redacted]

Uw brief
12 mei 2020

Bijlage

2

Objection letter

[redacted]

20-7-2020 08:37

Bezwaarschrift

[redacted]

Beste heer/mevrouw [redacted]

Met dit schrijven dien ik een bezwaarschrift in met betrekking tot uw brief met kenmerk 2020.089 1712361-207920-WJZ.

De brief is een antwoord op mijn wob-verzoek van 12 mei 2020. In mijn verzoek vraag ik naar een document waaruit blijkt dat SARS-CoV-2 bestaat.

In het antwoord geeft de heer/mevrouw [redacted] aan dat de wob geen betrekking heeft tot informatie die reeds openbaar is en verwijst naar 2 wetenschappelijke publicaties waarin de informatie waarnaar ik heb gevraagd reeds openbaar zou zijn gemaakt.

Echter, in geen van de twee wetenschappelijke publicaties is sprake van een bewijs voor het bestaan van SARS-CoV-2. Er heeft namelijk geen purificabe van een virus plaatsgevonden en zijn er geen *controle* experimenten uitgevoerd.

3

U heeft dus niet voldaan aan mijn wob verzoek. Ik verzoek u daarom om mij alsnog de gevraagde informatie toe te sturen. Indien u niet over een document beschikt dat bewijst dat SARS-CoV-2 bestaat, wat ook mogelijk is, kunt u mij dat ook bevestigen.

Ook, zou ik u er op willen wijzen dat in de wet openbaarheid bestuur de volgende definitie is omschreven van een document: een bij een bestuursorgaan berustend schriftelijk stuk of ander materiaal dat gegevens bevat. Aangezien in deze definitie niet specifiek vermeld dat het document al dan niet egens anders is gepubliceerd kan het dus ook gaan om een document dat al eerder is gepubliceerd, maar bij u aanwezig is. Een verwijzing naar een peer-reviewed wetenschappelijk tijdschrift is dan ook mogelijk, alleen als die verwijzing een antwoord is op mijn vraag.

Met vriendelijke groet,

[redacted]

Ministerie van Volksgezondheid, Welzijn en Sport

Retouradres Postbus 20350 2500 EJ Den Haag

[redacted]

Alleen per e-mail: [redacted]

Secretaris Generaal / plv. Secretaris Generaal
Directie Wetgeving en Juridische Zaken
Cluster 1

Bezoekadres:
Parnassusplein 5
2511 VX Den Haag
T 070 340 79 11
F 070 340 78 34

www.rijksoverheid.nl

Inlichtingen bij
[redacted]

Kenmerk
[redacted]

Bijlage(n)
-

Correspondentie uitsluitend richten aan het retouradres met vermelding van de datum en het kenmerk van deze brief.

Datum – 4 SEP. 2020
Betreft Beslissing op bezwaar

Geachte heer [redacted]

Bij e-mailbericht van 20 juli 2020 heeft u een bezwaarschrift ingediend tegen mijn brief van 2 juli 2020, met kenmerk 2020.089 – 1712361-207520-WJZ in reactie op uw verzoek op grond van de Wet openbaarheid van bestuur (hierna: Wob).

Met deze brief beslis ik op uw bezwaar.

Besluit

Ik verklaar het bezwaar niet-ontvankelijk, omdat de brief van 2 juli 2020 geen besluit is. Ik heb namelijk terecht geconstateerd dat de documenten waar u om vraagt, al openbaar zijn en dat daarom de Wob niet van toepassing is. De brief heeft daardoor geen rechtsgevolg.

Ik licht mijn besluit hieronder voor u toe.

Verloop van de procedure

Bij brief van 12 mei 2020 heeft u een verzoek ingediend. U vraagt mij om u op basis van de Wob een wetenschappelijk onderzoek te doen toekomen waarin is aangetoond dat het virus SARS-CoV-2 bestaat.

Bij brief van 2 juli 2020 heb ik u laten weten dat de plicht tot openbaarmaking op grond van de Wob geen betrekking heeft op informatie die al openbaar is. De informatie waar u om vraagt is openbaar en ik heb u verwezen naar een tweetal websites.

Met uw e-mail van 20 juli 2020 heeft u bezwaar gemaakt tegen mijn brief van 2 juli 2020. Op dezelfde dag heb ik de ontvangst van uw bezwaar aan u bevestigd.

Op 23 juli 2020 heeft één van mijn medewerkers, mevrouw [redacted] een e-mail gestuurd over de bezwaarprocedure.

Beoordeling van het bezwaar

Secretaris Generaal / plv. Secretaris Generaal
Directie Wetgeving en Juridische Zaken
Cluster 1

Kenmerk
DWJZ 2020000171
1737130-208417-WJZ

Algemene toelichting

Voordat ik op uw bezwaren inga, wil ik in het algemeen iets zeggen over de regels die in dit geval gelden. Ik heb uw bezwaar beoordeeld op grond van de Algemene wet bestuursrecht (hierna: Awb) en de Wob.

Op grond van artikel 1, aanhef en onder a, van de Wob, wordt onder document verstaan een bij een bestuursorgaan berustend schriftelijk stuk of ander materiaal dat gegevens bevat.

Op grond van artikel 3, eerste lid, van de Wob kan een ieder een verzoek om informatie, neergelegd in documenten over een bestuurlijke aangelegenheid, richten tot een bestuursorgaan of een onder verantwoordelijkheid van een bestuursorgaan werkende instelling, dienst of bedrijf.

Op grond van artikel 3, tweede lid, van de Wob vermeldt de verzoeker bij zijn verzoek de bestuurlijke aangelegenheid of het daarop betrekking hebbende document, waarover hij informatie wenst te ontvangen.

Gronden van uw bezwaar

In uw bezwaarschrift heeft u aangevoerd dat ik niet heb voldaan aan uw Wob-verzoek, omdat volgens u in geen van de twee door mij genoemde wetenschappelijke publicaties sprake is van een bewijs voor het bestaan van SARS-CoV-2. Er heeft namelijk geen purificatie van een virus plaatsgevonden en er zijn geen controle-experimenten uitgevoerd. U vraagt mij de verzochte informatie alsnog toe te sturen of, als ik hier niet over beschik, dat te bevestigen. U verwijst naar de definitie van document in de Wob, waaruit volgens u niet blijkt dat een document dat al eerder is gepubliceerd, niet onder de Wob valt.

Overwegingen ten aanzien van de gronden van bezwaar

Over uw bezwaren overweeg ik het volgende.

Voordat ik inhoudelijk op uw bezwaren kan ingaan, moet ik beoordelen of uw bezwaar aan de wettelijke vereisten voldoet. Daarover overweeg ik als volgt.

Gelet op de artikelen 8:1 en 7:1, eerste lid, van de Awb kan een belanghebbende bezwaar maken tegen een besluit. Een besluit is gelet op artikel 1:3, eerste lid, van de Awb een schriftelijke beslissing van een bestuursorgaan, inhoudende een publiekrechtelijke rechtshandeling. Met het begrip rechtshandeling wordt een handeling van een bestuursorgaan bedoeld die is gericht op rechtsgevolg. Dit betekent dat door de desbetreffende handeling een wijziging in een recht of een plicht moet plaatsvinden.

Uit de rechtspraak volgt dat de plicht tot openbaarmaking op grond van de Wob geen betrekking heeft op informatie die al openbaar is.[1] In zoverre slaagt uw

[1] Onder meer de uitspraken van de Afdeling Bestuursrechtspraak van de Raad van State van 11 september 2019 (ECLI:NL:RVS:2019:3100) en 18 december 2019 (ECLI:NL:RVS:2019:4257).

bezwaar dat uit de definitie van document niet blijkt dat de Wob geen betrekking heeft op openbare informatie, dus niet.

Een reactie op een verzoek om stukken openbaar te maken die al openbaar zijn, is niet op rechtsgevolg gericht en daarom geen besluit in de zin van artikel 1:3, eerste lid, van de Awb. Tegen een dergelijke mededeling kan een verzoeker, zoals u in dit geval heeft gedaan, wel bezwaar maken. In de bezwaarprocedure kan dan worden beoordeeld of het bestuursorgaan op goede gronden stelt dat de gevraagde informatie openbaar is. Ik ben van oordeel dat ik op goede gronden heb gesteld dat de door u gevraagde informatie al openbaar is. Daarom acht ik uw bezwaar niet-ontvankelijk. Dit betekent dat ik niet toekom aan een verdere inhoudelijke beoordeling van uw bezwaar. Wel licht ik hierna toe hoe ik tot de conclusie ben gekomen dat de informatie al openbaar is.

Naar aanleiding van uw verzoek heb ik navraag gedaan bij het RIVM. Uit deze navraag is mij gebleken dat het RIVM zich baseert op openbare informatiebronnen, waarvan de twee in mijn brief van 2 juli 2020 genoemde artikelen voorbeelden zijn. Volgens het RIVM wordt in deze twee publicaties het bestaan van het virus SARS-CoV-2 aangetoond. In mijn brief heb ik hier dan ook naar kunnen verwijzen. Er zijn overigens nog veel meer wetenschappelijke artikelen over het virus SARS-CoV-2 openbaar beschikbaar, maar op grond van de Wob ben ik niet gehouden om naar aanleiding van uw verzoek een literatuuronderzoek te doen in openbare publicaties. De Wob ziet namelijk op een bij een bestuursorgaan berustend schriftelijk stuk of ander materiaal dat gegevens bevat (artikel 1, aanhef en onder a, van de Wob). Bovendien geldt dat als vaststaat dat de gevraagde informatie al openbaar is, ook niet meer hoeft te worden nagegaan of de informatie onder het bestuursorgaan berust.[2]

Dat u van mening bent dat in de genoemde artikelen geen bewijs wordt geleverd van het bestaan van het virus, wat daar verder ook van zij, doet er niet aan af dat het RIVM onder meer uitgaat van de twee genoemde artikelen. Het valt buiten de reikwijdte van de Wob om hierover met u een (medisch) wetenschappelijke discussie te voeren.

Conclusie
Gelet op het voorgaande kom ik tot de conclusie dat uw bezwaar niet-ontvankelijk is.

Horen

Ik kan op grond van artikel 7:3, aanhef en onder c, van de Awb afzien van horen als de belanghebbende heeft verklaard geen gebruik te willen maken van het recht te worden gehoord.

Secretaris Generaal / plv. Secretaris Generaal
Directie Wetgeving en Juridische Zaken
Cluster 1

Kenmerk
DWJZ-2020081272
1737238-1094517-WJZ

4

[2] Uitspraak van de Afdeling Bestuursrechtspraak van de Raad van State van 18 december 2019 (ECLI:NL:RVS:2019:4257).

Secretaris Generaal / pls. Secretaris Generaal
Directie Wetgeving en Juridische Zaken
Cluster 1

Kenmerk
DWJZ-2020002172
1737239-209457-WJZ

Per e-mail van 21 juli 2020 heeft u laten weten geen gebruik te willen maken van de mogelijkheid om uw bezwaren mondeling toe te lichten. Dit betekent dat ik een beslissing neem op grond van het door u ingediende bezwaarschrift. Op grond van het bepaalde in artikel 7:3, aanhef en onder c, van de Awb zie ik af van het houden van een hoorzitting.

Hoogachtend,

de minister van Volksgezondheid,
Welzijn en Sport,
namens deze,
de secretaris-generaal,

[redacted]

U kunt tegen deze beschikking beroep instellen bij de sector bestuursrecht van de rechtbank binnen het rechtsgebied waarvan u uw woonplaats in Nederland heeft.

Het beroepschrift moet binnen zes weken na de dag waarop de beschikking u is toegezonden aan de rechtbank worden gestuurd. U kunt ook digitaal beroep instellen via http://loket.rechtspraak.nl/bestuursrecht. Daarvoor moet u wel beschikken over een elektronische handtekening (DigiD).

Het beroepschrift moet op grond van artikel 6:5 van de Algemene wet bestuursrecht zijn ondertekend en bevat ten minste de naam en adres van de indiener, de dagtekening, de omschrijving van het besluit waartegen het beroep is gericht, zo mogelijk een afschrift van dit besluit, en de gronden waarop het beroepschrift rust.

Van de indiener van het beroepschrift wordt griffierecht geheven door de griffier van de rechtbank. Nadere informatie over de hoogte van het griffierecht en de wijze van betalen wordt door de griffie van de rechtbank verstrekt.

Offentleglova anmodning om informasjonsfrihet til Helsedirektoratet

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Christine Massey <cmssyc@gmail.com> Fri, Apr 16, 2021 at 2:28 PM
To: postmottak@helsedir.no

Offentleglova anmodning om informasjonsfrihet til Helsedirektoratet

Alle dokumenter som eies, oppbevares eller kontrolleres av Helsedirektoratet der isolering av SARS-COV-2-viruset beskrives, etter å ha samlet prøve fra en syk pasient, der prøven ikke har vært utblandet med et annet genetisk materiale (dvs. nyreceller fra ape, også kjent som veroceller; lungeceller fra pasient med lungekreft).

Vær oppmerksom på at jeg bruker ordet «isolering» i hverdagsbetydningen av ordet: det å separere/skille en ting fra enhver annen ting. Jeg ber ikke om dokumenter der «isolering av SARS-COV-2» refererer til:

- Dyrking/kultivering av noe
- Utførelsen av en mangfoldiggjøringstest (PCR-test) eller
- Sekvensering av noe

Min forespørsel begrenser seg heller ikke til dokumenter som er autorisert av Helsedirektoratet eller som gjelder arbeid som er utført av Helsedirektoratet. Forespørselen min gjelder enhver type dokument, f.eks. (men ikke begrenset til) ethvert publisert, fagfellevurdert studie som Helsedirektoratet har lastet ned eller skrevet ut.

Hvis noen dokumenter stemmer overens med beskrivelsen ovenfor og pr. i dag er tilgjengelig for offentligheten, vennligst gi meg nok informasjon om hvert dokument, slik at jeg med sikkerhet kan identifisere og få tilgang til hvert dokument (dvs. tittel, forfatter(e), dato, tidsskrift, hvor offentligheten kan få tilgang til det).

Christine Massey
[redacted]
Phone: [redacted]
Email: cmssyc@gmail.com

Thank you,
Christine Massey, M.Sc.

Gmail

Christine Massey <cmssyc@gmail.com>

Offentleglova anmodning om informasjonsfrihet til Helsedirektoratet

Torunn Janbu <Torunn.Janbu@helsedir.no> Sun, Apr 25, 2021 at 2:09 PM
To: "cmssyc@gmail.com" <cmssyc@gmail.com>

Takk for henvendelsen datert 16.april 2021.

Helsedirektoratet verken eier, oppbevarer eller kontrollerer dokumenter med informasjon om pasienter.

Torunn Janbu

Avdelingsdirektør Avdeling Spesialisthelsetjenester

Divisjon Kvalitet og forløp

Helsedirektoratet

Mobil 97735457

Gmail

This message has been automatically translated: Norwegian -> English.

Christine Massey
<cmssyc@gmail.com>

Public Administration Act request for freedom of information to the Norwegian Directorate of Health

Torunn Janbu <Torunn.Janbu@helsedir.no> **Sun, Apr 25, 2021 at 2:09 PM**
To: "cmssyc@gmail.com" <cmssyc@gmail.com>

Thank you for the inquiry dated 16 April 2021.

The Norwegian Directorate of Health does not own, store or control documents with information about patients.

Torunn Janbu

Department Director Department of Specialist Health Services

Quality and course division

The Norwegian Directorate of Health

Mobile 97735457

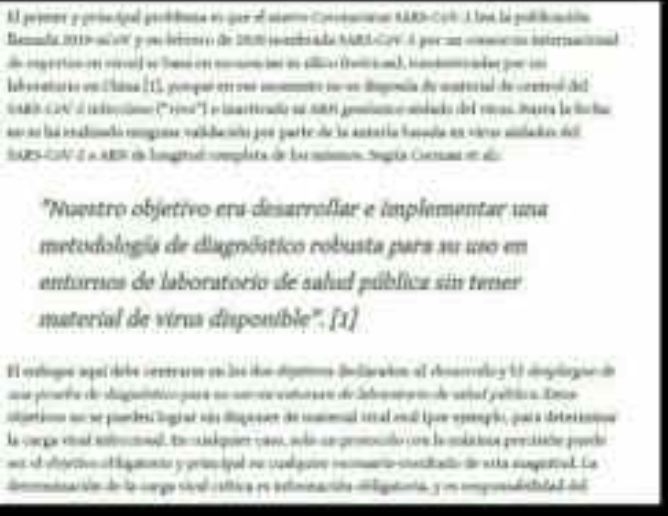
El Ministerio de Sanidad Español reconoce que ni tiene una cepa del Sars-Cov-2 ni sabe quien la tiene

El Ministerio de Sanidad no dispone de cultivo de SARS-CoV-2 para ensayos, y no tiene un registro de los laboratorios con capacidad de cultivo y aislamiento para ensayos.

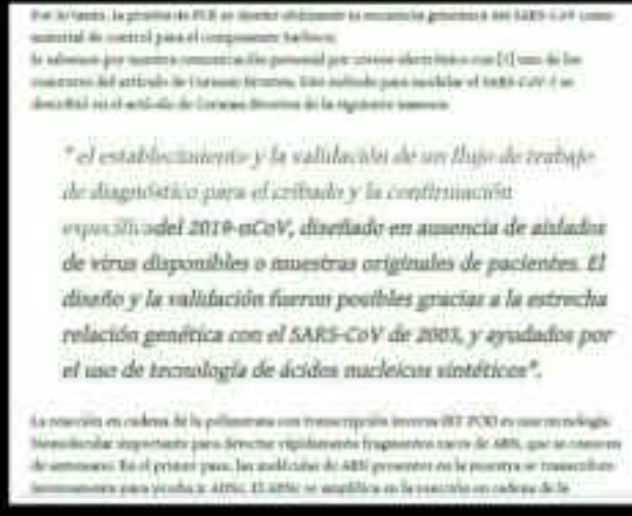
En relación a las pruebas diagnósticas de SARS-COV-2, y en general, con los temas relacionados con la pandemia por SARS-Cov-2, el Ministerio de Sanidad trabaja con los documentos antes mencionados, que se van actualizando según la necesidad epidemiológica, para posibilitar la toma de decisiones en relación a la gestión de la pandemia, y la difusión de información a terceros que puedan utilizaria en sus entornos específicos. En este sentido, los temas más conceptuales y de definiciones quedan más en los entornos académicos y docentes, jugando el Ministerio de Sanidad un papel más secundario y no obrando dichos temas en su poder.

Además, básicamente reconoce no entrar en "temas conceptuales" y fiarse de lo que le digan sin analizarlo.

El Estudio Corman-Drosten (en el que se basa la farsa PCR) también reconoce haber desarrollado el protocolo SIN TENER MUESTRA DEL VIRUS SARS-COV-2 AISLADO



"Nuestro objetivo era desarrollar e implementar una metodología de diagnóstico robusta para su uso en entornos de laboratorio de salud pública sin tener material de virus disponible". [1]



" el establecimiento y la validación de un flujo de trabajo de diagnóstico para el cribado y la confirmación específicos del 2019-nCoV, diseñado en ausencia de aislados de virus disponibles o muestras originales de pacientes. El diseño y la validación fueron posibles gracias a la estrecha relación genética con el SARS-CoV de 2003, y ayudados por el uso de tecnología de ácidos nucleicos sintéticos".

La secuencia usada, procede de otros elementos genómicos + secuencias "teóricas" (es decir, inventadas).

Tribunal Administrativo de Círculo de Lisboa

Juízo Administrativo Comum

Processo n.º 525/21.4BELSB

SENTENÇA

I. Relatório

[redacted] doravante abreviadamente designados, em conjunto, por "Requerentes", vêm requerer a intimação da DGS – Direcção Geral de Saúde ("DGS") e do MINISTÉRIO DA SAÚDE (*rectius*, apenas deste último, atento o disposto no artigo 10.º, n.ºs 2 e 4, do CPTA, doravante abreviadamente designado por "Requerido"), todos melhor identificados a fls. 5-6 dos autos no SITAF, tendo em vista a disponibilização, por este último, de um conjunto de relatórios, pareceres e publicações de carácter científico relativos à COVID-19.

Juntam 10 documentos.

Citado o Requerido para, querendo, responder, veio este fazê-lo, sustentando, então, em síntese, que:

- Relativamente ao pedido de informação não procedimental, constatou-se que nenhum dos documentos, relatórios, provas e informações solicitados nas alíneas a) a q) do artigo 4.º dos requerimentos se encontram na posse da DGS, tal como, de resto, informou os Requerentes, circunstância que torna impossível o prosseguimento dos autos;

- No que se refere às alíneas l) e m) daqueles mesmos requerimentos, a 19.04.2021 a DGS acrescentou informação relativa ao número de óbitos, considerando-se, então, satisfeito o pedido formulado pelos Requerentes, com a consequente extinção da instância, por inutilidade da lide;
- Vindo os Requerentes solicitar informação ao abrigo do artigo 68.º, n.º 2, alínea a), do CPA, não alegaram, no entanto, quais os bens públicos que pretendiam defender com o pedido de informação, o que diluiria, então, a sua ilegitimidade activa.

Pugna, a final, pela extinção da instância, por impossibilidade e inutilidade superveniente da lide, e, sem conceder, pela procedência da excepção de ilegitimidade activa dos Requerentes, com a sua absolvição da instância.

Junta 12 documentos.

Instados a pronunciarem-se sobre as questões prévias suscitadas pelo Requerido, vieram os Requerentes redarguir, essencialmente, que aquele primeiro nunca lhes respondeu no prazo de que dispunha para esse efeito, mas tão-somente já na pendência da presente intimação, pelo que a impossibilidade arguida pelo Requerido era da sua exclusiva responsabilidade, e que, bem assim, são parte legítima na presente intimação, não estando obrigados a demonstrar perante a Administração uma qualquer lesão de interesses difusos.

Pugnam, a final, pela improcedência da excepção de ilegitimidade activa e pela condenação do Requerido no pagamento das custas processuais.

Juntam 1 documento.

*

Em face do exposto, o objecto do litígio consiste, em suma, em aquilatar se os Requerentes são parte legítima na presente acção de intimação, se se verifica, ou não, a invocada impossibilidade e inutilidade superveniente da lide e se, bem assim, os Requerentes têm direito à informação solicitada, sendo estas as questões que ao Tribunal cumpre decidir *in casu*.

II. Saneamento

Conforme se fez menção, o Requerido vem suscitar um conjunto de questões prévias que, a verificarem-se, poderão, efectivamente, obstar ao conhecimento do mérito da causa, com a sua absolvição ou a extinção da instância.

No entanto, e na medida em que o conhecimento dessas questões depende da prévia fixação da respectiva factualidade pertinente, protela-se o seu conhecimento para a fundamentação de direito da presente decisão.

III. Fundamentação

III.1. De facto

Consideram-se provados os seguintes factos, pertinentes para a decisão da causa:

1. Em 24.02.2021, os Requerentes remeteram requerimentos ao Requerido, cujos teores se transcrevem parcialmente *infra*:
   (...) *[N]o gozo dos seus direitos civis e políticos, ao abrigo do artigo 268º, nº 2, da Constituição da República Portuguesa (CRP), e dos artigos 13º, nº 1, 17º, e 68º, nº2, al.a), todos do Código do Procedimento Administrativo (CPA), bem como nos termos do disposto no artigo 5º, nº 1, da Lei nº 26/2016, de 22 de Agosto, com a redação que lhe foi conferida pela Lei nº 58/2019, de 8 de Agosto, vem*

REQUERER a V. Exa. se digne fornecer-lhe, no prazo legal de dez (10) dias, reprodução por fotocópia ou por qualquer outro meio técnico, designadamente electrónico, do teor dos relatórios, pareceres, e publicações de carácter científico, disponíveis, nos vossos arquivos referentes à doença Covid-19 declarada pela Organização Mundial da Saúde como "epidemia de Covid-19":

I - Cópia de publicação científica, revista por pares (peer-review), referente ao estudo sobre o grau de infeção provocada nos humanos, pelo vírus SARS-Cov2, responsável pela doença Covid-19, a partir de uma amostra não adulterada retirada de um humano doente;

II - Cópia de publicação científica, revista por pares (peer review), referente ao estudo sobre o grau de infecção nos humanos provocada pelo SARS-Cov2 obtida por via empírica e que prove que foram cumpridos os postulados de Koch/Evans (1976), indicando a data e o(s) autor(es) que realizaram o isolamento e purificação do vírus em laboratório;

III - Cópia da publicação científica, revista por pares (peer review), relativamente ao teste RT-PCR (polimerase chain reaction, ou, em português, reação em cadeia da polimerase) como ferramenta de diagnóstico fiável para identificar a infecção por vírus SARS-Cov2 em humanos, i.é, se o teste RT-PCR identifica a presença do RNA viral e a presença do referido vírus infeccioso;

IV - Cópia da publicação científica, revista por pares (peer-review), em que o resultado do teste PCR indica especificadamente, sem margem de erro, a presença do vírus SARS-Cov2 em humanos que manifestem sintomas semelhantes aos sintomas da gripe;

V - Cópia da publicação científica, revista por pares (peer-review), que demonstre que o resultado positivo do teste PCR indica, sem margem de erro, a presença de infecção por SARS-Cov2 em humanos sem sintomas (assintomáticos) e que estes transmitem a doença a terceiros;

VI - Cópia da publicação científica, revista por pares (peer-review), identificando os sintomas da nova doença resultante de infeção por SARS-Cov2 e o que distingue a nova, e alegada doença, da doença sazonal gripe / influenza e da doença provocada pelas já conhecidas estirpes 229E, NL63, OC43 e HKU1 de coronavírus;

VII - Informação documentada sobre o ciclo de amplificação definido para os testes PCR usados em Portugal, e indicação da entidade que determinou o ciclo definido;

VIII - Informação sobre os testes PCR usados em Portugal para detetar infecção por SARS-Cov2, se os mesmos conseguem distinguir matéria inactiva e reprodutiva;

IX - Informação sobre quais os tipos de vírus, e respectivas estirpes, detectáveis por via do teste PCR usado massivamente na obtenção de "infectados covid-19" entre a população em Portugal;

IX [sic] – Prova científica, revista por pares, que fundamenta a aplicação de medidas de quarentena e confinamento a pessoas testados positivo, via teste PCR, e assintomáticos;

X - Cópia do documento publicado e elaborado pelos cientistas chineses, revisto por pares (peer-review), do mapeamento do código genético do novo coronavírus SARS-Cov2;

XI - Informação/relatório sobre o número de mortes em Portugal, desde o início da declarada pandemia, causadas por infeção SARS-Cov2, tendo a causa da morte sido objetiva e legalmente aferida por via de autópsia a cadáveres;

XII - Informação/relatório sobre o número de mortes em Portugal, desde o início da declarada pandemia, causada por infeção SARS-Cov2, tendo a causa da morte sido unicamente aferida por via do teste PCR;

XIII - Prova científica da eficácia do distanciamento social, com a respetiva fundamentação empírica revista por pares (peer-review), no âmbito da doença covid-19;

XIV - A Organização Mundial de Saúde (OMS) publicou em 6 de Abril de 2020 uma reavaliação sobre o uso das máscaras de protecção individual, incidindo sobre o assunto específico do SARS-COV2, e concluiu: "as máscaras continuam a estar recomendadas apenas para certos grupos específicos – doentes infectados com o SARS-Cov2, pessoas com sintomas, cuidadores ou profissionais de saúde em contacto com doentes infectados ou suspeitos.".

Assim, e em sequência da referida publicação pela OMS, requer-se cópia das publicações com evidências científica, na posse da DGS, de estudos revistos por pares (peer-review), que provem, sem margem para dúvidas, da inexistência de dano colateral para a saúde física e psíquica resultante do uso de máscara facial por crianças, jovens e adultos em espaços fechados e abertos;

XV - Prova científica, das publicações realizadas por especialistas e revistas por pares, que demonstre que o confinamento de pessoas sem sintomas, de estarem doentes, reduz de forma significativa a transmissão de doença respiratória covid-19, e do benefício do confinamento para a saúde da população;

XVI - Prova, devidamente documentada, em como as chamadas vacinas experimentais de mRNA de última geração não representam manipulação genética e que no todo não constituem perigo de dano, a médio e longo prazo, na saúde de quem já foi e está a ser vacinado com vacinas ainda não aprovadas e sem dados clínicos avaliados, todavia, recomendados à população pela Direcção Geral da Saúde.

Pelo que, e ao abrigo do direito à informação não procedimental, com respaldo nas leis acima indicadas, consubstanciado no direito de acesso a documentos administrativos integrantes de procedimentos já finalizados ou a arquivos ou registos administrativos, conferido a todos os cidadãos, e tendo em vista a defesa de interesses difusos – artigo 52º, da C.R.P." (cf.

cópias dos requerimentos juntas a fls. 22-106 dos autos n SITAF, documentos que se dão por integralmente reproduzidos).

2. Em 30.03.2021, os Requerentes apresentaram a juízo o r.i. dos presentes autos de intimação (cf. cópia da mensagem electrónica junta a fls. 1 dos autos no STAF, documento que se dá por integralmente reproduzido).
3. Em 12.04.2021, a DGS remeteu ofícios aos Requerentes, cujos teores se reproduzem parcialmente *infra*:

> Analisado atentamente o requerimento de V. Exa., rececionado nesta Direção-Geral, informa-se, que o pedido não se enquadra no disposto na Lei nº 26/2016, de 22 de agosto, na sua versão atual, porquanto, as cópias, provas e informações solicitadas não se referem a documentos administrativos desta Direção-Geral, nos termos definidos na alínea a) do nº 1 da referida Lei.
>
> A matéria referida e questionada no requerimento, segue os termos do disposto no artº 102º e seguintes do Código do Procedimento Administrativo, CPA.
>
> Com efeito, não tendo sido apresentada a exposição dos factos em que se baseia o pedido, os quais devem ser adequados à pretensão e aos fins a que se destina, convida-se V. Exa., querendo, a suprir a deficiência do requerimento, nos termos do disposto no artº 102º do CPA.

(cf. cópias dos ofícios juntas a fls. 132-141 dos autos no SITAF, documento que se dão por integralmente reproduzidos).

4. Em 19.04.2021, o Requerido apresentou a sua resposta no âmbito dos presentes autos de intimação, aí declarando que não possuía "*nenhum documento administrativo correspondente às alíneas a) a j) e de n) a q) do art.º 4º do requerimento de intimação*", mais dando conta de que:
"*Após análise da base réplica do SICO desde 01-01-2020 até 18.04.2021, conseguimos apurar até ao momento as seguintes distribuições:*
Entre 2020 e 2021 foram emitidos 152 certificados de óbito pelos médicos que trabalham para a tutela Ministério da Justiça (INMLCF) cuja causa básica de morte foi devido a COVID 19 de acordo com a seguinte distribuição:
• Dos 152 certificados de óbito, 132 óbitos a causa básica foi U071 (COVID 19-vírus identificado) e 20 óbitos a causa básica foi U072 (COVID 19 -não identificado laboratorialmente).

• *Dos 152 certificados de óbito, a 148 óbitos foi dispensada autópsia, sendo que 129 óbitos a causa básica de morte foi U071 e 19 óbitos a causa básica d morte foi U072.*

Dos 152 óbitos, a 4 óbitos não foi dispensada autópsia, sendo que 3 óbitos a causa básica de morte foi U071 e 1 óbito a causa básica foi UO72" (cf. resposta junta a fls. 115-126 dos autos no SITAF, documento que se dá por integralmente reproduzido).

5. Por ofício de 27.04.2021, os Requerentes foram notificados da resposta a que se alude no ponto anterior (cf. ofício junto a fls. 150 dos autos no SITAF, documento que se dá por integralmente reproduzido)

A prova dos factos fixados *supra* assenta no teor dos documentos juntos aos autos, conforme referido a respeito de cada um deles.

Nada mais foi provado com interesse para a decisão da causa.

III.2. De direito

Como é sabido, o direito à informação administrativa encontra guarida constitucional no artigo 268.º da Lei Fundamental, segundo o qual:

"*1. Os cidadãos têm o direito de ser informados pela Administração, sempre que o requeiram, sobre o andamento dos processos em que sejam directamente interessados, bem como o de conhecer as resoluções definitivas que sobre eles forem tomadas.*

2. Os cidadãos têm também o direito de acesso aos arquivos e registos administrativos, sem prejuízo do disposto na lei em matérias relativas à segurança interna e externa, à investigação criminal e à intimidade das pessoas.".

Os ditames constitucionais citados consagram, assim, aquilo que a jurisprudência e a doutrina têm designado por "*direito à informação procedimental*" e "*direito à informação não procedimental*", respectivamente, os quais se encontram regulados pelos artigos 82.º a 85.º do actual CPA (artigos 61.º a 65.º do anterior CPA) e pelo disposto na Lei n.º 26/2016, de 22.08 (a qual revogou a Lei n.º 46/2007, de 24.08, vulgo "LADA" ou "Lei de Acesso aos Documentos Administrativos").

A este respeito, atente-se ao acórdão prolatado pelo Tribunal Central Administrativo ("TCA") Norte, em 22.06.2006, no âmbito do processo n.º 00028/06.7BEPNF, no qual se explicita, com meridiana clareza, a interpretação a fazer das disposições legais enunciadas e cujo entendimento continua a deter plena actualidade:

"*[A] existência e o âmbito do direito à informação dependem, essencialmente, da relação existente entre os requerentes e o objecto a esclarecer.*

*Por princípio, o direito à informação cabe aos directamente interessados no procedimento a que se reportam as pretendidas informações (cfr. arts. 61.º e 62.º do CPA) e "por extensão", tal direito cabe "*a quaisquer pessoas que provem ter interesse legítimo no conhecimento dos elementos que pretendam*" (cfr. art. 64.º, n.º 1 do CPA); fora destes casos, qualquer pessoa pode aceder aos registos e arquivos administrativos (cfr. art. 65.º do CPA) que não exijam reserva, mas tal acesso pressupõe a prévia conclusão do procedimento e se forem nominativos, o direito de acesso é limitado à pessoa a que digam respeito ou a terceiros que demonstrem "*interesse directo e pessoal*" (cfr. art. 07.º, n.ºs 1, 2 e 5 da LADA)*".

No mesmo sentido, e de forma particularmente impressiva, afirma-se no acórdão proferido pelo TCA Sul em 20.03.2014, no âmbito do processo n.º 10919/14, que:

"*Se quisermos utilizar duas expressões consagradas na dogmática, o direito à informação administrativa procedimental define-se como um direito* uti singulis, *sendo*

que o direito de acesso a arquivos e registos administrativos se caracteriza por ser um direito uti cives.

Ou, nas palavras de J. M. Sérvulo Correia, o direito à informação administrativa procedimental configura a "publicidade erga partes*" e o direito de acesso a arquivos e registos administrativos, independentemente de um procedimento, a "publicidade* erga omnes*" (*in O direito à informação e os direitos de participação dos particulares no procedimento e, em especial, na formação da decisão administrativa, *Cadernos de Ciência e Legislação/1994, n"s.9-10, pp. 135).*

O primeiro perspectiva o indivíduo enquanto administrado, em sentido estrito, no quadro de uma específica e concreta relação com a Administração Pública e portador de interesses eminentemente subjectivos.

Já o segundo considera o particular como cidadão face ao poder, em termos mais genéricos.

Dizendo ainda de outra forma, o direito à informação administrativa procedimental visa a tutela de interesses e posições subjectivas directas, enquanto o direito de acesso a arquivos e registos administrativos está configurado como um dos instrumentos de protecção de interesses mais objectivos partilhados pela comunidade jurídica, designadamente o da transparência da acção administrativa.".

A orientação acabada de descrever e que aqui se acolhe, sem reservas, encontra ainda eco na mais recente doutrina produzida a este respeito, referindo MÁRIO AROSO DE ALMEIDA e CARLOS ALBERTO FERNANDES CADILHA (*in "Comentário ao Código de Processo nos Tribunais Administrativos"*, Almedina, 2017, 4.ª edição, páginas 855 e 856), em anotação ao artigo 104.º do CPTA, que:

"Como resulta textualmente do n.º 1, a intimação destina-se, em primeira linha, a efetivar jurisdicionalmente, quer o direito à informação sobre o andamento dos procedimentos e o conhecimento das decisões, que integra o direito à informação procedimental, quer o direito de acesso aos arquivos e registos administrativos, que corresponde a um direito à informação não procedimental. E, neste sentido, o preceito

concretiza, no plano processual, os direitos e garantias consagrados no artigo 268.º, n.ºs 1 e 2, da CRP, que se encontram regulados, no plano do direito substantivo, respetivamente, pelos artigos 82.º a 85.º do CPA e pela Lei n.º 46/2007, de 24 de agosto (alterada pelo Decreto-Lei n.º 214-G/2015, de 2 de outubro).

Em tese geral, o direito à informação procedimental reporta-se a factos, atos ou documentos que integram ou resultam de um concreto procedimento administrativo que se encontre ainda em curso; o direito à informação não procedimental respeita a documentos contidos em arquivos ou registos administrativos, aí se incluindo os documentos existentes em procedimentos já findos, independentemente da correlação com qualquer procedimento administrativo que esteja pendente".

Ora, na situação *sub judice*, ficou acima demonstrado que os Requerentes se arrogam unicamente à obtenção de "*informação não procedimental, com respaldo nas leis acima indicadas, consubstanciado no direito de acesso a documentos administrativos integrantes de procedimentos já finalizados ou a arquivos ou registos administrativos, conferido a todos os cidadãos, e tendo em vista a defesa de interesses difusos*" (cf. facto 1. firmado *supra*).

Neste pressuposto, importa, então, no plano infraconstitucional, atender ao disposto nos artigos 3.º, n.º 1, alínea a), e 5.º, n.º 1, ambos da LADA, segundo os quais "*Todos, sem necessidade de enunciar qualquer interesse, têm direito de acesso aos documentos administrativos* [*id est*, "*qualquer conteúdo, ou parte desse conteúdo, que esteja na posse ou seja detido em nome dos órgãos e entidades referidas no artigo seguinte, seja o suporte de informação sob forma escrita, visual, sonora, eletrónica ou outra forma material*"], *o qual compreende os direitos de consulta, de reprodução e de informação sobre a sua existência e conteúdo*" (cf. artigos 3.º, n.º 1, alínea a), e 5.º, n.º 1, ambos da LADA).

Definido o quadro legal que, em tese, é aplicável ao presente dissídio, desçamos, então, de novo, ao caso dos autos, a fim de aí identificar a solução legal aplicável.

Como se viu, o Requerido vem, a certo ponto, sufragar que, vindo os Requerentes solicitar informação ao abrigo do artigo 68.º, n.º 2, alínea a), do CPA, não alegariam, no entanto, quais os bens públicos que pretendiam defender com o pedido de informação, circunstância que, defende, carrearia à sua ilegitimidade activa – mas sem que lhe assista aqui qualquer razão, como se verá.

Com efeito, é certo que os Requerentes invocam, a certo ponto dos requerimentos tendentes à obtenção da informação aqui pretendida, o artigo 68.º, n.º 2, alínea a), do CPA, segundo o qual *"Os cidadãos no gozo dos seus direitos civis e políticos e os demais eleitores recenseados no território português"* têm *"legitimidade para a proteção de interesses difusos perante ações ou omissões da Administração passíveis de causar prejuízos relevantes não individualizados em bens fundamentais como a saúde pública, a habitação, a educação, o ambiente, o ordenamento do território, o urbanismo, a qualidade de vida, o consumo de bens e serviços e o património cultural"*.

Porém, e conforme exsuda do seu próprio teor e inserção sistemática, este comando normativo respeita à *legitimidade procedimental para reagir perante acções e omissões da Administração*, e não à legitimidade para aceder a informação administrativa não procedimental.

Essa, como se viu, encontra-se plasmada no supracitado artigo 5.º, n.º 1, da LADA, aí se preceituando, em termos inequivocamente abertos, que *"Todos, sem necessidade de enunciar qualquer interesse, têm direito de acesso aos documentos administrativos"*, sem necessidade de invocar ou demonstrar um qualquer particular interesse na obtenção de tal informação.

Improcede, por isso, a invocada excepção de ilegitimidade activa dos Requerentes.

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De seguida, e ainda a título de questão prévia, vem o Requerido sindicar que nenhum dos documentos, relatórios, provas e informações solicitados pelos Requerentes se encontraria na sua posse, o que carrearia, então, à impossibilidade da lide; e que, bem assim, teria, no entanto, disponibilizado informação aos Requerentes quanto à informação solicitada acerca do número de mortes em Portugal, o que ditaria, neste particular, a inutilidade superveniente da lide, com a consequente extinção da instância.

Neste conspecto, limitaram-se os Requerentes a redarguir que a impossibilidade que o Requerido agora vem invocar seria da sua exclusiva responsabilidade, pugnando, então, pela sua condenação nas respectivas custas processuais.

Principiando por aquele segundo segmento assinalado, ficou acima provado que os Requerentes solicitaram, a certo ponto dos seus requerimentos, que lhes fosse disponibilizada "*XI - Informação/relatório sobre o número de mortes em Portugal, desde o início da declarada pandemia, causadas por infeção SARS-Cov2, tendo a causa da morte sido objetiva e legalmente aferida por via de autópsia a cadáveres; // XII - Informação/relatório sobre o número de mortes em Portugal, desde o início da declarada pandemia, causada por infeção SARS-Cov2, tendo a causa da morte sido unicamente aferida por via do teste PCR*" (cf. facto 1. firmado *supra*).

A este respeito, viria, então, o Requerido retorquir que:

"*Após análise da base réplica do SICO desde 01-01-2020 até 18.04.2021, conseguimos apurar até ao momento as seguintes distribuições:*

Entre 2020 e 2021 foram emitidos 152 certificados de óbito pelos médicos que trabalham para a tutela Ministério da Justiça (INMLCF) cuja causa básica de morte foi devido a COVID 19 de acordo com a seguinte distribuição:

• *Dos 152 certificados de óbito, 132 óbitos a causa básica foi U071 (COVID 19-vírus identificado) e 20 óbitos a causa básica foi U072 (COVID 19 -não identificado laboratorialmente).*

• *Dos 152 certificados de óbito, a 148 óbitos foi dispensada autópsia, sendo que 129 óbitos a causa básica de morte foi U071 e 19 óbitos a causa básica d morte foi U072.*

Dos 152 óbitos, a 4 óbitos não foi dispensada autópsia, sendo que 3 óbitos a causa básica de morte foi U071 e 1 óbito a causa básica foi UO72" (cf. facto 4. firmado *supra*).

Ora, tal como vem sendo pacificamente entendido pela jurisprudência e doutrina, "*A lide torna-se inútil quando ocorre um facto ou circunstância, ulterior à sua instauração, que torna desnecessário que sobre ela recaia pronúncia judicial. nomeadamente porque o pedido formulado já foi atingido por outro meio*" (neste sentido, *vide*, a título exemplificativo, o aresto prolatado pelo Supremo Tribunal Administrativo, em 28.09.2017, no âmbito do processo n.º 049/17).

Na situação *sub judice*, do cotejo do segmento em apreciação dos pedidos formulados pelos Requerentes no âmbito dos requerimentos por si apresentados com o teor da resposta oferecida pelo Requerido no âmbito dos presentes autos de intimação, resulta evidente, para este Tribunal, que a pretensão do Requerente se encontra, neste particular, satisfeita, pelo que a prolação de decisão se afiguraria, *in concreto*, desprovida de qualquer utilidade.

Considerando que, de harmonia com o disposto na alínea e) do artigo 277.º do CPC, aplicável *ex vi* artigo 1.º do CPTA, a instância se extingue com a impossibilidade ou inutilidade superveniente da lide, não restam, então, alternativas a este Tribunal que não concluir por essa mesma inutilidade, no que tange aos pontos XI e XII dos requerimentos para prestação de informações apresentados pelos Requerentes, com a consequente extinção parcial da instância.

Nos demais pontos de tais requerimentos, e considerando que, tal como invocado pelo Requerido – sem que haja oposição dos Requerentes ou, de resto, se vislumbrem quaisquer motivos para que se duvide de tal asserção –, o mesmo não se encontra na posse dos elementos pretendidos pelos Requerentes, afigura-se inescapável a conclusão em como a presente lide é, nesse particular, impossível, na medida em que, como se infere, o Requerido não poderá ser intimado a facultar aos Requerentes elementos de que não dispõe.

No entanto, e atendendo a que, diversamente do que refere o Requerido, o mesmo em momento algum deu conta de tal facto aos Requerentes no prazo de que dispunha para lhes responder – limitando-se apenas a, em 12.04.2021, e já na pendência da presente acção de intimação, endereçar-se aos mesmos, convidando-os a aperfeiçoar os requerimentos apresentados, cf. factos 2. e 3. firmados *supra* – julgo essa mesma impossibilidade imputável à sua pessoa, condenando-o na totalidade das custas devidas pelo presente processo.

IV. Decisão

Em face do que antecede:

(i) Declaro a inutilidade superveniente parcial da lide relativamente aos pontos XI e XII dos requerimentos apresentados pelos Requerentes [redacted] e, em consequência, julgo parcialmente extinta a instância, ao abrigo da alínea e) do artigo 277.º do CPC;

(ii) No mais, declaro a impossibilidade da lide e julgo parcialmente extinta a instância, ao abrigo da alínea e) do artigo 277.º do CPC.

Atendendo a que, tal como resultou provado, o Requerido prestou a informação ora em crise ulteriormente à propositura da presente intimação (cf. factos 2. a 5. firmados *supra*), julgo a impossibilidade e inutilidade superveniente da presente lide imputáveis ao mesmo e, em consequência, condeno-o na totalidade das custas, de acordo com o preceituado nos n.ºs 3 e 4 do artigo 536.º do CPC, aplicável *ex vi* artigo 1.º do CPTA, conjugadamente com o disposto no artigo 12.º, n.º 1, alínea b), e tabela I-B, linha 1, ambos do Regulamento das Custas Processuais.

Valor da causa: EUR 30.000,01, de harmonia com o disposto nos artigos 31.º e 34.º, n.ºs 1 e 2, ambos do CPTA, e nos artigos 296.º, n.º 1, 299.º, n.º 1, e 306.º, n.ºs 1 e 2, *in fine*, todos do CPC, aplicável *ex vi* artigo 1.º do CPTA.

Registe e notifique.

Lisboa, 19 de Maio de 2021

O Juiz de Direito

PEDRO MOREIRA

(Texto processado em computador e incorporado no SITAF, com aposição de assinatura electrónica qualificada – artigo 24.º, n.º 1, do CPTA e artigo 16.º, n.º 1, da Portaria n.º 380/2017, de 19.12)

Freedom of Information request to Public Health Wales

FOI Reference:	**FOI 453**
Date request received	**06 October 2020**
Date information is due to be sent	**03 November 2020**

Information Requested:

Under the Freedom of Information Act 2000, I request all records in
the possession, custody or control of Public Health Wales describing the isolation of a 'SARS-COV-2'
virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (eg. monkey kidney cells, a.k.a vero cells;
liver cancer cells etc).

Please note that I am using "isolation" in the everyday sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers *instead* to:

- the culturing of something, or

- the performance of an amplification test (i.e. a RT-PCR test), or

- the genetic sequencing of something.

Please also note that my request is not limited to records that were authored by the PHW or that pertain to work done by the PHW. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the PHW has downloaded or printed.

Please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).

Information provided for the answer:

Thank you for your recent request. Public Health Wales has not produced any of the above mentioned material. Any records that may be in possession of Public Health Wales would be material that is already in the public domain, which we would decline to supply under Section 21 of the Freedom of Information Act.

Under our duty to assist, we would ordinarily be willing to provide links or advise where you may be able to find such documentation if we held it within our systems, however the information above would prove to be too wide in terms of search parameters for us to identify any records with certainty that we hold.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of the decision, you should write to the Corporate Complaints Manager, Public Health Wales NHS Trust, 3, Number 2, Capital Quarter, Tyndall Street, Cardiff, CF10 4BZ.

If you are not content with the outcome of your complaint or review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Trust. The Information Commissioner can be contacted at:

Information Commissioner for Wales

2nd Floor
Churchill House
Churchill Way
Cardiff
CF10 2HH

Telephone: 029 2067 8400

Email: wales@ico.org.uk

Registro Electrónico General de la AGE

administracion.gob.es
punto de acceso general

JUSTIFICANTE DE PRESENTACIÓN

Número de registro: 202101216310?
Oficina: O00000318 - REGISTRO ELECTRÓNICO
Fecha y hora de: 10/02/2021 17:58:15
Tipo de registro: Entrada

Interesados

Interesado		Representante
Nombre:	KEFA MIRENA ORMAZABAL SANCHEZ	Nombre:
NIF:		
e-mail:	[redacted]	

Información del registro

Resumen: Derecho de acceso

Asunto: Solicitud Acceso Transparencia

Expone:

Solicita: [Ámbito] : UIT Sanidad (9)
[Información que solicita] : Todos los registros bibliográficos científicos en conocimiento del Ministerio de Sanidad y de los organismo dependientes de él en los que se describa el aislamiento del virus SARS-Cov2 directamente de muestras tomadas de pacientes diagnosticados de covid-19, vivos o muertos. La solicitud no se refiere a registros bibliográficos científicos basados en muestras que hayan sido mezcladas con otras fuentes de material genético, como, por ejemplo, células de riñón de simio o células de hígado canceroso. Nótese que se usa el término "aislamiento" en el sentido que le da el Diccionario la Real Academia Española de "dejar algo solo y separado de otras cosas" o "separar un elemento o un cuerpo de una combinación o del medio en que se halla, generalmente para identificarlo o analizarlo".

Por tanto, no estoy solicitando información sobre registros bibliográficos científicos sobre cultivos celulares, ni resultados de amplificación de material genético (ya sea por técnica PCR u otras) ni secuenciaciones de material genético.
[Notificaciones y recepción de la información] : Deseo ser notificado a través del Portal de la Transparencia
[Asunto] : aislamiento virus sars-cov-2
[Notificacion Sede] : Por Sede

General Electronic Registry of the Age
inistracion.gob.es
general access point

PROOF OF PRESENTATION

Registration number:	2021012163107
Office:	000000318 - ELECTRONIC REGISTRATION
Date and time:	02/10/2021 17:56:15
Type of registration:	Entry

Interested

Interest

Name:	KEPA Ml RENA ORMAZABAL SANCHEZ
NIF:	(blank)
e-mail:	[redacted]
Representative:	(blank)

Registry information

Summary:	Right of Access
Affair:	Transparency Access Request
Exposes:	(blank)
[Scope]:	ITU HEALTH (8)

[Information requested]:

All scientific bibliographic records known to the Ministry of Health and its dependent organizations in which the isolation of the SARS-Cov2 virus is described directly from samples taken from patients diagnosed with covid-19, alive or dead. The application does not refer to scientific bibliographic records based on samples that have been mixed with other sources of genetic material, such as, for example, simian kidney cells or cancer liver cells. Note that the term "isolation" is used in the sense given by the Real Academia Espanola Dictionary of "leaving something alone and separated from other things" or "separating an element or a body from a combination or from the medium in which it is found, generally to identify or analyze it. "

Therefore, I am not requesting information on scientific bibliographic records on cell cultures, nor results of amplification of genetic material (either by PCR or other techniques) nor sequencing of genetic material.

[Notifications and receipt of information]: I wish to be notified through the Transparency Portal

[Subject]: sars-cov2 virus isolation

[Headquarters Notification]: By Headquarters

Con fecha 10 de febrero de 2021 tuvo entrada en la Unidad de Información de Transparencia del Ministerio de Sanidad, solicitud de acceso a la información pública al amparo de la Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno, presentada por D./Dña. Kepa Mirena Ormazábal Sánchez, solicitud que quedó registrada con el número **001-053660**.

Con fecha 15 de febrero de 2021 esta solicitud se recibió en la Dirección General de Salud Pública, fecha a partir de la cual empieza a contar el plazo de un mes previsto en el artículo 20.1 de la Ley 19/2013, de 9 de diciembre, para su resolución.

Una vez analizada la solicitud, esta Dirección General resuelve conceder el acceso a la información a que se refiere la solicitud deducida por D./Dña. Kepa Mirena Ormazábal Sánchez.

La bibliografía científica que maneja el Ministerio de Sanidad la puede encontrar en los distintos documentos técnicos para profesionales publicados en la página web de este Ministerio [a la que puede acceder a través del siguiente enlace: https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos.htm] y, en concreto, en el apartado titulado *Documentos de preparación y respuesta al brote.*

Contra la presente resolución, que pone fin a la vía administrativa, podrá interponerse recurso contencioso-administrativo ante el la Sala de lo Contencioso-Administrativo del Tribunal Superior de Justicia de Madrid [Ley 39/2015, de 1 de octubre, del procedimiento administrativo común de las administraciones públicas, y Ley 29/1998, de 13 de julio, reguladora de la jurisdicción contencioso-administrativa], en el plazo de dos meses o, previa y potestativamente, reclamación ante el Consejo de Transparencia y Buen Gobierno en el plazo de un mes; en ambos casos, el plazo se contará desde el día siguiente al de la notificación de la presente resolución.

LA DIRECTORA GENERAL DE SALUD PÚBLICA
(firmado electrónicamente)

Pilar Aparicio Azcárraga

MINISTRY OF HEALTH

SECRETARIAT OF STATE OF HEALTH
GENERAL DIRECTORATE OF PUBLIC HEALTH
Transparency portal
Government of Spain

On February 10, 2021, it entered the Transparency Information Unit from the Ministry of Health, request for access to public information under the Law 19/2013, of December 9, on transparency, access to public information and good government, presented by D./Dña. Kepa Mirena Ormazábal Sánchez, request that remained registered under number 001-053660.

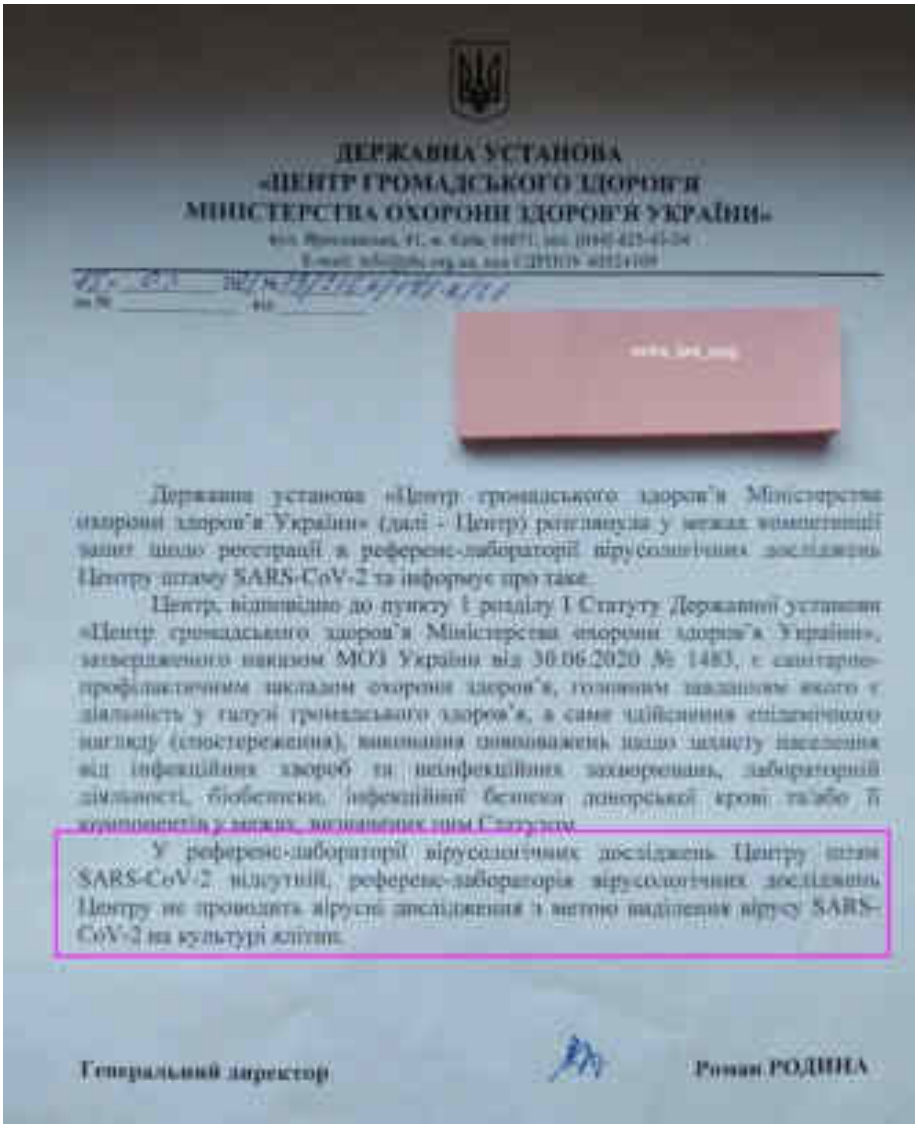
On February 15, 2021, this request was received at the General Directorate of Health Public, date from which the period of one month foreseen in the article begins to count. 20.1 of Law 19/2013, of December 9, for its resolution.

Once the request has been analyzed, this General irectorate resolves to grant access to the information referred to in the request deduced by Mr./Dña. Kepa Mirena Ormazábal Sanchez.

The scientific bibliography managed by the Ministry of Health can be found in the different technical documents for professionals published on the website of this Ministry [which you can access through the following link: https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos.htm] and, specifically, in the section entitled Preparation and response documents to the outbreak.

Against this resolution, which puts an end to administrative proceedings, an appeal may be lodged contentious-administrative before the Contentious-Administrative Chamber of the Court Superior of Justice of Madrid [Law 39/2015, of October 1, on the procedure common administrative law of public administrations, and Law 29/1998, of July 13, regulator of contentious-administrative jurisdiction], within two months or, prior and Optionally, claim before the Council of Transparency and Good Governance within the term of one month; in both cases, the period will be counted from the day following the notification of the present resolution.

THE GENERAL DIRECTOR OF PUBLIC HEALTH
(electronically signed)
Pilar Aparicio Azcárraga



ДЕРЖАВНА УСТАНОВА
«ЦЕНТР ГРОМАДСЬКОГО ЗДОРОВ'Я
МІНІСТЕРСТВА ОХОРОНИ ЗДОРОВ'Я УКРАЇНИ»

Державна установа «Центр громадського здоров'я Міністерства охорони здоров'я України» (далі - Центр) розглянувши у межах компетенції запит щодо реєстрації в референс-лабораторії вірусологічних досліджень Центру штаму SARS-CoV-2 та інформує про таке.

Центр, відповідно до пункту 1 розділу І Статуту Державної установи «Центр громадського здоров'я Міністерства охорони здоров'я України», затвердженого наказом МОЗ України від 30.06.2020 № 1483, є санітарно-профілактичним закладом охорони здоров'я, головним завданням якого є діяльність у галузі громадського здоров'я, а саме здійснення епідеміологічного нагляду (спостереження), виконання повноважень щодо захисту населення від інфекційних хвороб та неінфекційних захворювань, лабораторної діяльності, біобезпеки, інфекційної безпеки донорської крові та/або її компонентів у межах, визначених цим Статутом.

У референс-лабораторії вірусологічних досліджень Центру штам SARS-CoV-2 відсутній, референс-лабораторія вірусологічних досліджень Центру не проводить вірусні дослідження з метою виділення вірусу SARS-CoV-2 на культурі клітин.

Генеральний директор **Роман РОДІНА**

MINISTERSTVO ZDRAVOTNICTVÍ
ČESKÉ REPUBLIKY

Váš dopis ze dne 26. prosince 2020

V Praze dne 30. prosince 2020

Č. j.: MZDR 55403/2020-11/MIN/KAN

MZDRX01DQV5W

Sdělení Ministerstva zdravotnictví ke stížnosti – poskytnutí požadovaných informací

K Vámi podané stížnosti, doručené Ministerstvu zdravotnictví dne 26. prosince 2020, evidované pod č. j.: MZDR 55403/2020-8/MIN/KAN, Vám níže zasílám požadované informace.

Publikace potvrzující existenci viru SARS-CoV-2:

1. Ludwig S.,Zarbock A. *Coronaviruses and SARS-CoV-2: A Brief Overview.* 2020 International Anaesthesia Research Society, www.anesthesia-analgesia.org Dostupné na: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7173023/
2. Na Zhu et al., *A novel coronavirus from patients with pneumonia in China, 2019,* N Engl J MED 382;8, February 20, 2020 (pdf ke stažení zde: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7092803/pdf/NEJMoa2001017.pdf)
3. SZÚ WEB: http://www.szu.cz/uploads/Epidemiologie/Coronavirus/Zakladni_info/2020_08_07_Covid_19_zakladni_informace.pdf
4. Sharma et.al. *Severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2): a global pandemic and treatment strategies*. Int J Antimicrob Agents. 2020 Aug; 56(2): 106054. Published online 2020 Jun 10. doi: 10.1016/j.ijantimicag.2020.106054
5. Junejo Y, Ozaslan M, Safdar M, et al. *Novel SARS-CoV-2/COVID-19: Origin, pathogenesis, genes and genetic variations, immune responses and phylogenetic analysis*. Gene Rep. 2020;20:100752. doi:10.1016/j.genrep.2020.100752
6. https://viralzone.expasy.org/9056

7. Corman VM, et al. *Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR.* Euro Surveill. 2020 Jan 23;25(3):pii=2000045. https://doi.org/10.2807/1560-7917.ES.2020.25.3.2000045Received: 21 Jan 2020; Accepted: 22 Jan 2020
Correction in: Euro Surveill. 2020 Apr 9; 25(14): 20200409c.
Correction in: Euro Surveill. 2020 Jul 30; 25(30): 2007303.

Tímto doplněním k naší odpovědi ze dne 21.12.2020, č,j.: MZDR 55403/2020-7/MIN/KAN považuji Vaši stížnost za vyřízenou.

S pozdravem

Mgr. Daniela Kobilková
ředitelka odboru Kancelář ministra
podepsáno elektronicky

UNIVERZITA KARLOVA

Kvestor

V Praze dne 17. března 2021
Č.j. : UKRUK/68296/2021

Rozhodnutí

K žádosti pana Davida Šubíka, [redacted] o poskytnutí informací na základě zákona č. 106/1999 Sb. vydává kvestor Univerzity Karlovy v souladu s ustanovením čl. 2 odst. 1 Opatření rektora č. 41/2014 ve znění Opatření rektora č. 7/2020 toto rozhodnutí :

Žádost pana Davida Šubíka se odmítá.

Odůvodnění :

Pan David Šubík, [redacted] podal dne 24. 2. 2012 žádost podle zákona č. 106/1999 Sb., kterou požaduje poskytnutí

- „relevantní vědecké informace" ve formě citace vědecké publikace k otázce, jakým způsobem byla získána kompletní makromolekula RNA genomu viru SARS-CoV-2,
- případné informace, na základě jaké vědecké publikace je možno považovat výsledek WGS – celogenomové sekvenace za skutečný genom patogenního viru,
- informace, na základě jaké vědecké publikace byla prokázána existence patogenu SARS-CoV-2 a jeho příčinná souvislost s onemocněním COVID-19,
- „relevantní vědecké informace" dokládající skutečnost, že cílové sekvence RNA lze pokládat za součást genomu infekce schopného SARS-CoV-2, a konečně
- „relevantní vědecké informace" dokazující skutečnost, že antigeny detekované antigenními testy byly řádně biochemicky určeny na základě izolace viru zmiňovaného viru.

K žádosti pana Davida Šubíka je třeba uvést, že jde o vysoce specializované odborné otázky, na něž sice existuje konsensuální vědecký názor, široce sdílený mezinárodní

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vědeckou komunitou, ale rozhodně se nejedná o nějaký uzavřený soubor informací, který by byl v jakémkoli smyslu ve vlastnictví nebo dispozici University Karlovy, a který by bylo možno po veřejné instituci požadovat ve smyslu dikce zákona č. 106/1999 Sb. Vědecké informace v odborných publikacích jsou intelektuálním vlastnictvím autora resp. autorů jednotlivých publikovaných článků, případně vydavatelů příslušných vědeckých publikací. Univerzita Karlova není však povinna informace uvedené v konkrétních publikacích (ani svých vlastních zaměstnanců) přezkoumávat a ani není oprávněna z nich vyvozovat další hypotézy a úvahy nebo je předávat jako potvrzené dalším osobám. Vědecké poznání není uzavřeným systémem pravd, ale dynamickým procesem směřování k pravdě, kde není nikdo "vlastníkem" konkrétních vědeckých závěrů. Je na každém, aby na základě kritického zkoumání a s erudicí v oboru učinil závěry ze všech dostupných pramenů.

Dotazy, které žadatel pokládá, jsou ostatně zjevně založeny na dogmatickém pojetí tzv. Kochových postulátů a byly široce diskutovány již během kontroverzí kolem epidemie HIV a AIDS. Je třeba upozornit, že tento soubor pravidel, který Robert Koch před 140 lety aplikoval na detekci bacilu tuberkulosy, je už dávno překonaný. Díky moderním molekulárně biologickým metodám nepotřebujeme isolovat pathogenní mikroorganismus, abychom určili jeho molekulovou strukturu, přesnou sekvenci párů bází jeho DNA/RNA nebo i prostorovou strukturu všech jeho proteinů.

Existuje široký vědecký konsensus o tom, že chorobu COVID-19 způsobuje virus SARS-CoV-2, že tento virus lze specificky a citlivě detekovat pomocí řady biochemických metod včetně polymetázové řetězové reakce, je známa detailní chemická i prostorová struktura všech proteinů, z nichž se virus SARS-CoV-2 skládá, i struktura viru samotného a je známa přesná sekvence jeho dědičné informace, RNA. To vše může poučená, kvalifikovaná osoba snadno zjistit informovaným hledáním v otevřených informačních zdrojích. Univerzita Karlova však nemůže sdělit odpovědi na předmětné dotazy žadatele, které by mohly sloužit jako konečné, autoritativní a nesporné pravdy, resp. konečné vědecké informace.

Z těchto všech důvodů nelze žadateli vyhovět a Univerzitě Karlově nezbývá než žádost odmítnout.

Poučení : Proti tomuto rozhodnutí lze podat odvolání nejpozději do 15 dnů ode dne jeho doručení podáním u rektorátu Univerzity Karlovy (ust. § 16 odst. 1 zák. č. 106/1999 Sb.).

JUDr. Tomáš Horáček, Ph.D.
kvestor Univerzity Karlovy

[redacted]

CHARLES UNIVERSITY
Bursar

Prague, 17 March 2021
Ref. No.: UKRUK/68296/2021

Decision

Regarding a request filed by Mr. David Šubík, [redacted], for the disclosure of information in accordance with Act No. 106/1999 Coll., the Bursar of Charles University hereby delivers the present Decision in accordance with Article 2, Paragraph 1 of Rectoral Decree No. 41/2014, as amended by Rectoral Decree No. 7/2020:

The request of Mr. David Šubík is rejected.

Explanation:

On 24 February 2021, Mr. David Šubík, [redacted], filed a request in accordance with Act No. 106/1999 Coll., in which he requested:

- "relevant scientific information" in the form of citation of a scientific publication regarding the method for obtaining a complete macromolecule of the RNA of the genome of the SARS-CoV-2 virus,
- alternatively, if applicable, information on a scientific publication based on which the outcome of full-genome WGS sequencing can be considered to coincide with the actual genome of a pathogenic virus,
- information on what scientific publication has been the basis for demonstrating the existence of the SARS-CoV-2 pathogen and the causal link between SARS-CoV-2 and the COVID-19 disease,
- "relevant scientific information" proving that the target RNA sequences can be considered part of the genome of infection-causing SARS-CoV-2, and, lastly
- "relevant scientific information" proving that the antigens detected by antigen tests have been duly established in biochemical terms based on the isolation of the aforementioned virus.

Regarding the request filed by Mr. David Šubík, it needs to be said that the issues in question are highly specialized, and that although scientific consensus, broadly shared across the international scientist community, exists in this regard, the issues can in no way be considered to constitute an integral body of knowledge that would in any sense whatsoever be the property or at the disposal of Charles University, and information regarding which could be requested from a public organization within the meaning of Act No. 106/1999 Coll. Scientific information presented in specialized publications are the intellectual property of the author, or authors, of specific published articles, or, as the case may be, the publishers of the relevant scientific publications. However, Charles University is under no obligation to review information stated in specific publications, including those published by its own employees. Likewise, Charles University has no right to use such information as a basis for formulating hypotheses and considerations or to convey such information, as verified facts, to third

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parties. As opposed to being a closed system of truths, scientific knowledge is a dynamic process leading toward truth, where no entity is the "owner" of specific scientific conclusions. It is up to everyone to use critical examination and relevant erudition to draw conclusions, using all available resources.

The questions asked by the applicant clearly stem from the dogmatic concept of the so-called Koch's Postulates, and they have been widely debated already in connection with the controversies surrounding the HIV/AIDS epidemic. It needs to be pointed out that the ensemble of rules applied by Robert Koch 140 years ago in the detection of the tuberculosis bacillus has now been long considered obsolete. Thanks to modern molecular and biological methods, it is not necessary to isolate a pathogenic micro-organism to be able to determine its molecular structure, the exact sequence of the base pairs of its DNA/RNA, and the spatial structure of all of its proteins.

There exists broad scientific consensus that the COVID-19 disease is caused by the SARS-CoV2 virus, that this virus can be specifically and sensitively detected using a number of biochemical methods, including polymerase chain reaction, that the detailed chemical and spatial structure of all of the proteins constituting the SARS-CoV-2 virus is known, as is the structure of the virus itself, and that the exact sequence of the hereditary information, RNA, of the virus is known as well. Information on all of the foregoing can be easily obtained by an informed, qualified person through an informed search in open information sources. Charles University, however, cannot provide answers to the applicant's questions, which could serve as the final, authoritative, and indisputable truth or ultimate scientific information.

For these reasons, the applicant's request cannot be accepted, and Charles University has no choice but to reject it.

Note: This Decision may be appealed to the Charles University Rectorate within 15 days after the delivery hereof (Section 16, Paragraph 1 of Act No. 106/1999 Coll.).

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Bursar, Charles University

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NACIONALNI LABORATORIJ ZA ZDRAVJE, OKOLJE IN HRANO

SKUPNE STROKOVNE SLUŽBE

Datum: 15.3.2021

Številka: 161-0-7-UZ-3/2021

Nacionalni laboratorij za zdravje, okolje in hrano, Prvomajska ulica 1, Maribor, ki ga zastopa direktorica mag. Tjaša Žohar Čretnik, dr. med., spec., izdaja na podlagi prvega odstavka 21. člena ter drugega odstavka 22. člena Zakona o dostopu do informacij javnega značaja (Ur. l. št. RS, 51/06 - UPB-2 in 117/06 - ZdavP-2, 23/2014, 50/2014) in na podlagi četrtega odstavka 26. člena Sklepa o ustanovitvi Nacionalnega laboratorija za zdravje, okolje in hrano (štev. 01403-26/2013/4 z dne 25. 7. 2013), v upravni zadevi dostopa do informacij javnega značaja po vloženi zahtevi prosilca [redacted]

O D L O Č B O

o delni zavrnitvi zahteve za dostop do informacije javnega značaja

1. Zahtevi za dostop do informacij javnega značaja prosilca [redacted] vloženi dne 9.2.2021, s e delno u g o d i v delu, ki se nanaša na cepivo proti bolezni Covid-19

2. V ostalem se zahtevo prosilca zavrne.

3. Nacionalni laboratorij za zdravje, okolje in hrano in prosilec krijeta vsak svoje stroške postopka.

O b r a z l o ž i t e v:

Prosilec je dne 9.2.2021 na Nacionalni laboratorij za zdravje, okolje in hrano (v nadaljevanju: NLZOH) v elektronski pošti naslovil Zahtevo za dostop do informacij javnega značaja. Zaradi molka NLZOH se je prosilec pritožil, zato je Informacijski pooblaščenec NLZOH pozval k odločitvi v skladu z ZDIJZ oz. sporočilo, zakaj odločba ni bila izdana pravočasno, če za to obstajajo opravičeni razlogi.

Vlagatelj je na NLZOH naslovil zahtevo s sledečo vsebino:

A. Virus SARS-CoV-2 (v nadaljevanju: Virus) in bolezen Covid-19 (v nadaljevanju: C19)

10. Glede na z državnimi predpisi določenimi vlogo in namenom ter pomenom NLZOH na področju javnega zdravja, Vlagatelj domneva, da je NLZOH v lastnem laboratoriju dokazal fizični obstoj Virusa iz vzorcev okuženih oseb ob upoštevanju Kochovih in/ali Riverjevih postulatov, zato Vlagatelj od NLZOH Vlagatelj pričakuje listinsko informacijo, v kateri NLZOH to izkazuje.

11. Če NLZOH fizični obstoj Virusa ni dokazal, Vlagatelj pričakuje, da mu NLZOH predloži listinsko informacijo laboratorija, ki je dokazal fizični obstoj Virusa.

12. Če fizični obstoj Virusa (sploh) ni laboratorijsko dokazan po Kochovih in/ali Riverjevih postulatih, Vlagatelj od NLZOH pričakuje listinsko informacijo, ki (kakorkoli) dokazuje obstoj Virusa.

13. Ali se je celotna (izolirana) DNA sekvenca Virusa pridobila iz okuženih pacientov ali računalniško z algoritmi iz vzorcev vzetih iz genske banke? Vlagatelj pričakuje, da mu

NLZOH predloži listinsko informacijo kdo je prvi izvedel celotno (biokemično karakterizacijo) DNA sekvenco virusa?

14. Ali so bili opravljeni vsi potrebni kontrolni eksperimenti, da se izloči možnost, da ta sekvenčna struktura, i.e. genetski sev, ki je pripisan temu virusu, ne izvira iz drugega vira in da je neškodljiv?

15. Ali so bili opravljene vse potrebne kontrole, da se izloči, da eksperimentalna priprava, i.e. okužba celične kulture (e.g. VeroE6 celice/celice iz jeter opic), s katero se je obdelala celična kultura, ni posledica afekta, ki bi se tako pomotoma pripisal zaznavanju virusa?

16. Glede na (uradno) informacijo, da Virus povzroča C19, Vlagatelj od NLZOH pričakuje listinsko informacijo, ki pri ljudeh to vzročnost Virusa in C19 dokazuje.

17. Ali NLZOH pri odkrivanju Virusa s PCR testom uporablja Corman-Drostenov protokol ali kateri drug protokol? Vlagatelj od NLZOH pričakuje ali pritrditev ali listinsko informacijo o protokolu, ki ga pri svojem delu upošteva NLZOH.

18. Glede na zapis v javno dostopni informaciji "PCR testi so zanesljivi." avtorjev Petra Vovko, mikrobiologinja v sodelovanju z Majo Bombek Ihan ter Matjažem Reteljem, da gre za osebna/strokovna mnenja in ne nujno mnenja delodajalca (NLZOH), in v kateri je navedeno, da se za detekcijo Virusa s PCR testom opravi 40 ciklov (pomnoževanj) kratkih zaporedij DNA, medtem ko Corman-Drostenov protokol navaja 45 ciklov.

18.1. NLZOH naj Vlagatelju pojasni, zakaj ta razlika, ali je znanstveno/strokovno ali drugače utemeljena, ter Vlagatelju predloži listinsko informacijo utemeljitve odstopanja.

18.2. NLZOH naj Vlagatelju pojasni, ali dosledno in ves čas od marca 2020 pri detekciji Virusa s PCR testom upošteva navodila proizvajalcev glede števila.

18.3. NLZOH naj Vlagatelju pojasni, ali dosledno in ves čas od marca 2020 uporablja na isti/enaki napravi isto število ciklov za detekcijo Virusa.

18.4. Če je NLZOH spreminjal število ciklov, naj Vlagatelju predloži listinsko informacijo o razlogih in ciljih spreminjanja števila ciklov ter o rezultatih odkrivanja in potrjevanja Virusa z različnim številom pomnoževanj kratkih zaporedij DNA.

19. V javno dostopni informaciji "PCR testi so zanesljivi." je navedeno: "Vrednost Ct je zaporedna številka cikla, pri katerem signal vzorca doseže prag, ki je potreben za pozitiven rezultat. Če je Ct nizek, je bilo v vzorcu veliko virusnih genov. Če je Ct visok, je bilo v vzorcu malo virusnih genov.".

19.1. Ker Vlagatelju ni jasno, v kakšni povezavi so navedbe v javno dostopni informaciji "PCR testi so zanesljivi." s "standardnimi" 40 Ct, od NLZOH pričakuje pojasnilo, ali kljub vsemu obstaja minimum pomnoževanj, ki dokazuje prisotnost Virusa in s tem pozitivnost testirane osebe, ter maksimum pomnoževanj, ki dokazuje odsotnost Virusa in s tem negativnost testirane osebe?, kot npr. Ct 35 za pozitivnost in Ct 40 za negativnost?
19.2. Ali PCR odkrije celotno sekvenco domnevnega virusa?
19.3. Ali je "količina" Virusa merljiva in če, kako?
19.4. Ali že vsaka dokazana "količina" Virusa dokazuje okuženost z Virusom?
19.5. Ali lahko PCR časovno določi, kdaj je človek pridobil virus?
19.6. Ali lahko PCR najde virusne delce iz preteklih okužb?
19.7. Ali lahko PCR zazna druge sorodne koronaviruse?

19.8. Ali že vsaka s PCR testom ugotovljena prisotnost Virusa pri neki osebi, ne glede na "količino" Virusa, de facto že pomeni obolelost te osebe s C19?
19.9. Če vzorec preverimo s PCR testom pri 30 Ct in isti vzorec testiramo pri 40 Ct, ,bo vrednost enaka ali bo vplivalo na rezultat, ter bi želel reference do teh podatkov?

20. Vlagatelj prilaga kopijo (anonimiziranega) izvida o prisotnosti oz. detekciji Virusa pri osebi, ki ga je opravil Inštitut za mikrobiologijo in imunologijo iz Ljubljane (IMI).

20.1. Vlagatelj, izhajajoč iz predloženega izvida testiranja in ker iz javno dostopnih virov in informacij ni mogel razbrati in z gotovostjo ugotoviti, od NLZOH pričakuje, da mu predloži listinsko informacijo, ki vsebuje navedbo državnega predpisa, na podlagi katerega je IMI, tako kot NLZOH po 23.c členu ZNB, javno pooblaščen za izvajanje mikrobioloških preizkušanj na področju medicinske mikrobiologije za potrebe izvajalcev zdravstvene dejavnosti, ter od ECDC priznan nacionalni referenčni laboratorij.
20.2. Vlagatelj, ki mu v izvidu, po laičnem prepričanju, manjka vsaj podatek o številu opravljenih pomnoževanj, od NLZOH pričakuje, da mu predloži listinsko informacijo - predpis oz. akt, ki določa vsebino izvida testiranja oz. izvida neposrednega dokazovanja Virusa, ter predloži tudi en primerek lastnega (anonimiziranega) izvida dejansko opravljenega dokazovanja Virusa.
20.3. Vlagatelj od NLZOH pričakuje, da mu navede dejansko skupno število (vseh) opravljenih PCR testiranj ter skupno število (vseh) testiranih oseb (i) v letu 2020 in (ii) v januarju 2021.

B. Cepivo proti C19 (v nadaljevanju: Cepivo)

21. Je NZLOH kakorkoli sodeloval z EMA pri izbiri ter kontroli in potrjevanju Cepiva, in če, kako? Vlagatelj od NZLOH pričakuje ali pisno zanikanje sodelovanja ali predložitev listinskih informacij, ki izkazujejo sodelovanje NZLOH z EMA.
22. Je NLZOH, pred dejanskim potrjevanjem Cepiva vsakega proizvajalca v promet oz. uporabo na področju RS, samostojno in neodvisno ali po nalogu JAZMP analizno preskusil Cepivo, bodisi kot redno bodisi kot izredno kontrolo kakovosti Cepiva?
22.1. Če DA, Vlagatelj od NLZOH pričakuje listinsko informacijo o opravljeni kontroli kakovosti Cepiva vseh proizvajalcev.
22.2. Če NE, Vlagatelj od NLZOH pričakuje listinsko informacijo o opravljeni kontroli kakovosti Cepiva vseh proizvajalcev od (evropskega) uradnega kontrolnega laboratorija, ki je opravil kontrolo kakovosti.
23. Ali je NZLOH pri določanju redne in izredne kontrole kakovosti, ter nerutinskih ali posebnih preskusov samostojna in suverena inštitucija, ali je podrejena nekemu drugemu in kateremu organu oz. entiteti, ter, ali lahko predlaga nerutinske ali posebne preskuse civilna družba in pod kakšnimi pogoji?

Vlagatelj pričakuje od NLZOH, javnega zavoda z izjemno pomembnimi pooblastili in nalogami na področju javnega zdravja in tudi v vlogi nacionalnega referenčnega laboratorija, da bo
- Vlagatelju odgovoril na v tej zahtevi postavljena vprašanja,
- Vlagatelju predložil zahtevane listinske informacije, bodisi v obliki elektronskih zapisov (word, PDF) ali prepisov (kopija/scan) listin bodisi v obliki elektronskih povezav do spletnih strani, na katerih bodo relevantne listinske informacije Vlagatelju prosto dosegljive, ter
- Vlagateljeve zahtevke po informacijah v obliki vprašanj ali listin, ki ne sodijo v delovno področje NLZOH, nemudoma odstopil pristojni inštituciji ali (državnemu) organu. Vlagatelju pa hkrati posredoval dopis o odstopljenih zadeva pisno obvestil.
- Vse pisne odpravke NZLOH pričakuje Vlagatelj na e-naslov [redacted]

NACIONALNI LABORATORIJ ZA
ZDRAVJE, OKOLJE IN HRANO

SKUPNE STROKOVNE SLUŽBE

Zahtevi za informacijo javnega značaja se ugodi v delu, ki se nanaša na informacije o cepivih, tako, da se mu odgovor posreduje na elektronski naslov [redacted]
V ostalem se prosilčeva zahteva za informacijo javnega značaja zavrne.

Po določilu 4. člena Zakona o dostopu do informacij javnega značaja je informacija javnega značaja informacija, ki izvira iz delovnega področja organa, nahaja pa se v obliki dokumenta, zadeve, dosjeja, registra, evidence ali drugega dokumentarnega gradiva(v nadaljnjem besedilu: dokument), ki ga je organ izdelal sam, v sodelovanju z drugim organom, ali pridobil od drugih oseb.

Z dokumenti, zaprošenimi pod točkami 10. do 17. NLZOH ne razpolaga v takšni obliki, ki jo zahteva prosilec, ker NLZOH za diagnostiko Covid19 ne uporablja gojitvenih metod, temveč za dokazovanje virusne RNK v kužninah uporablja teste, ki so validirani, imajo CE-IVD oznako, izvaja jih od prvega dne epidemije po protokolih proizvajalca, pred uporabo jih verificira po internih navodilih za delo, ki so izključno namenjeni laboratorijskemu osebju in so opredeljeni kot poslovna skrivnost, zato prosilca napotuje na svetovni splet, kjer so številni peer-viewed članki, v katerih je opisano gojenje virusa SARS-CoV-2 na celičnih kulturah.

V nadaljevanju prosilec prosi za pojasnila (tč. 18. in 19.). Ob tem NLZOH pojasnjuje, da skladno s 4. členom ZDIJZ informacijo javnega značaja predstavlja samo dokument, ki že obstaja v neki materialni obliki oz. tisti dokument, ki ga je organ v okviru svojega delovnega področja že izdelal oz. pridobil in ga ni dolžan ustvariti šele na podlagi zahteve. Pojasnilo tako ne predstavlja informacije javnega značaja, saj to ni dokument, s katerim bi NLZOH že razpolagal.

V zvezi s tč. 20 prosilčevih vprašanj je potrebno pojasniti, da NLZOH ni pristojen za interpretacijo izvidov drugih izvajalcev, da izvid vsebuje posebne vrste osebnih podatkov, katerega razkritje bi pomenilo kršitev varstva osebnih podatkov, vsebina izvida je določena v Pravilniku o pogojih, ki jih morajo izpolnjevati laboratoriji za izvajanje preiskav na področju laboratorijske medicine, podatki o skupnem številu opravljenih PCR testiranj in skupnem številu testiranih oseb so vsakodnevno objavljeni na tiskovnih konferencah Vlade RS in na https://covid-19.sledilnik.org/sl/stats.

Ob tem velja še poudariti, da upoštevaje naloge, ki jih NLZOH v skladu s 23. členom Zakona o zdravstveni dejavnosti izvaja, ni organ, ki bi izvajal naloge oblasti in ob znani epidemiološki situaciji priprava zahtevnih strokovnih pojasnil še dodatno obremenjuje vrhunski strokovni kader, ki mora biti na razpolago za izvajanje zakonskih nalog.

Upoštevaje vse zgoraj ugotovljeno je odločeno kot izhaja iz izreka.

Nacionalni laboratorij za zdravje, okolje in hrano in prosilec krijeta vsak svoje stroške postopka.

Pouk o pravnem sredstvu: Zoper to odločbo je dovoljena pritožba na Informacijskega pooblaščenca, Dunajska cesta 22, 1000 Ljubljana, v 15 dneh po vročitvi odločbe. Pritožba se vloži pisno ali ustno na zapisnik pri organu, ki je izdal to odločbo. Pritožba je takse prosta.

Po pooblastilu direktorice:
Vlasta Lukar, univ. dipl. prav.

Vročiti:
- [redacted]
- v vednost: Informacijski pooblaščenec
- Arhiv – tu.

ENGLISH TRANSLATIONS (AS PROVIDED BY THE FOI SUBMITTER)
OF QUESTIONS 10-17 AND NLZOH'S INITIAL RESPONSE

10) Glede na z državnimi predpisi določeno vlogo in namenom ter pomenom NLZOH na področju javnega zdravja, Vlagatelj domneva, da je NLZOH v lastnih laboratoriju dokazal fizični obstoj virusa iz vzorcev okuženih oseb ob upoštevanju Kochovig in/ ali Riverjevih postulatov, zato Vlagatelj pričakuje listinsko informacijo, v kateri NLZOH to izkazuje.

Given the role and purpose determined by state regulations and the importance of NLZOH in the field of public health, the Applicant assumes that NLZOH proved in its own laboratory the physical existence of the virus from samples of infected persons taking into account Kochovig and / or River's postulates, which NLZOH demonstrates this.

11) Če NLZOH fizični obstoj virusa ni dokazal, Vlagatelj pričakuje, da mu NLZOH predloži listinsko informacijo laboratorija, ki je dokazal fizični obstoj virusa?

If the NLZOH has not proved the physical existence of the virus, does the Applicant expect the NLZOH to provide him with documentary information from the laboratory that proved the physical existence of the virus?

12) Če fizični obstoj virusa(sploh) ni laboratorijsko dokazan po Kochovih in/ali Riverjevih postulatih, vlagatelj pričakuje listinsko informacijo,ki (kakorkoli) dokazuje obstoj virusa?

If the physical existence of the virus (at all) is not laboratory proven according to Koch's and / or River's postulates, does the applicant expect documentary information that (in any way) proves the existence of the virus?

13) Ali se je celotna (izolirana) DNA sekvenca virusa pridobila iz okuženih pacientov ali računalniško z algoritmi iz vzorcev genske banke? Vlagatelj pričakuje,da mu NLZOH predloži listinsko informacijo kdo je prvi izvedel celotno(biokemično karakterizicijo) DNA sekvenco virusa?

Has the entire (isolated) DNA sequence of the virus been obtained from infected patients or by computer algorithms from gene bank samples? The applicant expects the NLZOH to provide him with documentary information as to who first performed the entire (biochemical characterization) DNA sequence of the virus?

14) Ali so bili opravljeni vsi potrebni kontrolni eksperimenti, da se izloči možnost,da ta sekvenčna struktura i.e. genetski sev, ki je pripisan temu virusu, ne izvira iz drugega vira in da je neškodljiv?

Have all the necessary control experiments been performed to rule out the possibility that this sequence structure i.e. the genetic strain attributed to this virus does not originate from another source and is harmless?

15)Ali so bile opravljene vse potrebne kontrole, da se izloči,da eksperimentalna priprava, i.e. okužba celične kulture(e.g. VeroE6 celice/celice iz jeter opic), s katero se je obdelala celična kultura, ni posledica afekta, ki bi se tako pomotoma pripisal zaznavanju virusa?

Have all the necessary controls been carried out to rule out that the experimental preparation, i.e. is the cell culture infection (eg VeroE6 cells / monkey liver cells) treated with the cell culture not the result of an affect so mistakenly attributed to virus detection?

16) Glede na (uradno) informacijo, da virus povzroča C19, vlagatelj od NLZOH pričakuje listinsko informacijo, ki pri ljudeh to vzročnost virusa in C19 dokazuje?

According to (official) information that the virus causes C19, does the applicant expect from NLZOH documentary information that proves this causality of the virus in humans and C19?

17) Ali NLZOH pri odkrivanju virusa s PCR testom uporablja Corman-Drosten protokol ali kateri drugi protokol? Vlagatelj pričakuje od NLZOH pričakuje ali potrditev ali listinsko informacijo o protokolu, ki ga pri svojem delu upošteva NLZOH.

Does NLZOH use the Corman-Drosten protocol or any other protocol to detect the virus by PCR test? The applicant expects from the NLZOH either confirmation or documentary information on the protocol that the NLZOH follows in its work.

ANSWER from NLZOH regarding questions 10-17

Z dokumenti, zaprošenimi pod točkami 10. do 17. NLZOH ne razpolaga v takšni obliki, ki jo zahteva prosilec, ker NLZOH za diagnostiko C19 ne uporablja gojitvenih metod,temveč za dokazovanje virusne RNK v kužninah uporablja teste, ki so validirani in imajo CE-IVD oznako, izvaja jih od prvega dne epidemije po protokolu proizvajalca, pred uporabo jih verificira po internih navodilih za delo, ki so izključno namenjeni laboratorijskemu osebju in so opredeljeni kot poslovna skrivnost, zato prosilca napotuje na svetovni splet, kjer so številni peer-viewed članki, v katerih je opisano gojenje virusa SARS-CoV-2 na celičnih kulturah

The documents requested under points 10 to 17 are not available to the NLZOH in the form required by the applicant, as the NLZOH does not use culture methods to diagnose C19, but uses tests that are validated and CE-certified to detect viral RNA in infectious diseases. IVD label, carried out from the first day of the epidemic according to the manufacturer's protocol, verified before use according to internal work instructions, which are exclusively intended for laboratory staff and are defined as a business secret, so the applicant is referred to the World Wide Web, where many peer-viewed articles , which describe the cultivation of SARS-CoV-2 virus on cell cultures

INFORMACIJSKI
POOBLAŠČENEC
[redacted]

Številka: 090-121/2021/7
Datum: 7. 6. 2021

Informacijski pooblaščenec po informacijski pooblaščenki Mojci Prelesnik, v nad. IP, na podlagi 2. člena Zakona o Informacijskem pooblaščencu (Ur. l. RS, št. 113/05 in 51/07-ZUstS-A, v nad. ZInfP), 3. in 4. odstavka 27. člena Zakona o dostopu do informacij javnega značaja (Ur. l. RS, št. 51/06 – UPB, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – odl. US in 102/15; v nad. ZDIJZ) ter 1. odstavka 248. člena ter 1. in 3. odstavka 251. člena Zakona o splošnem upravnem postopku (Ur. l. RS, št. 24/06 – UPB, 105/06–ZUS-1, 126/07-ZUP-F, 65/08-ZUP-F in 8/10-ZUP-G in 82/13-ZUP-H; v nad. ZUP), o pritožbi [redacted] z dne 1. 4. 2021, zoper odločbo **Nacionalnega laboratorija za zdravje, okolje in hrano**, Prvomajska ulica 1, 2000 Maribor (v nad. organ), št. 161-0-7-IJZ-3/2021 z dne 15. 3. 2021, v zadevi dostopa do informacij javnega značaja, izdaja naslednjo

O D L O Č B O

1. Pritožbi prosilca z dne 1. 4. 2021 zoper odločbo Nacionalnega laboratorija za zdravje, okolje in hrano, št. 161-0-7-IJZ-3/2021 z dne 15. 3. 2021, se delno ugodi in se izpodbijana odločba delno odpravi ter se zadeva v delu, ki se nanaša na 17. in 20.2. točko zahteve prosilca, vrne organu v ponovno odločanje. Organ je dolžan o zahtevi prosilca v tem delu odločiti brez odlašanja, najpozneje pa v 30 (trideseth) dneh od prejema te odločbe.

2. V preostalem delu se pritožba prosilca zavrne.

3. V postopku reševanja te pritožbe niso nastali posebni stroški.

OBRAZLOŽITEV:

Prosilec je dne 9. 2. 2021 na organ vložil zahtevo za dostop do informacij javnega značaja s sledečo vsebino:
A. Virus SARS-CoV-2 (v nad. virus) in bolezen Covid-19 (v nad. C19)
10. Prosilec domneva, da je organ, iz vzorcev okuženih oseb, ob upoštevanju Kochovih in/ali Riverjevih postulatov, v lastnem laboratoriju dokazal fizični obstoj virusa, zato prosilec od organa pričakuje listinsko informacijo, v kateri organ to izkazuje.
11. Če organ fizičnega obstoja virusa ni dokazal, naj predloži listinsko informacijo laboratorija, ki je dokazal fizični obstoj virusa.
12. Če fizični obstoj virusa (sploh) ni laboratorijsko dokazan po Kochovih in/ali Riverjevih postulatih, prosilec prosi za listinsko informacijo, ki (kakorkoli) dokazuje obstoj virusa.
13. Ali se je celotna (izolirana) DNA sekvenca virusa pridobila iz okuženih pacientov ali računalniško, z algoritmi iz vzorcev vzetih iz genske banke? Prosilec pričakuje, da mu organ predloži listinsko informacijo, kdo je prvi izvedel celotno (biokemično karakterizacijo) DNA sekvenco virusa.
14. Ali so bili opravljeni vsi potrebni kontrolni eksperimenti, da se izloči možnost, da ta sekvenčna struktura, i.e. genetski sev, ki je pripisan temu virusu, ne izvira iz drugega vira in da je neškodljiv.
15. Ali so bili opravljeni vse potrebne kontrole, da se izloči, da eksperimentalna priprava, i.e. okužba celične kulture (e.g. VeroEG celicerčalica iz jeter opic), s katero se je obdelala celična kultura, ni posledica efekta, ki bi se tako pomotoma pripisal zaznavanju virusa.
16. Glede na (uradno) informacijo, da virus povzroča C19, prosilec pričakuje listinsko informacijo, ki pri ljudeh to vzročnost virusa in C19 dokazuje.
17. Ali organ pri odkrivanju virusa s PCR testom uporablja Corman-Drostenov protokol ali kateri drug protokol? Prosilec pričakuje ali pritrditev ali listinsko informacijo o protokolu, ki ga pri svojem delu upošteva organ.
18. Glede na zapis v javno dostopni informaciji "PCR testi so zanesljivi," avtorjev Petra Vovko, mikrobiologinja v sodelovanju z Majo Bombek Ihan ter Matjažem Reteljem, da gre za osebna/strokovna mnenja in ne tujno mnenja delodajalca (organa) in v kateri je navedeno, da se za detekcijo virusa s PCR testom opravi 40 ciklov (pomnoževanj) kratkih zaporedij DNA, medtem ko Corman-Drostenov protokol navaja 45 ciklov.

18.1. Organ naj pojasni, zakaj je razlika (ali je znanstveno/strokovno ali drugače utemeljena) ter prosilcu predloži listinsko informacijo utemeljitve odstopanja.
18.2. Organ naj pojasni, ali dosledno in ves čas (od marca 2020) pri detekciji virusa s PCR testom upošteva navodila proizvajalcev glede števila.
18.3. Organ naj pojasni, ali dosledno in ves čas (od marca 2020) uporablja na istovrstni napravi isto število ciklov za detekcijo virusa.
18.4. Če je organ spreminjal število ciklov, naj prosilcu predloži listinsko informacijo o razlogih in ciljih spreminjanja števila ciklov ter o rezultatih odkrivanja in potrjevanja virusa z različnim številom pomnoževanj kratkih zaporedij DNA.
19. V javno dostopni informaciji "PCR testi so zanesljivi." je navedeno: "Vrednost Ct je zaporedna številka cikla, pri katerem signal vzorca doseže prag, ki je potreben za pozitiven rezultat. Če je Ct nizek, je bilo v vzorcu veliko virusnih genov. Če je Ct visok, je bilo v vzorcu malo virusnih genov.
19.1. Ker prosilcu ni jasno, v kakšni povezavi so navedbe v javno dostopni informaciji "PCR testi so zanesljivi." s "standardnimi" 40 Ct, od organa pričakuje pojasnilo, ali kljub vsemu obstaja minimum pomnoževanj, ki dokazuje prisotnost virusa in s tem pozitivnost testirane osebe ter maksimum pomnoževanj, ki dokazuje odsotnost virusa in s tem negativnost testirane osebe, kot npr. Ct 35 za pozitivnost in Ct 40 za negativnost.
19.2. Ali PCR odkrije celotno sekvenco domnevnega virusa?
19.3. Ali je "količina" virusa merljiva in če, kako?
19.4. Ali že vsaka dokazana "količina" virusa dokazuje okuženost z virusom?
19.5. Ali lahko PCR časovno določi, kdaj je človek pridobil virus?
19.6. Ali lahko PCR najde virusne delce iz preteklih okužb?
19.7. Ali lahko PCR zazna druge sorodne koronaviruse?
19.8. Ali že vsaka s PCR testom ugotovljena prisotnost virusa pri neki osebi, ne glede na 'količino' virusa pomeni obolelost te osebe s C19?
19.9. Če vzorec preverimo s PCR testom pri 30 Ct in isti vzorec testiramo pri 40 Ct, bo vrednost enaka ali bo vplivalo na rezultat? Prosilec bi želel reference do teh podatkov.
20. Prosilec prilaga kopijo (anonimiziranega) izvida o prisotnosti oz. detekciji virusa pri osebi, ki ga je opravil Inštitut za mikrobiologijo in imunologijo iz Ljubljane (v nad. IMI).
20.1. Prosilec, izhajajoč iz predloženega izvida testiranja in ker iz javno dostopnih virov ni informacij ni mogel razbrati in z gotovostjo ugotoviti, od organa pričakuje, da mu predloži listinsko informacijo, ki vsebuje navedbo državnega predpisa, na podlagi katerega je IMI, tako kot organ po 23.c členu ZNB, javno pooblaščen za izvajanje mikrobioloških preizkušanj na področju medicinske mikrobiologije za potrebe izvajalcev zdravstvene dejavnosti, ter od ECDC priznan nacionalni referenčni laboratorij.
20.2. Prosilec, ki mu v izvidu, po laičnem prepričanju, manjka vsaj podatek o številu opravljenih pomnoževanj, od organa pričakuje, da mu predloži listinsko informacijo – predpis oz. akt, ki določa vsebino izvida testiranja oz. izvida neposrednega dokazovanja virusa, ter predloži tudi en primerek lastnega (anonimiziranega) izvida dejansko opravljenega dokazovanja virusa.
20.3. Prosilec od organa pričakuje, da mu navede dejansko skupno število (vseh) opravljenih PCR testiranj ter skupno število (vseh) testiranih oseb v letu 2020 in v januarju 2021.

B. Cepivo proti C19 (v nad.: cepivo)

21. Je organ kakorkoli sodeloval z EMA pri izbiri ter kontroli in potrjevanju cepiva in če, kako. Prosilec od organa pričakuje ali pisno zanikanje sodelovanja ali predložitev listinskih informacij, ki izkazujejo sodelovanje organa z EMA.
22. Je organ, pred dejanskim potrjevanjem cepiva vsakega proizvajalca v promet oz. uporabo na področju RS, samostojno in neodvisno ali po nalogu JAZMP analizno preskusil cepivo, bodisi kot redno bodisi kot izredno kontrolo kakovosti cepiva.
22.1. Če da, prosilec od organa pričakuje listinsko informacijo o opravljeni kontroli kakovosti cepiva vseh proizvajalcev.
22.2. Če ne, prosilec od organa pričakuje listinsko informacijo o opravljeni kontroli kakovosti cepiva vseh proizvajalcev od (evropskega) uradnega kontrolnega laboratorija, ki je opravil kontrolo kakovosti.
23. Ali je organ pri določanju rednih in izrednih kontrole kakovosti, ter ne-rutinskih ali posebnih preskusov samostojna in suverena institucija, ali je podrejena nekemu drugemu in kateremu organu oz. entiteti ali lahko predlaga ne-rutinske ali posebne preskuse civilna družba in pod kakšnimi pogoji?
Vlagatelj pričakuje od organa, da bo,
- odgovoril na v tej zahtevi postavljena vprašanja,
- preoblikoval zahtevane listinske informacije, bodisi v obliki elektronskih zapisov (word, pdf) ali prepisov (kopija/scan) listin, bodisi v obliki elektronskih povezav do spletnih strani, na katerih bodo relevantne listinske informacije prosilcu prosto dosegljive.

- zahtevke po informacijah v obliki vprašanj ali listin, ki ne sodijo v delovno področje organa, nemudoma odstopil pristojni instituciji ali (državnemu) organu, prosilca pa hkrati posredoval dopis o odstopljenih zadevah pisno obvestil.

Organ je o zahtevi prosilca odločil z odločbo št. 161-0/7-IJZ-3/2021 z dne 15. 3. 2021, s katero je zahtevi ugodil v delu, ki se nanaša na cepivo, v preostalem delu pa je zahtevo prosilca zavrnil. V obrazložitvi izpodbijane odločbe je organ navedel, sledeče:
- Organ z dokumenti, zaprošenimi pod točkami od 10. do 17., ne razpolaga v takšni obliki, ki jo zahteva prosilec, ker organ za diagnostiko Covid-19 ne uporablja gojitvenih metod, temveč za dokazovanje virusne RNK v kužninah uporablja teste, ki so validirani, imajo CE-IVD oznako. Teste izvaja od prvega dne epidemije po protokolih proizvajalca, pred uporabo jih verificira po internih navodilih za delo, ki so namenjeni izključno laboratorijskemu osebju in so opredeljeni kot poslovna skrivnost. Organ zato prosilca napotuje na svetovni splet, kjer so številni peer-viewed članki, v katerih je opisano gojenje virusa SARS-CoV-2 na celičnih kulturah.
- Pod točko 18. in 19. prosilec pros za pojasnila, pri čemer organ pojasnjuje, da skladno s 4. členom ZDIJZ informacijo javnega značaja predstavlja samo dokument, ki že obstaja v neki materialni obliki oz. tisti dokument, ki ga je organ v okviru svojega delovnega področja že izdelal oz. pridobil in ga ni dolžan ustvariti šele na podlagi zahteve. Pojasnilo tako ne predstavlja informacije javnega značaja, saj to ni dokument, s katerim bi organ že razpolagal.
- V zvezi s točko 20. organ pojasnjuje, da ni pristojen za interpretacijo izvidov drugih izvajalcev, ter da izvid vsebuje posebne vrste osebnih podatkov, katerega razkritje bi pomenilo kršitev varstva osebnih podatkov. Vsebina izvida je določena v Pravilniku o pogojih, ki jih morajo izpolnjevati laboratoriji za izvajanje preiskav na področju laboratorijske medicine. Podatki o skupnem številu opravljenih PCR testiranj in skupnem številu testiranih oseb so vsakodnevno objavljeni na tiskovnih konferencah Vlade RS in na https://covid-19.sledilnik.org/sl/stat.
Organ še poudarja, da upoštevaje naloge, ki jih izvaja v skladu s 23. členom Zakona o zdravstveni dejavnosti (Ur. l. RS, št. 23/05 – UPB, 15/08 – ZPacP, 23/08, 58/08 – ZZdrS-E, 77/08 – ZDZdr, 40/12 – ZUJF, 14/13, 88/16 – ZdZPZD, 64/17, 1/19 – odl. US, 73/19, 82/20 in 152/20 – ZZUOOP, v nad. ZZDej), ni organ, ki bi zvajal naloge oblasti in ob znani epidemiološki situaciji priprava zahtevnih strokovnih pojasnil še dodatno obremenjuje vrhunski strokovni kader, ki mora biti na razpolago za izvajanje zakonskih nalog.

Zoper odločbo organa je prosilec dne 1. 4. 2021 vložil pritožbo, v kateri oporeka odločitvi organa v zavrnilnem delu in navaja sledeče:
1. Prosilec je po ZDIJZ na organ naslovil vprašanja od št. 10 do št. 16, vsa v zvezi z virusom SARS-CoV-2 in boleznijo Covid-19, ker je domneval, da je organ za izvajanje svojega ustanovitvenega namena in poslanstva, predvsem po 23. členu ZZDej, (1) bodisi v svojih laboratorijih po Kochovih postulatih dokazal obstoj virusa SARS-CoV-2 ter vzročnost virusa SARS-CoV-2 in bolezni Covid-19, (2) bodisi, da organ uporablja dokaze nekega drugega priznanega slovenskega, evropskega ali svetovnega laboratorija. Slovenski medicinski slovar za Kochove postulate določa, da se sme nekemu mikrobu, med katere sodijo tudi virusi, priznati vzročnost pri določeni bolezni samo, kadar so izpolnjeni naslednji pogoji: (i) mikrob moramo najti pri vsakem primeru bolezni, ne pa tudi pri zdravih osebah, (ii) treba ga je osamiti od bolnika v čisti kulturi, (iii) treba ga je vcepiti zdravim občutljivim živalim, pri katerih mora povzročiti isto bolezen, in (iv) isti mikrob moramo znova osamiti iz okuženih živali. Direktorica organa je na novinarski konferenci o aktualnem stanju glede bolezni Covid-19 dne 24. 2. 2021 predstavila nacionalno strategijo sledenja znanim in novim različicam virusa SARS-CoV-2. Navedla je, da bodo sledenje v humanih vzorcih pokrivali: organ, IMI Medicinske fakultete in Klinični inštitut za specialno laboratorijsko diagnostiko na pediatrični kliniki UKC Ljubljana. Namen spremljanja je hitro zaznavanje novih variant virusa z večjo prenosljivostjo oz. težjim potekom bolezni ter spremljanje njihovih vzorcev širjenja. Načrt spremljanja in pojavljanja širjenja novih variant virusa zajema 5 sklopov. Prv sklop je spremljanje novih variant pri okuženih osebah z različnimi tehnikami sekvenciranja in sekvenciranjem celotnega virusnega genoma. To spremljanje bo potekalo kontinuirano z zajemom 5-10% PCR pozitivnih vzorcev z celotne populacije v skladu s priporočili Evropske komisije in še posebej v posebnih ciljnih skupinah teh bolnikov. Drugi sklop je prav tako spremljanje novih variant, vendar s pomočjo dodatnega testiranja s presejalnimi PCR testi. Iz navedb direktorice organa prosilec sklepa, da organ (i) prejme kužnine, (ii) na katerih opravi PCR teste in (iii) opravi sekvenciranje, delnega in/ali celotnega genoma virusa. Ob trditvi NIJZ, da virus SARS-CoV-2 povzroči bolezen Covid-19 in ob zgornjih navedbah je prosilec prepričanja, da delo organa v zvezi z virusom temelji na znanosti ter na strokovnih raziskavah, dejstvih in dognanjih, ki dokazujejo (i) tudi fizični obstoj virusa SARS-CoV-2, in ne zgolj njegov (računalniško simuliran) genom, ter (ii) njegovo vzročnost bolezni Covid-19.
2. Prosilec je po ZDIJZ na organ naslovil vprašanja od št. 17 do št. 22, vsa v zvezi s PCR testom, ker organ za ugotavljanje virusa SARS-CoV-2 in bolezni Covid-19 uporablja PCR test, kar nedvoumno potrjuje del obrazložitve organa v l.l., nenazadnje pa tudi navedena izjava direktorice organa. S PCR testom se dokazuje materija, ki se mora zaradi majhnosti (začetnega) vzorca po točno določenem tehnično-tehnološkem postopku

multiplicirati, da se sploh lahko ugotovi njen obstoj. Materija pa je izključno fizična. Pri večini informacij, za katere organ smatra, da bi terjale pojasnilo, sploh ne gre za pojasnjevanje, ampak za odgovor da/ne in pa za informacijo v obliki listine ali spletne povezave, na podlagi katerih temelji delo organa, razen pri točki 18.1., saj gre za odstopanje med Corman-Drostenov protokolom in protokolom, kot je opisan v javno dostopni informaciji "PCR testi so zanesljivi." avtorjev Petra Vovko, mikrobiologinja v sodelovanju z Majo Bombek Ihan ter Matjažem Roteljem. Razlaga organa, da je protokol oz. navodila, po katerem opravlja teste, interne narave in poslovna skrivnost, prosilcu ni sprejemljiva. Prosilec je v točki 17. v zahtevi postavil neposredno in preprosto vprašanje, brez vsakršnega potrebnega pojasnjevanja. Corman-Drostenov protokol je javna listina, dosegljiva na spletni strani WHO, zato prosilec ne vidi temelja razlage organa, da gre za interno navodilo in poslovno skrivnost. Tudi napotilo organa, da naj prosilec poišče informacije na svetovnem spletu, prosilcu n. informacija v smislu 5. odstavka 6. člena ZDIJZ, ker niti ni konkretizirana do te mere, da bi prosilec in organ zagotovo imela isto informacijo, niti prosilec ne more vedeti, da na njej temelji delo organa, in je zato brezpredmetno.

3. Prosilec se strinja z delom obrazložitve organa, da ni pristojen dajati interpretacije izvidov drugih izvajalcev, vendar prosilec niti ni zahteval interpretacije, temveč informacijo v obliki listine ali povezave na svetovni splet, iz katere je razvidno pooblastilo drugih slovenskih laboratorijev za opravljanje nalog po 23.c členu ZZDej. Prosilec se organu zahvaljuje za v obrazložitvi dano informacijo o Pravilniku, ne more pa sprejeti trditve organa, da je število testiranih oseb javno dostopna prosta informacija. Znano je skupno število opravljenih testov in pa število okuženih oseb, koliko prebivalcev Slovenije je bilo dejansko testiranih, pa je podatek, ki prosilcu ni dosegljiv in mu je tako neznan.

4. Poudarjanje organa, da ni organ oblasti itd., je prosilcu brezpredmetno. V kolikor organ ne bi bil zavezanec za informacije po ZDIJZ, ga pritožbeni organ ne bi niti pozval, da pritožniku odgovori in mu posreduje zahtevane informacije. Virusa SARS-CoV-2 in bolezen Covid-19 sta v letu 2020 močno prizadela Svet in Slovenijo. Predvsem na svetovnem spletu je najti mnogo informacij, na verodostojnost le-teh pa slovenske prebivalce opozarjajo tako predstavniki oblasti kot strokovnjaki, ki z oblastjo sodelujejo pri reševanju zdravstvene krize. Ravno zato je prosilcu povsem nesprejemljiv izgovor organa, da mu dajanje informacije javnosti predstavlja obremenitev. Bolezen je vprašanje, ki najprej zadeva osebno človekovo sfero, če je bolezen razširjena, pa tudi javno. Molk javnih strokovnih institucij po prosilčevem prepričanju vodi v nezaupanje prebivalstva do teh institucij ter v informacijski kaos, kot smo mu priča tudi v zadnjem letu. Prosilec na organ zahteve sploh naslovil ne bi, v kolikor bi vse informacije, po katerih v zahtevi povprašuje, bile prosto dostopne z objavo na spletni strani organa.

IP je dne 19. 4. 2021 prejel dopis organa št. 161-0-7-IJZ-3/2021-1 z dne 16. 4. 2021, s katerim mu je ta, na podlagi 245. člena ZUP, odstopil pritožbo, kot dovoljeno, pravočasno in vloženo s strani upravičene osebe.

Na podlagi poziva IP št. 090-121/2021/2 z dne 4. 5. 2021, je organ IP posredoval dopis št. 161-0-7-IJZ-3/2021 z dne 10. 5. 2021, kateremu je priložil splošno dokumentacijo sistema vodenja kakovosti (t.i. interna navodila za delo oz. uporabo opreme). Dodatno je organ navedel, da je predmetno dokumentacijo v Klasifikacijskem načrtu organa št. 020-1/2020 z dne 10. 7. 2020, opredelil kot poslovno skrivnost po Zakonu o poslovni skrivnosti (Ur. l. RS št. 22/19, v nad. ZPosS), da jo ohrani kot skrivnost, saj zajema nerazkrito strokovno znanje, izkušnje in poslovne informacije, ki niso splošno znane ali lahko dosegljive osebam v krogih, ki se običajno ukvarjajo s to vrsto informacij, temveč je izključno namenjena laboratorijskemu osebju za izvajanje mikrobioloških preizkušanj znotraj organa in ima tržno vrednost. Zahtevana dokumentacija je dejansko zaščitena kot dokumentacija, za katero velja poslovna skrivnost že po subjektivnem kriteriju (sodba Upravnega sodišča v zadevi I U 1573/2014 z dne 18. 11. 2015 v povezavi s sodbo Upravnega sodišča v zadevi I U 599/2014-20 z dne 03. 11. 2015). Nedvomno gre tudi za dela, ki so izražena in predstavljajo intelektualno stvaritev avtorjev in spadajo v znanstveno področje človeške ustvarjalnosti po Zakonu o avtorskih in sorodnih pravicah (Ur. l. RS. št. 16/07 – UPB, 68/08, 110/13, 56/15 in 63/16 – ZKUASP; v nad. ZASP). IP je v podobni zadevi (npr. odločba št. 090-95/2012/12 z dne 20. 06. 2012) že odločal in je zahtevo prosilca zavrnil, ker zahtevani dokumenti (navodila za uporabo opreme) predstavljajo varovano avtorsko delo. Zoper točki zahteve št. 21. in 22. se prosilec ne pritožuje, zato nista predmet odločanja v pritožbenem postopku, glede točk zahteve do 10. do 20. pa organ podaja sledeča pojasnila, po posameznih točkah zahteve:

Točka 10.: Organ ne razpolaga z listinsko informacijo, ker v vzorcih ne dokazuje obstoja viabilnega virusa z gojitvenimi metodami, temveč v vzorcih dokazuje prisotnost nukleinske kisline (NK), to je fizični del virusa.

Točka 11.: Organ ne razpolaga z listinsko informacijo, ker v vzorcih ne dokazuje obstoja viabilnega virusa z gojitvenimi metodami. Fizični obstoj virusa na celičnih kulturah in živalskih modelih je izpričan v več člankih, ki so dosegljivi na spletu (prosto ali proti plačilu) in si jih lahko prosilec poišče sam. Kot primer organ navaja: DOI:10.1093/cid/ciaa325.10.1038/S41586-020-2342-5, 10.1016/j.virusres.2007.03.013.

Točka 12.: Organ ne razpolaga z listinsko informacijo, ker v vzorcih ne dokazuje obstoja viabilnega virusa z gojitvenimi metodami. Virusi SARS-CoV-2, ki so jih v celičnih kulturah izolirali na IMI Medicinske fakultete so

deponirani in registrirani v Evropskem arhivu virusov EVAg, dostopno na https://www.european-virus-archive.com/evag-portal/field provider/ul-123.

Točke 13., 14., 15., 18. (18.1., 18.2., 18.3., 18.4.), 19. (19.1., 19.2., 19.3., 19.4., 19.5., 19.6., 19.7., 19.8., 19.9.): To je vprašanje in ni informacija javnega značaja, kot jo določa 4. člen ZDIJZ. ZDIJZ organu ne nalaga obveznosti, da bi za prosilca ustvaril ali pridobil dokumente, s katerimi v času odločanja o njegovi zahtevi ne razpolaga. Ravno tako organu informacij za prosilca ni treba obdelovati, povezovati, analizirati ali mu dajati pojasnil.

Točka 16.: Organ ne razpolaga z listinsko informacijo, ker ne izvaja kliničnih poskusov in je diagnostični medicinski laboratorij. V diagnostiki okužb laboratoriji CMM dokazujejo prisotnost virusnih NK v vzorcu bolnika.

Točka 17.: Laboratorij pri svojem delu uporablja na tržišču dostopne molekularne metode za dokazovanje NK virusa v vzorcih, pri postopkih in interpretaciji sledi navodilom proizvajalca testov. Navodila so priloga dopisu in so zaščitena kot poslovna skrivnost. Organ pri tem pripominja, da prosilec motiva oz. utemeljitve zahteve po pridobitvi listinske informacije o protokolu, ki ga pri svojem delu upošteva organ, ni podal, kar je pomembno pri tehtanju pravice do dostopa ter javnega interesa po razkritju z interesom prizadete stranke, da do razkritja ne pride zaradi varstva poslovnih skrivnosti (stališče Upravnega sodišča v sodbi v zadevi I U 599/2014-20 z dne 03. 11. 2015).

Točka 20. (20.1.): Organ ni pristojen za podajanje informacij drugih izvajalcev, zato prosilca napotuje, da za zahtevano informacijo zaprosi IMI ter ga napotuje na spletno stran http://www.imi.si/o-institutu/nasa-kakovost. Pri tem pripominja, da so naloge organa izrecno določene v 23.c členu ZZDej in ne po ZBN, kot zmotno navaja prosilec, v navedeni določbi pa tudi ni določeno pooblastilo za izvajanje mikrobioloških preizkušanj na področju medicinske mikrobiologije za potrebe izvajalcev zdravstvene dejavnosti za IMI. Ministrstvo za zdravje skladno s 4. členom Pravilnika o pogojih, ki jih morajo izpolnjevati laboratoriji za izvajanje preiskav na področju laboratorijske medicine izda dovoljenje. ECDC ni institucija, ki presoja laboratorije. Referenčnost laboratorijev določi vsaka država sama.

Točka 20.2.: Organ izvida, ki vsebuje posebne vrste osebnih podatkov, pritožniku ne posreduje, ker bi razkritje pomenilo kršitev varstva osebnih podatkov. Vsebino izvida določa 13. člen Pravilnika o pogojih, ki jih morajo izpolnjevati laboratoriji za izvajanje preiskav na področju laboratorijske medicine. V zvezi s tem organ pojasnjuje, da je način podajanja rezultata preiskave v pristojnosti stroke. PCR, ki se izvaja za detekcijo SARS-CoV-2, je kvalitativna metoda in noben predpis ne določa, da je treba podajati število ciklov. Analogno je pri kvalitativnih PCR metodah za diagnostiko drugih virusov, kjer število ciklov prav tako ni podano.

Točka 20.3.: Organ prosilca ponovno napotuje na spletno stran Covid-19 sledilnik, kjer so objavljeni številni podatki, med drugim tudi podatki o testiranjih PCR, potrjenih primerih, itd., in sicer za vsak dan - od začetka testiranja dalje. V primeru, da prosilec ne zna uporabljati navedene aplikacije, ga organ napotuje na upravljavca aplikacije Covid-19 ali NIJZ, ki vodi in upravlja zbirke podatkov s področja zdravja in zdravstvenega varstva skladno s 23.a členom ZZDej.

Glede pritožbenih navedb prosilca organ po točkah pojasnjuje sledeče:

Točka 1.: Vsekakor delo organa, ki izvaja mikrobiološka preskušanja na področju medicinske mikrobiologije za potrebe izvajalcev zdravstvene dejavnosti v skladu s 23.c členom ZZDej temelji na znanosti in strokovnih raziskavah. Za dokazovanje virusov (velja za SARS-CoV-2 in druge viruse) se danes najpogosteje uporabljajo molekularne tehnike, kjer dokazujemo prisotnost nukleinske kisline, to je genoma virusa v odvzetem vzorcu. Za ta postopek ne potrebujemo viabilnega (,živega") virusa, zato vzorec že na začetku inaktiviramo in tako je postopek varen za izvajalca. Najpogosteje uporabljena molekularna tehnika je v ta namen PCR (Polymerase Chain Reaction oz. Verižna reakcija s polimerazo). Odvisno od uporabljenih metod in naprav postopki trajajo od ene do približno štirih ur. Dokazovanje virusne nukleinske kisline (RNK) v vzorcu je podobno kot forenziki dokazujejo genom (DNK) iskanega človeka na kraju dogodka. Kadar želimo dokazati obstoj viabilnega virusa (virusa, ki je sposoben okužiti naslednjo celico), nanesemo vzorec (npr. bris nosno-žrelnega predela) na ustrezno celično kulturo z ustreznim gojiščem. Nato več dni opazujemo pod mikroskopom, ali se je pojavil citopatogen učinek, ki nam pove, da se virus v celicah namnožuje. To potem dodatno dokažemo še z drugimi tehnikami (npr. imunofluorescenca). Ker delamo z viabilnim virusom in je SARS-CoV-2 dobro prenosljiv in lahko povzroči resno obolenje, je za tako delo predpisano, da se ga lahko izvaja le v laboratoriju s stopnjo biološke varnosti III. Postopek traja približno štiri do osem dni in se ga v diagnostične namene ne izvaja, ker bi preiskava trajala predolgo. Za preprečevanje širjenja nalezljive bolezni kot je Covid-19 je potrebno hitro ukrepanje, zato gojitvenih metod za dokazovanje viabilnega virusa SARS-CoV-2 v diagnostične namene, ki so predmet pritožnikovih vprašanj, pri organu ne izvajajo, zato tudi ne razpolagajo z zahtevano listinsko dokumentacijo.

Točka 2.: Kot je bilo že večkrat pojasnjeno, organ v vzorcih ne dokazuje obstoja viabilnega virusa z gojitvenimi metodami, temveč v vzorcih dokazuje prisotnost nukleinske kisline (NK). Organ za preiskovanja vzorcev uporablja metode, ki so znanstveno preizkušene in jih priznavajo mednarodna ali domača strokovna združenja, skladno z 10. členom Pravilnika o pogojih, ki jih morajo izpolnjevati laboratoriji za izvajanje preiskav na področju laboratorijske medicine. Prosilec je v svoji zahtevi III. del A. Virus SARS-CoV-2 in bolezen Covid-19 posredoval 20 vprašanj s podvprašanji in zahteva od organa, da mu odgovori na vprašanja. Pri tem organ pripominja, da

vprašanja ni so informacija javnega značaja kot jo določa 4. člen ZDIJZ. ZDIJZ organu ne nalaga obveznosti, da bi moral prosilcu posredovati informacijo kot odgovor na vprašanje, ki je vezano na delovno področje organa, kot to določa 45. člen ZMed, kar pa ne velja za prosilca. Zato je zmotno stališče prosilca, da mu je organ dolžan odgovoriti z da/ne.

Točka 3.: Pristojnost za opravljanje nalog določenih v 23.c členu ZZDej ima samo organ. Ni mogoče slediti navedbi prosilca, da število testiranih oseb ni javno dostopna prosta informacija in da podatek prosilcu ni dosegljiv in ne znan. Kot je bilo že pojasnjeno, so podatki o številu testiranj PCR na posamezni dan, že od začetka testiranj dostopni na spletni strani Covid-19 sledilnik https://covid-19.sledilnik.org/sl/stats, kjer lahko prosilec izbere tudi obdobje za katero želi imeti podatke.

Točka 4. Organ pripominja, da prosilec ne loči dveh pravnih oseb, in sicer NIJZ in NLZOH, ki opravljata različne naloge, NIJZ skladno s 23.a členom ZZDej in NLZOH skladno s 23.c členom ZZDej. Tako prosilec v pritožbi zmotno naslavlja organ kot NIJZ. Organ se nikakor ne strinja s prosilcem, da bi morale biti vse informacije, po katerih v svoji zahtevi povprašuje, prosto dostopne z objavo na spletni strani organa, ker vse povpraševane informacije, kot je bilo že večkrat pojasnjeno, ne izvirajo iz delovnega področja organa in se ne nahajajo v materializirani obliki. Organ javnosti ažurno poroča relevantne strokovne informacije v zvezi z virusom SARS-CoV-2, ki izvirajo iz njegovega delovnega področja tudi na tiskovnih konferencah vlade in prosilca napotuje na spletno stran https://www.gov.si/neposredni-prenos/, da spremlja neposredni prenos ali pa si informacije ogleda za nazaj na spletni strani https://4d.rtvslo.si/arhiv/tv-informativni/.

Organ ponovno poudarja, da glede na naloge, ki jih izvaja v skladu s 23.c členom ZZDej, z vidika zavezanosti po ZDIJZ ni organ, ki bi izvajal naloge oblasti, še posebno ob dejstvu, da ob znani epidemiološki situaciji priprava strokovnih pojasnil in odgovorov na vprašanja za posamezne državljane dodatno obremenjuje vrhunski strokovni kader, ki mora biti na razpolago za izvajanje zakonsko opredeljenih nalog. Vsekakor pa strokovno usposobljeno osebje ažurno pripravlja odgovore na vprašanja, ki jih novinarji skladno z ZMed naslovijo na organ, zato je javnost obveščena. Glede na to, da so navodila za delo in uporabo opreme izključno namenjena strokovno usposobljenemu laboratorijskemu osebju organa, na podlagi katerih izvajajo laboratorijske preiskave in niso prosto dostopna ter zanj prav gotovo ne obstoji javni interes o podrobnih postopkih izvedbe preiskav in uporabo specifične opreme, organ meni, da je izpodbijana odločba pravilna in zakonita ter temelji na določbah ZDIJZ. Dopisu je organ poleg Klasifikacijskega načrta organa z dne 10. 7. 2020, priložil še sledeče dokumente, vse z oznako poslovna skrivnost:

- Declaration of conformity NeuMoDx SARS-CoV2 ASSAY, z dne 19. 3. 2020 (1 stran),
- Delo z aparatom NeuMoDx 96 ND-IV-NLZOH-OMMMB 08-31, z dne 7. 9. 2020 (8 strani),
- Dokazovanje virusa SARS-Cov-2 s testom NeuMoDx ND-IV-NLZOH-OMMMB-08-32, z dne 7. 9. 2020 (6 strani),
- Neumodox SARS-CoV-2 Assay Instruction For Use, januar 2021 (23 strani).

Pritožba je delno utemeljena.

IP uvodoma pojasnjuje, da je kot organ druge stopnje, v skladu z 247. členom ZUP, dolžan preizkusiti odločbo v delu, v katerem jo pritožnik oz. prosilec izpodbija. Odločbo preizkusi v mejah pritožbenih navedb, po uradni dolžnosti pa preizkusi, ali ni prišlo v postopku na prvi stopnji do bistvenih kršitev postopka in ali ni prekršen materialni zakon.

V obravnavanem primeru ni sporno, da organ sodi med organe, zavezane po ZDIJZ.

Kot izhaja iz določbe 1. odstavka 4. člena ZDIJZ in tudi določbe 1. odstavka 1. člena ZDIJZ, informacijo javnega značaja predstavlja samo dokument, ki že obstaja, je že ustvarjen, oz. dokument, ki ga je organ v okviru svojega delovnega področja že izdelal oz. pridobil. Gre za pogoj, ki je v teoriji poznan kot »kriterij materializirane oblike«. Organi, ki so zavezanci po ZDIJZ, so namreč dolžni omogočiti dostop le do že obstoječih informacij in niso dolžni ustvariti novega dokumenta ali pridobiti oz. vzpostaviti dokumenta, ki ga v času zahteve nimajo.

Predmet tega pritožbenega postopka je vprašanje, ali je organ upravičeno zavrnil dostop do 10., 11., 12., 13., 14., 15., 16., 17., 18. (18.1. - 18.4.), 19. (19.1., - 19.9.) in 20. (20.1., - 20.3.) točke zahteve prosilca.

- **K 1. točki izreka (17. in 20.2. točka zahteve prosilca)**

V pritožbenem postopku je IP ugotovil, da je organ z izpodbijano odločbo prosilcu zavrnil dostop do dokumenta oz. dokumentov, ki so predmet zahteve prosilca pod 17. točko, s sklicevanjem na izjemo iz 2. točke 6. člena ZDIJZ (poslovna skrivnost), brez da bi se organ uvodoma sploh opredelil do zahtevanega dokumenta oz. brez navedbe, kateri konkretni dokument oz. dokumenti so predmet presoje in po mnenju organa predstavljajo

poslovno skrivnost. Organ se je v izpodbijani odločbi v tem delu tudi le pavšalno skliceval na poslovno skrivnost, brez izkazovanja izpolnjevanja kriterijev za obstoj zatrevane izjeme po ZPosS, in sicer za vsak posamezni dokument, na katerega se nanaša zahteva prosilca oz. ustreza zahtevi prosilca. Niti iz izpodbijane odločbe ni razvidno čigavo poslovno skrivnost organ, kot javni zavod, v konkretnem primeru sploh varuje.
Prav tako je organ zavrnil tudi zahtevo prosilca iz 20.2. točke, ki se nanaša na primer ustnega (anonimiziranega) izvida dejansko opravljenega dokazovanja virusa, s sklicevanjem na izjemo varstva osebnih podatkov (3. točka 1. odstavka 6. člena ZDIJZ) brez opredelitve, kateri konkretni dokument je bil predmet presoje, niti ni navedel, katere (varovane) oz. posebne vrste osebnih podatkov dokument vsebuje. Prav tako se organ ni opredelil, ali je informacije mogoče izločiti iz dokumenta ali ne oz. ali je obravnavanem primeru mogoče uporabiti tudi institut delnega dostopa (7. člen ZDIJZ) - če je organ ocenil, da bi bila z razkritjem podatkov, vsebovanih na zahtevanem dokumentu, ogrožena njihova zaupnost, bi moral pojasnit, zakaj ob prekritju teh delov, prosilca ne bi bilo mogoče seznanit z vsebino preostalega dela dokumenta. Hkrati bi organ moral bolj določno pojasniti tudi, kako bi dostop do zahtevanih podatkov kazal na točno določeno oz. določljivo osebo. Osebni podatek (npr. zdravstveno stanje) namreč ne more biti varovan že zgolj zaradi samega sebe temveč le zato, ker je iz njega mogoče razbrat tudi identiteto posameznika ali posameznikovo lastnost, ki ga dela določljivega.

Na podlagi navedenega je IP ugotovil, da se odločbe, zaradi pomanjkljive obrazložitve, v tem delu ne da preizkusiti in so posledično podane bistvene kršitve pravil postopka po 7. točki 2. odstavka 237. člena ZUP. IP je zato pritožbi prosilca v delu zahteve, ki se nanaša na 17. in 20.2. točko ugodil in na podlagi 3. odstavka 251. člena ZUP, izpodbijano odločbo v tem delu odpravil ter zadevo vrnil organu prve stopnje v ponovno odločanje, kot izhaja iz 1. točke izreka te odločbe.

Vrnitev zadeve v ponovno odločanje IP utemeljuje z razlogi ekonomičnosti postopka. Poseben vidik načela ekonomičnosti iz 14. člena ZUP je tudi načelo učinkovitosti, ki od organov zahteva, da se preskrbi vse, kar je potrebno za pravilno ugotovitev dejanskega stanja in za zavarovanje pravic strank ter javnih koristi. To pa bo najlažje dosegel prav prvostopenjski organ, ker se zahteva prosilca nanaša na dokumente, ki so del dokumentacije organa, posledično organ razpolaga z vso dokumentacijo, ki je predmet presoje in razpolaga z vsemi podatki, ki jih potrebuje za ustrezno rešitev predmetne zahteve. Poleg navedenega se organ (še) ni soočil v vsebinsko obravnavo zadeve in se ni opredelil do zahtevanih informacij, pri čemer mu je ta možnost dana prav z vrnitvijo v ponovno odločanje.

V ponovljenem postopku je organ uvodoma dolžan jasno opredeliti, kateri dokumenti, ki jih zahteva prosilec, so predmet presoje, torej konkretno za vsak dokument, do katerega prosilec v 17. in 20.2. točki zahteve zahteva dostop oz. za vsak dokument, ki ustreza zahtevi prosilca. V primeru obstoja katere od izjem po določbah 5.a in 6. člena ZDIJZ je dolžan presojati tudi, ali je mogoče uporabiti institut delnega dostopa v skladu z določbami 7. člena ZDIJZ in 19. člena Uredbe o posredovanju in ponovni uporabi informacij javnega značaja (Ur. l. RS, št. 24/16; v nad. Uredba) ter natančno in določno opredeliti, v katerem delu se posamezni dokument prekrije in na podlagi katere konkretne izjeme od prostega dostopa. Določba 19. člena Uredbe namreč določa, da če dokument ali njegov del le delno vsebuje informacije iz 5.a in 6. člena ZDIJZ, se šteje, da jih je mogoče izločiti iz dokumenta, ne da bi to ogrozilo njegovo zaupnost. Če jih je mogoče fizično postranti, prečrtati, trajno prekriti ali drugače napravit nedostopne (če gre za dokument v fizični obliki; zbrisati, kodirat, blokirati, omejiti oz. drugače napraviti nedostopne, če gre za dokument v elektronski obliki (1. odstavek). Ne glede na zapisano se šteje, da informacije iz dokumenta ni mogoče izločiti, če bi bilo tako izločeno informacijo mogoče razbrati z drugih informacij v dokumentu (2. odstavek 19. člena Uredbe). Delni dostop je torej potrebno onemogočit vedno, ko (in če) delno razkritje ne bi ogrozilo zaupnosti varovanih informacij. Pomembna sta torej tehnični in vsebinski vidik.

Pri tem IP opozarja na določbo 24. člena ZUP, po kateri mora organ ves čas med postopkom po uradni dolžnosti skrbeti za to, da so v postopku udeleženi vsi, na katerih pravice ali pravne koristi bi lahko vplivala odločba. Opustitev te dolžnosti (če osebi, ki bi morala biti udeležena kot stranka ali stranski udeleženec v postopku, ta možnost ni bila dana) pa predstavlja bistveno kršitev pravil postopka po 2. točki 2. odstavka 237. člena ZUP. Organ mora postopek voditi skladno z ZUP in stranke, za katere meni, da bi odločitev lahko vplivala na njihove pravice in pravne koristi, povabiti k sodelovanju v postopku na formalno pravilen način.

Glede na to, da se je organ v izpodbijani odločbi in v odgovoru na poziv IP, pri dostopu do določenih zahtevanih dokumentov, pavšalno skliceval na določene izjeme po ZDIJZ, IP v nadaljevanju opozarja na njihovo pravilno razlago in podaja nekaj napotkov, v zvezi z zatrjevanimi izjemami, ki jih mora organu upoštevati v ponovljenem postopku. V tem delu IP še dodaja, da dokazno breme, da so določene informacije izvzete iz prostega dostopa, nosi organ.

- *Izjema iz 2. točke 1. odstavka 6. člena (poslovna skrivnost)*

Pr. zatrjevanju izjeme poslovne skrivnosti mora organ uvodoma upoštevati, da so zahtevani dokumenti nedvomno nastali po 20. 4. 2019, ko je začel veljati ZPosS, kar pomeni, da so podvrženi opredelitvi poslovne skrivnosti po določbah ZPosS in posledično mora organ izkazati izpolnjevanje kriterijev za obstoj poslovne skrivnosti po določba ZPosS. Da so zahtevani dokumenti nedvomno nastali po začetku veljave ZPosS izhaja iz datumov na dokumentih, ki jih je organ IP posredoval skupaj z odgovorom na poziv in jih prepoznal kot dokumente, ki ustrezajo zahtevi prosilca pod 17. točko.

Za poslovno skrivnost, kot izjemo iz 2. točke 1. odstavka 6. člena ZDIJZ, se sicer štejejo informacije, ki izpolnjujejo zahteve za poslovno skrivnost v skladu z zakonom, ki ureja poslovne skrivnosti (ZPosS). Pojem poslovne skrivnosti po 2. členu ZPosS zajema nerazkrito strokovno znanje, izkušnje in poslovne informacije, ki izpolnjuje naslednje zahteve:
- je skrivnost, ki ni splošno znana ali lahko dosegljiva osebam v krogih, ki se običajno ukvarjajo s to vrsto informacij;
- ima tržno vrednost;
- imetnik poslovne skrivnosti je v danih okoliščinah razumno ukrepal, da jo ohrani kot skrivnost.
Domneva se, da je zahteva iz tretje alinеje prejšnjega odstavka izpolnjena, če je imetnik poslovne skrivnosti informacijo določil kot poslovno skrivnost v pisni obliki in o tem seznanil vse osebe, ki prihajajo v stik ali se seznanijo s to informacijo, zlasti družbenike, delavce, člane organov družbe in druge osebe. Za poslovno skrivnost se ne morejo določiti informacije, ki so po zakonu javne, ali informacije o kršitvi zakona ali dobrih poslovnih običajev.

Glede na navedeno so poslovna skrivnost le tisti podatki, pri katerih so vse tri zgoraj naštete zahteve kumulativno izpolnjene. Kot izhaja iz komentarja k 2. členu predloga zakona[1], poslovna skrivnost pomeni strokovno znanje in izkušnje ter dragocene poslovne informacije, ki imetnikom omogočajo večjo konkurenčnost in uspešnost na trgu in s tem povečujejo donosnost, zaradi česar je v interesu imetnikov poslovnih skrivnosti, da te ostanejo nerazkrite oz. zaupne. Ob tem IP pripominja, da je v skladu s slovensko sodno prakso dokazno breme pri pojasnjevanju, zakaj zahtevane informacije pomenijo konkurenčno prednost, na subjektu, ki poslovno skrivnost zatrjuje.[2]

V tem delu IP še dodaja, da organ kot javni zavod, ki, na podlagi določb ZZdej opravlja naloge na področju zdravja, okolja in hrane, določene s posebnimi predpisi, ter na celotnem območju države združuje vse laboratorije in pripadajoče strokovne dejavnosti nekdanjih ZZV in IVZ, ne more zatrjevati poslovne skrivnosti za dokumente, ki izkazujejo njegovo javnopravno delovanje in morajo biti podvrženi transparentnosti. S tem se zagotavlja učinkovit nadzor nad delovanjem organa, kar zmanjšuje korupcijska tveganja, veča vestnost, poštenost, skrbnost in zaupanje, kar prispeva k temu, da ima tak organ večjo legitimnost, da se poveča zaupanje v razmerju do navedenega organa in da se poveča odgovornost organa do vseh državljanov v demokratični družbi. Organ pri svojem delovanju nedvomno zasleduje javni interes, kar pomeni, da so pomembni vsi temeljni podatki, na katerih temelji odločitev organa, ki jih ima javnost pravico izvedeti, zato je že pojmovno nemogoče, da bi tovrstni podatki, v celoti predstavljali poslovno skrivnost.

- *Izjema iz 3. točke 1. odstavka 6. člena (osebni podatek)*

Za obstoj opisane izjeme morata biti izpolnjena dva pogoja, in sicer:
- podatek mora ustrezati definiciji osebnega podatka
- za razkritje osebnega podatka ne obstaja pravna podlaga (tj. da gre za varovan osebni podatek).

Uredba (EU) 2016/679 Evropskega parlamenta in Sveta z dne 27. aprila 2016 o varstvu posameznikov pri obdelavi osebnih podatkov in prostem pretoku takih podatkov ter o razveljavitvi Direktive 95/46/ES (Uradni list Evropske unije, št. L 119 z dne 4. 5. 2106; v nad. Splošna uredba o varstvu podatkov)[1], ki se v Republiki Sloveniji uporablja neposredno, v členu 4(1) določa, da je osebni podatek katera koli informacija v zvezi z določenim ali določljivim posameznikom (v nad.: posameznik, na katerega se nanašajo osebni podatki); določljiv posameznik je tisti, ki ga je mogoče neposredno ali posredno določiti, zlasti z navedbo identifikatorja, kot je ime, identifikacijska številka, podatki o lokaciji, spletni identifikator, ali z navedbo enega ali več dejavnikov, ki so značilni za fizično, fiziološko, genetsko, duševno, gospodarsko, kulturno ali družbeno identiteto tega

[1] https://www.findinfo.si/download/razno/781d313c27b6103dc7b8.pdf
[2] Tako upravno sodna praksa, ki se sicer nanaša na določbe ZGD-1, ki so veljale pred uveljavitvijo ZPosS, vendar pravno vrednotenje po mnenju IP ostaja enako: npr. sodbe, št. U 284/2008 z dne 27. 5. 2009, št. U 1276/2008 z dne 11. 2. 2010, št. I U 1732/2015 z dne 27. 1. 2016.

posameznika. Organ mora pri sklicevanju na izjemo varstva osebnih podatkov jasno navesti, katere vse podatke vsebuje posamezni zahtevani/presojani dokument in se jih šteje za osebne podatke (vrsta osebnega podatka), zakaj jih šteje za osebne (kako jih je mogoče povezati z določenim ali določljivim posameznikom) in katere od teh osebnih podatkov šteje za varovane, ker zakonodaja ne omogoča njihovega razkritja.

- *O avtorskopravnem varstvu*

V skladu s 5. členom ZASP je avtorsko delo individualna intelektualna stvaritev s področja književnosti, znanosti in umetnosti, ki je na kakršenkoli način izražena, čo ni v ZASP drugače določeno. Iz navedene definicije in obstoječe sodne prakse ter pravne teorije izhaja pet predpostavk, ki morajo biti izpolnjene, da se posamezno delo šteje za avtorsko delo po ZASP, in sicer: so to individualnost, intelektualnost oz. duhovnost, stvaritev, področje ustvarjalnosti in izraženost. Če torej posamezno delo izpolnjuje vse navedene predpostavke kumulativno, se šteje, da gre za avtorsko delo.

2. odstavek 25. člena ZDIJZ pravi, da se je na varstvo avtorske pravice v zvezi z omejitvijo načina seznanitve mogoče sklicevati le v primerih, ko je imetnik avtorskih pravic tretja oseba, in ne organ, ki je zavezanec za posredovanje informacij javnega značaja. Poleg navedenega 2. odstavek 25. člena ZDIJZ pravi, da se reprodukcija zahtevane informacije vendarle dovoli tudi v primerih, ko je imetnik avtorske pravice na njej tretja oseba, vendar gre za okoljske informacije.

Organ se mora v ponovljenem postopku pri sklicevanju na avtorsko delo uvodoma opredeliti do vprašanja, kdo je imetnik materialnih avtorskih pravic na dokumentih, ki so predmet zahteve prosilca, pri tem pa IP opozarja, da zgolj dejstvo, da dokument predstavlja avtorsko delo, ne zadostuje za zavrnitev posredovanja.

- *Test interesa javnosti (2. odstavek 6. člena ZDIJZ)*

Test interesa javnosti je urejen v 2. odstavku 6. člena ZDIJZ, ki določa, da se ne glede na določbe 1. odstavka istega člena, dostop do zahtevane informacije dovoli, če je javni interes glede razkritja močnejši od javnega interesa ali interesa drugih oseb za omejitev dostopa do zahtevane informacije, razen v določenih primerih, ki so v zakonu tudi jasno določeni. Organ v ničemer ni pojasnil svoje odločitve, zakaj je zavzel stališče, da zahtevani dokumenti oz. podatki, vsebovani v zahtevanih dokumentih niso podatki, ki bi bili v javnem interesu, ampak je le pavšalno navedel, da prosilec ni izkazal, da bi bilo razkritje zahtevnih dokumentov v javnem interesu.

Bistvo presoje interesa javnosti je v možnosti relativizacije določene izjeme, ki mora biti omejena zgolj na tiste primere, ko je interes javnosti za razkritje določene izjeme močnejši od interesa, zaradi katerega je določena informacija zavarovana kot izjema. Pri uporabi testa prevladujočega interesa javnosti je treba presoditi tudi, ali je interes javnosti za razkritje informacije javnega značaja lahko močnejši od potencialno storjene škode, ki bi nastala z razkritjem informacije. V teoriji se poudarja, da ga je treba uporabljati z veliko mero previdnosti in skrbnosti, saj test interesa javnosti zahteva bistveno večjo kakovost odločanja v obliki tehtanja posameznih nasprotujočih si pravic oz. interesov. Test interesa javnosti zato pomeni izjemo od izjem, ki se mora uporabljati zelo premišljeno in zgolj takrat, ko bi s pomočjo tega testa odkrili nekaj, kar bi pripomoglo k širši razpravi in razumevanju nečesa pomembnega za širšo javnost. Javni interes za razkritje je na npr. močan v situacijah, ki se navezujejo na pridobivanje ali porabo javnih sredstev, javno varnost, javno zdravje, odgovornost in transparentnost odločanja, ki sprožijo javno ali parlamentarno razpravo, ipd. Pojem interesa javnosti tako ni v vsaki zadevi enak ali vnaprej definiran, temveč se lahko kaže v različnih pojavnih oblikah. Prav tako se lahko javni interes s časom spreminja, saj je odvisen od številnih dejanskih okoliščin. Zasnova javnega interesa torej ni konstantna, ampak spremenljiva in odvisna od trenutnega dejanskega stanja. S tem pa je pri izvajanju testa javnega interesa omogočena presoja od primera do primera, ki upošteva različne in prav tako spremenljive dejavnike, ki tvorijo javni interes za razkritje. Pri tem IP izpostavlja še stališče sodne prakse, iz katere izhaja, da bi bil javni interes glede razkritja podan, »če bi bile ogrožene take vrednote kot je npr. življenje, zdravje ali varnost ljudi in podobno«.[3] Interes javnosti kot splošen interes, ki ne služi samo interesom ozke skupine oseb, je torej opredeljen kot nekaj, kar bi koristilo javnemu vedenju in s tem omogočilo nadzor in sodelovanje javnosti pri oblikovanju tistih tematik, nad katerimi bi morala ta odeti z vso skrbnostjo.
Pri testu javnega interesa gre tako za tehtanje, pri katerem je potrebno presoditi, kdaj prevlada pravica javnosti vedeti nad kakšno drugo pravico oz. izjemo iz določb ZDIJZ in s tem ugotoviti, ali bo v konkretnem primeru javnemu interesu bolj zadoščeno z razkritjem ali z nerazkritjem informacije.

[3] Npr. sodbi Upravnega sodišča št. I U 1488/2011-95 in št. I U 1992/2010-26.

IP pripominja, da je že odločal o vsebinsko podobni zadevi, in sicer o dostopu do dokumentacije, ki se je nanašala na pridobitve in podaljšanja dovoljenja za promet z določenimi cepivi, pri čemer je IP presojal tudi javni interes za razkritje zahtevanih informacij ter ugotovil, da je podan velik javni interes, da se cepljenja s predmetnimi cepivi izvajajo, v smislu varovanja javnega zdravja in preprečevanja nalezljivih bolezni, in da ne gre zgolj za vprašanje poslovne skrivnosti.[4]

- *Poraba javnih sredstev (3. odstavek 6. člena ZDIJZ)*

Skladno z določbo 3. odstavka 6. člena ZDIJZ se, ne glede na morebiten obstoj izjeme iz 1. odstavka tega člena (torej tudi obstoj poslovne skrivnosti), dostop do zahtevanih informacij javnega značaja dovoli, če gre za podatke o porabi javnih sredstev ali podatke, povezane z opravljanjem javne funkcije ali delovnega razmerja javnega uslužbenca, razen v primerih iz 4. in 5. do 8. točke prvega odstavka ter v primerih, ko zakon, ki ureja javne finance ali zakon, ki ureja javna naročila, določata drugače.

Iz navedenega jasno izhaja, da je že zakonodajalec pretehtal, da javni interes za razkritje podatkov pretehta vselej (tudi npr. ne glede na morebitno izjemo poslovne skrivnosti) kadar gre za podatke, ki predstavljajo podatke o porabi javnih sredstev.

- **K 2. točki izreka (10., 11., 12., 13., 14., 15., 16., 18. (18.1. - 18.4.), 19. (19.1., - 19.9.), 20. (20.1., 20.3.) točka zahteve prosilca)**

IP pojasnjuje, da so organi dolžni omogočiti prosilcem dostop le do že obstoječih informacij ter niso dolžni ustvarjati novih dokumentov, zbirati informacij, opravljati raziskav ali analizirati podatkov, da bi zadostili zahtevi prosilca. IP dodaja, da iz samega ZUP, Uredbe o upravnem poslovanju ter načela prijazne in odprte javne uprave, sicer izhaja obveznost organov, da odgovorijo na vsako vlogo stranke, torej, da po svojih najboljših močeh, predvsem pa upoštevajoč svojo (predvsem stvarno) pristojnost, pomagajo prosilcu, da pride do želenih podatkov. Vendar pa IP opozarja, da ZDIJZ ne predstavlja instrumenta za zagotavljanje informiranosti prosilcev izven dometa samega zakona, ki konkretizira pravico pridobivanja že ustvarjenih dokumentov, s katerimi organ tudi dejansko razpolaga.

Skladno s 4. členom ZDIJZ informacijo javnega značaja predstavlja samo dokument, ki že obstaja v neki materialni obliki, oz. tisti dokument, ki ga je organ v okviru svojega delovnega področja že izdelal oz. pridobil in ga ni dolžan ustvariti šele na podlagi zahteve. Navedeno pomeni, da na primer vloga, s katero se zahteva, da organ odgovori na vprašanja oz. pripravi pojasnilo, obrazložitev ipd. ne predstavlja zahteve za dostop do informacij javnega značaja. IP pojasnjuje, da ZDIJZ, ki omogoča pritožbo k IP, ne omogoča oz. predvideva pravice do odgovorov in pojasnil ter podobnega. Takšno stališče izhaja tudi iz sodbe Upravnega sodišča RS, št. I U 1351/2010-12 z dne 25. 5. 2011. Prosilec ima namreč po ZDIJZ pravico zahtevati dokumente, s katerimi organi zavezanci že razpolagajo, ne prosilci ne IP pa nimajo po tem zakonu nikakršnega vzvoda, s katerim bi prisilili organ, da posebej na zahtevo prosilca ustvari določen dokument (npr. pripravi odgovore na vprašanja, poda pojasnilo,, obrazložitve ipd.).

Iz zahteve prosilca jasno izhaja, da želi pridobiti določena pojasnila, obrazložitve in odgovore v zvezi s potekom testiranja oz. rezultati testiranj na Covid-19, pri čemer IP pri reševanju pritožbe ni posumil, da organi razpolaga ali bi lahko razpolagal z dokumenti iz katerih bi izhajali odgovori na zastavljena vprašanja, pojasnil in obrazložitev v zvezi s konkretnimi vprašanji, niti odgovorov z dejanje na določeno zastavljeno vprašanje, pa organ, na podlagi določb ZDIJZ, prosilcu ni dolžan posredovati, na kar je večkrat pravilno opozoril tudi organ v izpodbijani odločbi in v odgovoru na poziv IP. IP **tako ne vidi utemeljenega razloga, da ne bi verjel organu, da z dokumenti, iz katerih bi izhajali odgovori na vprašanja prosilca, ne razpolaga, še zlasti, ker se vprašanja prosilca v določenem delu niti ne nanašajo na delovno področje organa, ki je podrobneje opredeljeno v 23.c členu ZZDej. Oprijemljivih dejstev, ki bi nakazovali na to, da organ z dokumenti razpolaga, ni navedel niti prosilec.** V tem delu IP še dodaja, da tudi sama odmevnost tematike in pisanje različnih medijev/strokovnjakov o tej temi še ne pomeni, da bi organ s temi informacijami tudi nedvomno moral razpolagati.

Glede pritožbenih navedbe prosilca, da splošno napotilo organa na svetovni splet, kjer so objavljeni različni tuji članki, iz katerih lahko prosilec pridobi zahteve informacije (npr. opisujejo gojenje virusa SARS-Cov-2 na celičnih kulturah), ni informacija v skladu z določbami ZDIJZ, pa IP pojasnjuje, da organ na podlagi določb ZDIJZ ni dolžan po svetovnem spletu iskati različne tuje članke ter ugotavljati/presojati, iz katerih člankov bi

[4] odločba št. 090-136/2013/59 z dne 18. 1. 2019 po sodbi Upravnega sodišča RS IU 1520/2018-80

lahko izhajale informacije, na katere se nanaša zahteva prosilca in posledično prosilcu posredovati povezave na te članke.

Upoštevaje navedeno je IP pritožbo prosilca v tem delu, na podlagi 1. odstavka 248. člena ZUP, kot neutemeljeno zavrnil, kot izhaja iz 2. točke izreka te odločbe.

Na trditve organa, da ob znani epidemiološki situaciji priprava strokovnih pojasnil in odgovorov na vprašanja za posamezne državljane dodatno obremenjuje vrhunski strokovni kader organa, ki mora biti na razpolago za izvajanje zakonsko opredeljenih nalog, IP odgovarja, da za kakršno koli privilegirano obravnavo konkretnega organa, ne glede na epidemiološko situacijo v državi, nima zakonska podlage. Upravno poslovanje organa v času vložitve zahteve in do izdaje izpodbijane odločbe ni bilo ustavljeno ali prekinjeno, niti v tem času noben pravni akt ni določil kakršnihkoli ukrepov v zvezi z upravnimi oz. javnopravnimi zadevami – kamor sodi odločanje po ZDIJZ – ki bi omogočali posebno obravnavo.

Glede navedb organa, da prosilec ni podal motiva oz. utemeljitve zahteve po pridobitvi zahtevanih informacij, pa IP pojasnjuje, da se, v skladu z načelom prostega dostopa iz 5. člena ZDIJZ, za dostop do informacij javnega značaja pravni interes ne zahteva. V postopku dostopa do informacij javnega značaja tako prosilčev interes ali pravne koristi niso relevantni. ZDIJZ namreč določa možnost vsakogar, da zahteva informacije, ki predstavljajo informacije javnega značaja, obenem pa ne pozna nobene »privilegirane« kategorije prosilcev. V kolikor gre pri posočeni informaciji za prosto dostopno informacijo javnega značaja, je ta dostopna vsem, ne glede na njihov izkazan pravni interes. IP je v skladu z ZDIJZ dolžan vsebinsko presoditi le, ali zahtevana informacija izpolnjuje merila za informacijo javnega značaja in ali je zaradi tega prosto dostopna vsem, lat. erga omnes, ne le prosilcu. Pravni interes posameznika tako v postopku po ZDIJZ ni relevanten in ne vpliva na odločitev organa.

Sklepno

Na podlagi ugotovljenega v pritožbenem postopku je IP pritožbi prosilca delno ugodil in izpodbijano odločbo, v delu, ki se nanša na 17. in 20.2. točko zahteve prosilca, v skladu s 1. in 3. odstavkom 251. člena ZUP, odpravil ter zadevo vrnil organu v ponovno odločanje. V delu zahteve, ki se nanaša na 10., 11., 12., 13., 14., 15., 16., 18. (18.1. - 18.4.), 19. (19.1., - 19.9.), 20. (20.1., 20.3.) točko zahteve prosilca, pa je IP, na podlagi 1. odstavka 248. člena ZUP, pritožbo prosilca kot neutemeljeno zavrnil.

Posebni stroški v tem postopku niso nastali. Ta odločba je v skladu s 30. točko 28. člena Zakona o upravnih taksah (Ur. l. RS, št. 106/10 – ZUT-UPB5 in 14/15 – ZUUJFO) oproščena plačila upravne takse.

Pouk o pravnem sredstvu:
Zoper 1. točko izreka te odločbe ni dovoljena pritožba, ni upravni spor. Zoper 2. in 3. točko izreka te odločbe lahko prosilec sproži upravni spor. Upravni spor se sproži s tožbo, ki se vloži v 30 dneh od vročitve te odločbe na Upravno sodišče, Fajfarjeva 33, Ljubljana. Tožba se lahko vloži pisno po pošti ali pri navedenem sodišču. Če se tožba pošlje priporočeno po pošti, se za dan izročitve sodišču šteje dan oddaje na pošto. Tožba z morebitnimi prilogami se vloži v najmanj treh izvodih. Tožbi je treba priložiti tudi to odločbo v izvirniku ali prepisu.

Postopek vodila:
Tanja Švab, dipl.upr.ved.,
razsodnikinja IP

Informacijski pooblaščenec:
Mojca Prelesnik, univ. dipl. prav.,
informacijska pooblaščenka

Vročiti:
- Organ: Nacionalni laboratorij za zdravje, okolje in hrano, Prvomajska ulica 1, 2000 Maribor – z vročilnico;
- Prosilec: [redacted]

Vložiti:
- zbirka dokumentarnega gradiva pri IP.

tš

ENGLISH TRANSLATIONS (AS PROVIDED BY THE FOI SUBMITTER)
OF NLZOH'S FINAL RESPONSE TO SELECT QUESTIONS

Point 10: We do not have information as you asked, because we do not prove existence of viable virus with growing methods, but we prove in samples presence of nucleic acid, this is physical part of the virus.

Point 11: We do not have information as you asked, because we do not prove existence of viable virus with growing methods. Physical presence of virus in cell cultures and animal models is attested in many articles on line for free are pay

Point 12: We do not have information as you asked, because we do not prove existence of viable virus with growing methods. Virus SARS-CoV-2, which was isolated in cell culture by IMI is deposited and registered in European archive for viruses EVAg, available at https://www.european-virus-archive.com/virus/sars-cov-2-strain-sloveniasi-426520-d614g

Then on page 5 of this document:

Today for proving viruses (SARS-CoV-2 or other viruses) we mostly use molecular techniques where we prove presence of nucleic acid, this is genome of the virus in the sample. For this procedure we do not need viable (live) virus, that is why we inactivate the sample at the beginning, so the procedure is safe for technician. The most used molecular method today is PCR. Depending on the machine and used methods it takes about 1 to 4 hours. When we want to prove existence of viable virus (virus which is able to infect next cell), we put sample on appropriate cell culture with appropriate medium. We then observe for several days under a microscope whether a cytopathogenic effect has occurred, which tells us that the virus is spreading in the cells.

This is then further proven by other techniques (such as immunofluorescence). Because we work with a viable virus and the SARS-CoV-2 is well transmitted and can cause serious illness, such work is prescribed to be performed only in a laboratory with a biosafety level of III. The procedure takes about four to eight days and is not performed for diagnostic purposes because the investigation would take too long. Rapid action is needed to prevent the spread of the infectious disease, so the cultivation methods for the detection of viable virus for diagnostic purposes, which are the subject of the complainant, are not performed by us, and therefore we do not have the required documentation

REPUBLIKA SLOVENIJA
MINISTRSTVO ZA ZDRAVJE
DIREKTORAT ZA JAVNO ZDRAVJE

Štefanova ulica 6, 1000 Ljubljana

T: 01 478 60 07
F: 01 478 60 76
E: gp.mz@gov.si
www.mz.gov.si

INŠTITUT ZA MIKROBIOLOGIJO IN IMUNOLOGIJO MEDICINSKE FAKULTETE UNIVERZE V LJUBLJANI

Zaloška 4
1000 Ljubljana

Številka: 090-77/2020/2
Datum: 3. 12. 2020

Zadeva: Zahteva za dostop do informacij javnega značaja – odstop zadeve

S strani prosilca [redacted] smo prejeli e-sporočilo, v katerem le-ta zahteva določene informacije javnega značaja, s katerimi na Ministrstvu za zdravje ne razpolagamo, in se nanašajo na več strokovnih področij. Menimo, da vprašanja prosilca pod zaporednimi številkami od 1 - 7 sodijo v delovno področje vaše institucije. Vprašanja so naslednja:

1) Mi lahko pošljete ali usmerite na papir ali študijo, kjer se točno vidi, da so izolirali virus(SARS-CoV-2)? Naredili pet Kochovih postavk?
2) Mi lahko poveste na koliko ciklov kopiranja(Ct) je dr. Christian Drosten določil zlati standard, ko je prvi naredil protokol odkrivanje virusa s RT-PCR testi? Je to 25 , 27, 30, 35,40 ali več ciklov?
3) Koliko ciklov kopiranja(Ct) je priporočilo proizvajalcev teh PCR testov?
4) Koliko ciklov kopiranja RNA vzorcev se uporablja v naših laboratorijih?
5) Ali se je spreminjalo število ciklov kopiranja med prvim valom korone, po prvem valu, in zdaj ko smo v drugem valu corone?
6) Mi lahko pokažete reference, kjer se točno vidi, da so ti PCR testi primerni za klinično diagnozo s katero lahko 99,9% ugotovimo, da je človek okužen s točno določenim virusom(SARS-CoV-2)?
7) Mi lahko uradno potrdite, da so ti testi 99,9% natančni in seveda, mi zato predložite dokaze?

Zato vam kot pristojni instituciji e-sporočilo z dne 30. 11. 2020 oziroma vprašanja pod zaporednimi številkami od 1 - 7 odstopamo v reševanje.

Pri odgovoru na naš dopis se, prosimo, sklicujte na številko tega dopisa.

Lepo pozdravljeni.

po sklepu ministra:
št. 1001-182/2020/2 z dne 16. 10. 2020
Anita Tomc
višja svetovalka II

Priloga:
- E-sporočilo z dne 30. 11. 2020

Poslati:
- Inštitut za mikrobiologijo in imunologijo Medicinske fakultete Univerze v Ljubljani, Zaloška 4, 1000 Ljubljana, e-naslov: imi.info@mf.uni-lj.si – po e-pošti

V vednost:
- [redacted] – po e-pošti

PRILOGA:

Pošiljatelj: [redacted]
Datum: 30.11.2020 14:14:40
Prejemnik: gp.mz@gov.si
V vednost:
Zadeva: informacije javnega značaja

Pozdravljeni,

Pišem vam email, ker bi rad imel nekaj odgovorov na določena vprašanja glede PCR testov in virusa " virusa" (SARS-CoV-2), ki naj bi povzročal bolezen COVID-19

1) Mi lahko poljete ali usmerite na papir ali študijo, kjer se točno vidi, da so izolirali virus(SARS-CoV-2)? Navadili pot Kochovih postulk?

2) Mi lahko poveste na koliko ciklov kopiranja(Ct) je dr. Christian Drosten določil zlati standard, ko je prvi navedil protokol odkrivanje virusa s RT-PCR testi? Je to 25 , 27, 30, 35,40 ali več ciklov?

3) Koliko ciklov kopiranja(Ct) je priporočilo proizvajalcev teh PCR testov?

4) Koliko ciklov kopiranja RNA virusov se uporablja v teoih laboratorijih?

5) Ali se je spremenilo število ciklov kopiranja med prvim valom koronae, ge prvem valu, in zdaj ko smo v drugem valu corone?

6) Mi lahko pokažete reference, kjer se točno vidi, da so ti PCR testi primerni za klinično diagnozo s katero lahko 99,9% zagotovimo, da je človek okužen s točno določenim virusom(SARS-CoV-2)?

7) Mi lahko uradno potrdite, da so ti testi 99,9% zanesljivi in varni, mi zato predložite dokaze?

8) Mi lahko pokažete študije, ki dokazujejo, da nošenje mask preprečuje okužbo?

9) Mi lahko pokažete študijo, da razgrmičini (brez simptomov) jadejo prenašajo virus?

Na ta vprašanja bi želel odgovor, ker so to informacije javnega značaja in kot del jamstva iz katerega izhaja vlada, jih moremo dobiti. Ukrepe ste tudi navedli po priporočilih vaših strokovnjakov, ki so vam morali predložiti strokovne študije, da res obstaja virus(izolirna) in, da ga lahko s RT-PCR testi 99,9% odkrijemo Kar pomeni, da vam bo lahko odgovorili in poslali reference, ki dajo odgovor na moja vprašanja

V primeru, da ne dobim odgovora ali , da me boste usmerjali na druge naslove, bom smatral, da ščitim tajkune, kar bo povzročilo en velik vpražaj na celotno epidemijo.

V naprej se vam zahvaljujem za odgovore in vam želim vse najboljše.

S spoštovanjem

[redacted]

Univerza v Ljubljani
Medicinska fakulteta

Št. 0100-4/2021-2
Ljubljana, 3. februar 2021

UL Medicinska fakulteta izdaja na podlagi drugega odstavka 22. člena Zakona o dostopu do informacij javnega značaja (Uradni list RS, št. 51/06 – uradno prečiščeno besedilo, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – odl. US, 102/15 in 7/18), v nadaljevanju: ZDIJZ, in skladno s 15. členom ZDIJZ v upravni zadevi javnega uveljavljanja zahteve prosilca [redacted] za dostop do informacij javnega značaja

O D L O Č B O

1. Zahteva prosilca [redacted] za dostop do informacij javnega značaja se zavrne v delu, ki se nanaša na naslednje točke:

e1) Mi lahko pošljete ali usmerite na papir ali študijo, kjer se točno vidi, da so izolirali virus(SARS-CoV-2)? Nameščli jaz Kochovih postavk?

2) Mi lahko povesite na koliko ciklov kopiranja(Ct) je dr. Christian Drosten določil zlati standard, ko je prvi narodil protokol odkrivanja virusa s RT-PCR test? Je to 25 , 27, 30, 35,40 ali več ciklov?

4) Koliko ciklov kopiranja RNA virusov se uporablja v naših laboratorijih? RNA se kopira DA

4) Mi lahko pokažete referenco, kjer se točno vidi, da so ti PCR testi primerni za klinično diagnozo s katero lahko 99,9% zagotovimo, da je človek okužen s točno določenim virusom(SARS-CoV-2)?

7) Mi lahko uradno potrdite, da so ti testi 99,9% natančni in zanesljivi, mi zato predložite dokaze?

8) Mi lahko pokažete študije, ki dokazujejo, da noben musk preprečuje okužbo?

9) Mi lahko pokažete študijo, da asimptomatični (brez simptomov) ljudje prenašajo viruse

2. Stroški postopka niso nastali.

Obrazložitev:

Organ je dne 1. 2. 2021 s strani Informacijskega pooblaščenca prejel poziv, vezan na dostop do informacij javnega značaja gg. [redacted]. Skladno s 4. členom ZDIJZ je informacija javnega značaja vsaka informacija, ki izvira iz delovnega področja organa, ne glede na to v obliki dokumenta, zadeve, dosjeja, registra, evidence ali drugega dokumentarnega gradiva (v nadaljevanju: dokument), ki ga je organ izdelal sam, v sodelovanju z drugim organom, ali pridobil od drugih oseb. Iz navedene določbe izhajajo tiste osnovni pogoji, ki morajo biti kumulativno izpolnjeni, da lahko govorimo o obstoju informacije javnega značaja, in sicer:

1. informacija mora izvirati iz delovnega področja organa,
2. organ mora z njo razpolagati in
3. zahtevati se mora v taki materializirani obliki.

Prosilec v točkah 1., 2., 4. in 6. – 9. zahteva navedena navedene podatke. Organ z zahtevanimi dokumenti ne razpolaga oz. ne izvirajo iz delovnega področja organa, zaradi česar je bilo potrebno glede teh točk zahteve odločiti, kot izhaja iz izreka tega sklepa.

Glede točke 1):
UL MF Inštitut za mikrobiologijo in imunologijo znanstvene študije, ki bi izpeljala zbiranje o izolaciji virusa Sars-Cov-2 v skladu s Kochovimi postulati, ni izvajal. Organ tako z zahtevanim dokumentom ne razpolaga.

Glede točke 2):
Dr. Christian Drosten slavega standarda, ko naj bi naredil postopek odkrivanja virusa s RT PCR testi, ne dokončal v okviru UL MF Inštituta za mikrobiologijo in imunologijo, tako da informacija ne izvira iz delovnega področja organa.

Glede točke 4):
UL MF Inštitut za mikrobiologijo in imunologijo ne izvaja kopiranja RNA. Zahtevana informacija tako ne izvira iz delovnega področja organa.

Glede točke 6):
Reference v zvezi s pomnoževanjo PCR testov so objavljene na spletu, reference prav tako ni dokončal UL MF Inštitut za mikrobiologijo in imunologijo. Zahtevana informacija tako ne izvira iz delovnega področja organa.

Glede točke 7):
UL MF Inštitut za mikrobiologijo in imunologijo dokaza o učinkovitosti testa ni izpeljal. Zahtevano informacija tako ne izvira iz delovnega področja organa.

Glede točke 8):
UL MF Inštitut za mikrobiologijo in imunologijo ni izvedel znanstvene študije, ki bi dokazovala vzročno zvezo med nošenjem mask in preprečevanjem okužbe. Organ tako z zahtevanim dokumentom ne razpolaga, zaradi česar je bilo potrebno glede 8. točke zahteve odločiti, kot izhaja iz izreka tega sklepa.

Glede točke 9):
UL MF Inštitut za mikrobiologijo in imunologijo ni izvedel znanstvene študije, ki bi dokazovala, ali asimptomatski (brez simptomov) ljudje prenašajo virus. Organ tako z zahtevanim dokumentom ne razpolaga.

Člede 3. in 5. točke zahteve prosilca sporočamo, da je priporočeno število ciklov kopimanja 40. Med prvim valom, po prvem valu in v drugem valu epidemije se to število ni spremenjalo.

V zvezi z izdajo te odločbe niso nastali posebni stroški. Ta odločba je v skladu s 30. točko 28. člena Zakona o upravnih taksah (Ur. l. RS, št. 106/10 – uradno prečiščeno besedilo, 14/15 – ZUJF, 84/15 – ZZelP-J, 32/16 in 30/18) oproščena plačila upravne takse.

Pouk o pravnem sredstvu:
Zoper to odločbo je v zakonitem roku dovoljena pritožba. Informacijskemu pooblaščencu RS, Zaloška 59, 1000 Ljubljana v roku 15 dni od dne prejema te odločbe. Pritožba se vloži pisno ali ustno na zapisnik pri UL Medicinski fakulteti, Vrazov trg 2, 1000 Ljubljana ali pošlje priporočeno po pošti na ta isti naslov. V tem roku se lahko stranka pravica do pritožbe tudi odpove. Pritožba je taksa prosta.

S spoštovanjem,

Prof. dr. Igor Šoltes, dr. med.
dekan

Poslati:
[redacted]
- Informacijski pooblaščenec

univerzitetni klinični center ljubljana
University Medical Centre Ljubljana
v.d. generalnega direktorja [illegible]
Zaloška cesta 2
1525 Ljubljana
E: [illegible]
W: [illegible]
Twitter: [illegible]

Številka: ZDIJZ–2021-20
Izhodna številka dokumenta: 045-0020/2021/0002

Ljubljana, 9. 7. 2021

SKLEP

Univerzitetni klinični center Ljubljana (v nadaljevanju organ) po v. d. generalnega direktorja, Jožetu Golobič, na podlagi drugega odstavka 22. člena Zakona o dostopu do informacij javnega značaja (Uradni list RS, št. 51/06 - uradno prečiščeno besedilo, 117/06 - ZDavP-2, 23/14, 50/14, 72/14 - skl. US, 19/15 - odl. US in 7/18; v nadaljevanju: ZDIJZ) v zvezi z zahtevo prosilca gospoda [redacted]

O D L O Č B O

Zahtevi gospoda [redacted] za dostop do informacije javnega značaja, vloženi dne 14. 6. 2021 se delno ugodi tako, da se mu posreduje naslednje informacije:

K vprašanju pod zaporedno številko 1 se posreduje povezavo:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7095418/

K vprašanju pod zaporedno številko 2 se posreduje povezavo:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7095418/
in pojasnilo: genetski zapis SARS-CoV-2 je soroden drugim koronavirusom in je škodljiv.

K vprašanju pod zaporedno številko 3 se posreduje povezavo:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7184425/pdf/ciaa325.pdf
In pojasnilo: podajamo reference, iz katere je razvidno, da SARS-CoV-2 izpolnjuje Kochove postulate. Vlagatelju ob tem pojasnjujemo, da je Koch s svojim sodelavcem Henlejem postulate objavil, precej preden so bili odkriti virusi. Kasneje so, predvsem v luči spoznanj virologije, Kochovi postulati bili prilagojeni novim odkritjem. Ne vemo sicer, kaj vlagatelj pojmuje pod pojmom "papir", domnevamo, da gre za neposreden prevod angleškega izraza "paper", ki v tem primeru pomeni članek.

K vprašanju pod zaporedno številko 4 se posreduje povezavo:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7184425/pdf/ciaa325.pdf

K vprašanju pod zaporedno številko 5 se posreduje napotilo na:
https://pubmed.ncbi.nlm.nih.gov/12748632/
elektronski vir: Nature 2003 May 15;423(6937):240.

K vprašanju pod zaporedno številko 6 se posreduje povezavo:
10.1016/0035-9203(52)90043-6.

K vprašanju pod zaporedno številko 7 se posreduje povezavo:
https://www.eurosurveillance.org/docserver/fulltext/eurosurveillance/25/3/eurosurv-25-3-5.pdf?expires=1624872204&id=id&accname=guest&checksum=8D3EF216634EF95158095FEABA7CCA1C
In pojasnilo: Corman et.al (2020) mejo med pozitivnim in negativnim rezultatom ne podajo s CT vrednostjo, temveč na osnovi limite detekcije (slika 3), ki predstavlja najnižjo količino/koncentracijo analita (v tem primeru kopije virusne dednine) v vzorcu, ki jo je mogoče detektirati (za E gen in RdRp gen so ugotovili limite 5.2 oz 3.8 kopij virusne dednine na reakcijo).

K vprašanju pod zaporedno številko 8 se posreduje povezavo:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926410/Understanding_Cycle_Threshold__Ct__in_SARS-CoV-2_RT-PCR_.pdf
in pojasnilo: v primeru, da je za RT-PCR po validaciji ugotovljeno, da je test negativen nad 39CT, za takšen zaključek ni potrebno testa izvajati do 45CT.

K vprašanju pod zaporedno številko 10 se posreduje povezavo:
Https://www.qiagen.com/us/resources/resourcedetail?id=8d610767-ec01-4ec8-afc6-119f9f28fefd&lang=en
In pojasnilo: meja ni arbitrarna, temveč je določena glede na podatke validacije testa RT-PCR, ter internih validacijskih analiz posameznega laboratorija.

K vprašanju pod zaporedno številko 11 in 14 se posreduje napotilo na:
Specifičnost vezave začetnih oligonukleotidov v članku Corman et.al. (2020) avtorji pojasnijo sami v odstavku: "Specificity testing".

K vprašanju pod zaporedno številko 12 se posreduje napotilo na:
pojasnila avtorjev študije Corman et.al. (2020), ki so sekvence pridobili v skladu s prakso iz javno dostopnih baz: "We downloaded all complete and partial (if > 400 nt) SARS-related virus sequences available in GenBank by 1 January 2020. The list (n = 729 entries) was manually checked and artificial sequences (laboratory-derived, synthetic, etc), as well as sequence duplicates were removed, resulting in a final list of 375 sequences. These sequences were aligned and the alignment was used for assay design (Supplementary Figure S1). Upon release of the first 2019-nCoV sequence at virological.org, three assays were selected based on how well they matched to the 2019-nCoV genome (Figure 1). The alignment was complemented by additional sequences released independently on GISAID (https://www.gisaid.org), confirming the good matching of selected primers to all sequences. Alignments of primer binding domains with 2019-nCoV, SARS-CoV as well as selected bat-associated SARS-related CoV are shown in Figure 2."

K vprašanju pod zaporedno številko 13 se posreduje povezavo:
https://www.qiagen.com/us/resources/resourcedetail?id=8d610767-ec01-4ec8-afc6-119f9f28fefd&lang=en

K vprašanju pod zaporedno številko 15 se posreduje povezavo na:
European Commission. (2020) Current performance of COVID-19 test methods and devices and proposed performance criteria. 16 April 2020. https://ec.europa.eu/docsroom/documents/40805
p.5: "The RNA contained in this virus is generally detectable in respiratory specimens during the early and acute phases of infection. Whilst positive results are indicative of the presence of SARS-CoV-2 RNA, a clinical correlation with the patient history and other diagnostic information is necessary to determine the infection status of the patient."

K vprašanju pod zaporedno številko 16 se posreduje pojasnilo:
Z RT-PCR metodo se ugotavlja prisotnost/odsotnost virusne dednine.

K vprašanju pod zaporedno številko 17 se posreduje povezavo na:
Https://www.qiagen.com/us/resources/resourcedetail?id=8d610767-ec01-4ec8-afc6-119f9f28fefd&lang=en
In napotilo na: specifičnost vezave začetnih oligonukleotidov na "sorodne koronaviruse" v članku Corman et.al. (2020) avtorji pojasnijo v odstavku: "Cross-reactivity with other coronaviruses".

K vprašanju pod zaporedno številko 18 se posreduje pojasnilo, da lahko RT-PCR najde viralne delce iz preteklih okužb.

K vprašanju pod zaporedno številko 19 se posreduje pojasnilo, da je lahko vzorec pri 40Ct pozitiven in potem negativen, če bi mejo med pozitivnim in negativnim spustili na 25Ct.

K vprašanju pod zaporedno številko 20 se posreduje povezave na:
Efficacy of masks and face coverings in controlling outward aerosol particle emission from expiratory activities | Scientific Reports (nature.com)
Effectiveness of Mask Wearing to Control Community Spread of SARS-CoV-2 | Infectious Diseases | JAMA | JAMA Network
Social interaction context shapes emotion recognition through body language, not facial expressions. - PsycNET (apa.org)
Children's emotion inferences from masked faces: Implications for social interactions during COVID-19 (nih.gov)
COVID-19 and re-opening of schools: Opinions with scientific evidence (nih.gov)
Comprehensive and safe school strategy during COVID-19 pandemic (nih.gov)
Verwendung von Masken bei Kindern zur Verhinderung der Infektion mit SARS-CoV-2 (nih.gov)
To mask or not to mask children to overcome COVID-19 (nih.gov)
An evidence review of face masks against COVID-19 | PNAS
Mask-wearing and control of SARS-CoV-2 transmission in the USA: a cross-sectional stu

K vprašanju pod zaporedno številko 22 posreduje napotilo na:
MSphere 2021 May 19;6(3):e00019-21. doi: 10.1128/mSphere.00019-21

K vprašanju pod zaporedno številko 25 se posreduje pojasnilo, da so bili ljudi v letu 2020, ki so umrli v naši ustanovi zaradi virusa večinoma starejši, nad 65 let.

K vprašanju pod zaporedno številko 27 se posreduje povezavo na:
https://www.cdc.gov/vaccines/covid-19/downloads/Information-for-laboratories-COVID-vaccine-breakthrough-case-investigation.pdf

K vprašanju pod zaporedno številko 29 se posreduje Letna poročila UKC Ljubljana iz katerih bodo razvidni želeni podatki.

K vprašanju pod zaporedno številko 30 se posreduje pojasnilo, da pacientov, ki bi potrebovali nujno oskrbo, nismo zavračali, obravnavani so bili glede na epidemiološko anamnezo. Elektivni pacienti, ki niso izpolnjevani zahtevanih pogojev, pa so lahko po presoji zdravnika tudi odloženi.

K vprašanju pod zaporedno številko 31 posreduje povezavi:
https://c19ivermectin.com/
https://c19hcq.com/

univerzitetni klinični center ljubljana
University Medical Centre Ljubljana

Zahteva za dostop do informacije javnega značaja, vložena dne 14. 2. 2021, se v preostalem delu zavrne.

Posebni stroški v tem postopku niso nastali.

Obrazložitev:

Organ je dne 14. 6. 2021 prejel zahtevo gospoda [redacted] (v nadaljevanju: prosilec) za dostop do informacij javnega značaja.

V njej prosilec zahteva vso relevantno dokumentacijo in odgovore na sledeča vprašanja:

1. Vlagatelj želi usmeritev na papir in/ali študije na katere se vaša ustanova nanaša pri dokazovanju fizičnega obstoja virusa SARS-CoV-2 in njegovo patogenost?

2. Ali so se v primeru, da se vaše delo o izolaciji in patogenosti virusa, nanaša na gojenju virusov v celični kulturi, opravili potrebni kontrolni eksperimenti, ter bi vlagatelj želel, da se mu posreduje link do teh podatkov:

- **da se izloči** možnost , da bi sekvenčna struktura, i.e. genetski sev, ki je pripisan temu virusu, ne izvira iz drugega genetskega materiala in da je nebiološki?

- **da se izloči**, da eksperimentalna priprava, i.e. okužba celične kulture (e.g. VeroE6), s katero se je obdelala celična kultura ,ni razlog za citopatični efekt, ki bi se tako pomotoma pripisal virusu?

3. Se lahko vlagatelja, točno napoti do papirja in/ali študije slovenskega, evropskega ali svetovnega laboratorija, ki je dokazal fizični obstoj virusa **tudi** po Kochovih postulatih?

   Slovenski medicinski slovar za Kochove postulate določa, da se sme nekemu mikrobu, med katere sodijo tudi virusi, priznati vzročnost pri določeni bolezni samo, kadar so izpolnjeni naslednji pogoji: (i) mikrob moramo najti pri vsakem primeru bolezni, ne pa tudi pri zdravih osebah, (ii) treba ga je osamiti od bolnika v čisti kulturi, (iii) treba ga je vcepiti zdravim občutljivim živalim, pri katerih mora povzročiti isto bolezen, in (iv) isti mikrob moramo znova osamiti iz okuženih živali.

4. Ali vaša ustanova razpolaga s papirjem in/ali študijo slovenskega, evropskega ali svetovnega laboratorija, ki je dokazal fizični obstoj virusa in njegovo patogenost na naslednji način:

- se je vzel vzorec(kri, slina, pljučna tekočina) iz okužene osebe, ki se je očistil do te mere, da nam ostanejo samo čisti viralni delci in nič drugega,
- se vizualizira vzorec pod mikroskopom in slika,
- karakterizira njegova unikatna biokemična struktura,
- se pridobi celotna sekvenca genoma,
- se določi iz katerih beljakovin je sestavljen,
- ter se očiščen virus vstavi v eksperimentalno telo živali ali človeka, ki je nato povzročil bolezen in njej pripadajoče simptome

5. Se lahko vlagatelja natančno napoti do papirjev in/ali študij slovenskega, evropskega ali svetovnega laboratorija, ki je dokazal fizični obstoj virusov iz družine koronavirusov (**229E, OC43, SARS-CoV-2003, NL63, HKU1, MERS-CoV**) po Kochovih postulatah ali na način opisan pod zaporedno številko 4?

6. Se lahko vlagatelja točno napoti do papirjev in/ali študij slovenskega, evropskega ali svetovnega laboratorija,ki je dokazal fizični obstoj virusa **Ebola, Zika, H1N1** ali **HIV** po Kochovih postulata ali na način opisan pod zaporedno številko 4?

7. Pri katerem ciklu pomnoževanje je Corman-Drosten protokol določil mejo med pozitivnim in negativnim vzorcem?

8. Zakaj se je v Sloveniji uporabljalo 40 ciklov pomnoževanje, ko pa Corman-Drosten protokol navaja 45 Ct?

9. Zakaj se je v Sloveniji v letu 2020 uporabljalo 40Ct, namesto priporočenih 25Ct?

10. Na podlagi katerih znanstvenih dokazov se lahko uporablja test za diagnostiko okuženosti, ki ni binaren(kot test za nosečnost), temveč je arbitraren, kar pomeni, da lahko vsak laboratorij oz država postavi svojo mejo Ct, ki loči med pozitivnim ali negativnim vzorcem?

11. Ali obstaja možnost, da se iniciatorji in geni uporabljeni v Corman-Drosten protokolu, vežejo na sekvence človeškega genoma in mikrobov? V primeru da ne, bi vlagatelj referenco ali link do teh podatkov, ki to dokazujejo.

12. Se lahko vlagatalje usmeri na dokumente,ki pojasnijo, kako je dr. Christian Drosten v protokolu določil sekvence obeh oligonukleotidov, ter E,N in RdRP genov, ki naj bi bili specifični za SARS-CoV-2, če priznava v svojem papirju, da ni imel na voljo izoliranega referenčnega vzorca virusa?

"We aimed to develop and deploy robust diagnostic methodology for use in public health laboratory settings without having virus material available." **[1]**

13. Se lahko vlagatelja usmeri na papir(validacija testa),kjer je razvidno, da je RT-PCR test občutljiv, specifičen in reproduktiven samo na viralne RNA sekvence virusa?

14. Ali obstaja možnost, da se iniciatorji in geni uporabljeni v Corman-Drosten protokolu, vežejo na sekvence človeškega genoma in mikrobov? V primeru da ne, bi vlagatelj referenco ali link do teh podatkov, ki to dokazujejo.

15. Ali lahko RT-PCR test loči med aktivnim in neaktivnim virusom? V primeru, da lahko, bi vlagatelj link do teh podatkov.

16. Ali lahko RT-PCR test ugotovi , da je viralna RNA sekvenca patogena? V primeru, da lahko, bi vlagatelj link do teh podatkov

17. Ali lahko RT-PCR test ugotovi sorodne koronaviruse? V primeru, da ne more, bi vlagatelj link do teh podatkov.

18. Ali lahko RT-PCR najde viralne delce iz preteklih okužb? Če ne more, bi vlagatelj link do teh podatkov, ki to potrjujejo.

19. Je lahko vzorec pri 40Ct pozitiven in potem negativen, če bi mejo med pozitivnim in negativnim spustili na 25Ct?

20. Se lahko vlagatelju napoti do RCT študij in ne priporočil, ki brez dvoma dokazujejo, da nošenje mask zaustavi širjenje virusov?

21. Vlagatelj želi tudi reference do RCT varnostnih študij izven kontroliranih območij(zdravstvene ustanove, laboratoriji itd), da nošenje mask v vsakdanjem življenju ne škoduje zdravju?

22. Se lahko vlagatelja napoti do RCT študij in ne računalniških modelov,ki brez dvoma dokazujejo, da zdravi ljudje lahko širijo virus?

23. Koliko ljudi je v vaši ustanovi umrlo v letu 2020, ki so imeli samo pozitive RT-PCR test in bili brez vsake življensko nevarne pridružene bolezni?

24. Koliko ljudi je v vaši ustanovi umrlo v letu 2020, ki so bili poslani iz DSO-jev in koliko ostalih?

25. Koliko je bila povprečna starost ljudi v letu 2020, ki so umrli v vaši ustanovi zaradi virusa?

26. Koliko ljudi v letu 2021 je bilo pozitivnih na RT-PCR testu ob prihodu v vašo ustanovo, kljub temu, da so že prejeli priporočene odmerke cepiva?

27. Zakaj se zdaj za »cepljene« ljudi priporoča izvajanje RT-PCR testov pri 28 Ct ali pa sploh ne, ko za vse druge velja, da se izvaja RT-PCR test med 40Ct? Zakaj dvojna merila, ki s tem ustvarjajo velik sum in dokazuje, da se lahko manipulira število okuženih s številom pomnožitev pri RT-PCR testih?

https://www.cdc.gov/vaccines/covid-19/downloads/Information-for-laboratories-COVID-vaccine-breakthrough-case-investigation.pdf

28. Koliko ljudi ste v letu 2021 zdravili ali so umrli zaradi stranskih učinkov cepiv za C-19?

29. Se lahko vlagatelju pošlje dokumentacija zasedenosti vseh vaših bolnišničnih postelj za leto 2017, 2018, 2019 in 2020?

30. Ali se bo izvedla zdravstvena storitev zdravemu pacientu, ki bi prišel v vašo ustanovo zaradi zloma noge in ne želi, da se ga kakorkoli testira?

31. Zakaj se v vaši ustanovi ne ponuja drugih varnih in učinkovitih terapij, kot je HQC in Ivermectin ,ter se samo ponuja popolnoma eksperimentalno injekcijo genske terapije, kot edini način zdravljenja C19 bolezni?
https://c19ivermectin.com/
https://c19hcq.com/

Prvenstveno je organ v skladu s prvim odstavkom 4. člena ZDIJZ presojal ali zahtevane informacije ustrezajo zakonski opredelitvi informacije javnega značaja in ali organ razpolaga z zahtevanimi informacijami. Po prvem odstavku 4. člena ZDIJZ je informacija javnega značaja informacija, ki izvira iz delovnega področja organa, nahaja pa se v obliki dokumenta, zadeve, dosjeja, registra, evidence ali drugega dokumentarnega gradiva (v nadaljevanju: dokument), ki ga je organ izdelal sam, v sodelovanju z drugim organom ali pridobil od drugih oseb. Iz navedene določbe izhajajo trije osnovni pogoji, ki morajo biti kumulativno izpolnjeni, da lahko govorimo o obstoju informacije javnega značaja, in sicer:

1. informacija mora izvirati iz delovnega področja organa,
2. organ mora z njo razpolagati in
3. nahajati se mora v materializirani obliki.

Upoštevajoč navedeno informacijo javnega značaja predstavlja dokument, ki že obstaja, je ustvarjen oziroma tisti dokument, ki ga je organ v okviru svojega delovnega področja že izdelal oziroma pridobil in ga ni dolžan ustvariti šele na podlagi zahteve.

Organ pojasnjuje, da je kot zavezanec po ZDIJZ prosilcu dolžan omogočiti dostop le do že obstoječih (materializiranih) informacij in ni dolžan odgovarjati na vprašanja oziroma podajati pojasnila na način, da bi posebej tvoril stavke, ki bi predstavljali odgovore na vprašanja, niti ni dolžan ustvariti dokumente ali jih pridobivati od drugih subjektov, da bi zadostil zahtevi. Iz odločbe IP, št. 090-277/2020/4 z dne 17.12.2020 izhaja, da na primer vloga, s katero se zahteva, da organ odgovori na vprašanja oz. pripravi pojasnilo, obrazložitev ipd. ne predstavlja zahteve za dostop do informacij javnega značaja. IP v odločbi pojasnjuje, da ZDIJZ ne omogoča oziroma predvideva pravice do odgovorov in pojasnil ter podobnega. Takšno stališče izhaja tudi iz sodbe Upravnega sodišča RS, št. I U 1351/2010-12 z dne 25. 5. 2011. Prosilec ima namreč po ZDIJZ pravico zahtevati dokumente, s katerimi organi zavezanci že razpolagajo, ne more pa prisiliti organa, da posebej na zahtevo prosilca ustvari določen dokument (npr. pripravi odgovore na vprašanja, poda pojasnilo, obrazložitve ipd.)

Organ po preučitvi zahteve ugotavlja, da v zvezi z vprašanji pod zaporednimi številkami 9, 21, 23, 24, 26 ter 28 prosilec od organa zahteva podajo odgovorov in pojasnil, ki ne predstavljajo zahteve za dostop do informacij javnega značaja po 4. členu ZDIJZ. Poleg tega organ z informacijami ne razpolaga v obliki dokumenta, zadeve, dosjeja, registra ali evidence oziroma drugega dokumentarnega gradiva oziroma da se dokumenti, iz katerih bi izhajali odgovori na navedena vprašanja.

Glede na navedeno upoštevajoč dejstvo, da organ ni dolžan ustvariti novih dokumentov oziroma podajati odgovorov in pojasnil, ni izpolnjen pogoj, ki ga za informacijo javnega značaja določa prvi odstavek 4. člena ZDIJZ, zato je potrebno prosilčevo zahtevo upoštevaje določilo 4. člena ZDIJZ v tem delu zavrniti.

Kljub temu je organ za ostala vprašanja pripravil in predložil vire podatkov, povezave na vire podatkov in pri nekaterih kratka pojasnila, kot je razvidno iz izreka te odločbe. V tem delu organ šteje, da je zahtevi delno ugodil.

Organ mora ob izdaji odločbe odločiti tudi o posebnih stroških, ki so nastali v zvezi z odločanjem v upravnem postopku. V predmetnem postopku posebni stroški postopka niso nastali, zato je organ odločil kot izhaja iz 3. točke izreka te odločbe.

POUK O PRAVNEM SREDSTVU:

Zoper to odločbo je dovoljena pritožba v roku 15 dni od dneva vročitve na Informacijskega pooblaščenca, Zaloška 59, 1000 Ljubljana, in je prosta plačila upravne takse. Pritožba se vloži v pisni (fizični ali elektronski) obliki ali ustno na zapisnik pri organu. Če je pritožba poslana priporočeno po pošti, se šteje, da je pravočasna, če je oddana na pošto zadnji dan pritožbenega roka. O pritožbi odloča Informacijski pooblaščenec.

Univerzitetni klinični center Ljubljana
v.d. generalnega direktorja
Jože Golobič

p. p. št. 100-0012/2020/0007
Petra Mrhar Slák, univ. dipl. prav.

Vročiti:
- prosilcu
- spis.

Translation provided by FOI submitter

QUESTIONS AND THE ANSWERS PROVIDED UKCLJ (UNIVERSITY MEDICAL CENTRE LJUBLJANA), SLOVENIA:

1) The applicant wants a link to the studies that your institution relies on in proving the physical existence of the SARS-CoV-2 virus and its pathogenicity?

ANSWER :
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7095418/

2) In the event that your work on virus isolation and its pathogenicity relies on the cultivation of viruses in cell culture, the necessary control experiments have been carried out, and the applicant would like to be provided with a link to this information:

- to rule out the possibility that this sequence structure i.e. the genetic strain attributed to this virus does not originate from other genetic material and is harmless?

- to exclude that experimental preparation, i.e. is the cell culture infection (VeroE6) treated with the cell culture not the reason for the cytopathic effect that would so mistakenly be attributed to the virus?

ANSWER:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7095418/
The genetic code of SARS-CoV-2 is related to other coronaviruses and is harmful

3) Can the applicant be referred exactly to the studies of a Slovenian, European or world laboratory, which proved the physical existence of the virus even according to Koch's postulates?

ANSWER:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7184405/pdf/ciaa325.pdf
We give a reference which shows that SARS-CoV-2 meets Koch's postulates. We explain to the applicant that Koch and his colleague Henle published the postulates before viruses were discovered. Later, mainly in the light of virology findings, Koch's postulates were adapted to the new discoveries.

4) Does your institution have an article or study from a Slovenian, European or world laboratory that has proven its physical existence and pathogenicity in the following way:
- a sample (blood, saliva, lung fluid, etc.) was taken from the infected person, which was cleaned to such an extent that only pure viral particles and nothing else remained
-the sample is visualized under the microscope and the image of the virus is taken
-characterized by its unique biochemical structure
-the entire genome sequence is obtained

-determines which proteins it is composed of
-and then an isolated and purified sample is inserted into the experimental body of the animal or human who then caused the disease and its associated symptoms

ANSWER: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7184405/pdf/ciaa325.pdf

5) Can the applicant be referred to the studies of a Slovenian, European or world laboratory that has proven the physical existence of viruses from the coronavirus family (229E, OC43, SARS-CoV-2003, NL63, HKU1, MERS-CoV) according to Koch's postulates or in the manner described under serial number 4?

ANSWER:
https://pubmed.ncbi.nlm.nih.gov/12748632/

6) Can the applicant be specifically referred to the studies of a Slovenian, European or world laboratory that has proven the physical existence of Ebola, Zika, H1N1 or HIV viruses according to Koch's postulates or in the manner described under serial number 4?

ANSWER:
DOI: 10.1016/0035-9203(52)90043-6
https://pubmed.ncbi.nlm.nih.gov/12995441/
https://academic.oup.com/trstmh/article-abstract/46/5/521/1896900?redirectedFrom=fulltext

7) By which multiplication cycle did the Corman-Drosten protocol define the boundary between the positive and negative sample?

ANSWER:
https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.3.2000045

Explanation: Corman et al (2020) does not specify the boundary between a positive and a negative sample with a Ct value, but on the basis of a detection limit (Figure 3) representing the lowest amount / concentration of analyte (in this case a copy of viral inheritance) can be detected (limits of 5.2 and 3.8 copies of viral inheritance per reaction were found for E gene and RdRP gene, respectively).

8) Why was 40 ct used in Slovenia, if Corman et al states 45 Ct?

ANSWER:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926410/Understanding_Cycle_Threshold__Ct__in_SARS-CoV-2_RT-PCR_.pdf
Explanation: In the event that the RT-PCR is found to be negative above 39CT after validation, it is not necessary to perform a test up to 45Ct for such completion.
9) Why was 40Ct used in Slovenia instead of the recommended 25 Ct?

ANSWER: Refused to answer

10) On the basis of which scientific evidence can a test be used to diagnose an infection that is not binary (as a pregnancy test) but arbitrary, which means that each laboratory or country can set its own Ct limit that separates when a sample is positive or negative?

ANSWER:
http://www.giagen.com/us/resources/resourcedetail?id=8d610767-ec01-4ec8-afc6-119f9f28fefd&lang=en
Explanation: The limit is not arbitrary, but is determined on the validation data of the RT-PCR test, and internal validation analyzes of each laboratory

11) Is there a possibility that the initiators and genes used in the Corman et al protocol bind to sequences of the human genome and microbes? If not, the applicant wants a reference or link to this data to prove this?

ANSWER:
The specificity of the binding of the initial oligonucleotides in the article by Corman et al (2020) is explained by the authors themselves in the paragraph: "Specificity testing"

12) Can the applicant be directed to documents that explain how dr. Christian Drosten determined the sequences of both oligonucleotides, and the E, N and RdRP genes that are supposed to be specific for SARS-CoV-2, if he admits in his study that he did not have an isolated reference sample of the virus?

ANSWER:
Explanations of the authors of the studies Corman et al (2020), who obtained the sequences in accordance with the practice from publicly available databases.
On the page 2 you have the rest of the answer in english third pragraph from the bottom up

13) Can the applicant be referred to a study (test validation) where the RT-PCR test is shown to be sensitive, specific and reproducible only to viral RNA sequences of the virus?

ANSWER:
http://www.giagen.com/us/resources/resourcedetail?id=8d610767-ec01-4ec8-afc6-119f9f28fefd&lang=en

14) Almost the same question as under number 11. My mistake. Same answer as under number 11

15) Can RT-PCR distinguish between active and inactive virus? In case it can, the applicant wants a link to this information

ANSWER:
https://ec.europa.eu/docsroom/documents/40805
The remaining answer is in English in the last paragraph on page 2

16) Can an RT-PCR test determine that a viral RNA sequence is pathogenic? In case it can, the applicant wants a link to this information

ANSWER:
With RT-PCR method we detect the presence/absence of viral inheritance

17) Can an RT-PCR test detect related coronaviruses? In case it does not, the applicant wants a link to this data.

ANSWER:
https://www.qiagen.com/us/resources/resourcedetail?id=8d610767-ec01-4ec8-afc6-119f9f28fefd&lang=en

In reference to: the specificity of the binding of the initial oligonucleotides to "related coronaviruses" in Corma et.al. (2020) the authors explain in paragraph: "Cross - reactivity with other coronaviruses"

18) Can an RT-PCR test find viral particles from past infections? If he cannot, the applicant wants a link to this information

ANSWER: RT-PCR test can find viral particles from past infections

19) Can a sample at 40Ct be positive and then negative if we lower the boundary between positive and negative to 25 Ct?

ANSWER: Yes, it can

20) Can the applicant be directed to RCT studies and not recommendations that unequivocally prove that wearing a mask prevents the spread of the virus?

ANSWER:

https://www.nature.com/articles/s41598-020-72798-7
https://jamanetwork.com/journals/jama/fullarticle/2776536
https://psycnet.apa.org/record/2020-02994-001
https://pubmed.ncbi.nlm.nih.gov/33362251/

https://pubmed.ncbi.nlm.nih.gov/33362251/
https://pubmed.ncbi.nlm.nih.gov/33422089/
https://link.springer.com/article/10.1007/s00112-020-01090-99m
https://pubmed.ncbi.nlm.nih.gov/32388722/
https://www.pnas.org/content/118/4/e2014564118
https://pubmed.ncbi.nlm.nih.gov/33483277/

21) The applicant also wants references to RCT safety studies outside the controlled areas (medical facilities, laboratories, etc.) that wearing a mask in everyday life is not harmful to health?

ANSWER: Refused to answer

22) Can an applicant be referred to RTC studies rather than computer models that unequivocally prove that a healthy person can spread the virus?

ANSWER:
https://journals.asm.org/doi/10.1128/mSphere.00019-21

23) How many people died in your institution in 2020 who had only a positive RT-PCR test and were free of any life-threatening associated disease?

ANSWER: Refused to answer

24) How many people died in your institution in 2020 who were sent from nursing homes and how many others?

ANSWER: Refused to answer

25) What was the average age of people in 2020 who died in your institution from the virus?

ANSWER: the people who died were mostly from the age of 65 onwards

26) How many people tested positive for RT-PCR tests in 2021 upon arrival at your facility, even though they had already received the recommended doses of vaccines?

ANSWER: Refused to answer

27) Why is it now recommended for vaccinated people to perform the RT-PCR test at 28Ct or not at all, when for all others it is considered that the RT-PCR test is performed at 40Ct? Why double standards, which create a lot of suspicion and prove that the number of infected people can be manipulated by the number of aids in the RT-PCR test?

ANSWER: Information-for-laboratories-COVID-vaccine-breakthrough-case-investigation.pdf

28) How many people have you treated or died from the side effects of COVID-19 vaccines in 2021?

ANSWER: Refused to answer

29) Can the applicant be sent the occupancy documentation of all your hospital beds for 2017, 2018, 2019 and 2020?

ANSWER: I got the annual report for 2019 and 2020

30) Will a medical service be provided to a healthy patient who would come to your facility due to a broken leg and does not want to be tested in any way?

31) Why is there no other safe and effective therapies like HQC and Ivermectin offered in your facility, but only a fully experimental gene therapy injection is offered as the only way to treat COVID-19 disease?

ANSWER:
https://c19ivermectin.com/
https://c19hcq.com/
they put my links in this answer

De: "Bettina Galo" <bettina.galo@gmail.com>
Para: "Gustavo Folle" <gfolle@iibce.edu.uy>, "Gustavo Folle" <gustavofolle@gmail.com>, "Susana González" <sgonzalez@iibce.edu.uy>, info@geneticamedica.com.uy, "Jose Badano" <Jbadano@pasteur.edu.uy>, genetica@fmed.edu.uy, decano@fq.edu.uy
Enviados: Lunes, 3 de Mayo 2021 16:26:04
Asunto: Solicitud de REGISTROS DEL SARS-COV-2

Esta es una solicitud formal de acceso a registros generales, realizada bajo la Ley Nº 18.381 Derecho de Acceso a la Información Pública

Descripción de los registros solicitados:

Todos los estudios y / o informes en posesión, custodia o control de los informes y registros que describan la **purificación** de cualquier **"virus COVID-19 "** (incluidos "B.1.1.7", "B.1.351", "P.1" y cualquier otra "variante") (mediante maceración, filtración y uso de una ultracentrífuga; también a veces por algunas personas como "aislamiento") , directamente de una muestra tomada de un ser humano enfermo, donde la muestra del paciente NO SE combinó primero con ninguna otra fuente de material **genético** (es decir, células de riñón de mono, también conocidas como células Vero; suero fetal bovino) .

Tenga en cuenta que no estoy solicitando estudios / informes donde los investigadores **no pudieron purificar** el "virus" sospechoso y en su lugar:

- cultivado una muestra no purificada u otra sustancia no purificada, y / o
- realizó una prueba de amplificación (es decir, una prueba de PCR) en todo el ARN de una muestra de paciente o de un cultivo celular, o en material genético de cualquier sustancia no purificada, y / o
- Secuenció el ARN total de una muestra de paciente o de un cultivo celular o de cualquier sustancia no purificada , y / o
- produjo imágenes de microscopía electrónica de cosas no purificadas en un cultivo celular.

Para mayor claridad, tenga en cuenta que ya soy consciente de que, según la teoría del virus, un "virus" requiere células huésped para replicarse, y **no** solicito registros que describan la **replicación** de un "virus" sin células huésped.

Además, yo **no** estoy solicitando los registros de pacientes privados o registros que describen un supuesto "virus" flotando en el vacío; Simplemente solicito registros que describan su **purificación** (**separación** de todo lo demás en la

muestra del paciente, según las prácticas estándar de laboratorio para la purificación de otras cosas pequeñas).

Tenga en cuenta también que mi solicitud **no se limita** a los registros que fueron creados por o en cualquiera de los organismos, instituciones antes nombradas o que pertenecen al trabajo realizado en / por ellos . Más bien, mi solicitud incluye cualquier registro que coincida con la descripción anterior, por ejemplo (pero no limitado a) cualquier estudio revisado por pares publicado y escrito por cualquier persona, en cualquier lugar, alguna vez. que haya sido descargado o impreso por los antes citados y se haya utilizado como evidencia de un "virus" causante de enfermedades.

Tenga en cuenta que a pesar del hecho de que la purificación es un paso esencial (pero no suficiente) para probar la existencia de un "virus" que causa una enfermedad, hasta la fecha, 53 instituciones en todo el mundo no han proporcionado o citado tales registros, por lo tanto, a mi conocimiento no existen tales registros y si existen no puedo acceder a ellos hasta que se me proporcione una cita o URL.

Por lo tanto, si algún registro **coincide con la descripción anterior de los registros solicitados** y está actualmente disponible para el público en otro lugar, proporcione suficiente información sobre cada registro para que pueda identificar y acceder a cada uno con certeza (es decir, título, autor (es), fecha, revista, donde el público pueda acceder a ella). Proporcione las URL siempre que sea posible.

Formato :
Documentos PDF enviados a mí por correo electrónico;

Información del contacto:
Apellido: Galo Viegas
Nombre : María Bettina

Correo electrónico:bettina.galo@gmail.com

El mié, 26 may 2021 a las 12:13, Asistentes Académicos IIBCE (<asistentes@iibce.edu.uy>) escribió:

Estimada Bettina Galo:

Cumplo en enviar adjunto nota con la respuesta del Consejo Directivo, referente a su consulta.

Se solicita acusar recibo de la misma.
Saludos cordiales,
Yenny Marrero

iibce
INSTITUTO DE INVESTIGACIONES BIOLÓGICAS CLEMENTE ESTABLE

Asistente Académica
Instituto de Investigaciones Biologicas Clemente Estable (IIBCE)
www.iibce.edu.uy
Av. Italia 3318, C.P. 11600
Montevideo, Uruguay
Telefono: (598) 2487 1616 int. 150
Fax: (598) 2487 5461

Ministerio de Educación y Cultura

Montevideo, 25 de mayo de 2021.

Consejo Directivo del Instituto de Investigaciones Biológicas Clemente Estable

ASUNTO: la solicitud de acceso a información pública, presentada por la Sra. María Bettina Gallo, al amparo de la Ley 18.381 de Acceso a la Información Pública

OBJETO: La Sra. María Bettina Gallo determina el objeto de la solicitud en su derecho a conocer acerca de " *Todos los estudios y / o informes en posesión, custodia o control de los informes y registros que describan la* ***purificación*** *de cualquier* ***"virus COVID-19*** *" (incluidos "B.1.1.7", "B.1.351", "P.1" y cualquier otra "variante") (mediante maceración, filtración y uso de una ultracentrífuga; también a veces por algunas personas como "aislamiento") , directamente de una muestra tomada de un ser humano enfermo, donde la muestra del paciente NO SE combinó primero con ninguna otra fuente de material* ***genético*** *(es decir, células de riñón de mono, también conocidas como células Vero, suero fetal bovino)"*

FUNDAMENTO LEGAL: El acceso a la información pública es un derecho de todas las personas, con arreglo al artículo 3º de la Ley 18.381.

Que la Unidad Ejecutora 011 "Instituto de Investigaciones Biológicas Clemente Estable" es un sujeto obligado por la Ley 18.831 a brindar información que se sea considerada pública con arreglo a los artículos 4 y 5 de la citada.

Que en aplicación del principio de informalismo a favor del administrado el Consejo Directivo de la Unidad Ejecutara va a procesar la presente solicitud ya que la misma debió presentarse por escrito en la forma establecida por el artículo 13 de la Ley 18.381.

INFORME: De acuerdo a lo hasta aquí expresado el Consejo Directivo de la Unidad Ejecutora 011 "Instituto de Investigaciones Biológicas Clemente Estable" informa que no se trabaja con el virus vivo y que no se realizó la purificación del virus COVID en ninguna de sus variantes.

MINISTERIO DE EDUCACIÓN Y CULTURA
INSTITUTO DE INVESTIGACIONES BIOLÓGICAS CLEMENTE ESTABLE
IIBCE

Av. Italia 3318. C.P.: 11600. Montevideo, URUGUAY
Tel.: + (598) 2487 1616 • Fax: + (598) 2487 5461

por Solicitud de REGISTROS DEL SARS-COV-2 Recibidos ×

decano@fq.edu.uy 11:36 (hace 14 minutos)

para mí

Sra. María Bettina Galo Viegas:

Desde Decanato de Facultad de Química – UdelaR acusamos recibo del correo electrónico enviado por Ud. e informamos que al mismo le faltan algunos datos de los exigidos en el Art. 13 de la ley 18.381 para considerarse una solicitud viable en ese marco, en especial número de documento de identidad y domicilio del solicitante (Se transcribe dicho artículo al final de este mensaje).

Sin perjuicio de ello, de acuerdo a las consultas realizadas, desde ya se informa a la solicitante que la Facultad de Química – UdelaR no ha efectuado estudios de aislamientos de virus SARS-COV 2.

"Art 13.- (De la solicitud y sus requisitos).- Toda persona física o jurídica interesada en acceder a la información pública en poder de los sujetos obligados por la presente ley, deberá hacerlo mediante solicitud escrita ante el titular del organismo. En dicha solicitud deberá constar:
A) La identificación del solicitante, su domicilio y forma de comunicación.
B) La descripción clara de la información requerida y cualquier dato que facilite su localización.
C) Y, opcionalmente, el soporte de información preferido, sin constituir este último una obligación para el organismo."

Agradecemos confirmación de este mensaje.

Atentamente.

Prof. Dr. Alvaro W. Mombrú
Decano
Facultad de Química - UdelaR

De: "Bettina Galo" <bettina.galo@gmail.com>
Para: "Gustavo Folle" <gfolle@iibce.edu.uy>, "Gustavo Folle" <gustavofolle@gmail.com>, "Susana González" <sgonzalez@iibce.edu.uy>, info@geneticamedica.com.uy, "Jose Badano" <Jbadano@pasteur.edu.uy>, genetica@fmed.edu.uy, decano@fq.edu.uy
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Información del contacto:
Apellido: Galo Viegas
Nombre : María Bettina

Correo electrónico:bettina.galo@gmail.com

El mié, 26 may 2021 a las 12:13, Asistentes Académicos IIBCE (<asistentes@iibce.edu.uy>) escribió:

Estimada Bettina Galo:

Cumplo en enviar adjunto nota con la respuesta del Consejo Directivo, referente a su consulta.

Se solicita acusar recibo de la misma.
Saludos cordiales,
Yenny Marrero

iibce
INSTITUTO DE INVESTIGACIONES BIOLÓGICAS CLEMENTE ESTABLE

Asistente Académica
Instituto de Investigaciones Biologicas Clemente Estable (IIBCE)
www.iibce.edu.uy
Av. Italia 3318, C.P. 11600
Montevideo, Uruguay
Telefono: (598) 2487 1616 int. 150
Fax: (598) 2487 5461

Ministerio de Educación y Cultura

Montevideo, 25 de mayo de 2021.

Consejo Directivo del Instituto de Investigaciones Biológicas Clemente Estable

ASUNTO: la solicitud de acceso a información pública, presentada por la Sra. María Bettina Gallo, al amparo de la Ley 18.381 de Acceso a la Información Pública

OBJETO: La Sra. María Bettina Gallo determina el objeto de la solicitud en su derecho a conocer acerca de " *Todos los estudios y / o informes en posesión, custodia o control de los informes y registros que describan la* ***purificación*** *de cualquier* ***"virus COVID-19*** *" (incluidos "B.1.1.7", "B.1.351", "P.1" y cualquier otra "variante") (mediante maceración, filtración y uso de una ultracentrífuga; también a veces por algunas personas como "aislamiento") , directamente de una muestra tomada de un ser humano enfermo, donde la muestra del paciente NO SE combinó primero con ninguna otra fuente de material* ***genético*** *(es decir, células de riñón de mono, también conocidas como células Vero, suero fetal bovino)"*

FUNDAMENTO LEGAL: El acceso a la información pública es un derecho de todas las personas, con arreglo al artículo 3º de la Ley 18.381.

Que la Unidad Ejecutora 011 "Instituto de Investigaciones Biológicas Clemente Estable" es un sujeto obligado por la Ley 18.831 a brindar información que se sea considerada pública con arreglo a los artículos 4 y 5 de la citada.

Que en aplicación del principio de informalismo a favor del administrado el Consejo Directivo de la Unidad Ejecutara va a procesar la presente solicitud ya que la misma debió presentarse por escrito en la forma establecida por el artículo 13 de la Ley 18.381.

INFORME: De acuerdo a lo hasta aquí expresado el Consejo Directivo de la Unidad Ejecutora 011 "Instituto de Investigaciones Biológicas Clemente Estable" informa que no se trabaja con el virus vivo y que no se realizó la purificación del virus COVID en ninguna de sus variantes.

MINISTERIO DE EDUCACIÓN Y CULTURA
INSTITUTO DE INVESTIGACIONES BIOLÓGICAS CLEMENTE ESTABLE
IIBCE

Av. Italia 3318. C.P.: 11600. Montevideo, URUGUAY
Tel.: + (598) 2487 1616 • Fax: + (598) 2487 5461

por Solicitud de REGISTROS DEL SARS-COV-2 Recibidos ×

decano@fq.edu.uy 11:36 (hace 14 minutos)

para mí

Sra. María Bettina Galo Viegas:

Desde Decanato de Facultad de Química – UdelaR acusamos recibo del correo electrónico enviado por Ud. e informamos que al mismo le faltan algunos datos de los exigidos en el Art. 13 de la ley 18.381 para considerarse una solicitud viable en ese marco, en especial número de documento de identidad y domicilio del solicitante (Se transcribe dicho artículo al final de este mensaje).

Sin perjuicio de ello, de acuerdo a las consultas realizadas, desde ya se informa a la solicitante que la Facultad de Química – UdelaR no ha efectuado estudios de aislamientos de virus SARS-COV 2.

"Art 13.- (De la solicitud y sus requisitos).- Toda persona física o jurídica interesada en acceder a la información pública en poder de los sujetos obligados por la presente ley, deberá hacerlo mediante solicitud escrita ante el titular del organismo. En dicha solicitud deberá constar:
A) La identificación del solicitante, su domicilio y forma de comunicación.
B) La descripción clara de la información requerida y cualquier dato que facilite su localización.
C) Y, opcionalmente, el soporte de información preferido, sin constituir este último una obligación para el organismo."

Agradecemos confirmación de este mensaje.

Atentamente.

Prof. Dr. Alvaro W. Mombrú
Decano
Facultad de Química - UdelaR

Referencia:
12/001/3/2902/2021

DOCUMENTO COMPLETO **IDOC**

Fecha de ingreso: 03/05/2021 13:23
Lugar de Ingreso: División Jurídico Notarial

Datos del documento

Titulares: DIVISION SERVICIOS JURIDICOS
Resumen: ACCESO A LA INFORMACION PUBLICA

MARIA BETTINA GALO VIEGAS
Cantidad de Actuaciones: 11

Campos del tipo de documento

Procedencia: 12/001/1.511
Nómina Procedencia:
Oficio:

A DIRECCIÓN GENERAL DE SECRETARÍA

Exp. Ref. N° 12/001/3/2902/2021

Por solicitud de acceso a la información pública la Sra. María Galo solicita: "Descripción de los registros solicitados: "*Todos los estudios y / o informes en posesión, custodia o control de los Centros para el Control y la Prevención de Enfermedades del MSP y/o PRIVADOS integrantes o no del GACH -sin excepción- a cargo de la Pandemia Covid19, UDELAR, Facultad de Ciencias, Facultad de Química, Facultad de Medicina y el Departamento de Genética de la Facultad de Medicina, la Agencia para Sustancias y cualquier otra dependencia público o privado, o público-privada (Laboratorios de investigación): QUE describan la purificación de cualquier "virus COVID-19 " (incluidos "B.1.1.7", "B.1.351", "P.1" y cualquier otra "variante") (mediante maceración, filtración y uso de una ultracentrífuga; también a veces por algunas personas como "aislamiento") , directamente de una muestra tomada de un ser humano enfermo, donde la muestra del paciente NO SE combinó primero con ninguna otra fuente de material genético (es decir, células de riñón de mono, también conocidas como células Vero; suero fetal bovino). Tenga en cuenta que no estoy solicitando estudios /informes donde los investigadores no pudieron purificar el "virus" sospechoso y en su lugar:*

• cultivado una muestra no purificada u otra sustancia no purificada, y / o

• realizó una prueba de amplificación (es decir, una prueba de PCR) en todo el ARN de una muestra de paciente o de un cultivo celular, o en material genético de cualquier sustancia no purificada, y / o

• Secuenció el ARN total de una muestra de paciente o de un cultivo celular o de cualquier sustancia no purificada, y / o

• produjo imágenes de microscopía electrónica de cosas no purificadas en un cultivo celular.

Para mayor claridad, tenga en cuenta que ya soy consciente de que, según la teoría del virus, un "virus" requiere células huésped para replicarse, y no solicito registros que describan la replicación de un "virus" sin células huésped.

Además, yo no estoy solicitando los registros de pacientes privados o registros que describen un supuesto "virus" flotando en el vacío; Simplemente solicito registros que

describan su purificación (separación de todo lo demás en la muestra del paciente, según las prácticas estándar de laboratorio para la purificación de otras cosas pequeñas). Tenga en cuenta también que mi solicitud no se limita a los registros que fueron creados por o en cualquiera de los organismos, instituciones antes nombradas o que pertenecen al trabajo realizado en / por ellos . Más bien, mi solicitud incluye cualquier registro que coincida con la descripción anterior, por ejemplo (pero no limitado a) cualquier estudio revisado por pares publicado y escrito por cualquier persona, en cualquier lugar, alguna vez que haya sido descargado o impreso por los antes citados y se haya utilizado como evidencia de un "virus" causante de enfermedades. Tenga en cuenta que a pesar del hecho de que la purificación es un paso esencial (pero no suficiente) para probar la existencia de un "virus" que causa una enfermedad, hasta la fecha, 53 instituciones en todo el mundo no han proporcionado o citado tales registros, por lo tanto, a mi conocimiento no existen tales registros y si existen no puedo acceder a ellos hasta que se me proporcione una cita o URL. Por lo tanto, si algún registro coincide con la descripción anterior de los registros solicitados y está actualmente disponible para el público en otro lugar, proporcione suficiente información sobre cada registro para que pueda identificar y acceder a cada uno con certeza (es decir, título, autor (es), fecha, revista, donde el público pueda acceder a ella). Proporcione las URL siempre que sea posible."

La Ley N° 18.381 en su artículo 13 exige que las solicitudes de información deben ser claras respecto a la información que se solicita. Los términos de lo consultado, no logran ser comprendidos en su cabalidad, lo cual dificulta dar respuesta a lo peticionado. Las solicitudes deben establecer con precisión a qué información se solicita acceder, no a qué información no se solicita acceder. Tampoco corresponde en esta vía ingresar en discusiones sobre las opiniones del peticionante.

En segundo lugar, corresponde aclarar que el Ministerio de Salud Pública no es custodio, ni de estudios ni de informes de otras instituciones y organismos, como lo son la UDELAR o el GACH, donde la interesada debería dirigir sus consultas.

Sí es posible afirmar, que de acuerdo a lo informado por la Dirección de Laboratorios del Ministerio, la muestra del paciente contiene genes de las células de la persona que se realiza el hisopado y de contener virus, contienen genes del virus, en este caso SARS

CoV2 y que su purificación se realiza a través de un proceso automatizado que utiliza reactivos y perlas magnéticas donde se separa el ARN del virus, que es el que se busca.

En virtud de lo expuesto, corresponde dar respuesta al peticionante en los términos del presente informe.

DOCUMENTO COMPLETO **IDOC**

Actuación

Fecha Creación:	07/06/2021 14:40
Usuario Creación:	MARIA DEL HUERTO CORRADO
Dependencia:	12/001/1.51 Dpto. De Secretaría Y Acuerdos
Finalizada Por:	Gustavo Cardoso, Maria del Huerto Corrado
Adjuntos:	1
	001-3-2902-2020 RESPUESTA PARCIAL ACCESO A LA INFORMACIÓN MARIA BETTINA GALO - MJB.pdf
Firmado Por:	MARÍA del HUERTO CORRADO SCARCELA
Fecha Firma:	07/06/2021 14:41
Firmado Por:	GUSTAVO CARDOSO MUÑOZ
Fecha Firma:	07/06/2021 17:25

Ministerio de Salud Pública

Dirección General de Secretaría

VISTO: la solicitud de información pública efectuada por la Sra. María Bettina Galo Viegas, al amparo de lo dispuesto por la Ley Nº 18.381 de 17 de octubre de 2008;

RESULTANDO: que la peticionante solicita información sobre: i) todos los estudios y/o informes en posesión, custodia o control de los Centros para el Control y la Prevención de Enfermedades del M.S.P. y/ o privados integrantes o no del Grupo Asesor Científico Honorario (GACH), sin excepción, a cargo de la pandemia Covid-19, UDELAR, Facultad de Ciencias, Facultad de Química, Facultad de Medicina y el Departamento de Genética de la Facultad de Medicina, la Agencia para Sustancias y cualquier otra dependencia público o privado, o público-privada (Laboratorios de investigación); y ii) información sobre cada registro que describan la purificación de cualquier "virus- COVID -19" para poder identificar y acceder a cada uno con certeza;

CONSIDERANDO: I) que en merito a lo informado por la División Servicios Jurídicos, corresponde acceder a lo peticionado con excepción de la información solicitada que no se ajusta a los requisitos normativos, debiendo existir una descripción clara de la información requerida, así como cualquier dato que facilite su localización, rigiendo para ello lo dispuesto en el artículo 13 de la Ley Nº 18.381 de 17 de octubre de 2008;

II) que de acuerdo a lo dispuesto por el artículo 16 de la citada disposición legal, el acto que resuelva la petición debe emanar del jerarca máximo del Inciso o quien posea facultades delegadas al efecto;

ATENTO: a lo precedentemente expuesto y a lo establecido por Resolución Ministerial Nº 38/991 de 22 de enero de 1991;

LA DIRECCIÓN GENERAL DE SECRETARÍA

en ejercicio de las atribuciones delegadas

R E S U E L V E:

1º) Autorízase el acceso a la información en forma parcial, en referencia a la solicitud efectuada por la Sra. María Bettina Galo Viegas, al amparo de lo dispuesto por la Ley Nº 18.381 de 17 de octubre de 2008.

2º) Notifíquese a la parte interesada a través de Secretaría de la Dirección General de Secretaría. Pase al Departamento de Comunicaciones para su publicación en la página web Institucional. Cumplido, archívese.

Ref. Nº 001-3-2902-2021

VC

Se otorgó Nº de Res. DIGESE 377-2021

This text has been automatically translated in gmail: Spanish -> English.

Date of admittance: 03/05/2021 13:23
Place of Entry: Legal Notarial Division
Document data
Holders: LEGAL SERVICES DIVISION
Summary: ACCESS TO PUBLIC INFORMATION
MARIA BETTINA GALO VIEGAS
Number of Performances: 11
Document type fields
Origin: 12/001 / 1.511
Payroll Origin:
Job:
Reference:
12/001/3/2902/2021
FULL IDOC DOCUMENT

TO THE GENERAL DIRECTORATE OF THE SECRETARIAT
Exp. Ref. N ° 12/001/3/2902/2021

Upon request for access to public information, Mrs. María Galo requests:

“Description of the requested records:

“All studies and / or reports in possession, custody or
control of the Centers for Disease Control and Prevention of the MSP and / or
PRIVATE members or not of the GACH -without exception- in charge of the Covid19 Pandemic,
UDELAR, Faculty of Sciences, Faculty of Chemistry, Faculty of Medicine and the
Department of Genetics of the Faculty of Medicine, the Agency for Substances and
any other public or private, or public-private agency (Laboratorios de
research): THAT describe the purification of any "COVID-19 viruses" (including
"B.1.1.7", "B.1.351", "P.1" and any other "variant") (by maceration, filtration
and use of an ultracentrifuge; also sometimes by some people like
"isolation"), directly from a sample taken from a sick human being,
where the patient sample was NOT first combined with any other source of
genetic material (i.e. monkey kidney cells, also known as cells
Vero; fetal bovine serum).

Please note that I am not requesting studies / reports
where the researchers were unable to purify the suspected "virus" and instead:

• cultured a non-purified sample or other non-purified substance, and / or

• performed an amplification test (that is, a PCR test) on all RNA from
a patient sample or cell culture, or genetic material from any
non-purified substance, and / or

• Sequenced total RNA from a patient sample or from a cell culture or from
any non-purified substance, and / or

• produced electron microscopy images of unpurified things in a culture
mobile.
For the sake of clarity, note that I am already aware that according to the theory of

virus, a "virus" requires host cells to replicate, and I do not request records that describe the replication of a "virus" without host cells.

Also, I am not requesting private patient records or records that describe a supposed "virus" floating in a vacuum; I simply request records that describe its purification (separation from everything else in the patient sample, according to standard laboratory practices for purification of other things little).

Also note that my request is not limited to records that were created by or in any of the agencies, institutions named above or that belong to the work done in / by them. Rather, my request includes any record that matches the description above, for example (but not limited to) any peer-reviewed study published and written by any person, anywhere, ever that has been downloaded or printed by the cited above and has been used as evidence of a "virus" that causes diseases.

Note that despite the fact that purification is a step essential (but not sufficient) to prove the existence of a "virus" that causes a disease, to date, 53 institutions worldwide have not provided or cited such records, therefore, to my knowledge there are no such records and if they exist I cannot access them until a quote or URL is provided to me. For the

Therefore, if any record matches the previous description of the requested records and is currently available to the public elsewhere, please provide enough information about each record so that you can identify and access each one with certainty (i.e. title, author (s), date, journal, where the public can access her). Provide URLs whenever possible. "

Law No. 18,381 in its article 13 requires that requests for information must be clear regarding the information requested. The terms of what was consulted, no manage to be fully understood, which makes it difficult to respond to what petitioned. Requests must establish precisely what information is requests to access, not what information is not requested to access. Nor does it correspond to In this way, enter into discussions about the opinions of the petitioner.

Secondly, it is appropriate to clarify that the Ministry of Public Health is not custodian, neither of studies nor of reports of other institutions and organizations, as They are the UDELAR or the GACH, where the interested party should direct their inquiries.

Yes, it is possible to affirm that according to the information provided by the Laboratories Directorate from the Ministry, the patient's sample contains genes from the person's cells that swabbing is performed and if they contain viruses, they contain virus genes, in this case SARS CoV2 and that its purification is carried out through an automated process that uses reagents and magnetic beads where the RNA of the virus is separated, which is what it is looking for.

By virtue of the foregoing, it is the responsibility of the petitioner to respond in the terms of this report.

Performance

Creation date: 06/07/2021 14:40
User Creation: MARIA DEL HUERTO CORRADO
Unit: 12/001 / 1.51 Department of Secretariat and Agreements
Finished By: Gustavo Cardoso, Maria del Huerto Corrado
Attachments: 1
001-3-2902-2020 PARTIAL RESPONSE ACCESS TO THE INFORMATION MARIA BETTINA GALO - MJB.pdf
Signed By: MARÍA del HUERTO CORRADO SCARCELA
Signature Date: 06/07/2021 14:41
Signed By: GUSTAVO CARDOSO MUÑOZ
Signature Date: 06/07/2021 17:25
FULL IDOC DOCUMENT
Document: 12/001/3/2902/2021 Action: 10 32
Ministry of Public Health
General Directorate of Secretariat

SEEN: the request for public information made by Mrs. María Bettina Galo Viegas, under the provisions of Law No. 18,381 of 17 October 2008;

RESULTING: that the petitioner requests information on: i) all the studies and / or reports in possession, custody or control of the Centers for the Control and Prevention of Diseases of the MSP and / or private members or not of the Honorary Scientific Advisory Group (GACH), without exception, in charge of the Covid-19 pandemic, UDELAR, Faculty of Sciences, Faculty of Chemistry, Faculty of Medicine and the Department of Genetics of the Faculty of Medicine, the Agency for Substances and any other public or private, or public-private agency (Research laboratories); and ii) information on each record that describe the purification of any "COVID-19 viruses" in order to identify and access each one with certainty;

CONSIDERING:

I) that based on the information provided by the Division Legal Services, it corresponds to access the request with the exception of the requested information that does not conform to regulatory requirements, there must be a clear description of the required information, as well as any data that facilitates its location, governing for this the provided in Article 13 of Law No. 18,381 of October 17, 2008;

II) that in accordance with the provisions of article 16 of the aforementioned legal provision, the act that resolves the petition must emanate from the maximum hierarch of the subsection or whoever has powers delegated to that effect;

ATTENTION: to the foregoing and to what is established by Ministerial Resolution No. 38/991 of January 22, 1991;
001-3-2902-2020 PARTIAL RESPONSE ACCESS TO INFORMATION MARIA BETTINA GALO - MJB.pdf
Document: 12/001/3/2902/2021 Action: 10 33

THE GENERAL DIRECTORATE OF THE SECRETARIAT

in exercise of delegated powers

RESOLVES:

1º) Authorize access to information partially, in reference to the request made by Mrs. María Bettina Galo Viegas, at under the provisions of Law No. 18,381 of October 17, 2008.

2º) Notify the interested party through the Secretariat of the General Directorate of Secretariat. Go to the Department of Communications for publication on the Institutional website. Accomplished, file.

Ref. No. 001-3-2902-2021
VC

001-3-2902-2020 PARTIAL RESPONSE ACCESS TO INFORMATION MARIA BETTINA GALO - MJB.pdf

Document: 12/001/3/2902/2021 Action: 10 34
Res. No. DIGESE 377-2021 was granted
Document: 12/001/3/2902/2021 Action: 11 36

Public Health England

Protecting and improving the nation's health

Public Accountability Unit
Wellington House
133-155 Waterloo Road
London SE1 8UG

T 020 8327 6920

www.gov.uk/phe

By email
request-679566-e6380751@whatdotheyknow.com

Our ref: 24/07/hf/872

20 August 2020

Dear Andrew Johnson,

Re: Documents held showing SARS-COV2 has been isolated and Causes COVID-19

Thank you for your email dated 24 July 2020. In accordance with Section 1(1)(a) of the Freedom of Information Act 2000 (the Act), I can confirm that Public Health England (PHE) does not hold the information you have specified.

Your Request
All records in the possession, custody or control of Public Health England describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers *instead* to:

• the culturing of something, or
• the performance of an amplification test (i.e. a PCR test), or • the sequencing of something.

Please also note that my request is not limited to records that were authored by the PHE or that pertain to work done by the PHE. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the PHE has downloaded or printed.

Please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).”

Response
PHE can confirm it does not hold information in the way suggested by your request.

Under section 16 of the Act, public authorities have a duty to provide advice and assistance. I have signposted you to the below links which contain information on taking COVID-19 swabs.

https://www.gov.uk/government/publications/covid-19-guidance-for-taking-swab-samples
https://www.gov.uk/government/publications/types-and-uses-of-coronavirus-covid-19-tests/types-and-uses-of-coronavirus-covid-19-tests

Additionally, the below publication contains some information on virus isolation:
https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.32.2001483

If you have any queries regarding the information that has been supplied to you, please refer your query to in writing in the first instance. If you remain dissatisfied and would like to request an internal review, then please contact us at the address above or by emailing foi@phe.gov.uk.

Please note that you have the right to an independent review by the Information Commissioner's Office if a complaint cannot be resolved through the PHE complaints procedure. The Information Commissioner's Office can be contacted by writing to Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,
FOI Team

3rd November 2020

Dear Sirs

Freedom of Information Request Reference No: 202010343

Thank you for your request for information about SARS-COV-2

Your request was received on 24/10/2020 and I am dealing with it under the terms of the Freedom of Information Act 2000 (the Act).

I can confirm that following a search of our records, the Health and Safety Executive does not hold information relating to isolation of SARS-COV-2, I have been advised you should contact Public Health England.

However I can confirm that the Health and Safety Executive holds the information relating) any published peer-reviewed study that the HSE has downloaded or printed

This information is being withheld as it falls under the exemption in section 21 of the Act Information accessible by other means.

Section 21 of the Act is an absolute exemption not subject to the public interest test.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the decisions made by HSE you may ask for an internal review within two calendar months of the date of this letter by writing to me.

If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 0303 123 1113
Email: casework@ico.org.uk
Website: https://ico.org.uk

Yours sincerely
Cameron Hadwin

Fwd: Freedom of information - TL1S - FOI 11035 - Final response

[redacted] Tue, Jul 27, 2021 at 3:49 AM

To: christinem@fluoridefreepeel.ca

- TL1S - FOI 11035 - Final response

Good morning,

The Trust has now completed collation of data to support a response to your recent Freedom of Information requests for Pennine Acute NHS Trust and Salford Royal NHS Foundation Trust.

Details requested have been attached to this email.

As part of the disclosure log, all responses to Freedom of Information requests are posted on the Trust's website. Please click on the link below to view the response to your request.

https://www.srft.nhs.uk/about-us/freedom-of-information/trands/?entryid34=218053&q=0%7e1113B%7e

Please click on the corresponding Trusts tab to view the information.

We trust these details will assist with your enquiries. If we can be of any further assistance in the future please do not hesitate to contact us again.

Questionnaire

As a Trust we are keen to monitor and improve the services we offer. We'd be grateful if you could take the time to answer the following questions and provide us with any other feedback that may assist us with this process:

Were you satisfied with the handling of your request?	YES/NO

Was your request handled in a timely manner?	**YES/NO**
Were you provided with sufficient information to assist you with your request?	**YES/NO**

Yours Sincerely

Freedom of Information Office

Digital

Northern Care Alliance

Salford/North Manchester/Oldham/Rochdale/Fairfield

Team Tel: **Please note our offices are closed for the foreseeable future. The best way to contact the team is via email or Microsoft teams**

-----Original Message-----
From: PennineFOI atSalford
Sent: 11 June 2021 07:54
Subject: RE: Freedom of information - TL1S - FOI 11035 - ack

Good morning,

With reference to your request made under the Freedom of Information Act, Salford Royal NHS Foundation Trust acknowledges receipt of your request for information and informs you that the process has been instigated. Our Reference number should be used in all future correspondence.

In accordance with Trust policy and the requirements of the Freedom of Information Act 2000, a period of 20 working days is assigned for processing your request. [Working days within the NHS refers to Mon-Fri.] We will provide you with an explanation if we find that there is any reason why this period may extend beyond the period prescribed by the Act.

Please contact us if you have any queries regarding the procedure.

Kind regards,

Freedom of Information Office

Digital

Northern Care Alliance

Salford/North Manchester/Oldham/Rochdale/Fairfield

Team Tel: Please note our offices are closed for the foreseeable future. The best way to contact the team is via email or Microsoft teams

-----Original Message-----

From: Ryan Kate (Microbiology) <kate.ryan@srft.nhs.uk>

Sent: 10 June 2021 10:31

Cc: Freedom of information request <FreedomOf.InformationRequest@srft.nhs.uk>

Subject: RE: Freedom of information - TL1S - FOI 11035

I have referred your request to the Freedom of Information department.

Kind Regards,

Kate Ryan

Microbiology Service Manager

Pathology at Wigan and Salford (PAWS)

Salford Royal NHS Foundation Trust

Salford Care Organisation

Part of the Northern Care Alliance NHS Group

tel: 0161 206 5025 (Internal extension: 65025)

mobile: 07970268833

Trust email: kate.ryan@srft.nhs.uk

NHS email: paws.microbiology@nhs.net

PA for Microbiology – Diane Lancaster (0161 206 5030 diane.lancaster@srft.nhs.uk)

-----Original Message-----

Sent: 09 June 2021 21:02

To: Ryan Kate (Microbiology) <kate.ryan@srft.nhs.uk>

Subject: Freedom of information

Hi Kate,

Under the freedom of information Act I would like to know the number of cycles you have been using on the PCR test (Polymerase Chain Reaction) test as standard, and if that number has been changed at any time for whatever reason.

I would also like to know how many children under the age of 16 have been logged as a death from SARSCoV2, without any underlying health issues.

And can you tell me if you have any records of SARSCoV2 going through Koch's postulates?

Kind regards

The UK

Sent from my iPhone

3 attachments

PCR Testing - 09 07 2021.pdf
194K

NCA FOI COVID 19 responses 080721.pdf
258K

NCA FOI Response Report - FOI 11135 - Final.pdf
154K

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NHS
Northern Care Alliance
NHS Group

Freedom of Information Report **FOI / 11135**

Question (dated:09/06/2021)
Requestor Category: Individual

I would like to know the number of cycles you have been using on the PCR (polymerase chain reaction) test as standard and if that number has ever been changed at any time for whatever reason.

I would also like to know how many children with under the age of 16 have been logged as a death from SARSCoV2 without any underlying health issues.

Can you also tell me if you have any records of SARSCoV2 going through Koch's Postulates.

Response – Salford Royal NHS Foundation Trust

All COVID-19 related information for the Trust is published online (including PCR testing). In line with section 21 of the Freedom of Information Act, please visit the link below to access the information requested

https://www.srft.nhs.uk/about-us/freedom-of-information/randr/?entryid34=217656&q=0%7epcr%7e

https://www.srft.nhs.uk/about-us/freedom-of-information/randr/?esctl2071478directoryviewpager_p=1&entryid34=205243&q=0%7efoi+covid%7e

Freedom of Information Report

COVID-19 RELATED FIGURES

COVID- 19 death figures are reported daily on the NHS England website. In line with section 21 of the Freedom of Information Act, please visit the link below to access the information requested

https://www.england.nhs.uk/statistics/statistical-work-areas/covid-19-daily-deaths/

- the number of patients in hospital with COVID including those in mechanical ventilation
- the number of patients admitted to hospital with COVID
- the number of patients diagnosed in hospital with COVID
- the number of patients discharged from hospital and
- staffing absences
- hospital admissions,
- number of Adult G&A beds; occupied by COVID patients; occupied by non-COVID patients, unoccupied
- number of all beds occupied by COVID patients
- number of MV beds occupied by COVID patients

are also reported via the link below

https://www.england.nhs.uk/statistics/statistical-work-areas/covid-19-hospital-activity/

Cause of death is not recorded on our clinical systems and would be recorded on an individual's death certificate. To review all death certificates issued over this time period to establish the primary cause of death is estimated will take in excess of time expectations of the Freedom of Information Act. The Trust therefore sites section 12(1) and is unable to provide a response to this request.

Break down per Care Organisation and Hospital

	Patients (March 2020 – December 2020)	Patients (Jan 2021 – March 2021
Bury and Rochdale Care Organisation (Fairfield General Hospital and Rochdale Infirmary)	12	12
Oldham Care Organisation (The Royal Oldham Hospital)	16	35
North Manchester Care Organisation (North Manchester General Hospital)	88	<10

The total number of patients who have died with a positive COVID-19 test within 28 days of their death with no previous existing health conditions between March 2020 and 8th December 2020 at **Salford Royal NHS Foundation Trust** is **<10**

The total number of patients who have died with a positive COVID-19 test within 28 days of their death with no previous existing health conditions between January 2021 and March 2021 at **Salford Royal NHS Foundation Trust** is **<10**

The Trust applies an exemption under section 41 (1) of the Freedom of Information Act (Information provided in confidence in relation to patients that are deceased and are not afforded rights under the GDPR) and has not provided any figures less than 10.

The Trust is unable to differentiate between those who died with or from COVID-19. However, in the spirit of the FOI Act, the Trust is able to provide the following information of the total number of patients who have died with a positive COVID-19 test within 28 days of their death:

432 patient's deaths have been submitted into the Covid-19 Patient Notification System (CPNS) via NHS England within the time frame of March 2020 to the 16th of December 2020 at **Fairfield General Hospital**

155 patient's deaths have been submitted into the Covid-19 Patient Notification System (CPNS) via NHS England within the time frame of March 2020 to the 22nd of January 2021 at the **Royal Oldham Hospital**

***Figures for April to July 2021 will be published by the end of September 2021 (exempt under section 22 of the FOI Act – intended for future publication)*

Saving lives, Improving lives

NHS
Northern Care Alliance
NHS Group

Freedom of Information Report FOI / 11128

Question (dated:09/06/2021)
Requestor Category: Individual

1. I would like to know the number of cycles you have been using on PCR (Polymerase Chain Reaction) test as standard and if that number has ever been changed at anytime for whatever reason.

2. I would also like to know how many children under the age of 16 have been logged as a death from SARSCov2 without any underlying health issues.

3. And can you tell me if you have any records of SARSCov2 going through Koch's Postulates.

Response – Salford Royal Foundation Trust

1. I would like to know the number of cycles you have been using on PCR (Polymerase Chain Reaction) test as standard and if that number has ever been changed at anytime for whatever reason.

   The Trust uses the following Commercial CE IVD assays - Hologic Panther, Cepheid, BD Max, Abbott Alinity, Abbott M2000 and AusDiagnostics Hi-Plex. The number of thermal cycles across all the platforms in use varies slightly and the maximum is 42; the parameters for all these assays are available from the commercial suppliers. The Trust does not alter them for any reason.

2. I would also like to know how many children under the age of 16 have been logged as a death from SARSCov2 without any underlying health issues.

   There were no children under the age of 16 who died within 28 days of a positive COVID-19 test result.

3. And can you tell me if you have any records of SARSCov2 going through Koch's Postulates.

   The Trust has not recorded any cases going through Koch's Postulates.

Response – Pennine Acute Hospitals NHS Trust

1. I would like to know the number of cycles you have been using on PCR (Polymerase Chain Reaction) test as standard and if that number has ever been changed at anytime for whatever reason.

   The Trust uses the following Commercial CE IVD assays - Hologic Panther, Cepheid, BD Max, Abbott Alinity, Abbott M2000 and AusDiagnostics Hi-Plex. The number of thermal cycles across all the platforms in use varies slightly and the maximum is 42; the parameters for all these assays are available from the commercial suppliers. The Trust does not alter them for any reason.

2. I would also like to know how many children under the age of 16 have been logged as a death from SARSCov2 without any underlying health issues.

   The Trust is unable to provide figures of those who have died from COVID-19. In the spirit of the FOI Act, the Trust can provide information on those with a positive COVID 19 test within 28 days of death.
   There were less than 10 children who died within 28 days of a positive COVID-19 test result.
   The Trust applies an exemption under section 41 (1) of the Freedom of Information Act (Information provided in confidence in relation to patients that are deceased and are not afforded rights under the GDPR) and has not provided any figures less than 10.

3. And can you tell me if you have any records of SARSCov2 going through Koch's Postulates.

   The Trust has not recorded any cases going through Koch's Postulates.

Fwd: Freedom of information - TL1S - FOI 11035 - Final response

[redacted] Tue, Jul 27, 2021 at 3:49 AM

To: christinem@fluoridefreepeel.ca

- TL1S - FOI 11035 - Final response

Good morning,

The Trust has now completed collation of data to support a response to your recent Freedom of Information requests for Pennine Acute NHS Trust and Salford Royal NHS Foundation Trust.

Details requested have been attached to this email.

As part of the disclosure log, all responses to Freedom of Information requests are posted on the Trust's website. Please click on the link below to view the response to your request.

https://www.srft.nhs.uk/about-us/freedom-of-information/trands/?entryid34=218053&q=0%7e1113B%7e

Please click on the corresponding Trusts tab to view the information.

We trust these details will assist with your enquiries. If we can be of any further assistance in the future please do not hesitate to contact us again.

Questionnaire

As a Trust we are keen to monitor and improve the services we offer. We'd be grateful if you could take the time to answer the following questions and provide us with any other feedback that may assist us with this process:

Were you satisfied with the handling of your request?	YES/NO

Was your request handled in a timely manner?	**YES/NO**
Were you provided with sufficient information to assist you with your request?	**YES/NO**

Yours Sincerely

Freedom of Information Office

Digital

Northern Care Alliance

Salford/North Manchester/Oldham/Rochdale/Fairfield

Team Tel: **Please note our offices are closed for the foreseeable future. The best way to contact the team is via email or Microsoft teams**

-----Original Message-----
From: PennineFOI atSalford
Sent: 11 June 2021 07:54
Subject: RE: Freedom of information - TL1S - FOI 11035 - ack

Good morning,

With reference to your request made under the Freedom of Information Act, Salford Royal NHS Foundation Trust acknowledges receipt of your request for information and informs you that the process has been instigated. Our Reference number should be used in all future correspondence.

In accordance with Trust policy and the requirements of the Freedom of Information Act 2000, a period of 20 working days is assigned for processing your request. [Working days within the NHS refers to Mon-Fri.] We will provide you with an explanation if we find that there is any reason why this period may extend beyond the period prescribed by the Act.

Please contact us if you have any queries regarding the procedure.

Kind regards,

Freedom of Information Office

Digital

Northern Care Alliance

Salford/North Manchester/Oldham/Rochdale/Fairfield

Team Tel: Please note our offices are closed for the foreseeable future. The best way to contact the team is via email or Microsoft teams

-----Original Message-----

From: Ryan Kate (Microbiology) <kate.ryan@srft.nhs.uk>

Sent: 10 June 2021 10:31

Cc: Freedom of information request <FreedomOf.InformationRequest@srft.nhs.uk>

Subject: RE: Freedom of information - TL1S - FOI 11035

I have referred your request to the Freedom of Information department.

Kind Regards,

Kate Ryan

Microbiology Service Manager

Pathology at Wigan and Salford (PAWS)

Salford Royal NHS Foundation Trust

Salford Care Organisation

Part of the Northern Care Alliance NHS Group

tel: 0161 206 5025 (Internal extension: 65025)

mobile: 07970268833

Trust email: kate.ryan@srft.nhs.uk

NHS email: paws.microbiology@nhs.net

PA for Microbiology – Diane Lancaster (0161 206 5030 diane.lancaster@srft.nhs.uk)

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Freedom of Information Report **FOI / 11135**

Question (dated:09/06/2021)
Requestor Category: Individual

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Response – Salford Royal NHS Foundation Trust

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https://www.srft.nhs.uk/about-us/freedom-of-information/randr/?entryid34=217656&q=0%7epcr%7e

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Freedom of Information Report

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Saving lives, Improving lives

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Freedom of Information Report FOI / 11128

Question (dated:09/06/2021)
Requestor Category: Individual

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3. And can you tell me if you have any records of SARSCov2 going through Koch's Postulates.

Response – Salford Royal Foundation Trust

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   There were no children under the age of 16 who died within 28 days of a positive COVID-19 test result.

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   The Trust has not recorded any cases going through Koch's Postulates.

Response – Pennine Acute Hospitals NHS Trust

1. I would like to know the number of cycles you have been using on PCR (Polymerase Chain Reaction) test as standard and if that number has ever been changed at anytime for whatever reason.

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NIH National Institutes of Health
Turning Discovery Into Health

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Request Status

Request Details

Click on Request # to view request details.

Case #	Description
56595	All studies and/or reports in the possession, cust...

Showing 1 to 1 of 1 entries

oad

1 Next

All studies and/or reports in the possession, custody or control of the National Institutes of Health (NIH) describing the purification of any "COVID-19 virus" (aka "SARS-COV-2" and including "B.1.1.7", "B.1.351", "P.1" and any other "variant") (via filtration and use of an ultracentrifuge; also referred toat times by some people as "isolation") directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum). Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" and instead: - cultured an unpurified sample or other unpurified substance, and/or - performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or - sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or - produced electron microscopy images of unpurified things. For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells. Further, I am not requesting private patient data. Nor am I requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of very small things). Please also note that my request is not limited to records that were authored by the NIH or that pertain to work done at/bythe NIH. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed and relied on as evidence of a disease-causing "virus" by the NIH. In the interests of transparency, if any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible. Format: Pdf documents sent to me via email; I do not wish for anything to be shipped to me. (Date Range for Record Search: From 12/01/2019 To 06/24/2021)

NIH Home | En Español | Site

Gmail **Christine Massey <cmssyc@gmail.com>**

FW: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56595

Schofield, Robin (NIH/NIAID) [E] <robin.schofield@nih.gov> Thu, Jun 24, 2021 at 10:56 AM
To: "cmssyc@gmail.com" <cmssyc@gmail.com>
Cc: "Moore, Marg (NIH/NIAID) [E]" <mmoore@niaid.nih.gov>

Good morning Ms. Massey,

Your request below is properly directed to the Centers for Disease Control and Prevention (CDC) as they are the ones who did the isolation: https://www.cdc.gov/coronavirus/2019-ncov/lab/grows-virus-cell-culture.html

See publication: https://wwwnc.cdc.gov/eid/article/26/6/20-0516_article

You can submit a request to the CDC at the following link: https://www.cdc.gov/od/foia/index.htm

Regards,

Robin L. Schofield, MPS

FOIA Coordinator

National Institute of Allergy and Infectious Diseases

From: FOIA_noreply@nih.gov <FOIA_noreply@nih.gov>
Sent: Thursday, June 24, 2021 10:39 AM
To: FOIA-7 <FOIA71@mail.nih.gov>
Subject: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56595

Hi FOIA Team!

Request # 56595 was submitted through the NIH FOIA Public Portal and assigned to you for review and further processing.

Please review the request and if all required details have not been provided by the requester, be sure to use

the "Stop Clock" option to ensure processing time for the request is accurately monitored while waiting for clarification/information from the requester.

Request Description:

All studies and/or reports in the possession, custody or control of the National Institutes of Health (NIH) describing the purification of any "COVID-19 virus" (aka "SARS-COV-2" and including "B.1.1.7", "B.1.351", "P.1" and any other "variant") (via filtration and use of an ultracentrifuge; also referred toat times by some people as "isolation"),directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" and instead:

- cultured an unpurified sample or other unpurified substance, and/or

- performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or

- sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or

- produced electron microscopy images of unpurified things.

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting private patient data. Nor am I requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of very small things).

Please also note that my request is not limited to records that were authored by the NIH or that pertain to work done at/bythe NIH. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed and relied on as evidence of a disease-causing "virus" by the NIH.

In the interests of transparency, if any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:

Pdf documents sent to me via email; I do not wish for anything to be shipped to me. (Date Range for Record Search: From 12/01/2019 To 06/24/2021)

Gmail **Christine Massey <cmssyc@gmail.com>**

FW: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56595

Christine Massey <cmssyc@gmail.com> Thu, Jun 24, 2021 at 12:37 PM
To: "Schofield, Robin (NIH/NIAID) [E]" <robin.schofield@nih.gov>

Dear Robin,

Thank you but this request has already been submitted to the CDC multiple times, both last year and again this year. Their most recent response dated June 7, 2021, attached, was that ***"A search of our records failed to reveal any documents pertaining to your request."***

I am already aware of the CDC study by Harcourt et al., thank you. They did not purify any suspected "virus" from a patient sample, thus their study does not match the description of my request. Instead they unscientifically interpreted cytopathic effects on monkey kidney cells (to which patient sample + fetal bovine serum + toxic drugs had been added) as proof of "the virus", without any control group. They also fabricated (as opposed to discovered) a genome.

72 additional institutions globally have all failed to provide any record of "virus" purification from a patient sample: https://www.fluoridefreepeel.ca/fois-reveal-that-health-science-institutions-around-the-world-have-no-record-of-sars-cov-2-isolation-purification/

Thus, I do require a formal response from NIH and/or NIAID.

Please note that I resubmitted the request a few minutes ago, to specify that I seek records held by NIAID as opposed to NIH in general (although I would be interested in a response re NIH in general, as well).

Thank you and best wishes,
Christine

[Quoted text hidden]

June 7 2021 CDC SARS-COV-2 21-01076 Final Response No Records EXHIBIT.pdf
141K

Gmail **Christine Massey <cmssyc@gmail.com>**

FW: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56595

Schofield, Robin (NIH/NIAID) [E] <robin.schofield@nih.gov> Thu, Jun 24, 2021 at 1:11 PM
To: Christine Massey <cmssyc@gmail.com>
Cc: "Moore, Marg (NIH/NIAID) [E]" <mmoore@niaid.nih.gov>

Please see the attached.

Regards,

Robin L. Schofield, MPS

FOIA Coordinator

National Institute of Allergy and Infectious Diseases

[Quoted text hidden]

Final #56595.pdf
245K

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Freedom of Information Office
5601 Fishers Lane, Room 6G50
Bethesda, Maryland 20892
Tel (301) 451-3109
Fax (301) 480-0994

National Institutes of Health
National Institute of Allergy
and Infectious Diseases
Bethesda, MD 20892

June 24, 2021

Christine Massey
[redacted]
CANADA
cmssyc@gmail.com

Re: FOI Case No. 56595

Dear Ms. Massey:

This is our final response to your Freedom of Information Act (FOIA) request submitted to the National Institute of Allergy and Infectious Diseases (NIAID) on June 24, 2021. You requested:

> All studies and/or reports in the possession, custody or control of the National Institute of Allergy and Infectious Diseases (NIAID) describing the purification of any "COVID-19 virus" (aka "SARS-COV-2" and including "B.1.1.7", "B.1.351", "P.1" and any other "variant") (via filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).
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For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting private patient data. Nor am I requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of very small things).

Please also note that my request is not limited to records that were authored by the NIAID or that pertain to work done at/by the NIAID. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed and relied on as evidence of a disease-causing "virus" by the NIAID.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:
Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

(Date Range for Record Search: From 12/01/2019 To 06/24/2021)

We have previously queried our Division of Clinical Research for records responsive to similar requests. Your request is properly directed to the Centers for Disease Control and Prevention (CDC) as they are the ones who did the isolation: https://www.cdc.gov/coronavirus/2019-ncov/lab/grows-virus-cell-culture.html

See publication: https://wwwnc.cdc.gov/eid/article/26/6/20-0516_article

You can submit a request to the CDC at the following link: https://www.cdc.gov/od/foia/index.htm
If you disagree with their no records determination, you should properly avail yourself of the appeal rights described in their final response to you.

If you are not satisfied with the processing and handling of this request, you may contact the NIAID FOIA Public Liaison:

NIAID FOIA Public Liaison
Margaret Moore
5601 Fishers Lane
Suite 6G51
Bethesda, MD 20892
301-451-5109 (phone)

301-480-0904 (fax)
mm52s@nih.gov (email)

In certain circumstances provisions of the FOIA and Department of Health and Human Services FOIA Regulations allow us to recover part of the cost of responding to your request. Because the cost is below the $25 minimum, there is no charge.

Sincerely,

Robin L. Schofield -S

Digitally signed by Robin L. Schofield -S
Date: 2021.06.24 13:10:25 -04'00'

Robin L. Schofield
FOIA Coordinator
National Institute of Allergy and Infectious Diseases

Gmail **Christine Massey <cmssyc@gmail.com>**

FW: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56597

Schofield, Robin (NIH/NIAID) [E] <robin.schofield@nih.gov> Thu, Jun 24, 2021 at 12:36 PM
To: "cmssyc@gmail.com" <cmssyc@gmail.com>
Cc: "Moore, Marg (NIH/NIAID) [E]" <mmoore@niaid.nih.gov>

Good afternoon Ms. Massey,

I am closing this case as a duplicate of the one you submitted and to which I responded less than two hours ago (copy attached).

Regards,

Robin L. Schofield, MPS

FOIA Coordinator

National Institute of Allergy and Infectious Diseases

From: FOIA_noreply@nih.gov <FOIA_noreply@nih.gov>
Sent: Thursday, June 24, 2021 12:17 PM
To: FOIA-7 <FOIA71@mail.nih.gov>
Subject: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56597

Hi FOIA Team!

Request # 56597 was submitted through the NIH FOIA Public Portal and assigned to you for review and further processing.

Please review the request and if all required details have not been provided by the requester, be sure to use the "Stop Clock" option to ensure processing time for the request is accurately monitored while waiting for clarification/information from the requester.

Request Description:

All studies and/or reports in the possession, custody or control of the

National Institute of Allergy and Infectious Diseases (NIAID) describing the purification of any "COVID-19 virus" (aka "SARS-COV-2" and including "B.1.1.7", "B.1.351", "P.1" and any other "variant") (via filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" and instead:

- cultured an unpurified sample or other unpurified substance, and/or

- performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or

- sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or

- produced electron microscopy images of unpurified things.

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting private patient data. Nor am I requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of very small things).

Please also note that my request is not limited to records that were authored by the NIAID or that pertain to work done at/by the NIAID. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed and relied on as evidence of a disease-causing "virus" by the NIAID.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:

Pdf documents sent to me via email; I do not wish for anything to be shipped to me.

(Date Range for Record Search: From 12/01/2019 To 06/24/2021)

---------- Forwarded message ----------
From: "Schofield, Robin (NIH/NIAID) [E]" <robin.schofield@nih.gov>
To: "cmssyc@gmail.com" <cmssyc@gmail.com>
Cc: "Moore, Marg (NIH/NIAID) [E]" <mmoore@niaid.nih.gov>
Bcc:
Date: Thu, 24 Jun 2021 14:56:30 +0000
Subject: FW: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56595

Good morning Ms. Massey,

Your request below is properly directed to the Centers for Disease Control and Prevention (CDC) as they are the ones who did the isolation: https://www.cdc.gov/coronavirus/2019-ncov/lab/grows-virus-cell-culture.html

See publication: https://wwwnc.cdc.gov/eid/article/26/6/20-0516_article

You can submit a request to the CDC at the following link: https://www.cdc.gov/od/foia/index.htm

Regards,

Robin L. Schofield, MPS

FOIA Coordinator

National Institute of Allergy and Infectious Diseases

From: FOIA_noreply@nih.gov <FOIA_noreply@nih.gov>
Sent: Thursday, June 24, 2021 10:39 AM
To: FOIA-7 <FOIA71@mail.nih.gov>
Subject: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56595

Hi FOIA Team!

Request # 56595 was submitted through the NIH FOIA Public Portal and assigned to you for review and further processing.

Please review the request and if all required details have not been provided by the requester, be sure to use the "Stop Clock" option to ensure processing time for the request is accurately monitored while waiting for clarification/information from the requester.

Request Description:

All studies and/or reports in the possession, custody or control of the National Institutes of Health (NIH) describing the purification of any "COVID-19 virus" (aka "SARS-COV-2" and including "B.1.1.7", "B.1.351", "P.1" and any other "variant") (via filtration and use of an ultracentrifuge; also referred toat times by some people as "isolation"),directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" and instead:

- cultured an unpurified sample or other unpurified substance, and/or

- performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or

- sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or

- produced electron microscopy images of unpurified things.

For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting private patient data. Nor am I requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of very small things).

Please also note that my request is not limited to records that were authored by the NIH or that pertain to work done at/bythe NIH. Rather, my request includes any record matching the above description, for example (but not limited to) any published peer-reviewed study authored by anyone, anywhere, ever that has been downloaded or printed and relied on as evidence of a disease-causing "virus" by the NIH.

In the interests of transparency, if any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

Format:

Pdf documents sent to me via email; I do not wish for anything to be shipped to me. (Date Range for Record Search: From 12/01/2019 To 06/24/2021)

FW: NIH FOIA - Assignment Notification from NIH FOIA Public Portal-Tracking # 56595.eml
21K

Gmail

Christine Massey <cmssyc@gmail.com>

Appeal re NIAID handling of FOIA requests Portal-Tracking # 56595 and #56597

Christine Massey <cmssyc@gmail.com> Thu, Jun 24, 2021 at 2:33 PM
To: mm52s@nih.gov

June 24, 2021

NIAID FOIA Public Liaison
Margaret Moore
5601 Fishers Lane
Suite 6G51
Bethesda, MD 20892
301-451-5109 (phone)
301-480-0904 (fax)
mm52s@nih.gov (email)

Dear Ms. Moore,

This morning I submitted a FOIA request to the National Institutes of Health (NIH) (Portal-Tracking # 56595).

The FOIA Coordinator for the National Institute of Allergy and Infectious Diseases (NIAID) almost immediately closed my request and referred me to the CDC, even after I advised them that the same request had already been submitted to the CDC and the CDC advised me on June 7, 2021 that they have no record matching my request, and I stressed that I do require a response from NIH and/or more specifically the National Institute of Allergy and Infectious Diseases (NIAID). All of the relevant communications are attached to this email.

I also submitted this morning a "duplicate" request through the NIH to NIAID specifically (Portal-Tracking # 56597), after seeing that my original request had been closed. The same FOIA Coordinator for NIAID advised that she was closing this 2nd request as well (her email is attached).

I am not satisfied with the processing and handling of these requests by the NIAID, and was advised to contact you if this is the case, and would appreciate any assistance in this matter.

Thank you in advance, and best wishes,
Christine Massey, M.Sc.

2 attachments

NIAID closing duplicate request.pdf
137K

NIAID FOIA virus purification all communications Portal-Tracking # 56595.pdf
773K

Gmail

Christine Massey <cmssyc@gmail.com>

Appeal re NIAID handling of FOIA requests Portal-Tracking # 56595 and #56597

Moore, Marg (NIH/NIAID) [E] <mmoore@niaid.nih.gov> Thu, Jun 24, 2021 at 2:40 PM
To: Christine Massey <cmssyc@gmail.com>

Ms. Massey - Is there a telephone number I can call you on? Thank you.

Margaret Moore

[Quoted text hidden]

Gmail **Christine Massey <cmssyc@gmail.com>**

Appeal re NIAID handling of FOIA requests Portal-Tracking # 56595 and #56597

Christine Massey <cmssyc@gmail.com> Fri, Jun 25, 2021 at 7:50 PM
To: "Moore, Marg (NIH/NIAID) [E]" <mmoore@niaid.nih.gov>

Hello Ms. Moore,

Thank you for getting back to me so quickly.

I've been advised that it's preferable to keep all my communications re FOIAs in writing, so that there is an accurate record, so would prefer email communication if that's OK with you.

Thank you and best wishes,
Christine
[Quoted text hidden]

Gmail

Christine Massey <cmssyc@gmail.com>

Appeal re NIAID handling of FOIA requests Portal-Tracking # 56595 and #56597

Moore, Marg (NIH/NIAID) [E] <mmoore@niaid.nih.gov> Thu, Jul 8, 2021 at 10:30 AM
To: Christine Massey <cmssyc@gmail.com>
Cc: "Moore, Marg (NIH/NIAID) [E]" <mmoore@niaid.nih.gov>

Dear Ms. Massey – The NIAID has provided our response. The information you are requesting falls within in the purview of the Centers for Disease Control (CDC). If you are not satisfied with the response you received from the CDC, you should follow the Appeal procedure outlined in their letter to you.

Best,

Margaret Moore

NIAID FOIA Office

[Quoted text hidden]

From: [redacted]
To: OHA.PublicRecords@state.or.us
Subject: Public Records request to OHA re: "SARS-COV-2" purification
Date: Monday, March 29, 2021 4:06:59 PM

March 29, 2021

To:

Keely West, JD
Central Operations Manager
503-945-6292

Jeanne Windham
Public Records Coordinator
971-345-1688

Submitted via email to: OHA.PublicRecords@state.or.us

Dear Ms. West and Ms. Windham,

This is a formal request for access to general records, made under Oregon's Public Records Law.

Description of Requested Records:

All studies and/or reports in the possession, custody or control of the Oregon Health Authority (OHA) describing the purification of any "SARS-COV-2" (including any "variant" of "SARS-COV-2") said to have caused disease in humans (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).

Clarifications re: the above Request

Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" and instead:

- cultured an unpurified sample or other unpurified substance, and/or
- performed an amplification test (i.e. a PCR test) on all the RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or
- sequenced the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or
- produced electron microscopy images of unpurified things.

For further clarity, please note I am already aware that according to virus theory a "virus" requires

host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.

Further, I am not requesting records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of other small things).

Further, please also note that my request above is not limited to records that were authored by the OHA or that pertain to work done at/by OHA. Rather, my request includes any study or report matching the above description, for example (but not limited to) a published peer-reviewed study authored by anyone, anywhere, ever, downloaded or printed by health officials at OHA and possibly (but not necessarily) relied on as evidence of a disease-causing "virus".

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.

☑

Format:
Pdf documents sent to me via email. I do not wish for anything to be shipped to me.

Contact Information:
Last name: [redacted]
First name: [redacted]
Address: [redacted]
Phone: [redacted]
Email: [redacted]

Thank you in advance and best wishes,
[redacted]

On Tuesday, March 30, 2021 1:28 PM, Windham Jeanne <JEANNE.WINDHAM@dhsoha.state.or.us> wrote:

VIA EMAIL ONLY - [redacted]

March 30, 2021

[redacted]

Re: Public Records Request - Studies/Reports Related to Purification of Any "SARS-COV-2 Causing Disease in Humans (2021-[redacted])

Good Afternoon [redacted],

This will confirm Oregon Health Authority received your March 29, 2021 public records request for “All studies and/or reports in the possession, custody or control of the Oregon Health Authority (OHA) describing the purification of any "SARS-COV-2" (including any "variant" of "SARS-COV-2") said to have caused disease in humans (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).” There are no responsive records to your request. This will complete your request.

Jeanne Windham
Public Records and Internal Litigation Process Coordinator
OREGON HEALTH AUTHORITY
Fiscal and Operations Division
500 Summer St. NE, E-20
Salem, OR 97301
(971) 345-1688
jeanne.windham@dhsoha.state.or.us
http://www.oregon.gov/OHA

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

November 2, 2020

[redacted]

This letter is in response to your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of August 9, 2020, for "All records in the possession, custody or control of The Centers for Disease Control (CDC) describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

* the culturing of something,
* or the performance of an amplification test (i.e. a PCR test),
* or the sequencing of something.

Please also note that my request is not limited to records that were authored by the CDC or that pertain to work done by The CDC. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the CDC has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it)."

A search of our records failed to reveal any documents pertaining to your request.

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. You may also transmit your appeal via email to FOIARequest@psc.hhs.gov. Please mark both your appeal letter and envelope "FOIA Appeal." Your appeal must be postmarked or electronically transmitted by Monday, February 1, 2021.

Sincerely,

Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
(770) 488-6399
Fax: (404) 235-1852

#20-02166-FOIA

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

November 2, 2020

[redacted]

This letter is in response to your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of August 9, 2020, for "All records in the possession, custody or control of The Centers for Disease Control (CDC) describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

* the culturing of something,
* or the performance of an amplification test (i.e. a PCR test),
* or the sequencing of something.

Please also note that my request is not limited to records that were authored by the CDC or that pertain to work done by The CDC. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the CDC has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it)."

A search of our records failed to reveal any documents pertaining to your request.

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. You may also transmit your appeal via email to FOIARequest@psc.hhs.gov. Please mark both your appeal letter and envelope "FOIA Appeal." Your appeal must be postmarked or electronically transmitted by Monday, February 1, 2021.

Sincerely,

Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
(770) 488-6399
Fax: (404) 235-1852

#20-02166-FOIA

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case NO: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
And	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

FILING NOTICE

KINDLY TAKE NOTICE THAT the Respondents herein file their Answering, Confirmatory ant Explanatory Affidavits evenly herewith.

SIGNED AT **CAPE TOWN** ON THIS 25th DAY OF **MAY** 2021

THE STATE ATTORNEY

Per: **M Nkabini**

First to Fourth Respondents' Attorneys
4th Floor

THE STATE ATTORNEY
Per: Mr M Nkabini
Tel: 021-441-9200

22 Long Street
CAPE TOWN
Ref No: 891/21/P6

TO: **THE REGISTRAR**
Western Cape High Court
CAPE TOWN

AND TO: **T VICTOR & ASSOCIATES**
24 Viola Road
BLOUBERGSTRAND
CAPE TOWN
Tel: 077078168

C/o **ROB GREEN ATTORNEYS**
Room 305
Benzal House
3 Barrack Street
CAPE TOWN

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PROFESSOR ADRIAN J PUREN

do hereby make oath and say:

INTRODUCTION

1. I am an adult male and employed as the Acting Executive Director of the National Institute for Communicable Diseases ("NICD") I am carrying out my principal duties at 1 Modderfontein Road, Sandringham, Johannesburg, Gauteng Province,

2. The NICD is a national public health institute of the South Africa, providing reference to microbiology, virology, epidemiology, surveillance, and public health research to support the South African Government's response to communicable disease threats. The NICD thus serves as a resource of knowledge and expertise of communicable diseases to the South African Government, Southern African Development Community countries and the African continent. The main goal of the NICD is to be the national organ for South Africa for public health surveillance of communicable disease.

3. Before commenced my employment with the NICD: I graduated as a medical doctor from the University of the Witwatersrand and obtained a Medical degree (1986) and a Ph (1993). I received further training at the University of Oxford and University of Colorado Health Sciences Center in the fields of immunology and Cytokines.

4. I was appointed at the NICD to implement a HIV diagnostic and vaccine laboratory in July 1999. Subsequently, I was appointed as a Deputy Director for Virology Division that included several sections including Centres for Respiratory Diseases

and Meningitis, Centre for Vaccines and Immunology and Centre for HIV and STIs. I have thus gained extensive experience and practical knowledge in virology, virology diagnostics and surveillance.

5. I serve as the technical manager for quality assurance at the NICD and have a knowledge and understanding of the matters relating to requirements for providing accurate and key results in line with the ISO standards.

6. I am accordingly duly authorised to depose to this affidavit on behalf of the Fourth Respondent. In the interest of simplicity, the first, second and fourth Respondents will be referred to, herein, by their abbreviated title (the first Respondent as "the President", the second Respondent as "CoGTA" and the fourth Respondent as "the NDOH" or the Respondents.)

7. The facts set out in this affidavit are within my personal knowledge or are derived from documents and information under my control, unless the context indicates otherwise, and are true.

8. As will appear from the allegations (including the annexures thereto) in the founding affidavit, the Applicant's application turns, to a large extent, if not exclusively, on the documents he attached to his founding affidavit, the authenticity and contents whereof are disputed and which I have perused.

9. Where required, the facts set out in this affidavit are supported and confirmed by affidavits depose to by the appropriate persons in CoGTA or NDOH or both, with

personal knowledge of the relevant facts and will be filed together with this affidavit. Where legal submissions are made during this affidavit, they are based upon the advice of my legal representatives. I believe such advice to be correct.

10. I have read the founding affidavit of the Applicant and respond thereto as follows:

POINTS *IN LIMINE*

11. At the outset I point out that there are several legal issues which arise from the averments set out in the Applicant's founding affidavit, which requires comment before I deal with the balance of the averments, therein.

12. The comments below will be raised by way of legal objections/points *in limine* in relation to three issues, viz: non-compliance with the regulations, self-created urgency and no prima facie or strong case for the relief sought.

THE FIRST POINT IN LIMINE:

Non-compliance with the National Health Act, 2003

13. In terms of paragraph 2 of the Notice of Motion the Applicant seeks an order that the Respondents "*produce the isolated and purified physical SARS-COV-2 virus, not a culture isolate or any mixture within which the supposed virus is, nor a*

photograph or the RNA sequence only, to the Applicant at the place in terms of their safety measures of choice within 7 days".

14. NDOH contends that on the face of the relief in paragraph 2, *supra*, the Applicant's request amounts to, *inter alia*, an acquisition or importation or handling of human pathogens. Because the Applicant requested the Court to order that the Respondents "produce" the isolated and purified physical SARS-CoV2 to him within 7 days.

15. The NDOH contends that any, one (or more) of the processes, contemplated in paragraph 2, above, seem to fall within the scope of the National Health Act, 2003, Regulations relating to the registration of microbiological laboratories and the acquisition, importation, handling, maintenance, and supply of the human pathogens ("the NHA Regulations"). Put differently, to give effect to his relief, he would, amongst others, be required to "acquire" "receive" or "handle" human pathogens, as contemplated in the NHA Regulations.

16. Accordingly, the NDOH contends that the Applicant, before, he can claim that he has a right to the relief under paragraph 2, *supra*, he must comply with the express requirements of the NHA Regulations.

17. Section 1(a) of the NHA Regulations defines "human pathogen" means-

> "*an infectious substance (b) the toxin of an infectious substance, or (c) any diagnostic specimen, vector or other material that contains, or that is*

reasonably suspected to contain **an infectious substance** or a toxin of an *infectious substance*"

"*infectious substance*" **means- (a)** a micro-organism, virus or parasite that is capable of causing human disease or (b) an artificial produced hybrid or mutant micro-organism that contains genetic components of any micro-organism capable of causing human disease."

"*microbiological laboratory*" means a laboratory which handles human pathogens capable of colonising in humans, irrespective of whether or not the laboratory undertakes specific culture of such human pathogens or merely receives and handles tissue and other specimens potentially infected or infested which such human pathogens, and including laboratories which handle infected or infested, or potentially infected or infested, indigenous vectors of human pathogens, or exotic vector species irrespective of whether they are infected or infested."

18. Section 3 of the NHA Regulations 2003 provides that-

No person shall:

"(a) acquire, receive or import human pathogens; or

(b) *handle, manipulate, maintain, store, culture or in any way process, issue or in any way dispose of human pathogens so acquired, received, or imported, unless the person -*

(i) is registered with the department as a microbiological laboratory in terms of regulation 6(1)(a)(ii);

(ii) is assigned a BSL code in terms of regulation 6(1)(a)(iii)

(iii) is in possession of permit issued in terms of regulation 6(1)(b) to conduct the activities referred to in paragraph (a) or (b) in respect of human pathogens in accordance with the BSL code of the laboratory indicated in the permit; and

(iv) conduct an activity referred to in (a) or (b) as the case may be, in accordance with the provisions of these regulations and the standards."

19. The NDOH contends that the Applicant, on his own case, he is not competent nor permitted to request the relief sought referred to in paragraph 2 above. Accordingly, the NDOH contends that the Applicant on, at least, two grounds would be disqualified to request the relief in his Notice of Motion.

19.1. Firstly, in paragraph 2 of the founding affidavit the Applicant merely describes himself as "an adult male, Ricardo Mazman who holds an MA International Politics obtained at the University of Leicester in the UK. He specialises in post-cold World Order, International Security intelligence and

Security & US Foreign Policy". Thus, on his own description he would not qualify.

19.2. Secondly, his founding affidavit contains no positive or other averments which indicates or show that he, was registered as a microbiological laboratory with the Department, as contemplated in section 3(a) of the NHA Regulations. In addition, it not suggested by the Applicant that he is in the process or doing so. In any event, even if he was (which is denied) his expertise or lack thereof would still preclude him from requesting the relief sought.

20. In all the circumstances, the NDOH the contends that the Applicant's relief sought in paragraph 2 of his Notice of Motion appears to be unlawful, in that, it is contrary to the requirements of the NHA Regulations.

21. In the premises his application fell to be dismissed with costs. Should the Court nevertheless consider his application, then the NDOH contends that his applications must be dismissed on the grounds set out, below.

THE SECOND POINT IN LIMINE

Whether the Applicant has made out a case for urgency in his affidavit

22. In paragraph 1 of the Notice of Motion (read with paragraphs 10 to 24 of the founding affidavit) the Applicant prays for an order along the following lines:

> *"That this application is heard as a matter of urgency and that the Applicant's failure to comply with the time limits imposed by the Rules of this Honourable Court be condoned in terms of Rule 6(12)."*

23. In support of his urgent application the Applicant in paragraphs 10 to 21 of the founding affidavit set out the purported grounds which he asserted renders this matter urgent. To avoid unnecessary repetition, herein, I will only refer some of the Applicant's averments set out in his founding affidavit, below. In doing so, I do not thereby concede and/or acknowledge the correctness or otherwise of his averments set out below (or those expressly excluded, herein). I turn to the Applicant's averments, below:

> *"I respectfully submit that this matter cannot wait to be dealt with in the ordinary course, as such, I ask the Court to dispense with the forms and service provided for in the Rules and in my non-adherence with the normal rules procedure as set out in Rule 6.*
>
> *This matter is of such urgency that it simply cannot wait for the normal procedure to be complied with. I respectfully submit that this application should be heard other than in the normal course, otherwise the relief which we seek will be rendered ineffective.*
>
> *Currently the entire state is under lockdown level 1, which is a serious violation of the citizens' fundamental rights. To date, the Minister of Health has uttered and there are circulating discussions that the lockdown*

measures will be tightened which begs for those measures to be scrutinised.

There is a massive nationwide rollout of a vaccine claimed by the Respondent that must be used in the prevention of being infected by the alleged virus.
This vaccine rollout has begun in other countries and it has resulted in deaths and vaccine injuries.
The National disaster has been declared and is ongoing for almost a year affecting the entire nation with dire consequences.

The outcome of the order could very well mean a quick recovery to normal circumstances for the entire nation.
In South Africa, there is vast unemployment and poverty. As such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste.

...And each week of continual lockdown will, in the long run, cause more loss of lives than the virus itself."

24. The Respondents (CoGTA and NDOH) contend that the Applicant's application to I to be dismissed, in that, he failed to, amongst other factors, show that he will not otherwise be afforded substantial redress at a hearing in due course. The Respondents (CoGTA and NDOH) contend that the Applicant *faintly* asserted in paragraph 11, without more, that *"this matter is of such urgency that it simply cannot wait for the normal procedures to be complied with"*. Apart from the latter statement, no material facts or circumstances are advanced in his founding

affidavit wherein he claims that he will not be afforded substantial redress at a hearing in due course.

25. The Respondents contend that the only reasonable inference which could be drawn from the lack of any particularity or facts, in the founding affidavit, about the substantial redress, stems from the fact that the Applicant, in essence, is seeking *final* relief in this matter. In other words, the granting of an interdict, in the manner framed by the Applicant, would be dispositive of any matter between the parties. This is so because the Applicant is not seeking the relief in paragraph 2 of the Notice of Motion *pending* the resolution of the main (or other) proceedings.

26. Thus, the Applicant in paragraph 2, *supra*, is seeking final relief or relief with final effect. In any event, the Applicant is not suggesting that he is seeking (through the interdict) any "freezing" of existing rights which are threatened by irreparable harm.

27. The above, notwithstanding, the Respondents contend that the urgency in this matter appears to be self-created. Although it lacks the requisite factors to show urgency, the only allegation in the founding affidavit which contains some '*elements*' of alleged urgency appears in paragraph 20, where he alleged that:

> "*In South Africa, there is vast unemployment and poverty as such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste*".

28. The Respondents contend that the above allegation should be read against, amongst others, the allegations contained in paragraph 62 where the Applicant asserted that he *has a reasonable suspicion about the existence of SARS-CoV-2 virus*'. On the Applicant's version, if the SARS COV 2-virus does not exist then, amongst other restrictions, the lockdown restrictions are unlawful or irregular and as such violates his fundamental rights.

29. The Respondents contend that the Applicant commits an elementary error, in that, no right is absolute and may in appropriate circumstances be limited in terms of section 36 of the Constitution.

30. In any event, the Respondents contend that there appears to be a disconnect, on the one hand between the claim for urgency and on the other, the allegations in paragraph 10 to 21 of the founding affidavit in support thereof. Put differently, the allegations in the founding affidavit do not support the Applicant's cause of action

31. Nevertheless, the Respondents contend that if the Applicant failed to comply with the requirements of section 3 of the NHA Regulations then this Court may, in any event, not exercise its discretion in favour of the Applicant. In addition, the relief sought contains the risk that the Court, in granting the relief sought, might thereby enters, into the exclusive domain of the Executive or organs of state (in circumstances where no case is made out that the Executive or the organ of state commit an irregularity or violate the Constitution.)

32 I turn to the self-created urgency which emerge from the allegations in paragraphs 51 to 57 of the founding affidavit. Due to the repetition of the latter allegations, I only restate the gist of the allegations set out in the founding affidavit, below:

32.1 The Applicant knew about the National Lockdown restrictions, at least since 15 March 2020.

32.2. On the Applicant's own version, he knew or reasonable should have known that in or during January 2020 the world became aware of the so-called Coronavirus.

32.3. He knew or reasonably should have learnt about the vaccination rollout programs in this country, since March 2021 or earlier.

32.4. In addition, the reported case of infected persons in the country are in the public domain, on a daily or weekly basis.

32.5. The instances when the President address the citizens of the country about restrictions is, similarly, in the public domain. The President mostly recently in or during the beginning of April 2021 address the citizens of the country.

33. Despite all the above information at his disposal, at the time, the Applicant now wishes to leapfrog the court procedures and insist that he must be heard on an urgent basis, whilst no discernable case is made out in his founding affidavit.

34. More importantly, the Applicant rushes to Court, despite, the fact that he on his own case has an alternative remedy. This is evident from paragraph 132 of his affidavit that *"the applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here."*

35. The Applicant put up no grounds or facts why he omitted to invoke his right to access to information. The Respondents contend that it is, in any event, not suggested by the Applicant in his affidavit that he in or during March or April 2021 submitted a request for information and his request was declined by the Respondents.

36. Accordingly, the Respondents contend that it is plain, that on his own version, the Applicant has an alternative remedy which he should have invoked before launching this urgent application.

37. In the circumstances, the Respondents contend that the Applicant's failure to do so, should be regarded as an abuse of the Court process. This is so because, not only is he requesting relief with far reaching consequences for how the Executive and organs of state should positively comply with their constitutional obligations

(by protecting the population and the health resources) but the net effect of his relief might very well place the lives of millions at risk. Because the Applicant establishes no factual basis how he will come with the provisions of the NHA Regulations. Accordingly, the handover the physical virus to him, as requested, poses serious dangers for the effective protections of the population.

38. In the premises the Respondents contend that this Applicant's application fell to be dismissed on this ground also. Should the Court, nevertheless, be amenable to consider his application (which ought to be rejected) then the Respondents contend his application should be dismiss on the ground set out below.

THE THIRD POINT IN LIMINE

39. The Respondent contends that the Applicant's application for a mandatory interdict is not an *ordinary interdict*. The Respondents contend that it is common cause that the Applicant is seeking a mandatory interdict against the Executive and organs of state (first, second and fourth Respondents).

40. The Respondents contend that in the absence of *male fides* on the part of the Reespondents, the Court does not readily grant such an interdict. Moreover, the Respondents contend that the Court only grants an interdict, such as that sought by the Applicant in the present instance upon a strong case being made out for

that relief. The Applicant failed to make out such a **string case** and for the reason(s) referred to above and hereunder.

41. In terms of the Notice of Motion (read with paragraphs 129 to 141) of the founding affidavit the Applicant seeks the following relief:

> *"That the Respondents "produce" the isolated and purified physical SARS-COV-2 virus (not a culture isolate of any mixture within which the supposed virus is, nor a photograph or the RNA- sequence only) to the Applicant at a place in terms of their security measures of choice, within 7 days."*

42. The Respondents contend that in terms of paragraph 2 of his Notice of Motion, if the relief is granted, they would be obliged to perform a positive act, *viz.*: to "produce" the isolated and purified SARS-COV-2 virus to the Applicant" even if the Applicant failed to comply with the provisions of section 3 of the NHA Regulations. The Respondent contend that since the Applicant has no legal basis to request the relief, this should be end of the matter. However, for consistency I, nevertheless, deal with the grounds advance in the founding affidavit, below.

Whether the Applicant has made out a prima facie case in the founding affidavit

Ad paragraphs 129 to 141 of the founding affidavit

43. The Applicant in his founding affidavit sets out the alleged basis for the relief sought in the Notice of Motion. The Applicant in paragraph 129(a) to (i) to thereof, allegec that he (and the public have the following undisputed *prima facie* rights, viz.:

Prima facie right

43.1. **Ad paragraph 129**

"The Applicant and the public have the following undisputable prima facie right to (a) to human dignity; (b) life; (c) bodily and psychological integrity; (d) to make decisions concerning the security and control over their body; (e) freedom to practice their trade, occupation and professional; (f) not to be treated in a cruel, inhumane and degrading way; (g) the right to have access to health care services; (h) freedom to movement; and (i) just administration."

43.2. **Ad paragraph 130**

"Not to have limitations imposed on their rights entrenching the Bill of Rights and if so that it must be restrictively interpreted, so as to impose minimum limitation on those rights, in accordance with section 36 of the Constitution."

43.3. **Ad paragraph 131**

"*That the Bill of Rights be applied to all law, including the DMA.*"

43.4. **Ad paragraph 132**

"*The Applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here.*"

43.5. **Ad paragraph 133**

"*From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of, have at least prima facie right.*"

44. The Respondents contend that there appears to be a disconnect between the relief sought in paragraph 2 of the Notice of Motion and the fundamental rights claimed in the paragraphs set out in paragraphs 129 to 133, *supra*. Because the Applicant failed to show which, if any of the rights referred to above, is/are threatened by an impending or imminent irreparable harm. In addition, the Applicant failed whether any member of the public (which he claims to represent) right(s) was/were threatened by an impending or imminent irreparable.

45. The Respondent contend that on the Applicant's case the prima facie right which he must establish is not merely a catalogue of rights, as envisage in paragraph 129 (a) to (i), *supra*, in order, for the Court to grant an order in terms whereof the Respondents would be compelled "*to produce of the isolated and purified physical*

SARS-COV-2 virus." The Respondents contend that the prima facie right must be a right to which, if not protected by an interdict, irreparable harm would ensue. I have already pointed out in paragraph 44, *supra*, no such case is made out on the papers by the Applicant.

46. In any event, the Respondents contend that the allegations contained, *inter alia*, in paragraphs 129 (read with 134 to 138) of the founding affidavit failed to demonstrate a *prima facie* right that is threatened by an impending or imminent irreparable harm. Alternatively, the above facts in the founding affidavit failed to demonstrate a prima facie case for the relief sought in the Notice of Motion.

47. Similarly, the facts set out in, *inter alia*, paragraphs 129 (read with paragraph 134 to 138) of the founding affidavit failed to demonstrate a clear right that is threatened by an impending or imminent irreparable harm.

***Reasonable** apprehension of **irreparable** and imminent harm*

48. In paragraph 134 the Applicant in support of the assertion of reasonable apprehension of irreparable and imminent harm alleged that:

48.1. <u>**At paragraph 134**</u>

> "*I submit that harm is apparent in this instance, as set out throughout this founding affidavit.*"

48.2. **Ad paragraph 135**

"Without the relief sought to prevent further harm the Applicant and the rest of South Africa will continue to suffer irreparable financial, material, physical and psychological harm."

48.3. **Ad paragraph 138**

"From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of the existence of the reasonable apprehension of irreparable and imminent harm."

49. The Respondents contend that there is another difficulty with the Applicant's assertion that he has prima facie right to an interim urgent interdict against the Respondents, is this: He is seeking the interim interdict ostensibly to protect the catalogue of rights set out in paragraph 129(a) to (l) of the founding affidavit. However, the difficulty with the Applicant's case is that he established no facts or circumstances how the "production" of the isolated and purified physical SARS-COV-2 virus would protect those fundamental rights. To this end he commits an elementary error by not establishing facts or circumstances to support his cause of action.

50. What is, however, plain from paragraph 136 to 137 of the founding affidavit is that he is, essentially, complaining about the lockdown restrictions. If this is the case, then, the Respondents contend no case is made out for an attack on those restrictions. Put more accurately, no case is made out to show the declaration of a national state of disaster (RM7) and the subsequent regulations ad directive were are unconstitutional. Because it is not suggested in his founding affidavit (in addition to the interdict) that he complains that the lockdown restrictions are unlawful or otherwise offend the provisions of the Constitution.

51 The allegations on paragraphs 136 to 137 reads:

52. **Ad paragraph 136**

"The public further stands severely prejudiced with the arbitrary infringements of their fundamental rights should the Respondents continue to ignore their rights."

53. **Ad paragraph 137**

"At the current rate, the South African Government will run out of money to pay the salaries of state employees, it is submitted that if South Africa's present economically restricted lockdown measures are not discontinued immediately, the Respondents may cause 29 times more deaths with the measures aimed to prevent the spread than the virus itself."

54. In all the circumstances the Respondents contend that there is misalignment between the relief sought for an interdict and source of the harm.

55. The Respondents further contend that it is plain from the structure of the Notice of Motion, the Applicant seems to pray for final relief or a mandatory interdict with final effect. This is evident from prayers 1 and 2 of the Notice of Motion. It is also evidence from allegations in paragraphs 129 to 141 of the founding affidavit. Put differently, the Applicant is not seeking a provisional order which is designed to protect his rights pending an (the main) application to be brought to establish his rights. That is the purpose of the interim interdict is to freeze the position until the Courts decides where his rights lie

56. In the premises, the Respondents contend that the Applicant's application fell to be dismissed with costs.

Hearsay evidence

57. The Respondents contend that the Applicant's application is largely, if not, exclusively founded on statements and documents, the authenticity of which are disputed. Notwithstanding the dispute about the authenticity of those documents, the Respondents contend that a large, if not, the entire case in support of the relief sought under paragraph 2 of the Notice of Motion, appears to consist of hearsay evidence.

58. I will, accordingly, not deal with those individual paragraphs and documents which offend the rules of evidence and the Uniform Rules of Court in this affidavit. The Respondents intend to launch an interlocutory application in this regard. Accordingly, my responses below will be confined to those allegations which invite a scientific response.

59. I will, similarly, not expressly deal with those averments which relates to CoGTA. In this regard, a supporting affidavit, explanatory and confirmatory affidavits will be deposed to by the relevant employees.

THE AVERMENTS CONTAINED IN THE FOUNDING AFFIDAVIT

60. Ad paragraphs 1 to 2 thereof:

61. Denied.

61.1. As is evident from paragraph 2 of the founding affidavit, the Applicant's expertise falls within the domain of 'social science'. In particular, he appears to specialise in, amongst others, Post-cold war world order, international security, intelligence, and US foreign policy.

61.2. Whereas the subject matter of SARS-COV2 seems to fall within the broader branches of microbiology, virology, and epidemiology. There is no evidence that the Applicant is a specialist or had otherwise gain expert knowledge in

any of the branches of science. To this end the NDOH dispute the Applicant's claim about his personal knowledge and his expertise in the relevant branch of science.

61.3. I am advised that the documentary material attached to his founding affidavit constitutes hearsay evidence. The NDOH denies that it consented to the submission or use of those documents.

61.4. Save as aforesaid, the balance of the allegations contained in this paragraph are denied.

62. **Ad paragraphs 3 to 5 thereof:**

The allegations contained in these paragraphs are noted but not disputed.

63. **Ad paragraphs 6 to 9 thereof:**

64. Denied.

64.1. The NDOH denies that this matter is urgent. The NDOH repeats the submissions set out in paragraphs 22 to 38, *supra*.

64.2. The NDOH denies that the Applicant is entitled to the relief sought in paragraph 7 (read with paragraph 2 of his Notice of Motion). The grounds

upon which the NDOH claims that the Applicant is not entitled to the relief sought are more fully traverse in paragraphs 13 to 21 and 39 to 56, *supra*.

64.3. In particular, the NDOH denies that the Applicant is registered as a microbiological laboratory. The NDOH avers that there are minimum requirements which must be met before a person or laboratory can be registered. For ease of reference, I attached hereto a copy of the minimum requirements for laboratories, marked ("**AP1**")

64.4. When a person/laboratory is so registered the NDOH issued a permit to the laboratory. I also attached hereto, a flow chart of how a permit is obtained, marked ("**AP2**").

64.5. Save as aforesaid the balance of the averments is denied.

65. **Ad paragraphs 10 to 24 thereof:**

66. Denied.

66.1. The NDOH repeat the submissions in paragraphs 25 to 28, *supra*.

67. **Ad paragraphs 25 to 31 thereof:**

The allegations herein are noted, but not admitted.

68. **Ad paragraph 32 thereof:**

The allegations herein are noted.

69. **Ad paragraph 33 thereof:**

70. Denied.

71. The NDOH avers that the allegations in this paragraph amounts to a statement which are not supported by any material facts or circumstances.

72. In any event, there are no corroborating evidence in support of the Applicant's claim that he acts for or in the interests of the public.

73. **Ad paragraphs 34 to 39 thereof:**

The allegations contained herein are noted, but not admitted.

74. **Ad paragraphs 40 to 44 (read with paragraphs 46, 47, 48 and 49) thereof.**

75. Denied.

76. The NDOH avers that the allegations contained in the above paragraphs are argumentative and fell to be struck from the affidavit.

77. In any event, the NDOH denies that the Applicant could have any personal knowledge in respect of the matters set out in paragraphs 40 to 42, above.

78. **Ad paragraphs 45 thereof:**

79. Denied.

79.1. The NDOH dispute the basis upon which the Applicant advance the submission in this paragraph.

79.2. It is common cause that he is not qualified as an expert or otherwise expertise in the fields of microbiology or epidemiology.

79.3. Despite the patent lack of the requisite expertise the Applicant seeks to venture deep into branches of science, without the benefit of a qualified expert.

79.4. More importantly, despite the grave knowledge deficits, the Applicant persist with this application on an urgent basis.

79.5. The NDOH avers that the Applicant does not only (through this application) place the Court a great disadvantage, in that, the Court is not qualified nor possess the requisite scientific knowledge. But, in doing so, I am advised, he also contravene the Rules of this Court, in particular Rule 36(9).

80. **Ad paragraph 50 thereof:**

The allegations contained herein are noted but not admitted.

81. **Ad paragraphs 51 to 60 thereof:**

The NDOH avers that these averments are dealt with in the supporting affidavit deposed to by Deputy-Director General from CoGTA.

82. **Ad paragraphs 61 to 63 thereof:**

83. The NDOH avers that in lockdown restrictions were lawfully impose in the context of the prevailing COVID 19 pandemic to, amongst others, to save lives and control the rapid spread of infections in the country.

83.1. The NDOH avers that assertions by the Applicant that "some disruption is lives may only be necessary if we are assured beyond doubt of the existence of the SARS-COV2, appears to be baseless.

83.2. It is not plain what is the source of the opinion advanced in paragraph 61 of the founding affidavit, in particular, his claim that such disruptions depend on an assurance beyond doubt. In addition, the Applicant failed to provide any qualified expert opinion or any peer review which supports his claim.

83.3. In any event, he is not qualified as an expert in the relevant field, it is accordingly unclear on what basis if any, he advanced his findings.

83.4. Save as aforesaid the balance of the allegations is denied.

84. **Ad paragraphs 84 to 71 thereof:**

85. Denied.

86. In amplification of the aforesaid denial the NDOH avers as follows:

86.1. Protocols for isolation and culturing of "physical virus" are now well established. There are many clear review manuscripts to support this statement. It is not done routinely for diagnosis, as it will be impractical and will not be conducive to patient management.

86.2. The nature of the SARS COV-2 has been established not only through RT-PCR in sequencing but also in electron microscopy.

86.3. I confirm that this has been achieved by the NICD where I carry out my principal duties. I refer below to certain criteria/methodologies use, viz. Koch and the Bradford-Hill criteria/methodologies.

The Koch criteria

86.4. Koch postulates that the following needs to be satisfied to determine causation of a disease:

(a) the organisms must be regularly associated with the disease and its characteristic lesions.

(b) the organisms must be regularly associated with the disease host and grown in culture.

(c) the disease must be reproduced when a pure culture of the organism is introduced into a healthy susceptible host.

(d) the same organisms must be re-isolated from the experimentally infected host.

86.5. There have been significant advances with new diagnostic methodologies and sequencing, and further associations are made:

86.5.1. A nucleic acid sequencing belonging to a putative pathogen should be present in most cases of an infectious disease. Microbial nucleic acids should be found preferentially in those organs or gross anatomic sites known to be diseased and not in those organs that lack pathology. Fewer, or no, copy numbers of

pathogens-associated nucleic acid sequences should occur in hosts or tissues without disease. With resolution of disease, the copy number of pathogen-associated nucleic acid sequence should decrease or become undetectable. With clinical relapse, the opposite should occur.

86.5.2. When sequence detection predates disease, or sequence copy number correlates with severity of disease or pathology, the sequence-disease association is more likely to be a causal relationship.

86.6. The nature of the micro-organism inferred from the available sequence should be consistent with the known biological characteristic of that group or organisms.

86.7. Tissue-sequence correlates should be sought at the cellular level: efforts should be made to demonstrate specific in situ hybridization of microbial sequence to areas of tissue pathology and to visible micro-organisms or to areas where micro-organisms are presumed to be located. These sequence base forms with evidence for microbial causation should be reproducible

The Bradford-Hill criteria

86.8. Causation may also be determined by the Bradford-Hill criteria (Koch postulates are not possible for all pathogens):

86.9. Strength (effect size): the association between SARS COV-2 infections and COVID-19 presentation is strong.

86.10. Consistency (reproducibility): consistent findings observed by persons in different places with different samples strengthens the likelihood of an effect. This has been done for SARS-COV-2 and COVID-19 in many ways by many different groups around the world.

86.11. Specificity: causation is likely if there is a very specific population at a specific site and disease with no other likely explanation. The more specific an association between a factor and an effect is, the bigger the probability of a causal relationship. These criteria may be a bit problematic for COVID-19.

86.12. I think one supporting evidence here is that one Island that is free from COVID-19 and no SARS COV-2 detected.

86.13. Temporality: the effect is to occur after the cause (and if there is an expected delay between the cause and the expected effect, then the effect must occur after the delay. COVID-19 was not reported before the emergence of SARS COV-2.

86.14 Biological gradient (dose-response relationship): greater exposure should generally lead to greater incidents of the effect.

86.15. I think the effect of lockdown measures etc. can be named here, i.e. reduced risk, reduced cases, this is but one example there are many other exemples which could be identified.

86.16. Plausibility: a plausible mechanism between cause and effect is helpful (but Bradford-Hill noted that knowledge of the mechanisms is limited by current knowledge).

86.17. We know from SARS and MERS that zoonotic coronavirus is involved in respiratory illness.

86.18. Coherence: coherence between epidemiological and laboratory findings increased the likelihood of an effect. This has also been found now many times.

86.19. Experiment: occasionally it is possible to appeal to experimental evidence. This is where the animal models can come in. For ease of reference, I attached a recent article which comments on: Animal models for SARS-Cov2/COVID 19 research- A commentary, marked ("NM3")

86.20. Analogy: the use of analogies or similarities between the observed association and any other associations. SARS and MERS sets the precedent for zoonotic coronaviruses emerging to cause respiratory diseases in humans, although no difference in epidemiology/clinical spectrum

87. **Ad paragraphs 72 to 128 thereof:**

88. The NDOH avers that the allegations (including the annexures thereto) constitute hearsay evidence and as such fell to be strike out from this affidavit.

89. The NDOH further avers that the complaint about the hearsay evidence forms part of an interlocutory application (which will be heard with the application).

90. Save as aforesaid the allegations contained in paragraphs 72 to 79 are denied, as if specifically, traverse, herein.

91. **Ad paragraphs 129 to 141 thereof:**

92. Denied.

93. The NDOH repeats the submission set out in paragraphs 42 to 56.

94. Save as aforesaid the balance of the averments contained in paragraphs 129 to 141 are denies, as if, specifically, traverse, herein.

95. **Ad paragraphs 134 to 138:**

The allegations contained herein are denied.

96 **Ad paragraph 142 thereof:**

97. Denied.

97.1. The NDOH avers that the Applicant is not permitted and/or competent to received, and/or handle and/or otherwise deal with this or any other infectious virus.

97.2. The NDOH repeals the grounds set out in paragraphs 13 to 21, **supra**, in support of the aforesaid averments.

97.3. Save as aforesaid the balance of the averments is denied.

98. **Ad paragraph 143 thereof:**

99. Denied.

100. The NDOH avers that on the Applicant's own case, he established in paragraph 132 that he does have an alternative remedy.

101. In any event, the NDOH avers that the must first overcome the hurdles referred to in paragraphs 13 to 21, supra; before he could possibly assert any claim to the existence of a right.

102 Save as aforesaid the balance of the averments is denied.

Professor Adrian J Puren

I certify that:-

The deponent signed this affidavit and swore, and acknowledged that he/she: -

a) knew and understood the contents thereof;

b) had no objection to taking the oath; and,

c) considered the oath to be binding on his/her conscience.

The deponent then uttered the words, "*I swear that the contents of this declaration are true, so help me God*"

COMMISSIONER OF OATHS

Full names:
Designation and area:
Street address:

SOUTH AFRICAN POLICE SERVICE
25 MAY 2021
CSC

"AP1"

Annexure A

health
Department:
Health
REPUBLIC OF SOUTH AFRICA

Private Bag X828, **PRETORIA**, 0001 Civitas Building, c/o **Struben and** Thabo Sehume Streets
Enquiries: send to emails: registrationlaboratories@health.gov.za & DOH.COVID19@nhls.ac.za

MINIMUM REQUIREMENTS FOR LABORATORIES CONDUCTING SARS CoV-2 DIAGNOSTIC TESTING

AUGUST 2020

Introduction

Diagnostic Laboratories in South Africa are required to comply with a number of legislative requirements in order to perform diagnostic testing for human subjects. A set of minimum requirements were drafted for laboratories who wish to conduct SARS-CoV-2 diagnostic testing in consultation with the National Health Laboratory Service (NHLS), including the National Institute for Communicable Diseases (NICD) and National Institute for Occupational Health (NIOH) for the National Department of Health (NDoH). The minimum requirements checklist takes into consideration the legislative requirements as set out by the Department of Health (DOH), the Department of Employment and Labour (DEL), the Council for the Non-Proliferation of Weapons of Mass Destruction (NPC) and the Health Professionals Council of South Africa (HPCSA).

One of the major regulations relevant to laboratories that wish to embark on clinical diagnostic testing, is Regulation 178. This Regulation stipulates that all laboratories that acquire, receive or import human pathogens; or handle, manipulate, maintain, store, culture or in any way process, issue and/or dispose of human pathogens, must be in possession of a permit issued by the Department of Health (DoH), authorizing the laboratory to conduct the work as described above.

Scope

This checklist is relevant to all South African laboratories, in both the public and in the private sector, that perform diagnostic testing in response to the current SARS-CoV-2 pandemic.

Instructions to Laboratories:

1. *All laboratories intending to do diagnostic SARS COV-2 testing should complete the checklist; this checklist represents the minimum requirements to be met by laboratories, that will be allowed to conduct diagnostic testing for SARS COV-2;*
2. *First step is to ensure the laboratories are compliant with the requirements described in the checklist (Annexure A);*
3. *Complete the checklist providing descriptions of compliance in the "comments" section, and return the completed checklist to registrationlaboratories@health.gov.za and copy the DOH.COVID19@nhls.ac.za within seven (7) working days of receiving the checklist;*
4. *Should you fail to return the minimum checklist within the allotted time, your laboratory will be removed from the testing & reporting register.*

5. Regardless of the information presented in the initial checklist, the laboratory will be afforded a period of one (1) calendar month to achieve compliance with the minimum requirements listed.
6. If compliant, an application form for authorisation to handle the SARS CoV-2 will be sent to the laboratory/facility. If non-compliant after this one month period, the laboratory may request an extension of an additional 1 month, but may not provide SARS-CoV-2 testing until compliance is achieved. Laboratories that still fail to show compliance will be required to cease with their SARS-CoV-2 testing.
7. The laboratory/facility will be allowed to report results and will be issued with a permit (valid for one year), to conduct SARS-CoV-2 diagnostic testing.

Conclusion

Patient specimen testing is a highly valued capacity for South Africa during this pandemic and these minimum requirements are not intended to be restrictive or hindering on the country's response efforts to this global pandemic. This unique and previously uncharted territory has highlighted opportunities for the enhancement and strengthening of biosafety and biosecurity regulations to better serve the country and its people. This ultimately brings us closer to 2021 International Health Regulations (IHR) requirements and will ultimately ensure that the diagnostic results are of the highest standard. It also paves a way to a legally compliant medical laboratory sector and greater government oversight regarding patient testing and pathogen security.

Annexure A: Minimum requirements to be met by laboratories conducting SARS-CoV-2 testing

1.	Personnel	Requirement	Yes/No	Comments
1.1	• A minimum of one Health Professions Council of South Africa (HPCSA) registered person working in the lab • Registration with the HPCSA in any medical laboratory discipline e.g. Microbiology, Virology, Chemical Pathology, Haematology, Cytology etc. • Provide registration numbers for people working in the laboratory/facility.	Person must have physical presence in the lab – There has to be a physical presence of an HPCSA registered person in the testing laboratory.		
2.	Quality requirements			
2.1	Participate in External Quality Assessment/ Proficiency Testing (PT) program/s for existing test(s) if laboratory is already participating in PT for SARS-CoV-2 please provide proof)	Once approved – register for SARS-CoV-2 testing in first month		
2.2	Must undergo a quality assurance audit	Applicants will be required to provide evidence of a quality management system in effect at the laboratory		
2.2.1	Proof of accreditation if laboratory is accredited	NOTE: Even though accreditation is not a requirement it will guide the audit process mentioned above		
2.2.2	Provide proof that the laboratory was testing for other coronaviruses before March 2020.	Example of a test results showing method excluding personal patient identifiers and information		
3.	Occupational Health and Safety requirements			

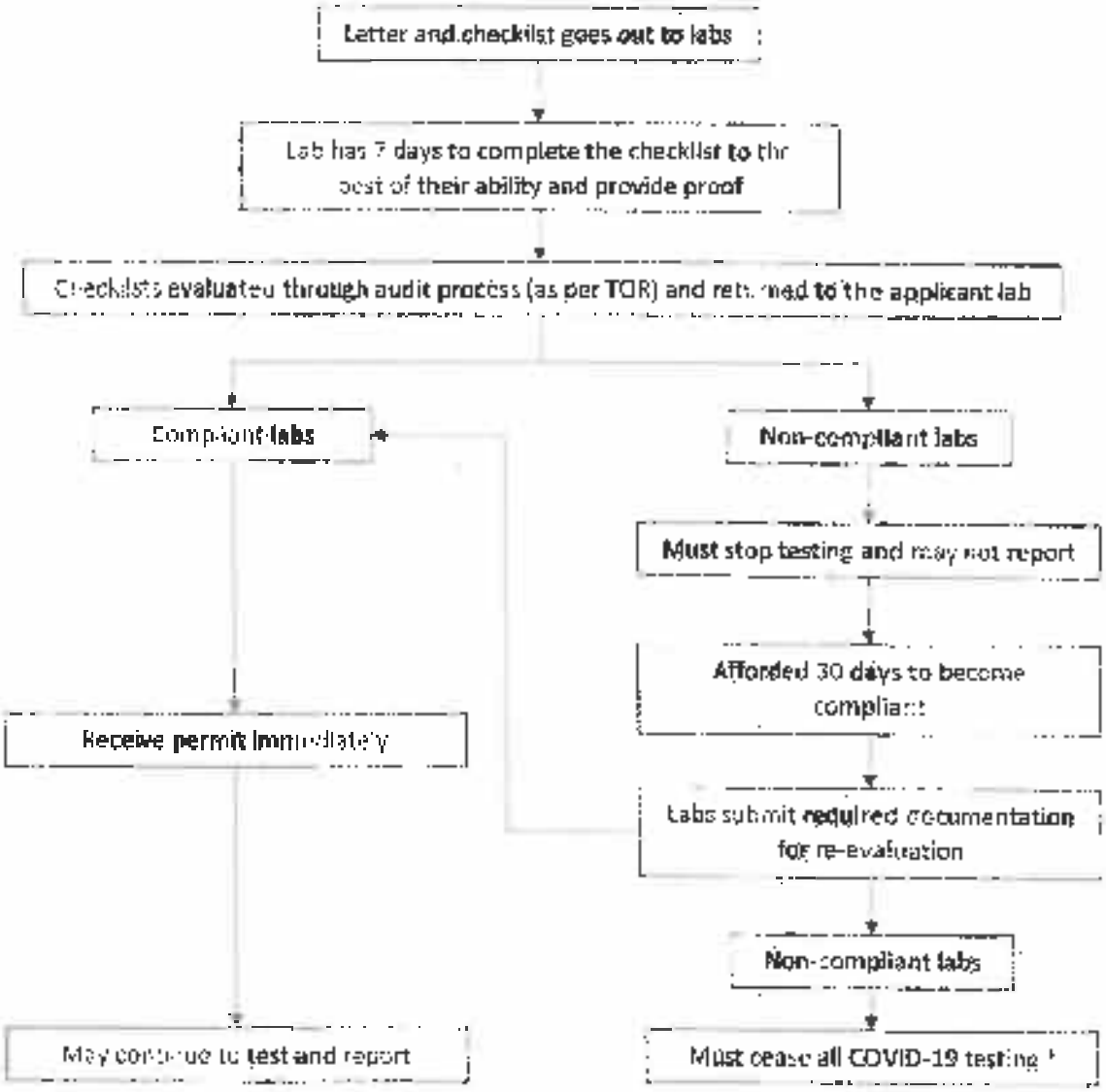
3.1	Must have a valid documented risk assessment that includes but is not limited to biological, chemical, physical and ergonomic risks	Include emergency procedures, training decontamination, Personal Protective Equipment (PPE), Occupational Health and Safety Policies		
3.2	The risk assessment must include control measures to be implemented to minimise the risks identified.	All control measures to be considered, engineering, administrative and PPE		
3.3	A record of control measures implemented and where relevant including any maintenance validation records to be provided	Risk assessment control measure e.g. Equipment service verification/validation		
3.4	If the employer has assigned any duties in terms of the Occupation Health & Safety (OHS) Act, a copy of the assignment in terms of Section 16.2 of the OHS Act to be provided.	E.g. Assignment letter describing the delegation of responsibilities for occupational health and employee safety.		
3.5	Provide proof of a process for the appointment of health and safety representative(s) HSR and the appointment thereof. Provide evidence that health and safety committees have been established and meetings are held, where applicable (number of HSRs dependent on the number of employees i.e. 1 HSR per < 50 laboratory employees)	Establish a Committee if more than one HSR		
3.6	Emergency procedures in place	Documented procedures		
3.7	Access control to facility	Photograph of the facility main lab access signage		
3.8	Provide details of the manager appointed as the COVID-19 Compliance Officer	Appointment letter		
4.	**Requirements for transport of dangerous goods**			
4.1	The vehicle on registration should be registered as a transporter of "Dangerous Goods". Vehicles should be appropriately marked and monitored by tracking devices	Registration – license disc		

4.2	Licensed driver trained to transport UN3373 Category B biological substances by training organisation that is registered with the Transport & Education Training Authority (TETA)	Public Drivers Permit Certificate with TETA full registration number		
5.	**Waste Management**			
5.1	Provide details of registration of either the Provincial or National Waste Information System in terms of the National Waste Information Regulations as a generator of waste	Copy of registration Online process put link		
5.2	Provide proof of an agreement between the facility and a registered health care risk waste management service provider for the removal, treatment and/ or disposal of chemical waste.	PO for company to safely remove waste.		
6.	**Laboratory registrations and permits**			
6.1	Laboratory is in possession of a permit issued in terms of Regulation 178 to conduct the activities as described in Regulation 178 in respect of human pathogens in accordance with the Biosafety Level (BSL) code of the laboratory indicated on the permit; (i.e. BSL2)	Regulation 178 Permit or temporary approval		
6.2	Laboratory issued with a permit from the National Department of Health as a Microbiological Laboratory that handles SARS-CoV-2 (excluding normal labs that test for other coronaviruses) – relevant for all labs that do not regularly test for coronaviruses)	Expiry date of permit – valid for one year from date of issue of permit and will then be reviewed		
7.	**Information Technology for Reporting Data to NICD**			
7.1	Laboratory Information Management System (LIMS) in place to submit data to NICD/NHLS/NDOH	Access to a LIS system to submit data		
7.2	Able to submit result data (negative and positive) to SOAP web. service	All results must ultimately be reported to the NICD as SARS-CoV-2 is a notifiable medical condition. For more information on the process please see:		

		https://www.niod.ac.za/nmc-overview/		
7.3	Data submitted per XML specification			
7.4	Quality data in line with requirements as stipulated in NMC regulations	Must have quality checks in place		

"AP2"

Annex B – Process flow for obtaining a Permit to conduct SARS-CoV-2 diagnostic testing



** extra month extension may be granted at the discretion of the evaluator – i.e. if there is a legitimate reason that cannot be met in the allotted first month, possibly outside the control of the lab e.g. rebranding and recruitment of an HPCSA registered person*

This would only be based on exceptional circumstances if there is a legitimate reason for the extra time, AND on condition that the lab does not conduct testing until the permit is in hand

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SABELO NYABONGA SANDILE BUTHELEZI

do hereby make oath and say:

455

1. I am an adult male and employed as the Director-General in the office of the Fourth Respondent.

2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent.

3. The facts contained herein are within my personal knowledge, and are both true and correct, unless the context indicates otherwise.

4. I have read the main answering affidavit deposed to by Professor Adrian J Puren on behalf of the Fourth Respondent, the supporting affidavit on behalf of CoGTA and/or the National Disaster Management Centre and I confirm that the facts set out therein, insofar as they pertain to the Fourth Respondent and such facts fall within my knowledge or are based on institutional knowledge of the Fourth Respondent gained in the course of my work as the Director-General and from documents now under my control, unless the context indicates otherwise, and are true and correct.

Sabelo Siyabonga Sandile Buthelezi

I certify that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice R1648 of 19 August 1977, as amended, have been complied with

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DIVISIONAL VISIBLE POLICING
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

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PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

EXPLANATORY AFFIDAVIT

I, the undersigned,

PROFESSOR KOLEKA MLISANA

do hereby make oath and say:

1. I am an adult female. The principal place where I carry out my duties is at 1 Modderfontein Road, Sandringham, Johannesburg.

2. I am duly authorised to depose to this affidavit on behalf of the Government Covid 19 Advisory Committee.

3. The facts set out in this affidavit are within my personal knowledge and are derived from documents and information under my control, unless the context indicates otherwise and are true.

4. I have read the affidavits of the Applicant, including the answering affidavit of Professor Adrian J Puren and the supporting affidavits thereto and I confirm the correctness of the contents thereof insofar as it relates to the recommendations of the Ministerial Advisory Committee on COVID-19.

5. The purpose of this affidavit is to explain the position of Professor Salim Abdool Karim the Third Respondent, who is cited in his official capacity as the head of the Ministerial Advisory Committee on COVID-19 (the Committee). I confirm that Professor Karim resigned as chairperson of the Committee on 26 March 2021.

6. I confirm that I am the chairperson of the committee and that I am duly authorised to deal with all matters pertaining to the Committee.

PROFESSOR KOLEKA MLISANA

I certify that the deponent has acknowledged that she knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice .R1648 of 19 August 1977, as amended, have been complied with

COMMISSIONER OF OATHS

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PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

FILING NOTICE

KINDLY TAKE NOTICE THAT the Respondents herein file their Answering, Confirmatory ant Explanatory Affidavits evenly herewith.

SIGNED AT **CAPE TOWN** ON THIS 25th DAY OF **MAY** 2021

THE STATE ATTORNEY

Per: **M Nkabini**

First to Fourth Respondents' Attorneys
4th Floor

THE STATE ATTORNEY
Per: Mr M Nkabini
Tel: 021-441-9200

22 Long Street
CAPE TOWN
Ref No: 891/21/P6

TO: **THE REGISTRAR**
Western Cape High Court
CAPE TOWN

AND TO: **T VICTOR & ASSOCIATES**
24 Viola Road
BLOUBERGSTRAND
CAPE TOWN
Tel: 077078168

C/o **ROB GREEN ATTORNEYS**
Room 305
Benzal House
3 Barrack Street
CAPE TOWN

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

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PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PROFESSOR ADRIAN J PUREN

do hereby make oath and say:

INTRODUCTION

1. I am an adult male and employed as the Acting Executive Director of the National Institute for Communicable Diseases ("NICD") I am carrying out my principal duties at 1 Modderfontein Road, Sandringham, Johannesburg, Gauteng Province,

2. The NICD is a national public health institute of the South Africa, providing reference to microbiology, virology, epidemiology, surveillance, and public health research to support the South African Government's response to communicable disease threats. The NICD thus serves as a resource of knowledge and expertise of communicable diseases to the South African Government, Southern African Development Community countries and the African continent. The main goal of the NICD is to be the national organ for South Africa for public health surveillance of communicable disease.

3. Before commenced my employment with the NICD: I graduated as a medical doctor from the University of the Witwatersrand and obtained a Medical degree (1986) and a Ph (1993). I received further training at the University of Oxford and University of Colorado Health Sciences Center in the fields of immunology and Cytokines.

4. I was appointed at the NICD to implement a HIV diagnostic and vaccine laboratory in July 1999. Subsequently, I was appointed as a Deputy Director for Virology Division that included several sections including Centres for Respiratory Diseases

and Meningitis, Centre for Vaccines and Immunology and Centre for HIV and STIs. I have thus gained extensive experience and practical knowledge in virology, virology diagnostics and surveillance.

5. I serve as the technical manager for quality assurance at the NICD and have a knowledge and understanding of the matters relating to requirements for providing accurate and key results in line with the ISO standards.

6. I am accordingly duly authorised to depose to this affidavit on behalf of the Fourth Respondent. In the interest of simplicity, the first, second and fourth Respondents will be referred to, herein, by their abbreviated title (the first Respondent as "the President", the second Respondent as "CoGTA" and the fourth Respondent as "the NDOH" or the Respondents.)

7. The facts set out in this affidavit are within my personal knowledge or are derived from documents and information under my control, unless the context indicates otherwise, and are true.

8. As will appear from the allegations (including the annexures thereto) in the founding affidavit, the Applicant's application turns, to a large extent, if not exclusively, on the documents he attached to his founding affidavit, the authenticity and contents whereof are disputed and which I have perused.

9. Where required, the facts set out in this affidavit are supported and confirmed by affidavits depose to by the appropriate persons in CoGTA or NDOH or both, with

personal knowledge of the relevant facts and will be filed together with this affidavit. Where legal submissions are made during this affidavit, they are based upon the advice of my legal representatives. I believe such advice to be correct.

10. I have read the founding affidavit of the Applicant and respond thereto as follows:

POINTS *IN LIMINE*

11. At the outset I point out that there are several legal issues which arise from the averments set out in the Applicant's founding affidavit, which requires comment before I deal with the balance of the averments, therein.

12. The comments below will be raised by way of legal objections/points *in limine* in relation to three issues, viz: non-compliance with the regulations, self-created urgency and no prima facie or strong case for the relief sought.

THE FIRST POINT IN LIMINE:

Non-compliance with the National Health Act, 2003

13. In terms of paragraph 2 of the Notice of Motion the Applicant seeks an order that the Respondents "*produce the isolated and purified physical SARS-COV-2 virus, not a culture isolate or any mixture within which the supposed virus is, nor a*

photograph or the RNA sequence only, to the Applicant at the place in terms of their safety measures of choice within 7 days".

14. NDOH contends that on the face of the relief in paragraph 2, *supra*, the Applicant's request amounts to, *inter alia*, an acquisition or importation or handling of human pathogens. Because the Applicant requested the Court to order that the Respondents "produce" the isolated and purified physical SARS-CoV2 to him within 7 days.

15. The NDOH contends that any, one (or more) of the processes, contemplated in paragraph 2, above, seem to fall within the scope of the National Health Act, 2003, Regulations relating to the registration of microbiological laboratories and the acquisition, importation, handling, maintenance, and supply of the human pathogens ("the NHA Regulations"). Put differently, to give effect to his relief, he would, amongst others, be required to "acquire" "receive" or "handle" human pathogens, as contemplated in the NHA Regulations.

16. Accordingly, the NDOH contends that the Applicant, before, he can claim that he has a right to the relief under paragraph 2, *supra*, he must comply with the express requirements of the NHA Regulations.

17. Section 1(a) of the NHA Regulations defines "human pathogen" means-

> "*an infectious substance (b) the toxin of an infectious substance, or (c) any diagnostic specimen, vector or other material that contains, or that is*

reasonably suspected to contain **an infectious substance** or a toxin of an *infectious substance*"

"*infectious substance*" **means- (a)** a micro-organism, virus or parasite that is capable of causing human disease or (b) an artificial produced hybrid or mutant micro-organism that contains genetic components of any micro-organism capable of causing human disease."

"*microbiological laboratory*" means a laboratory which handles human pathogens capable of colonising in humans, irrespective of whether or not the laboratory undertakes specific culture of such human pathogens or merely receives and handles tissue and other specimens potentially infected or infested which such human pathogens, and including laboratories which handle infected or infested, or potentially infected or infested, indigenous vectors of human pathogens, or exotic vector species irrespective of whether they are infected or infested."

18. Section 3 of the NHA Regulations 2003 provides that-

No person shall:

"(a) acquire, receive or import human pathogens; or

(b) *handle, manipulate, maintain, store, culture or in any way process, issue or in any way dispose of human pathogens so acquired, received, or imported, unless the person -*

(i) is registered with the department as a microbiological laboratory in terms of regulation 6(1)(a)(ii);

(ii) is assigned a BSL code in terms of regulation 6(1)(a)(iii)

(iii) is in possession of permit issued in terms of regulation 6(1)(b) to conduct the activities referred to in paragraph (a) or (b) in respect of human pathogens in accordance with the BSL code of the laboratory indicated in the permit; and

(iv) conduct an activity referred to in (a) or (b) as the case may be, in accordance with the provisions of these regulations and the standards."

19. The NDOH contends that the Applicant, on his own case, he is not competent nor permitted to request the relief sought referred to in paragraph 2 above. Accordingly, the NDOH contends that the Applicant on, at least, two grounds would be disqualified to request the relief in his Notice of Motion.

19.1. Firstly, in paragraph 2 of the founding affidavit the Applicant merely describes himself as "an adult male, Ricardo Mazman who holds an MA International Politics obtained at the University of Leicester in the UK. He specialises in post-cold World Order, International Security intelligence and

Security & US Foreign Policy". Thus, on his own description he would not qualify.

19.2. Secondly, his founding affidavit contains no positive or other averments which indicates or show that he, was registered as a microbiological laboratory with the Department, as contemplated in section 3(a) of the NHA Regulations. In addition, it not suggested by the Applicant that he is in the process or doing so. In any event, even if he was (which is denied) his expertise or lack thereof would still preclude him from requesting the relief sought.

20. In all the circumstances, the NDOH the contends that the Applicant's relief sought in paragraph 2 of his Notice of Motion appears to be unlawful, in that, it is contrary to the requirements of the NHA Regulations.

21. In the premises his application fell to be dismissed with costs. Should the Court nevertheless consider his application, then the NDOH contends that his applications must be dismissed on the grounds set out, below.

THE SECOND POINT IN LIMINE

Whether the Applicant has made out a case for urgency in his affidavit

22. In paragraph 1 of the Notice of Motion (read with paragraphs 10 to 24 of the founding affidavit) the Applicant prays for an order along the following lines:

> *"That this application is heard as a matter of urgency and that the Applicant's failure to comply with the time limits imposed by the Rules of this Honourable Court be condoned in terms of Rule 6(12)."*

23. In support of his urgent application the Applicant in paragraphs 10 to 21 of the founding affidavit set out the purported grounds which he asserted renders this matter urgent. To avoid unnecessary repetition, herein, I will only refer some of the Applicant's averments set out in his founding affidavit, below. In doing so, I do not thereby concede and/or acknowledge the correctness or otherwise of his averments set out below (or those expressly excluded, herein). I turn to the Applicant's averments, below:

> *"I respectfully submit that this matter cannot wait to be dealt with in the ordinary course, as such, I ask the Court to dispense with the forms and service provided for in the Rules and in my non-adherence with the normal rules procedure as set out in Rule 6.*
>
> *This matter is of such urgency that it simply cannot wait for the normal procedure to be complied with. I respectfully submit that this application should be heard other than in the normal course, otherwise the relief which we seek will be rendered ineffective.*
>
> *Currently the entire state is under lockdown level 1, which is a serious violation of the citizens' fundamental rights. To date, the Minister of Health has uttered and there are circulating discussions that the lockdown*

measures will be tightened which begs for those measures to be scrutinised.

There is a massive nationwide rollout of a vaccine claimed by the Respondent that must be used in the prevention of being infected by the alleged virus.
This vaccine rollout has begun in other countries and it has resulted in deaths and vaccine injuries.
The National disaster has been declared and is ongoing for almost a year affecting the entire nation with dire consequences.

The outcome of the order could very well mean a quick recovery to normal circumstances for the entire nation.
In South Africa, there is vast unemployment and poverty. As such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste.

...And each week of continual lockdown will, in the long run, cause more loss of lives than the virus itself."

24. The Respondents (CoGTA and NDOH) contend that the Applicant's application to I to be dismissed, in that, he failed to, amongst other factors, show that he will not otherwise be afforded substantial redress at a hearing in due course. The Respondents (CoGTA and NDOH) contend that the Applicant *faintly* asserted in paragraph 11, without more, that *"this matter is of such urgency that it simply cannot wait for the normal procedures to be complied with"*. Apart from the latter statement, no material facts or circumstances are advanced in his founding

affidavit wherein he claims that he will not be afforded substantial redress at a hearing in due course.

25. The Respondents contend that the only reasonable inference which could be drawn from the lack of any particularity or facts, in the founding affidavit, about the substantial redress, stems from the fact that the Applicant, in essence, is seeking *final* relief in this matter. In other words, the granting of an interdict, in the manner framed by the Applicant, would be dispositive of any matter between the parties. This is so because the Applicant is not seeking the relief in paragraph 2 of the Notice of Motion *pending* the resolution of the main (or other) proceedings.

26. Thus, the Applicant in paragraph 2, *supra*, is seeking final relief or relief with final effect. In any event, the Applicant is not suggesting that he is seeking (through the interdict) any "freezing" of existing rights which are threatened by irreparable harm.

27. The above, notwithstanding, the Respondents contend that the urgency in this matter appears to be self-created. Although it lacks the requisite factors to show urgency, the only allegation in the founding affidavit which contains some '*elements*' of alleged urgency appears in paragraph 20, where he alleged that:

> "*In South Africa, there is vast unemployment and poverty as such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste*".

28. The Respondents contend that the above allegation should be read against, amongst others, the allegations contained in paragraph 62 where the Applicant asserted that he *has a reasonable suspicion about the existence of SARS-CoV-2 virus*'. On the Applicant's version, if the SARS COV 2-virus does not exist then, amongst other restrictions, the lockdown restrictions are unlawful or irregular and as such violates his fundamental rights.

29. The Respondents contend that the Applicant commits an elementary error, in that, no right is absolute and may in appropriate circumstances be limited in terms of section 36 of the Constitution.

30. In any event, the Respondents contend that there appears to be a disconnect, on the one hand between the claim for urgency and on the other, the allegations in paragraph 10 to 21 of the founding affidavit in support thereof. Put differently, the allegations in the founding affidavit do not support the Applicant's cause of action

31. Nevertheless, the Respondents contend that if the Applicant failed to comply with the requirements of section 3 of the NHA Regulations then this Court may, in any event, not exercise its discretion in favour of the Applicant. In addition, the relief sought contains the risk that the Court, in granting the relief sought, might thereby enters, into the exclusive domain of the Executive or organs of state (in circumstances where no case is made out that the Executive or the organ of state commit an irregularity or violate the Constitution.)

32 I turn to the self-created urgency which emerge from the allegations in paragraphs 51 to 57 of the founding affidavit. Due to the repetition of the latter allegations, I only restate the gist of the allegations set out in the founding affidavit, below:

32.1 The Applicant knew about the National Lockdown restrictions, at least since 15 March 2020.

32.2. On the Applicant's own version, he knew or reasonable should have known that in or during January 2020 the world became aware of the so-called Coronavirus.

32.3. He knew or reasonably should have learnt about the vaccination rollout programs in this country, since March 2021 or earlier.

32.4. In addition, the reported case of infected persons in the country are in the public domain, on a daily or weekly basis.

32.5. The instances when the President address the citizens of the country about restrictions is, similarly, in the public domain. The President mostly recently in or during the beginning of April 2021 address the citizens of the country.

33. Despite all the above information at his disposal, at the time, the Applicant now wishes to leapfrog the court procedures and insist that he must be heard on an urgent basis, whilst no discernable case is made out in his founding affidavit.

34. More importantly, the Applicant rushes to Court, despite, the fact that he on his own case has an alternative remedy. This is evident from paragraph 132 of his affidavit that *"the applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here."*

35. The Applicant put up no grounds or facts why he omitted to invoke his right to access to information. The Respondents contend that it is, in any event, not suggested by the Applicant in his affidavit that he in or during March or April 2021 submitted a request for information and his request was declined by the Respondents.

36. Accordingly, the Respondents contend that it is plain, that on his own version, the Applicant has an alternative remedy which he should have invoked before launching this urgent application.

37. In the circumstances, the Respondents contend that the Applicant's failure to do so, should be regarded as an abuse of the Court process. This is so because, not only is he requesting relief with far reaching consequences for how the Executive and organs of state should positively comply with their constitutional obligations

(by protecting the population and the health resources) but the net effect of his relief might very well place the lives of millions at risk. Because the Applicant establishes no factual basis how he will come with the provisions of the NHA Regulations. Accordingly, the handover the physical virus to him, as requested, poses serious dangers for the effective protections of the population.

38. In the premises the Respondents contend that this Applicant's application fell to be dismissed on this ground also. Should the Court, nevertheless, be amenable to consider his application (which ought to be rejected) then the Respondents contend his application should be dismiss on the ground set out below.

THE THIRD POINT IN LIMINE

39. The Respondent contends that the Applicant's application for a mandatory interdict is not an *ordinary interdict*. The Respondents contend that it is common cause that the Applicant is seeking a mandatory interdict against the Executive and organs of state (first, second and fourth Respondents).

40. The Respondents contend that in the absence of *male fides* on the part of the Reespondents, the Court does not readily grant such an interdict. Moreover, the Respondents contend that the Court only grants an interdict, such as that sought by the Applicant in the present instance upon a strong case being made out for

that relief. The Applicant failed to make out such a **string case** and for the reason(s) referred to above and hereunder.

41. In terms of the Notice of Motion (read with paragraphs 129 to 141) of the founding affidavit the Applicant seeks the following relief:

> *"That the Respondents "produce" the isolated and purified physical SARS-COV-2 virus (not a culture isolate of any mixture within which the supposed virus is, nor a photograph or the RNA- sequence only) to the Applicant at a place in terms of their security measures of choice, within 7 days."*

42. The Respondents contend that in terms of paragraph 2 of his Notice of Motion, if the relief is granted, they would be obliged to perform a positive act, *viz.*: to "produce" the isolated and purified SARS-COV-2 virus to the Applicant" even if the Applicant failed to comply with the provisions of section 3 of the NHA Regulations. The Respondent contend that since the Applicant has no legal basis to request the relief, this should be end of the matter. However, for consistency I, nevertheless, deal with the grounds advance in the founding affidavit, below.

Whether the Applicant has made out a prima facie case in the founding affidavit

Ad paragraphs 129 to 141 of the founding affidavit

43. The Applicant in his founding affidavit sets out the alleged basis for the relief sought in the Notice of Motion. The Applicant in paragraph 129(a) to (i) to thereof, allegec that he (and the public have the following undisputed *prima facie* rights, viz.:

Prima facie right

43.1. **Ad paragraph 129**

"The Applicant and the public have the following undisputable prima facie right to (a) to human dignity; (b) life; (c) bodily and psychological integrity; (d) to make decisions concerning the security and control over their body; (e) freedom to practice their trade, occupation and professional; (f) not to be treated in a cruel, inhumane and degrading way; (g) the right to have access to health care services; (h) freedom to movement; and (i) just administration."

43.2. **Ad paragraph 130**

"Not to have limitations imposed on their rights entrenching the Bill of Rights and if so that it must be restrictively interpreted, so as to impose minimum limitation on those rights, in accordance with section 36 of the Constitution."

43.3. **Ad paragraph 131**

"*That the Bill of Rights be applied to all law, including the DMA.*"

43.4. **Ad paragraph 132**

"*The Applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here.*"

43.5. **Ad paragraph 133**

"*From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of, have at least prima facie right.*"

44. The Respondents contend that there appears to be a disconnect between the relief sought in paragraph 2 of the Notice of Motion and the fundamental rights claimed in the paragraphs set out in paragraphs 129 to 133, *supra*. Because the Applicant failed to show which, if any of the rights referred to above, is/are threatened by an impending or imminent irreparable harm. In addition, the Applicant failed whether any member of the public (which he claims to represent) right(s) was/were threatened by an impending or imminent irreparable.

45. The Respondent contend that on the Applicant's case the prima facie right which he must establish is not merely a catalogue of rights, as envisage in paragraph 129 (a) to (i), *supra*, in order, for the Court to grant an order in terms whereof the Respondents would be compelled "*to produce of the isolated and purified physical*

SARS-COV-2 virus." The Respondents contend that the prima facie right must be a right to which, if not protected by an interdict, irreparable harm would ensue. I have already pointed out in paragraph 44, *supra*, no such case is made out on the papers by the Applicant.

46. In any event, the Respondents contend that the allegations contained, *inter alia*, in paragraphs 129 (read with 134 to 138) of the founding affidavit failed to demonstrate a *prima facie* right that is threatened by an impending or imminent irreparable harm. Alternatively, the above facts in the founding affidavit failed to demonstrate a prima facie case for the relief sought in the Notice of Motion.

47. Similarly, the facts set out in, *inter alia*, paragraphs 129 (read with paragraph 134 to 138) of the founding affidavit failed to demonstrate a clear right that is threatened by an impending or imminent irreparable harm.

***Reasonable** apprehension of **irreparable** and imminent harm*

48. In paragraph 134 the Applicant in support of the assertion of reasonable apprehension of irreparable and imminent harm alleged that:

48.1. <u>**At paragraph 134**</u>

> "*I submit that harm is apparent in this instance, as set out throughout this founding affidavit.*"

48.2. **Ad paragraph 135**

"Without the relief sought to prevent further harm the Applicant and the rest of South Africa will continue to suffer irreparable financial, material, physical and psychological harm."

48.3. **Ad paragraph 138**

"From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of the existence of the reasonable apprehension of irreparable and imminent harm."

49. The Respondents contend that there is another difficulty with the Applicant's assertion that he has prima facie right to an interim urgent interdict against the Respondents, is this: He is seeking the interim interdict ostensibly to protect the catalogue of rights set out in paragraph 129(a) to (l) of the founding affidavit. However, the difficulty with the Applicant's case is that he established no facts or circumstances how the "production" of the isolated and purified physical SARS-COV-2 virus would protect those fundamental rights. To this end he commits an elementary error by not establishing facts or circumstances to support his cause of action.

50. What is, however, plain from paragraph 136 to 137 of the founding affidavit is that he is, essentially, complaining about the lockdown restrictions. If this is the case, then, the Respondents contend no case is made out for an attack on those restrictions. Put more accurately, no case is made out to show the declaration of a national state of disaster (RM7) and the subsequent regulations ad directive were are unconstitutional. Because it is not suggested in his founding affidavit (in addition to the interdict) that he complains that the lockdown restrictions are unlawful or otherwise offend the provisions of the Constitution.

51 The allegations on paragraphs 136 to 137 reads:

52. **Ad paragraph 136**

"The public further stands severely prejudiced with the arbitrary infringements of their fundamental rights should the Respondents continue to ignore their rights."

53. **Ad paragraph 137**

"At the current rate, the South African Government will run out of money to pay the salaries of state employees, it is submitted that if South Africa's present economically restricted lockdown measures are not discontinued immediately, the Respondents may cause 29 times more deaths with the measures aimed to prevent the spread than the virus itself."

54. In all the circumstances the Respondents contend that there is misalignment between the relief sought for an interdict and source of the harm.

55. The Respondents further contend that it is plain from the structure of the Notice of Motion, the Applicant seems to pray for final relief or a mandatory interdict with final effect. This is evident from prayers 1 and 2 of the Notice of Motion. It is also evidence from allegations in paragraphs 129 to 141 of the founding affidavit. Put differently, the Applicant is not seeking a provisional order which is designed to protect his rights pending an (the main) application to be brought to establish his rights. That is the purpose of the interim interdict is to freeze the position until the Courts decides where his rights lie

56. In the premises, the Respondents contend that the Applicant's application fell to be dismissed with costs.

Hearsay evidence

57. The Respondents contend that the Applicant's application is largely, if not, exclusively founded on statements and documents, the authenticity of which are disputed. Notwithstanding the dispute about the authenticity of those documents, the Respondents contend that a large, if not, the entire case in support of the relief sought under paragraph 2 of the Notice of Motion, appears to consist of hearsay evidence.

58. I will, accordingly, not deal with those individual paragraphs and documents which offend the rules of evidence and the Uniform Rules of Court in this affidavit. The Respondents intend to launch an interlocutory application in this regard. Accordingly, my responses below will be confined to those allegations which invite a scientific response.

59. I will, similarly, not expressly deal with those averments which relates to CoGTA. In this regard, a supporting affidavit, explanatory and confirmatory affidavits will be deposed to by the relevant employees.

THE AVERMENTS CONTAINED IN THE FOUNDING AFFIDAVIT

60. Ad paragraphs 1 to 2 thereof:

61. Denied.

61.1. As is evident from paragraph 2 of the founding affidavit, the Applicant's expertise falls within the domain of 'social science'. In particular, he appears to specialise in, amongst others, Post-cold war world order, international security, intelligence, and US foreign policy.

61.2. Whereas the subject matter of SARS-COV2 seems to fall within the broader branches of microbiology, virology, and epidemiology. There is no evidence that the Applicant is a specialist or had otherwise gain expert knowledge in

any of the branches of science. To this end the NDOH dispute the Applicant's claim about his personal knowledge and his expertise in the relevant branch of science.

61.3. I am advised that the documentary material attached to his founding affidavit constitutes hearsay evidence. The NDOH denies that it consented to the submission or use of those documents.

61.4. Save as aforesaid, the balance of the allegations contained in this paragraph are denied.

62. **Ad paragraphs 3 to 5 thereof:**

The allegations contained in these paragraphs are noted but not disputed.

63. **Ad paragraphs 6 to 9 thereof:**

64. Denied.

64.1. The NDOH denies that this matter is urgent. The NDOH repeats the submissions set out in paragraphs 22 to 38, *supra*.

64.2. The NDOH denies that the Applicant is entitled to the relief sought in paragraph 7 (read with paragraph 2 of his Notice of Motion). The grounds

upon which the NDOH claims that the Applicant is not entitled to the relief sought are more fully traverse in paragraphs 13 to 21 and 39 to 56, *supra*.

64.3. In particular, the NDOH denies that the Applicant is registered as a microbiological laboratory. The NDOH avers that there are minimum requirements which must be met before a person or laboratory can be registered. For ease of reference, I attached hereto a copy of the minimum requirements for laboratories, marked ("**AP1**")

64.4. When a person/laboratory is so registered the NDOH issued a permit to the laboratory. I also attached hereto, a flow chart of how a permit is obtained, marked ("**AP2**").

64.5. Save as aforesaid the balance of the averments is denied.

65. **Ad paragraphs 10 to 24 thereof:**

66. Denied.

66.1. The NDOH repeat the submissions in paragraphs 25 to 28, *supra*.

67. **Ad paragraphs 25 to 31 thereof:**

The allegations herein are noted, but not admitted.

68. **Ad paragraph 32 thereof:**

The allegations herein are noted.

69. **Ad paragraph 33 thereof:**

70. Denied.

71. The NDOH avers that the allegations in this paragraph amounts to a statement which are not supported by any material facts or circumstances.

72. In any event, there are no corroborating evidence in support of the Applicant's claim that he acts for or in the interests of the public.

73. **Ad paragraphs 34 to 39 thereof:**

The allegations contained herein are noted, but not admitted.

74. **Ad paragraphs 40 to 44 (read with paragraphs 46, 47, 48 and 49) thereof.**

75. Denied.

76. The NDOH avers that the allegations contained in the above paragraphs are argumentative and fell to be struck from the affidavit.

77. In any event, the NDOH denies that the Applicant could have any personal knowledge in respect of the matters set out in paragraphs 40 to 42, above.

78. **Ad paragraphs 45 thereof:**

79. Denied.

79.1. The NDOH dispute the basis upon which the Applicant advance the submission in this paragraph.

79.2. It is common cause that he is not qualified as an expert or otherwise expertise in the fields of microbiology or epidemiology.

79.3. Despite the patent lack of the requisite expertise the Applicant seeks to venture deep into branches of science, without the benefit of a qualified expert.

79.4. More importantly, despite the grave knowledge deficits, the Applicant persist with this application on an urgent basis.

79.5. The NDOH avers that the Applicant does not only (through this application) place the Court a great disadvantage, in that, the Court is not qualified nor possess the requisite scientific knowledge. But, in doing so, I am advised, he also contravene the Rules of this Court, in particular Rule 36(9).

80. **Ad paragraph 50 thereof:**

The allegations contained herein are noted but not admitted.

81. **Ad paragraphs 51 to 60 thereof:**

The NDOH avers that these averments are dealt with in the supporting affidavit deposed to by Deputy-Director General from CoGTA.

82. **Ad paragraphs 61 to 63 thereof:**

83. The NDOH avers that in lockdown restrictions were lawfully impose in the context of the prevailing COVID 19 pandemic to, amongst others, to save lives and control the rapid spread of infections in the country.

83.1. The NDOH avers that assertions by the Applicant that "some disruption is lives may only be necessary if we are assured beyond doubt of the existence of the SARS-COV2, appears to be baseless.

83.2. It is not plain what is the source of the opinion advanced in paragraph 61 of the founding affidavit, in particular, his claim that such disruptions depend on an assurance beyond doubt. In addition, the Applicant failed to provide any qualified expert opinion or any peer review which supports his claim.

83.3. In any event, he is not qualified as an expert in the relevant field, it is accordingly unclear on what basis if any, he advanced his findings.

83.4. Save as aforesaid the balance of the allegations is denied.

84. **Ad paragraphs 84 to 71 thereof:**

85. Denied.

86. In amplification of the aforesaid denial the NDOH avers as follows:

86.1. Protocols for isolation and culturing of "physical virus" are now well established. There are many clear review manuscripts to support this statement. It is not done routinely for diagnosis, as it will be impractical and will not be conducive to patient management.

86.2. The nature of the SARS COV-2 has been established not only through RT-PCR in sequencing but also in electron microscopy.

86.3. I confirm that this has been achieved by the NICD where I carry out my principal duties. I refer below to certain criteria/methodologies use, viz. Koch and the Bradford-Hill criteria/methodologies.

The Koch criteria

86.4. Koch postulates that the following needs to be satisfied to determine causation of a disease:

(a) the organisms must be regularly associated with the disease and its characteristic lesions.

(b) the organisms must be regularly associated with the disease host and grown in culture.

(c) the disease must be reproduced when a pure culture of the organism is introduced into a healthy susceptible host.

(d) the same organisms must be re-isolated from the experimentally infected host.

86.5. There have been significant advances with new diagnostic methodologies and sequencing, and further associations are made:

86.5.1. A nucleic acid sequencing belonging to a putative pathogen should be present in most cases of an infectious disease. Microbial nucleic acids should be found preferentially in those organs or gross anatomic sites known to be diseased and not in those organs that lack pathology. Fewer, or no, copy numbers of

pathogens-associated nucleic acid sequences should occur in hosts or tissues without disease. With resolution of disease, the copy number of pathogen-associated nucleic acid sequence should decrease or become undetectable. With clinical relapse, the opposite should occur.

86.5.2. When sequence detection predates disease, or sequence copy number correlates with severity of disease or pathology, the sequence-disease association is more likely to be a causal relationship.

86.6. The nature of the micro-organism inferred from the available sequence should be consistent with the known biological characteristic of that group or organisms.

86.7. Tissue-sequence correlates should be sought at the cellular level: efforts should be made to demonstrate specific in situ hybridization of microbial sequence to areas of tissue pathology and to visible micro-organisms or to areas where micro-organisms are presumed to be located. These sequence base forms with evidence for microbial causation should be reproducible

The Bradford-Hill criteria

86.8. Causation may also be determined by the Bradford-Hill criteria (Koch postulates are not possible for all pathogens):

86.9. Strength (effect size): the association between SARS COV-2 infections and COVID-19 presentation is strong.

86.10. Consistency (reproducibility): consistent findings observed by persons in different places with different samples strengthens the likelihood of an effect. This has been done for SARS-COV-2 and COVID-19 in many ways by many different groups around the world.

86.11. Specificity: causation is likely if there is a very specific population at a specific site and disease with no other likely explanation. The more specific an association between a factor and an effect is, the bigger the probability of a causal relationship. These criteria may be a bit problematic for COVID-19.

86.12. I think one supporting evidence here is that one Island that is free from COVID-19 and no SARS COV-2 detected.

86.13. Temporality: the effect is to occur after the cause (and if there is an expected delay between the cause and the expected effect, then the effect must occur after the delay. COVID-19 was not reported before the emergence of SARS COV-2.

86.14 Biological gradient (dose-response relationship): greater exposure should generally lead to greater incidents of the effect.

86.15. I think the effect of lockdown measures etc. can be named here, i.e. reduced risk, reduced cases, this is but one example there are many other exemples which could be identified.

86.16. Plausibility: a plausible mechanism between cause and effect is helpful (but Bradford-Hill noted that knowledge of the mechanisms is limited by current knowledge).

86.17. We know from SARS and MERS that zoonotic coronavirus is involved in respiratory illness.

86.18. Coherence: coherence between epidemiological and laboratory findings increased the likelihood of an effect. This has also been found now many times.

86.19. Experiment: occasionally it is possible to appeal to experimental evidence. This is where the animal models can come in. For ease of reference, I attached a recent article which comments on: Animal models for SARS-Cov2/COVID 19 research- A commentary, marked ("NM3")

86.20. Analogy: the use of analogies or similarities between the observed association and any other associations. SARS and MERS sets the precedent for zoonotic coronaviruses emerging to cause respiratory diseases in humans, although no difference in epidemiology/clinical spectrum

87. **Ad paragraphs 72 to 128 thereof:**

88. The NDOH avers that the allegations (including the annexures thereto) constitute hearsay evidence and as such fell to be strike out from this affidavit.

89. The NDOH further avers that the complaint about the hearsay evidence forms part of an interlocutory application (which will be heard with the application).

90. Save as aforesaid the allegations contained in paragraphs 72 to 79 are denied, as if specifically, traverse, herein.

91. **Ad paragraphs 129 to 141 thereof:**

92. Denied.

93. The NDOH repeats the submission set out in paragraphs 42 to 56.

94. Save as aforesaid the balance of the averments contained in paragraphs 129 to 141 are denies, as if, specifically, traverse, herein.

95. **Ad paragraphs 134 to 138:**

The allegations contained herein are denied.

96 **Ad paragraph 142 thereof:**

97. Denied.

97.1. The NDOH avers that the Applicant is not permitted and/or competent to received, and/or handle and/or otherwise deal with this or any other infectious virus.

97.2. The NDOH repeals the grounds set out in paragraphs 13 to 21, **supra**, in support of the aforesaid averments.

97.3. Save as aforesaid the balance of the averments is denied.

98. **Ad paragraph 143 thereof:**

99. Denied.

100. The NDOH avers that on the Applicant's own case, he established in paragraph 132 that he does have an alternative remedy.

101. In any event, the NDOH avers that the must first overcome the hurdles referred to in paragraphs 13 to 21, supra; before he could possibly assert any claim to the existence of a right.

102 Save as aforesaid the balance of the averments is denied.

Professor Adrian J Puren

I certify that:-

The deponent signed this affidavit and swore, and acknowledged that he/she: -

a) knew and understood the contents thereof;

b) had no objection to taking the oath; and,

c) considered the oath to be binding on his/her conscience.

The deponent then uttered the words, "*I swear that the contents of this declaration are true, so help me God*"

COMMISSIONER OF OATHS

Full names:
Designation and area:
Street address:

SOUTH AFRICAN POLICE SERVICE
25 MAY 2021
CSC

"AP1"

Annexure A

health
Department:
Health
REPUBLIC OF SOUTH AFRICA

Private Bag X828, **PRETORIA**, 0001 Civitas Building, c/o **Struben and** Thabo Sehume Streets
Enquiries: send to emails: registrationlaboratories@health.gov.za & DOH.COVID19@nhls.ac.za

MINIMUM REQUIREMENTS FOR LABORATORIES CONDUCTING SARS CoV-2 DIAGNOSTIC TESTING

AUGUST 2020

Introduction

Diagnostic Laboratories in South Africa are required to comply with a number of legislative requirements in order to perform diagnostic testing for human subjects. A set of minimum requirements were drafted for laboratories who wish to conduct SARS-CoV-2 diagnostic testing in consultation with the National Health Laboratory Service (NHLS), including the National Institute for Communicable Diseases (NICD) and National Institute for Occupational Health (NIOH) for the National Department of Health (NDoH). The minimum requirements checklist takes into consideration the legislative requirements as set out by the Department of Health (DOH), the Department of Employment and Labour (DEL), the Council for the Non-Proliferation of Weapons of Mass Destruction (NPC) and the Health Professionals Council of South Africa (HPCSA).

One of the major regulations relevant to laboratories that wish to embark on clinical diagnostic testing, is Regulation 178. This Regulation stipulates that all laboratories that acquire, receive or import human pathogens; or handle, manipulate, maintain, store, culture or in any way process, issue and/or dispose of human pathogens, must be in possession of a permit issued by the Department of Health (DoH), authorizing the laboratory to conduct the work as described above.

Scope

This checklist is relevant to all South African laboratories, in both the public and in the private sector, that perform diagnostic testing in response to the current SARS-CoV-2 pandemic.

Instructions to Laboratories:

1. *All laboratories intending to do diagnostic SARS COV-2 testing should complete the checklist; this checklist represents the minimum requirements to be met by laboratories, that will be allowed to conduct diagnostic testing for SARS COV-2;*
2. *First step is to ensure the laboratories are compliant with the requirements described in the checklist (Annexure A);*
3. *Complete the checklist providing descriptions of compliance in the "comments" section, and return the completed checklist to registrationlaboratories@health.gov.za and copy the DOH.COVID19@nhls.ac.za within seven (7) working days of receiving the checklist;*
4. *Should you fail to return the minimum checklist within the allotted time, your laboratory will be removed from the testing & reporting register.*

5. Regardless of the information presented in the initial checklist, the laboratory will be afforded a period of one (1) calendar month to achieve compliance with the minimum requirements listed.
6. If compliant, an application form for authorisation to handle the SARS CoV-2 will be sent to the laboratory/facility. If non-compliant after this one month period, the laboratory may request an extension of an additional 1 month, but may not provide SARS-CoV-2 testing until compliance is achieved. Laboratories that still fail to show compliance will be required to cease with their SARS-CoV-2 testing.
7. The laboratory/facility will be allowed to report results and will be issued with a permit (valid for one year), to conduct SARS-CoV-2 diagnostic testing.

Conclusion

Patient specimen testing is a highly valued capacity for South Africa during this pandemic and these minimum requirements are not intended to be restrictive or hindering on the country's response efforts to this global pandemic. This unique and previously uncharted territory has highlighted opportunities for the enhancement and strengthening of biosafety and biosecurity regulations to better serve the country and its people. This ultimately brings us closer to 2021 International Health Regulations (IHR) requirements and will ultimately ensure that the diagnostic results are of the highest standard. It also paves a way to a legally compliant medical laboratory sector and greater government oversight regarding patient testing and pathogen security.

Annexure A: Minimum requirements to be met by laboratories conducting SARS-CoV-2 testing

1.	Personnel	Requirement	Yes/No	Comments
1.1	• A minimum of one Health Professions Council of South Africa (HPCSA) registered person working in the lab • Registration with the HPCSA in any medical laboratory discipline e.g. Microbiology, Virology, Chemical Pathology, Haematology, Cytology etc. • Provide registration numbers for people working in the laboratory/facility.	Person must have physical presence in the lab – There has to be a physical presence of an HPCSA registered person in the testing laboratory.		
2.	Quality requirements			
2.1	Participate in External Quality Assessment/ Proficiency Testing (PT) program/s for existing test(s) if laboratory is already participating in PT for SARS-CoV-2 please provide proof)	Once approved – register for SARS-CoV-2 testing in first month		
2.2	Must undergo a quality assurance audit	Applicants will be required to provide evidence of a quality management system in effect at the laboratory		
2.2.1	Proof of accreditation if laboratory is accredited	NOTE: Even though accreditation is not a requirement it will guide the audit process mentioned above		
2.2.2	Provide proof that the laboratory was testing for other coronaviruses before March 2020.	Example of a test results showing method excluding personal patient identifiers and information		
3.	Occupational Health and Safety requirements			

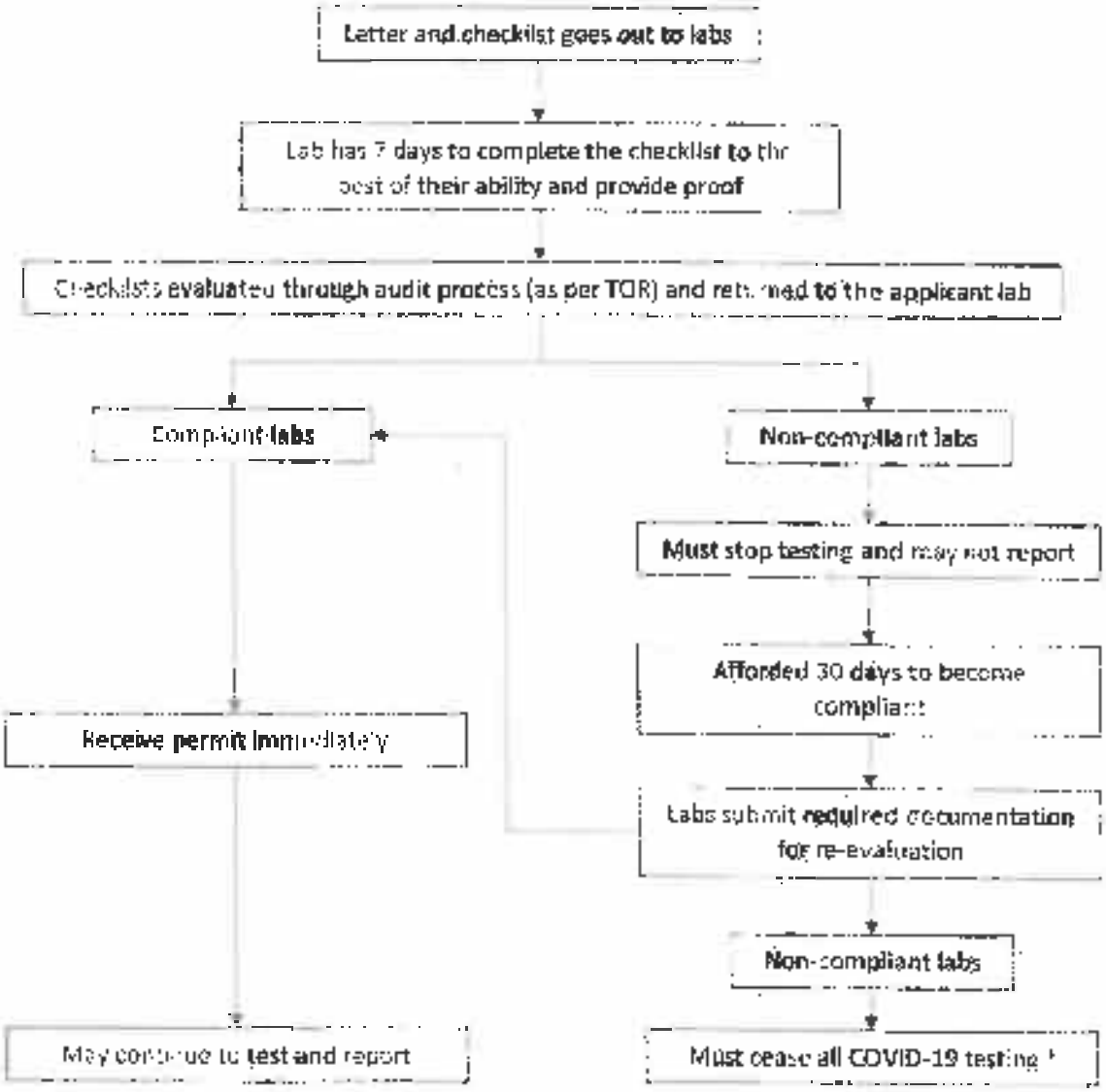
3.1	Must have a valid documented risk assessment that includes but is not limited to biological, chemical, physical and ergonomic risks	Include emergency procedures, training decontamination, Personal Protective Equipment (PPE), Occupational Health and Safety Policies		
3.2	The risk assessment must include control measures to be implemented to minimise the risks identified.	All control measures to be considered, engineering, administrative and PPE		
3.3	A record of control measures implemented and where relevant including any maintenance validation records to be provided	Risk assessment control measure e.g. Equipment service verification/validation		
3.4	If the employer has assigned any duties in terms of the Occupation Health & Safety (OHS) Act, a copy of the assignment in terms of Section 16.2 of the OHS Act to be provided.	E.g. Assignment letter describing the delegation of responsibilities for occupational health and employee safety.		
3.5	Provide proof of a process for the appointment of health and safety representative(s) HSR and the appointment thereof. Provide evidence that health and safety committees have been established and meetings are held, where applicable (number of HSRs dependent on the number of employees i.e. 1 HSR per < 50 laboratory employees)	Establish a Committee if more than one HSR		
3.6	Emergency procedures in place	Documented procedures		
3.7	Access control to facility	Photograph of the facility main lab access signage		
3.8	Provide details of the manager appointed as the COVID-19 Compliance Officer	Appointment letter		
4.	**Requirements for transport of dangerous goods**			
4.1	The vehicle on registration should be registered as a transporter of "Dangerous Goods". Vehicles should be appropriately marked and monitored by tracking devices	Registration – license disc		

4.2	Licensed driver trained to transport UN3373 Category B biological substances by training organisation that is registered with the Transport & Education Training Authority (TETA)	Public Drivers Permit Certificate with TETA full registration number		
5.	**Waste Management**			
5.1	Provide details of registration of either the Provincial or National Waste Information System in terms of the National Waste Information Regulations as a generator of waste	Copy of registration Online process put link		
5.2	Provide proof of an agreement between the facility and a registered health care risk waste management service provider for the removal, treatment and/ or disposal of chemical waste.	PO for company to safely remove waste.		
6.	**Laboratory registrations and permits**			
6.1	Laboratory is in possession of a permit issued in terms of Regulation 178 to conduct the activities as described in Regulation 178 in respect of human pathogens in accordance with the Biosafety Level (BSL) code of the laboratory indicated on the permit; (i.e. BSL2)	Regulation 178 Permit or temporary approval		
6.2	Laboratory issued with a permit from the National Department of Health as a Microbiological Laboratory that handles SARS-CoV-2 (excluding normal labs that test for other coronaviruses) – relevant for all labs that do not regularly test for coronaviruses)	Expiry date of permit – valid for one year from date of issue of permit and will then be reviewed		
7.	**Information Technology for Reporting Data to NICD**			
7.1	Laboratory Information Management System (LIMS) in place to submit data to NICD/NHLS/NDOH	Access to a LIS system to submit data		
7.2	Able to submit result data (negative and positive) to SOAP web. service	All results must ultimately be reported to the NICD as SARS-CoV-2 is a notifiable medical condition. For more information on the process please see:		

		https://www.niod.ac.za/nmc-overview/		
7.3	Data submitted per XML specification			
7.4	Quality data in line with requirements as stipulated in NMC regulations	Must have quality checks in place		

"AP2"

Annex B – Process flow for obtaining a Permit to conduct SARS-CoV-2 diagnostic testing



** extra month extension may be granted at the discretion of the evaluator – i.e. if there is a legitimate reason that cannot be met in the allotted first month, possibly outside the control of the lab e.g. rebranding and recruitment of an HPCSA registered person*

This would only be based on exceptional circumstances if there is a legitimate reason for the extra time, AND on condition that the lab does not conduct testing until the permit is in hand

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SABELO NYABONGA SANDILE BUTHELEZI

do hereby make oath and say:

455

1. I am an adult male and employed as the Director-General in the office of the Fourth Respondent.

2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent.

3. The facts contained herein are within my personal knowledge, and are both true and correct, unless the context indicates otherwise.

4. I have read the main answering affidavit deposed to by Professor Adrian J Puren on behalf of the Fourth Respondent, the supporting affidavit on behalf of CoGTA and/or the National Disaster Management Centre and I confirm that the facts set out therein, insofar as they pertain to the Fourth Respondent and such facts fall within my knowledge or are based on institutional knowledge of the Fourth Respondent gained in the course of my work as the Director-General and from documents now under my control, unless the context indicates otherwise, and are true and correct.

Sabelo Siyabonga Sandile Buthelezi

I certify that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice R1648 of 19 August 1977, as amended, have been complied with

SUID-AFRIKAANSE POLISIEDIENS
AFDELING: SIGBASIEPOLISIERING
2021 -05- 25
DIVISIONAL VISIBLE POLICING
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

IN THE HIGH COURT OF SOUTH AFRICA
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and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

EXPLANATORY AFFIDAVIT

I, the undersigned,

PROFESSOR KOLEKA MLISANA

do hereby make oath and say:

1. I am an adult female. The principal place where I carry out my duties is at 1 Modderfontein Road, Sandringham, Johannesburg.

2. I am duly authorised to depose to this affidavit on behalf of the Government Covid 19 Advisory Committee.

3. The facts set out in this affidavit are within my personal knowledge and are derived from documents and information under my control, unless the context indicates otherwise and are true.

4. I have read the affidavits of the Applicant, including the answering affidavit of Professor Adrian J Puren and the supporting affidavits thereto and I confirm the correctness of the contents thereof insofar as it relates to the recommendations of the Ministerial Advisory Committee on COVID-19.

5. The purpose of this affidavit is to explain the position of Professor Salim Abdool Karim the Third Respondent, who is cited in his official capacity as the head of the Ministerial Advisory Committee on COVID-19 (the Committee). I confirm that Professor Karim resigned as chairperson of the Committee on 26 March 2021.

6. I confirm that I am the chairperson of the committee and that I am duly authorised to deal with all matters pertaining to the Committee.

PROFESSOR KOLEKA MLISANA

I certify that the deponent has acknowledged that she knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice .R1648 of 19 August 1977, as amended, have been complied with

COMMISSIONER OF OATHS

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case NO: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
And	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

FILING NOTICE

KINDLY TAKE NOTICE THAT the Respondents herein file their Answering, Confirmatory ant Explanatory Affidavits evenly herewith.

SIGNED AT **CAPE TOWN** ON THIS 25th DAY OF **MAY** 2021

THE STATE ATTORNEY

Per: **M Nkabini**

First to Fourth Respondents' Attorneys
4th Floor

THE STATE ATTORNEY
Per: Mr M Nkabini
Tel: 021-441-9200

22 Long Street
CAPE TOWN
Ref No: 891/21/P6

TO: **THE REGISTRAR**
Western Cape High Court
CAPE TOWN

AND TO: **T VICTOR & ASSOCIATES**
24 Viola Road
BLOUBERGSTRAND
CAPE TOWN
Tel: 077078168

C/o **ROB GREEN ATTORNEYS**
Room 305
Benzal House
3 Barrack Street
CAPE TOWN

IN THE HIGH COURT OF SOUTH AFRICA
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THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PROFESSOR ADRIAN J PUREN

do hereby make oath and say:

INTRODUCTION

1. I am an adult male and employed as the Acting Executive Director of the National Institute for Communicable Diseases ("NICD") I am carrying out my principal duties at 1 Modderfontein Road, Sandringham, Johannesburg, Gauteng Province,

2. The NICD is a national public health institute of the South Africa, providing reference to microbiology, virology, epidemiology, surveillance, and public health research to support the South African Government's response to communicable disease threats. The NICD thus serves as a resource of knowledge and expertise of communicable diseases to the South African Government, Southern African Development Community countries and the African continent. The main goal of the NICD is to be the national organ for South Africa for public health surveillance of communicable disease.

3. Before commenced my employment with the NICD: I graduated as a medical doctor from the University of the Witwatersrand and obtained a Medical degree (1986) and a Ph (1993). I received further training at the University of Oxford and University of Colorado Health Sciences Center in the fields of immunology and Cytokines.

4. I was appointed at the NICD to implement a HIV diagnostic and vaccine laboratory in July 1999. Subsequently, I was appointed as a Deputy Director for Virology Division that included several sections including Centres for Respiratory Diseases

and Meningitis, Centre for Vaccines and Immunology and Centre for HIV and STIs. I have thus gained extensive experience and practical knowledge in virology, virology diagnostics and surveillance.

5. I serve as the technical manager for quality assurance at the NICD and have a knowledge and understanding of the matters relating to requirements for providing accurate and key results in line with the ISO standards.

6. I am accordingly duly authorised to depose to this affidavit on behalf of the Fourth Respondent. In the interest of simplicity, the first, second and fourth Respondents will be referred to, herein, by their abbreviated title (the first Respondent as "the President", the second Respondent as "CoGTA" and the fourth Respondent as "the NDOH" or the Respondents.)

7. The facts set out in this affidavit are within my personal knowledge or are derived from documents and information under my control, unless the context indicates otherwise, and are true.

8. As will appear from the allegations (including the annexures thereto) in the founding affidavit, the Applicant's application turns, to a large extent, if not exclusively, on the documents he attached to his founding affidavit, the authenticity and contents whereof are disputed and which I have perused.

9. Where required, the facts set out in this affidavit are supported and confirmed by affidavits depose to by the appropriate persons in CoGTA or NDOH or both, with

personal knowledge of the relevant facts and will be filed together with this affidavit. Where legal submissions are made during this affidavit, they are based upon the advice of my legal representatives. I believe such advice to be correct.

10. I have read the founding affidavit of the Applicant and respond thereto as follows:

POINTS *IN LIMINE*

11. At the outset I point out that there are several legal issues which arise from the averments set out in the Applicant's founding affidavit, which requires comment before I deal with the balance of the averments, therein.

12. The comments below will be raised by way of legal objections/points *in limine* in relation to three issues, viz: non-compliance with the regulations, self-created urgency and no prima facie or strong case for the relief sought.

THE FIRST POINT IN LIMINE:

Non-compliance with the National Health Act, 2003

13. In terms of paragraph 2 of the Notice of Motion the Applicant seeks an order that the Respondents "*produce the isolated and purified physical SARS-COV-2 virus, not a culture isolate or any mixture within which the supposed virus is, nor a*

photograph or the RNA sequence only, to the Applicant at the place in terms of their safety measures of choice within 7 days".

14. NDOH contends that on the face of the relief in paragraph 2, *supra*, the Applicant's request amounts to, *inter alia*, an acquisition or importation or handling of human pathogens. Because the Applicant requested the Court to order that the Respondents "produce" the isolated and purified physical SARS-CoV2 to him within 7 days.

15. The NDOH contends that any, one (or more) of the processes, contemplated in paragraph 2, above, seem to fall within the scope of the National Health Act, 2003, Regulations relating to the registration of microbiological laboratories and the acquisition, importation, handling, maintenance, and supply of the human pathogens ("the NHA Regulations"). Put differently, to give effect to his relief, he would, amongst others, be required to "acquire" "receive" or "handle" human pathogens, as contemplated in the NHA Regulations.

16. Accordingly, the NDOH contends that the Applicant, before, he can claim that he has a right to the relief under paragraph 2, *supra*, he must comply with the express requirements of the NHA Regulations.

17. Section 1(a) of the NHA Regulations defines "human pathogen" means-

> "*an infectious substance (b) the toxin of an infectious substance, or (c) any diagnostic specimen, vector or other material that contains, or that is*

reasonably suspected to contain **an infectious substance** or a toxin of an *infectious substance*"

"*infectious substance*" **means- (a)** a micro-organism, virus or parasite that is capable of causing human disease or (b) an artificial produced hybrid or mutant micro-organism that contains genetic components of any micro-organism capable of causing human disease."

"*microbiological laboratory*" means a laboratory which handles human pathogens capable of colonising in humans, irrespective of whether or not the laboratory undertakes specific culture of such human pathogens or merely receives and handles tissue and other specimens potentially infected or infested which such human pathogens, and including laboratories which handle infected or infested, or potentially infected or infested, indigenous vectors of human pathogens, or exotic vector species irrespective of whether they are infected or infested."

18. Section 3 of the NHA Regulations 2003 provides that-

No person shall:

"(a) acquire, receive or import human pathogens; or

(b) *handle, manipulate, maintain, store, culture or in any way process, issue or in any way dispose of human pathogens so acquired, received, or imported, unless the person -*

(i) is registered with the department as a microbiological laboratory in terms of regulation 6(1)(a)(ii);

(ii) is assigned a BSL code in terms of regulation 6(1)(a)(iii)

(iii) is in possession of permit issued in terms of regulation 6(1)(b) to conduct the activities referred to in paragraph (a) or (b) in respect of human pathogens in accordance with the BSL code of the laboratory indicated in the permit; and

(iv) conduct an activity referred to in (a) or (b) as the case may be, in accordance with the provisions of these regulations and the standards."

19. The NDOH contends that the Applicant, on his own case, he is not competent nor permitted to request the relief sought referred to in paragraph 2 above. Accordingly, the NDOH contends that the Applicant on, at least, two grounds would be disqualified to request the relief in his Notice of Motion.

19.1. Firstly, in paragraph 2 of the founding affidavit the Applicant merely describes himself as "an adult male, Ricardo Mazman who holds an MA International Politics obtained at the University of Leicester in the UK. He specialises in post-cold World Order, International Security intelligence and

Security & US Foreign Policy". Thus, on his own description he would not qualify.

19.2. Secondly, his founding affidavit contains no positive or other averments which indicates or show that he, was registered as a microbiological laboratory with the Department, as contemplated in section 3(a) of the NHA Regulations. In addition, it not suggested by the Applicant that he is in the process or doing so. In any event, even if he was (which is denied) his expertise or lack thereof would still preclude him from requesting the relief sought.

20. In all the circumstances, the NDOH the contends that the Applicant's relief sought in paragraph 2 of his Notice of Motion appears to be unlawful, in that, it is contrary to the requirements of the NHA Regulations.

21. In the premises his application fell to be dismissed with costs. Should the Court nevertheless consider his application, then the NDOH contends that his applications must be dismissed on the grounds set out, below.

THE SECOND POINT IN LIMINE

Whether the Applicant has made out a case for urgency in his affidavit

22. In paragraph 1 of the Notice of Motion (read with paragraphs 10 to 24 of the founding affidavit) the Applicant prays for an order along the following lines:

> *"That this application is heard as a matter of urgency and that the Applicant's failure to comply with the time limits imposed by the Rules of this Honourable Court be condoned in terms of Rule 6(12)."*

23. In support of his urgent application the Applicant in paragraphs 10 to 21 of the founding affidavit set out the purported grounds which he asserted renders this matter urgent. To avoid unnecessary repetition, herein, I will only refer some of the Applicant's averments set out in his founding affidavit, below. In doing so, I do not thereby concede and/or acknowledge the correctness or otherwise of his averments set out below (or those expressly excluded, herein). I turn to the Applicant's averments, below:

> *"I respectfully submit that this matter cannot wait to be dealt with in the ordinary course, as such, I ask the Court to dispense with the forms and service provided for in the Rules and in my non-adherence with the normal rules procedure as set out in Rule 6.*
>
> *This matter is of such urgency that it simply cannot wait for the normal procedure to be complied with. I respectfully submit that this application should be heard other than in the normal course, otherwise the relief which we seek will be rendered ineffective.*
>
> *Currently the entire state is under lockdown level 1, which is a serious violation of the citizens' fundamental rights. To date, the Minister of Health has uttered and there are circulating discussions that the lockdown*

measures will be tightened which begs for those measures to be scrutinised.

There is a massive nationwide rollout of a vaccine claimed by the Respondent that must be used in the prevention of being infected by the alleged virus.
This vaccine rollout has begun in other countries and it has resulted in deaths and vaccine injuries.
The National disaster has been declared and is ongoing for almost a year affecting the entire nation with dire consequences.

The outcome of the order could very well mean a quick recovery to normal circumstances for the entire nation.
In South Africa, there is vast unemployment and poverty. As such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste.

...And each week of continual lockdown will, in the long run, cause more loss of lives than the virus itself."

24. The Respondents (CoGTA and NDOH) contend that the Applicant's application to I to be dismissed, in that, he failed to, amongst other factors, show that he will not otherwise be afforded substantial redress at a hearing in due course. The Respondents (CoGTA and NDOH) contend that the Applicant *faintly* asserted in paragraph 11, without more, that *"this matter is of such urgency that it simply cannot wait for the normal procedures to be complied with"*. Apart from the latter statement, no material facts or circumstances are advanced in his founding

affidavit wherein he claims that he will not be afforded substantial redress at a hearing in due course.

25. The Respondents contend that the only reasonable inference which could be drawn from the lack of any particularity or facts, in the founding affidavit, about the substantial redress, stems from the fact that the Applicant, in essence, is seeking *final* relief in this matter. In other words, the granting of an interdict, in the manner framed by the Applicant, would be dispositive of any matter between the parties. This is so because the Applicant is not seeking the relief in paragraph 2 of the Notice of Motion *pending* the resolution of the main (or other) proceedings.

26. Thus, the Applicant in paragraph 2, *supra*, is seeking final relief or relief with final effect. In any event, the Applicant is not suggesting that he is seeking (through the interdict) any "freezing" of existing rights which are threatened by irreparable harm.

27. The above, notwithstanding, the Respondents contend that the urgency in this matter appears to be self-created. Although it lacks the requisite factors to show urgency, the only allegation in the founding affidavit which contains some '*elements*' of alleged urgency appears in paragraph 20, where he alleged that:

> "*In South Africa, there is vast unemployment and poverty as such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste*".

28. The Respondents contend that the above allegation should be read against, amongst others, the allegations contained in paragraph 62 where the Applicant asserted that he *has a reasonable suspicion about the existence of SARS-CoV-2 virus*'. On the Applicant's version, if the SARS COV 2-virus does not exist then, amongst other restrictions, the lockdown restrictions are unlawful or irregular and as such violates his fundamental rights.

29. The Respondents contend that the Applicant commits an elementary error, in that, no right is absolute and may in appropriate circumstances be limited in terms of section 36 of the Constitution.

30. In any event, the Respondents contend that there appears to be a disconnect, on the one hand between the claim for urgency and on the other, the allegations in paragraph 10 to 21 of the founding affidavit in support thereof. Put differently, the allegations in the founding affidavit do not support the Applicant's cause of action

31. Nevertheless, the Respondents contend that if the Applicant failed to comply with the requirements of section 3 of the NHA Regulations then this Court may, in any event, not exercise its discretion in favour of the Applicant. In addition, the relief sought contains the risk that the Court, in granting the relief sought, might thereby enters, into the exclusive domain of the Executive or organs of state (in circumstances where no case is made out that the Executive or the organ of state commit an irregularity or violate the Constitution.)

32 I turn to the self-created urgency which emerge from the allegations in paragraphs 51 to 57 of the founding affidavit. Due to the repetition of the latter allegations, I only restate the gist of the allegations set out in the founding affidavit, below:

32.1 The Applicant knew about the National Lockdown restrictions, at least since 15 March 2020.

32.2. On the Applicant's own version, he knew or reasonable should have known that in or during January 2020 the world became aware of the so-called Coronavirus.

32.3. He knew or reasonably should have learnt about the vaccination rollout programs in this country, since March 2021 or earlier.

32.4. In addition, the reported case of infected persons in the country are in the public domain, on a daily or weekly basis.

32.5. The instances when the President address the citizens of the country about restrictions is, similarly, in the public domain. The President mostly recently in or during the beginning of April 2021 address the citizens of the country.

33. Despite all the above information at his disposal, at the time, the Applicant now wishes to leapfrog the court procedures and insist that he must be heard on an urgent basis, whilst no discernable case is made out in his founding affidavit.

34. More importantly, the Applicant rushes to Court, despite, the fact that he on his own case has an alternative remedy. This is evident from paragraph 132 of his affidavit that *"the applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here."*

35. The Applicant put up no grounds or facts why he omitted to invoke his right to access to information. The Respondents contend that it is, in any event, not suggested by the Applicant in his affidavit that he in or during March or April 2021 submitted a request for information and his request was declined by the Respondents.

36. Accordingly, the Respondents contend that it is plain, that on his own version, the Applicant has an alternative remedy which he should have invoked before launching this urgent application.

37. In the circumstances, the Respondents contend that the Applicant's failure to do so, should be regarded as an abuse of the Court process. This is so because, not only is he requesting relief with far reaching consequences for how the Executive and organs of state should positively comply with their constitutional obligations

(by protecting the population and the health resources) but the net effect of his relief might very well place the lives of millions at risk. Because the Applicant establishes no factual basis how he will come with the provisions of the NHA Regulations. Accordingly, the handover the physical virus to him, as requested, poses serious dangers for the effective protections of the population.

38. In the premises the Respondents contend that this Applicant's application fell to be dismissed on this ground also. Should the Court, nevertheless, be amenable to consider his application (which ought to be rejected) then the Respondents contend his application should be dismiss on the ground set out below.

THE THIRD POINT IN LIMINE

39. The Respondent contends that the Applicant's application for a mandatory interdict is not an *ordinary interdict*. The Respondents contend that it is common cause that the Applicant is seeking a mandatory interdict against the Executive and organs of state (first, second and fourth Respondents).

40. The Respondents contend that in the absence of *male fides* on the part of the Reespondents, the Court does not readily grant such an interdict. Moreover, the Respondents contend that the Court only grants an interdict, such as that sought by the Applicant in the present instance upon a strong case being made out for

that relief. The Applicant failed to make out such a **string case** and for the reason(s) referred to above and hereunder.

41. In terms of the Notice of Motion (read with paragraphs 129 to 141) of the founding affidavit the Applicant seeks the following relief:

> *"That the Respondents "produce" the isolated and purified physical SARS-COV-2 virus (not a culture isolate of any mixture within which the supposed virus is, nor a photograph or the RNA- sequence only) to the Applicant at a place in terms of their security measures of choice, within 7 days."*

42. The Respondents contend that in terms of paragraph 2 of his Notice of Motion, if the relief is granted, they would be obliged to perform a positive act, *viz.*: to "produce" the isolated and purified SARS-COV-2 virus to the Applicant" even if the Applicant failed to comply with the provisions of section 3 of the NHA Regulations. The Respondent contend that since the Applicant has no legal basis to request the relief, this should be end of the matter. However, for consistency I, nevertheless, deal with the grounds advance in the founding affidavit, below.

Whether the Applicant has made out a prima facie case in the founding affidavit

Ad paragraphs 129 to 141 of the founding affidavit

43. The Applicant in his founding affidavit sets out the alleged basis for the relief sought in the Notice of Motion. The Applicant in paragraph 129(a) to (i) to thereof, allegec that he (and the public have the following undisputed *prima facie* rights, viz.:

Prima facie right

43.1. **Ad paragraph 129**

"The Applicant and the public have the following undisputable prima facie right to (a) to human dignity; (b) life; (c) bodily and psychological integrity; (d) to make decisions concerning the security and control over their body; (e) freedom to practice their trade, occupation and professional; (f) not to be treated in a cruel, inhumane and degrading way; (g) the right to have access to health care services; (h) freedom to movement; and (i) just administration."

43.2. **Ad paragraph 130**

"Not to have limitations imposed on their rights entrenching the Bill of Rights and if so that it must be restrictively interpreted, so as to impose minimum limitation on those rights, in accordance with section 36 of the Constitution."

43.3. **Ad paragraph 131**

"*That the Bill of Rights be applied to all law, including the DMA.*"

43.4. **Ad paragraph 132**

"*The Applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here.*"

43.5. **Ad paragraph 133**

"*From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of, have at least prima facie right.*"

44. The Respondents contend that there appears to be a disconnect between the relief sought in paragraph 2 of the Notice of Motion and the fundamental rights claimed in the paragraphs set out in paragraphs 129 to 133, *supra*. Because the Applicant failed to show which, if any of the rights referred to above, is/are threatened by an impending or imminent irreparable harm. In addition, the Applicant failed whether any member of the public (which he claims to represent) right(s) was/were threatened by an impending or imminent irreparable.

45. The Respondent contend that on the Applicant's case the prima facie right which he must establish is not merely a catalogue of rights, as envisage in paragraph 129 (a) to (i), *supra*, in order, for the Court to grant an order in terms whereof the Respondents would be compelled "*to produce of the isolated and purified physical*

SARS-COV-2 virus." The Respondents contend that the prima facie right must be a right to which, if not protected by an interdict, irreparable harm would ensue. I have already pointed out in paragraph 44, *supra*, no such case is made out on the papers by the Applicant.

46. In any event, the Respondents contend that the allegations contained, *inter alia*, in paragraphs 129 (read with 134 to 138) of the founding affidavit failed to demonstrate a *prima facie* right that is threatened by an impending or imminent irreparable harm. Alternatively, the above facts in the founding affidavit failed to demonstrate a prima facie case for the relief sought in the Notice of Motion.

47. Similarly, the facts set out in, *inter alia*, paragraphs 129 (read with paragraph 134 to 138) of the founding affidavit failed to demonstrate a clear right that is threatened by an impending or imminent irreparable harm.

***Reasonable** apprehension of **irreparable** and imminent harm*

48. In paragraph 134 the Applicant in support of the assertion of reasonable apprehension of irreparable and imminent harm alleged that:

48.1. <u>**At paragraph 134**</u>

> "*I submit that harm is apparent in this instance, as set out throughout this founding affidavit.*"

48.2. **Ad paragraph 135**

"Without the relief sought to prevent further harm the Applicant and the rest of South Africa will continue to suffer irreparable financial, material, physical and psychological harm."

48.3. **Ad paragraph 138**

"From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of the existence of the reasonable apprehension of irreparable and imminent harm."

49. The Respondents contend that there is another difficulty with the Applicant's assertion that he has prima facie right to an interim urgent interdict against the Respondents, is this: He is seeking the interim interdict ostensibly to protect the catalogue of rights set out in paragraph 129(a) to (l) of the founding affidavit. However, the difficulty with the Applicant's case is that he established no facts or circumstances how the "production" of the isolated and purified physical SARS-COV-2 virus would protect those fundamental rights. To this end he commits an elementary error by not establishing facts or circumstances to support his cause of action.

50. What is, however, plain from paragraph 136 to 137 of the founding affidavit is that he is, essentially, complaining about the lockdown restrictions. If this is the case, then, the Respondents contend no case is made out for an attack on those restrictions. Put more accurately, no case is made out to show the declaration of a national state of disaster (RM7) and the subsequent regulations ad directive were are unconstitutional. Because it is not suggested in his founding affidavit (in addition to the interdict) that he complains that the lockdown restrictions are unlawful or otherwise offend the provisions of the Constitution.

51 The allegations on paragraphs 136 to 137 reads:

52. **Ad paragraph 136**

"The public further stands severely prejudiced with the arbitrary infringements of their fundamental rights should the Respondents continue to ignore their rights."

53. **Ad paragraph 137**

"At the current rate, the South African Government will run out of money to pay the salaries of state employees, it is submitted that if South Africa's present economically restricted lockdown measures are not discontinued immediately, the Respondents may cause 29 times more deaths with the measures aimed to prevent the spread than the virus itself."

54. In all the circumstances the Respondents contend that there is misalignment between the relief sought for an interdict and source of the harm.

55. The Respondents further contend that it is plain from the structure of the Notice of Motion, the Applicant seems to pray for final relief or a mandatory interdict with final effect. This is evident from prayers 1 and 2 of the Notice of Motion. It is also evidence from allegations in paragraphs 129 to 141 of the founding affidavit. Put differently, the Applicant is not seeking a provisional order which is designed to protect his rights pending an (the main) application to be brought to establish his rights. That is the purpose of the interim interdict is to freeze the position until the Courts decides where his rights lie

56. In the premises, the Respondents contend that the Applicant's application fell to be dismissed with costs.

Hearsay evidence

57. The Respondents contend that the Applicant's application is largely, if not, exclusively founded on statements and documents, the authenticity of which are disputed. Notwithstanding the dispute about the authenticity of those documents, the Respondents contend that a large, if not, the entire case in support of the relief sought under paragraph 2 of the Notice of Motion, appears to consist of hearsay evidence.

58. I will, accordingly, not deal with those individual paragraphs and documents which offend the rules of evidence and the Uniform Rules of Court in this affidavit. The Respondents intend to launch an interlocutory application in this regard. Accordingly, my responses below will be confined to those allegations which invite a scientific response.

59. I will, similarly, not expressly deal with those averments which relates to CoGTA. In this regard, a supporting affidavit, explanatory and confirmatory affidavits will be deposed to by the relevant employees.

THE AVERMENTS CONTAINED IN THE FOUNDING AFFIDAVIT

60. Ad paragraphs 1 to 2 thereof:

61. Denied.

61.1. As is evident from paragraph 2 of the founding affidavit, the Applicant's expertise falls within the domain of 'social science'. In particular, he appears to specialise in, amongst others, Post-cold war world order, international security, intelligence, and US foreign policy.

61.2. Whereas the subject matter of SARS-COV2 seems to fall within the broader branches of microbiology, virology, and epidemiology. There is no evidence that the Applicant is a specialist or had otherwise gain expert knowledge in

any of the branches of science. To this end the NDOH dispute the Applicant's claim about his personal knowledge and his expertise in the relevant branch of science.

61.3. I am advised that the documentary material attached to his founding affidavit constitutes hearsay evidence. The NDOH denies that it consented to the submission or use of those documents.

61.4. Save as aforesaid, the balance of the allegations contained in this paragraph are denied.

62. **Ad paragraphs 3 to 5 thereof:**

The allegations contained in these paragraphs are noted but not disputed.

63. **Ad paragraphs 6 to 9 thereof:**

64. Denied.

64.1. The NDOH denies that this matter is urgent. The NDOH repeats the submissions set out in paragraphs 22 to 38, *supra*.

64.2. The NDOH denies that the Applicant is entitled to the relief sought in paragraph 7 (read with paragraph 2 of his Notice of Motion). The grounds

upon which the NDOH claims that the Applicant is not entitled to the relief sought are more fully traverse in paragraphs 13 to 21 and 39 to 56, *supra*.

64.3. In particular, the NDOH denies that the Applicant is registered as a microbiological laboratory. The NDOH avers that there are minimum requirements which must be met before a person or laboratory can be registered. For ease of reference, I attached hereto a copy of the minimum requirements for laboratories, marked ("**AP1**")

64.4. When a person/laboratory is so registered the NDOH issued a permit to the laboratory. I also attached hereto, a flow chart of how a permit is obtained, marked ("**AP2**").

64.5. Save as aforesaid the balance of the averments is denied.

65. **Ad paragraphs 10 to 24 thereof:**

66. Denied.

66.1. The NDOH repeat the submissions in paragraphs 25 to 28, *supra*.

67. **Ad paragraphs 25 to 31 thereof:**

The allegations herein are noted, but not admitted.

68. **Ad paragraph 32 thereof:**

The allegations herein are noted.

69. **Ad paragraph 33 thereof:**

70. Denied.

71. The NDOH avers that the allegations in this paragraph amounts to a statement which are not supported by any material facts or circumstances.

72. In any event, there are no corroborating evidence in support of the Applicant's claim that he acts for or in the interests of the public.

73. **Ad paragraphs 34 to 39 thereof:**

The allegations contained herein are noted, but not admitted.

74. **Ad paragraphs 40 to 44 (read with paragraphs 46, 47, 48 and 49) thereof.**

75. Denied.

76. The NDOH avers that the allegations contained in the above paragraphs are argumentative and fell to be struck from the affidavit.

77. In any event, the NDOH denies that the Applicant could have any personal knowledge in respect of the matters set out in paragraphs 40 to 42, above.

78. **Ad paragraphs 45 thereof:**

79. Denied.

79.1. The NDOH dispute the basis upon which the Applicant advance the submission in this paragraph.

79.2. It is common cause that he is not qualified as an expert or otherwise expertise in the fields of microbiology or epidemiology.

79.3. Despite the patent lack of the requisite expertise the Applicant seeks to venture deep into branches of science, without the benefit of a qualified expert.

79.4. More importantly, despite the grave knowledge deficits, the Applicant persist with this application on an urgent basis.

79.5. The NDOH avers that the Applicant does not only (through this application) place the Court a great disadvantage, in that, the Court is not qualified nor possess the requisite scientific knowledge. But, in doing so, I am advised, he also contravene the Rules of this Court, in particular Rule 36(9).

80. **Ad paragraph 50 thereof:**

The allegations contained herein are noted but not admitted.

81. **Ad paragraphs 51 to 60 thereof:**

The NDOH avers that these averments are dealt with in the supporting affidavit deposed to by Deputy-Director General from CoGTA.

82. **Ad paragraphs 61 to 63 thereof:**

83. The NDOH avers that in lockdown restrictions were lawfully impose in the context of the prevailing COVID 19 pandemic to, amongst others, to save lives and control the rapid spread of infections in the country.

83.1. The NDOH avers that assertions by the Applicant that "some disruption is lives may only be necessary if we are assured beyond doubt of the existence of the SARS-COV2, appears to be baseless.

83.2. It is not plain what is the source of the opinion advanced in paragraph 61 of the founding affidavit, in particular, his claim that such disruptions depend on an assurance beyond doubt. In addition, the Applicant failed to provide any qualified expert opinion or any peer review which supports his claim.

83.3. In any event, he is not qualified as an expert in the relevant field, it is accordingly unclear on what basis if any, he advanced his findings.

83.4. Save as aforesaid the balance of the allegations is denied.

84. **Ad paragraphs 84 to 71 thereof:**

85. Denied.

86. In amplification of the aforesaid denial the NDOH avers as follows:

86.1. Protocols for isolation and culturing of "physical virus" are now well established. There are many clear review manuscripts to support this statement. It is not done routinely for diagnosis, as it will be impractical and will not be conducive to patient management.

86.2. The nature of the SARS COV-2 has been established not only through RT-PCR in sequencing but also in electron microscopy.

86.3. I confirm that this has been achieved by the NICD where I carry out my principal duties. I refer below to certain criteria/methodologies use, viz. Koch and the Bradford-Hill criteria/methodologies.

The Koch criteria

86.4. Koch postulates that the following needs to be satisfied to determine causation of a disease:

(a) the organisms must be regularly associated with the disease and its characteristic lesions.

(b) the organisms must be regularly associated with the disease host and grown in culture.

(c) the disease must be reproduced when a pure culture of the organism is introduced into a healthy susceptible host.

(d) the same organisms must be re-isolated from the experimentally infected host.

86.5. There have been significant advances with new diagnostic methodologies and sequencing, and further associations are made:

86.5.1. A nucleic acid sequencing belonging to a putative pathogen should be present in most cases of an infectious disease. Microbial nucleic acids should be found preferentially in those organs or gross anatomic sites known to be diseased and not in those organs that lack pathology. Fewer, or no, copy numbers of

pathogens-associated nucleic acid sequences should occur in hosts or tissues without disease. With resolution of disease, the copy number of pathogen-associated nucleic acid sequence should decrease or become undetectable. With clinical relapse, the opposite should occur.

86.5.2. When sequence detection predates disease, or sequence copy number correlates with severity of disease or pathology, the sequence-disease association is more likely to be a causal relationship.

86.6. The nature of the micro-organism inferred from the available sequence should be consistent with the known biological characteristic of that group or organisms.

86.7. Tissue-sequence correlates should be sought at the cellular level: efforts should be made to demonstrate specific in situ hybridization of microbial sequence to areas of tissue pathology and to visible micro-organisms or to areas where micro-organisms are presumed to be located. These sequence base forms with evidence for microbial causation should be reproducible

The Bradford-Hill criteria

86.8. Causation may also be determined by the Bradford-Hill criteria (Koch postulates are not possible for all pathogens):

86.9. Strength (effect size): the association between SARS COV-2 infections and COVID-19 presentation is strong.

86.10. Consistency (reproducibility): consistent findings observed by persons in different places with different samples strengthens the likelihood of an effect. This has been done for SARS-COV-2 and COVID-19 in many ways by many different groups around the world.

86.11. Specificity: causation is likely if there is a very specific population at a specific site and disease with no other likely explanation. The more specific an association between a factor and an effect is, the bigger the probability of a causal relationship. These criteria may be a bit problematic for COVID-19.

86.12. I think one supporting evidence here is that one Island that is free from COVID-19 and no SARS COV-2 detected.

86.13. Temporality: the effect is to occur after the cause (and if there is an expected delay between the cause and the expected effect, then the effect must occur after the delay. COVID-19 was not reported before the emergence of SARS COV-2.

86.14 Biological gradient (dose-response relationship): greater exposure should generally lead to greater incidents of the effect.

86.15. I think the effect of lockdown measures etc. can be named here, i.e. reduced risk, reduced cases, this is but one example there are many other exemples which could be identified.

86.16. Plausibility: a plausible mechanism between cause and effect is helpful (but Bradford-Hill noted that knowledge of the mechanisms is limited by current knowledge).

86.17. We know from SARS and MERS that zoonotic coronavirus is involved in respiratory illness.

86.18. Coherence: coherence between epidemiological and laboratory findings increased the likelihood of an effect. This has also been found now many times.

86.19. Experiment: occasionally it is possible to appeal to experimental evidence. This is where the animal models can come in. For ease of reference, I attached a recent article which comments on: Animal models for SARS-Cov2/COVID 19 research- A commentary, marked ("NM3")

86.20. Analogy: the use of analogies or similarities between the observed association and any other associations. SARS and MERS sets the precedent for zoonotic coronaviruses emerging to cause respiratory diseases in humans, although no difference in epidemiology/clinical spectrum

87. **Ad paragraphs 72 to 128 thereof:**

88. The NDOH avers that the allegations (including the annexures thereto) constitute hearsay evidence and as such fell to be strike out from this affidavit.

89. The NDOH further avers that the complaint about the hearsay evidence forms part of an interlocutory application (which will be heard with the application).

90. Save as aforesaid the allegations contained in paragraphs 72 to 79 are denied, as if specifically, traverse, herein.

91. **Ad paragraphs 129 to 141 thereof:**

92. Denied.

93. The NDOH repeats the submission set out in paragraphs 42 to 56.

94. Save as aforesaid the balance of the averments contained in paragraphs 129 to 141 are denies, as if, specifically, traverse, herein.

95. **Ad paragraphs 134 to 138:**

The allegations contained herein are denied.

96 **Ad paragraph 142 thereof:**

97. Denied.

97.1. The NDOH avers that the Applicant is not permitted and/or competent to received, and/or handle and/or otherwise deal with this or any other infectious virus.

97.2. The NDOH repeals the grounds set out in paragraphs 13 to 21, **supra**, in support of the aforesaid averments.

97.3. Save as aforesaid the balance of the averments is denied.

98. **Ad paragraph 143 thereof:**

99. Denied.

100. The NDOH avers that on the Applicant's own case, he established in paragraph 132 that he does have an alternative remedy.

101. In any event, the NDOH avers that the must first overcome the hurdles referred to in paragraphs 13 to 21, supra; before he could possibly assert any claim to the existence of a right.

102 Save as aforesaid the balance of the averments is denied.

Professor Adrian J Puren

I certify that:-

The deponent signed this affidavit and swore, and acknowledged that he/she: -

a) knew and understood the contents thereof;

b) had no objection to taking the oath; and,

c) considered the oath to be binding on his/her conscience.

The deponent then uttered the words, "*I swear that the contents of this declaration are true, so help me God*"

COMMISSIONER OF OATHS

Full names:
Designation and area:
Street address:

SOUTH AFRICAN POLICE SERVICE
25 MAY 2021
CSC

"AP1"

Annexure A

health
Department:
Health
REPUBLIC OF SOUTH AFRICA

Private Bag X828, **PRETORIA**, 0001 Civitas Building, c/o **Struben and** Thabo Sehume Streets
Enquiries: send to emails: registrationlaboratories@health.gov.za & DOH.COVID19@nhls.ac.za

MINIMUM REQUIREMENTS FOR LABORATORIES CONDUCTING SARS CoV-2 DIAGNOSTIC TESTING

AUGUST 2020

Introduction

Diagnostic Laboratories in South Africa are required to comply with a number of legislative requirements in order to perform diagnostic testing for human subjects. A set of minimum requirements were drafted for laboratories who wish to conduct SARS-CoV-2 diagnostic testing in consultation with the National Health Laboratory Service (NHLS), including the National Institute for Communicable Diseases (NICD) and National Institute for Occupational Health (NIOH) for the National Department of Health (NDoH). The minimum requirements checklist takes into consideration the legislative requirements as set out by the Department of Health (DOH), the Department of Employment and Labour (DEL), the Council for the Non-Proliferation of Weapons of Mass Destruction (NPC) and the Health Professionals Council of South Africa (HPCSA).

One of the major regulations relevant to laboratories that wish to embark on clinical diagnostic testing, is Regulation 178. This Regulation stipulates that all laboratories that acquire, receive or import human pathogens; or handle, manipulate, maintain, store, culture or in any way process, issue and/or dispose of human pathogens, must be in possession of a permit issued by the Department of Health (DoH), authorizing the laboratory to conduct the work as described above.

Scope

This checklist is relevant to all South African laboratories, in both the public and in the private sector, that perform diagnostic testing in response to the current SARS-CoV-2 pandemic.

Instructions to Laboratories:

1. *All laboratories intending to do diagnostic SARS COV-2 testing should complete the checklist; this checklist represents the minimum requirements to be met by laboratories, that will be allowed to conduct diagnostic testing for SARS COV-2;*
2. *First step is to ensure the laboratories are compliant with the requirements described in the checklist (Annexure A);*
3. *Complete the checklist providing descriptions of compliance in the "comments" section, and return the completed checklist to registrationlaboratories@health.gov.za and copy the DOH.COVID19@nhls.ac.za within seven (7) working days of receiving the checklist;*
4. *Should you fail to return the minimum checklist within the allotted time, your laboratory will be removed from the testing & reporting register.*

5. Regardless of the information presented in the initial checklist, the laboratory will be afforded a period of one (1) calendar month to achieve compliance with the minimum requirements listed.
6. If compliant, an application form for authorisation to handle the SARS CoV-2 will be sent to the laboratory/facility. If non-compliant after this one month period, the laboratory may request an extension of an additional 1 month, but may not provide SARS-CoV-2 testing until compliance is achieved. Laboratories that still fail to show compliance will be required to cease with their SARS-CoV-2 testing.
7. The laboratory/facility will be allowed to report results and will be issued with a permit (valid for one year), to conduct SARS-CoV-2 diagnostic testing.

Conclusion

Patient specimen testing is a highly valued capacity for South Africa during this pandemic and these minimum requirements are not intended to be restrictive or hindering on the country's response efforts to this global pandemic. This unique and previously uncharted territory has highlighted opportunities for the enhancement and strengthening of biosafety and biosecurity regulations to better serve the country and its people. This ultimately brings us closer to 2021 International Health Regulations (IHR) requirements and will ultimately ensure that the diagnostic results are of the highest standard. It also paves a way to a legally compliant medical laboratory sector and greater government oversight regarding patient testing and pathogen security.

Annexure A: Minimum requirements to be met by laboratories conducting SARS-CoV-2 testing

1.	Personnel	Requirement	Yes/No	Comments
1.1	• A minimum of one Health Professions Council of South Africa (HPCSA) registered person working in the lab • Registration with the HPCSA in any medical laboratory discipline e.g. Microbiology, Virology, Chemical Pathology, Haematology, Cytology etc. • Provide registration numbers for people working in the laboratory/facility.	Person must have physical presence in the lab – There has to be a physical presence of an HPCSA registered person in the testing laboratory.		
2.	Quality requirements			
2.1	Participate in External Quality Assessment/ Proficiency Testing (PT) program/s for existing test(s) if laboratory is already participating in PT for SARS-CoV-2 please provide proof)	Once approved – register for SARS-CoV-2 testing in first month		
2.2	Must undergo a quality assurance audit	Applicants will be required to provide evidence of a quality management system in effect at the laboratory		
2.2.1	Proof of accreditation if laboratory is accredited	NOTE: Even though accreditation is not a requirement it will guide the audit process mentioned above		
2.2.2	Provide proof that the laboratory was testing for other coronaviruses before March 2020.	Example of a test results showing method excluding personal patient identifiers and information		
3.	Occupational Health and Safety requirements			

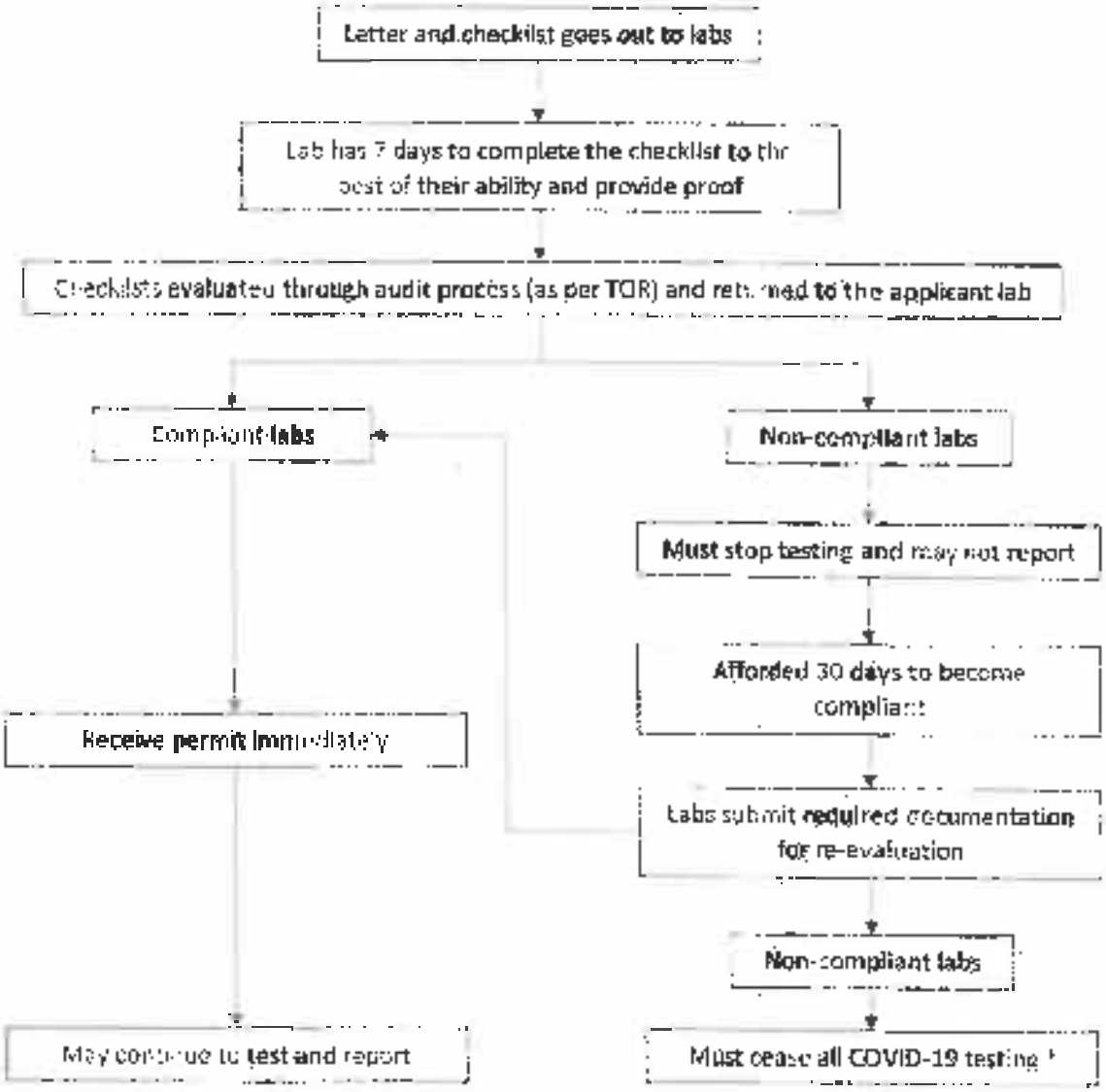
3.1	Must have a valid documented risk assessment that includes but is not limited to biological, chemical, physical and ergonomic risks	Include emergency procedures, training decontamination, Personal Protective Equipment (PPE), Occupational Health and Safety Policies		
3.2	The risk assessment must include control measures to be implemented to minimise the risks identified.	All control measures to be considered, engineering, administrative and PPE		
3.3	A record of control measures implemented and where relevant including any maintenance validation records to be provided	Risk assessment control measure e.g. Equipment service verification/validation		
3.4	If the employer has assigned any duties in terms of the Occupation Health & Safety (OHS) Act, a copy of the assignment in terms of Section 16.2 of the OHS Act to be provided.	E.g. Assignment letter describing the delegation of responsibilities for occupational health and employee safety.		
3.5	Provide proof of a process for the appointment of health and safety representative(s) HSR and the appointment thereof. Provide evidence that health and safety committees have been established and meetings are held, where applicable (number of HSRs dependent on the number of employees i.e. 1 HSR per < 50 laboratory employees)	Establish a Committee if more than one HSR		
3.6	Emergency procedures in place	Documented procedures		
3.7	Access control to facility	Photograph of the facility main lab access signage		
3.8	Provide details of the manager appointed as the COVID-19 Compliance Officer	Appointment letter		
4.	**Requirements for transport of dangerous goods**			
4.1	The vehicle on registration should be registered as a transporter of "Dangerous Goods". Vehicles should be appropriately marked and monitored by tracking devices	Registration – license disc		

4.2	Licensed driver trained to transport UN3373 Category B biological substances by training organisation that is registered with the Transport & Education Training Authority (TETA)	Public Drivers Permit Certificate with TETA full registration number		
5.	**Waste Management**			
5.1	Provide details of registration of either the Provincial or National Waste Information System in terms of the National Waste Information Regulations as a generator of waste	Copy of registration Online process put link		
5.2	Provide proof of an agreement between the facility and a registered health care risk waste management service provider for the removal, treatment and/ or disposal of chemical waste.	PO for company to safely remove waste.		
6.	**Laboratory registrations and permits**			
6.1	Laboratory is in possession of a permit issued in terms of Regulation 178 to conduct the activities as described in Regulation 178 in respect of human pathogens in accordance with the Biosafety Level (BSL) code of the laboratory indicated on the permit; (i.e. BSL2)	Regulation 178 Permit or temporary approval		
6.2	Laboratory issued with a permit from the National Department of Health as a Microbiological Laboratory that handles SARS-CoV-2 (excluding normal labs that test for other coronaviruses) – relevant for all labs that do not regularly test for coronaviruses)	Expiry date of permit – valid for one year from date of issue of permit and will then be reviewed		
7.	**Information Technology for Reporting Data to NICD**			
7.1	Laboratory Information Management System (LIMS) in place to submit data to NICD/NHLS/NDOH	Access to a LIS system to submit data		
7.2	Able to submit result data (negative and positive) to SOAP web. service	All results must ultimately be reported to the NICD as SARS-CoV-2 is a notifiable medical condition. For more information on the process please see:		

		https://www.niod.ac.za/nmc-overview/		
7.3	Data submitted per XML specification			
7.4	Quality data in line with requirements as stipulated in NMC regulations	Must have quality checks in place		

"AP2"

Annex B – Process flow for obtaining a Permit to conduct SARS-CoV-2 diagnostic testing



** extra month extension may be granted at the discretion of the evaluator – i.e. if there is a legitimate reason that cannot be met in the allotted first month, possibly outside the control of the lab e.g. rebranding and recruitment of an HPCSA registered person*

This would only be based on exceptional circumstances if there is a legitimate reason for the extra time, AND on condition that the lab does not conduct testing until the permit is in hand

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SABELO NYABONGA SANDILE BUTHELEZI

do hereby make oath and say:

455

1. I am an adult male and employed as the Director-General in the office of the Fourth Respondent.

2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent.

3. The facts contained herein are within my personal knowledge, and are both true and correct, unless the context indicates otherwise.

4. I have read the main answering affidavit deposed to by Professor Adrian J Puren on behalf of the Fourth Respondent, the supporting affidavit on behalf of CoGTA and/or the National Disaster Management Centre and I confirm that the facts set out therein, insofar as they pertain to the Fourth Respondent and such facts fall within my knowledge or are based on institutional knowledge of the Fourth Respondent gained in the course of my work as the Director-General and from documents now under my control, unless the context indicates otherwise, and are true and correct.

Sabelo Siyabonga Sandile Buthelezi

I certify that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice R1648 of 19 August 1977, as amended, have been complied with

SUID-AFRIKAANSE POLISIEDIENS
AFDELING: SIGBASIEPOLISIERING
2021 -05- 25
DIVISIONAL VISIBLE POLICING
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

EXPLANATORY AFFIDAVIT

I, the undersigned,

PROFESSOR KOLEKA MLISANA

do hereby make oath and say:

1. I am an adult female. The principal place where I carry out my duties is at 1 Modderfontein Road, Sandringham, Johannesburg.

2. I am duly authorised to depose to this affidavit on behalf of the Government Covid 19 Advisory Committee.

3. The facts set out in this affidavit are within my personal knowledge and are derived from documents and information under my control, unless the context indicates otherwise and are true.

4. I have read the affidavits of the Applicant, including the answering affidavit of Professor Adrian J Puren and the supporting affidavits thereto and I confirm the correctness of the contents thereof insofar as it relates to the recommendations of the Ministerial Advisory Committee on COVID-19.

5. The purpose of this affidavit is to explain the position of Professor Salim Abdool Karim the Third Respondent, who is cited in his official capacity as the head of the Ministerial Advisory Committee on COVID-19 (the Committee). I confirm that Professor Karim resigned as chairperson of the Committee on 26 March 2021.

6. I confirm that I am the chairperson of the committee and that I am duly authorised to deal with all matters pertaining to the Committee.

PROFESSOR KOLEKA MLISANA

I certify that the deponent has acknowledged that she knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice .R1648 of 19 August 1977, as amended, have been complied with

COMMISSIONER OF OATHS

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case NO: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
And	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

FILING NOTICE

KINDLY TAKE NOTICE THAT the Respondents herein file their Answering, Confirmatory ant Explanatory Affidavits evenly herewith.

SIGNED AT **CAPE TOWN** ON THIS 25th DAY OF **MAY** 2021

THE STATE ATTORNEY

Per: **M Nkabini**

First to Fourth Respondents' Attorneys
4th Floor

THE STATE ATTORNEY
Per: Mr M Nkabini
Tel: 021-441-9200

22 Long Street
CAPE TOWN
Ref No: 891/21/P6

TO: **THE REGISTRAR**
Western Cape High Court
CAPE TOWN

AND TO: **T VICTOR & ASSOCIATES**
24 Viola Road
BLOUBERGSTRAND
CAPE TOWN
Tel: 077078168

C/o **ROB GREEN ATTORNEYS**
Room 305
Benzal House
3 Barrack Street
CAPE TOWN

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PROFESSOR ADRIAN J PUREN

do hereby make oath and say:

INTRODUCTION

1. I am an adult male and employed as the Acting Executive Director of the National Institute for Communicable Diseases ("NICD") I am carrying out my principal duties at 1 Modderfontein Road, Sandringham, Johannesburg, Gauteng Province,

2. The NICD is a national public health institute of the South Africa, providing reference to microbiology, virology, epidemiology, surveillance, and public health research to support the South African Government's response to communicable disease threats. The NICD thus serves as a resource of knowledge and expertise of communicable diseases to the South African Government, Southern African Development Community countries and the African continent. The main goal of the NICD is to be the national organ for South Africa for public health surveillance of communicable disease.

3. Before commenced my employment with the NICD: I graduated as a medical doctor from the University of the Witwatersrand and obtained a Medical degree (1986) and a Ph (1993). I received further training at the University of Oxford and University of Colorado Health Sciences Center in the fields of immunology and Cytokines.

4. I was appointed at the NICD to implement a HIV diagnostic and vaccine laboratory in July 1999. Subsequently, I was appointed as a Deputy Director for Virology Division that included several sections including Centres for Respiratory Diseases

and Meningitis, Centre for Vaccines and Immunology and Centre for HIV and STIs. I have thus gained extensive experience and practical knowledge in virology, virology diagnostics and surveillance.

5. I serve as the technical manager for quality assurance at the NICD and have a knowledge and understanding of the matters relating to requirements for providing accurate and key results in line with the ISO standards.

6. I am accordingly duly authorised to depose to this affidavit on behalf of the Fourth Respondent. In the interest of simplicity, the first, second and fourth Respondents will be referred to, herein, by their abbreviated title (the first Respondent as "the President", the second Respondent as "CoGTA" and the fourth Respondent as "the NDOH" or the Respondents.)

7. The facts set out in this affidavit are within my personal knowledge or are derived from documents and information under my control, unless the context indicates otherwise, and are true.

8. As will appear from the allegations (including the annexures thereto) in the founding affidavit, the Applicant's application turns, to a large extent, if not exclusively, on the documents he attached to his founding affidavit, the authenticity and contents whereof are disputed and which I have perused.

9. Where required, the facts set out in this affidavit are supported and confirmed by affidavits depose to by the appropriate persons in CoGTA or NDOH or both, with

personal knowledge of the relevant facts and will be filed together with this affidavit. Where legal submissions are made during this affidavit, they are based upon the advice of my legal representatives. I believe such advice to be correct.

10. I have read the founding affidavit of the Applicant and respond thereto as follows:

POINTS *IN LIMINE*

11. At the outset I point out that there are several legal issues which arise from the averments set out in the Applicant's founding affidavit, which requires comment before I deal with the balance of the averments, therein.

12. The comments below will be raised by way of legal objections/points *in limine* in relation to three issues, viz: non-compliance with the regulations, self-created urgency and no prima facie or strong case for the relief sought.

THE FIRST POINT IN LIMINE:

Non-compliance with the National Health Act, 2003

13. In terms of paragraph 2 of the Notice of Motion the Applicant seeks an order that the Respondents "*produce the isolated and purified physical SARS-COV-2 virus, not a culture isolate or any mixture within which the supposed virus is, nor a*

photograph or the RNA sequence only, to the Applicant at the place in terms of their safety measures of choice within 7 days".

14. NDOH contends that on the face of the relief in paragraph 2, *supra*, the Applicant's request amounts to, *inter alia*, an acquisition or importation or handling of human pathogens. Because the Applicant requested the Court to order that the Respondents "produce" the isolated and purified physical SARS-CoV2 to him within 7 days.

15. The NDOH contends that any, one (or more) of the processes, contemplated in paragraph 2, above, seem to fall within the scope of the National Health Act, 2003, Regulations relating to the registration of microbiological laboratories and the acquisition, importation, handling, maintenance, and supply of the human pathogens ("the NHA Regulations"). Put differently, to give effect to his relief, he would, amongst others, be required to "acquire" "receive" or "handle" human pathogens, as contemplated in the NHA Regulations.

16. Accordingly, the NDOH contends that the Applicant, before, he can claim that he has a right to the relief under paragraph 2, *supra*, he must comply with the express requirements of the NHA Regulations.

17. Section 1(a) of the NHA Regulations defines "human pathogen" means-

> "*an infectious substance (b) the toxin of an infectious substance, or (c) any diagnostic specimen, vector or other material that contains, or that is*

reasonably suspected to contain **an infectious substance** or a toxin of an *infectious substance*"

"*infectious substance*" **means- (a)** a micro-organism, virus or parasite that is capable of causing human disease or (b) an artificial produced hybrid or mutant micro-organism that contains genetic components of any micro-organism capable of causing human disease."

"*microbiological laboratory*" means a laboratory which handles human pathogens capable of colonising in humans, irrespective of whether or not the laboratory undertakes specific culture of such human pathogens or merely receives and handles tissue and other specimens potentially infected or infested which such human pathogens, and including laboratories which handle infected or infested, or potentially infected or infested, indigenous vectors of human pathogens, or exotic vector species irrespective of whether they are infected or infested."

18. Section 3 of the NHA Regulations 2003 provides that-

No person shall:

"(a) acquire, receive or import human pathogens; or

(b) *handle, manipulate, maintain, store, culture or in any way process, issue or in any way dispose of human pathogens so acquired, received, or imported, unless the person -*

(i) is registered with the department as a microbiological laboratory in terms of regulation 6(1)(a)(ii);

(ii) is assigned a BSL code in terms of regulation 6(1)(a)(iii)

(iii) is in possession of permit issued in terms of regulation 6(1)(b) to conduct the activities referred to in paragraph (a) or (b) in respect of human pathogens in accordance with the BSL code of the laboratory indicated in the permit; and

(iv) conduct an activity referred to in (a) or (b) as the case may be, in accordance with the provisions of these regulations and the standards."

19. The NDOH contends that the Applicant, on his own case, he is not competent nor permitted to request the relief sought referred to in paragraph 2 above. Accordingly, the NDOH contends that the Applicant on, at least, two grounds would be disqualified to request the relief in his Notice of Motion.

19.1. Firstly, in paragraph 2 of the founding affidavit the Applicant merely describes himself as "an adult male, Ricardo Mazman who holds an MA International Politics obtained at the University of Leicester in the UK. He specialises in post-cold World Order, International Security intelligence and

Security & US Foreign Policy". Thus, on his own description he would not qualify.

19.2. Secondly, his founding affidavit contains no positive or other averments which indicates or show that he, was registered as a microbiological laboratory with the Department, as contemplated in section 3(a) of the NHA Regulations. In addition, it not suggested by the Applicant that he is in the process or doing so. In any event, even if he was (which is denied) his expertise or lack thereof would still preclude him from requesting the relief sought.

20. In all the circumstances, the NDOH the contends that the Applicant's relief sought in paragraph 2 of his Notice of Motion appears to be unlawful, in that, it is contrary to the requirements of the NHA Regulations.

21. In the premises his application fell to be dismissed with costs. Should the Court nevertheless consider his application, then the NDOH contends that his applications must be dismissed on the grounds set out, below.

THE SECOND POINT IN LIMINE

Whether the Applicant has made out a case for urgency in his affidavit

22. In paragraph 1 of the Notice of Motion (read with paragraphs 10 to 24 of the founding affidavit) the Applicant prays for an order along the following lines:

> *"That this application is heard as a matter of urgency and that the Applicant's failure to comply with the time limits imposed by the Rules of this Honourable Court be condoned in terms of Rule 6(12)."*

23. In support of his urgent application the Applicant in paragraphs 10 to 21 of the founding affidavit set out the purported grounds which he asserted renders this matter urgent. To avoid unnecessary repetition, herein, I will only refer some of the Applicant's averments set out in his founding affidavit, below. In doing so, I do not thereby concede and/or acknowledge the correctness or otherwise of his averments set out below (or those expressly excluded, herein). I turn to the Applicant's averments, below:

> *"I respectfully submit that this matter cannot wait to be dealt with in the ordinary course, as such, I ask the Court to dispense with the forms and service provided for in the Rules and in my non-adherence with the normal rules procedure as set out in Rule 6.*
>
> *This matter is of such urgency that it simply cannot wait for the normal procedure to be complied with. I respectfully submit that this application should be heard other than in the normal course, otherwise the relief which we seek will be rendered ineffective.*
>
> *Currently the entire state is under lockdown level 1, which is a serious violation of the citizens' fundamental rights. To date, the Minister of Health has uttered and there are circulating discussions that the lockdown*

measures will be tightened which begs for those measures to be scrutinised.

There is a massive nationwide rollout of a vaccine claimed by the Respondent that must be used in the prevention of being infected by the alleged virus.
This vaccine rollout has begun in other countries and it has resulted in deaths and vaccine injuries.
The National disaster has been declared and is ongoing for almost a year affecting the entire nation with dire consequences.

The outcome of the order could very well mean a quick recovery to normal circumstances for the entire nation.
In South Africa, there is vast unemployment and poverty. As such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste.

...And each week of continual lockdown will, in the long run, cause more loss of lives than the virus itself."

24. The Respondents (CoGTA and NDOH) contend that the Applicant's application to I to be dismissed, in that, he failed to, amongst other factors, show that he will not otherwise be afforded substantial redress at a hearing in due course. The Respondents (CoGTA and NDOH) contend that the Applicant *faintly* asserted in paragraph 11, without more, that *"this matter is of such urgency that it simply cannot wait for the normal procedures to be complied with"*. Apart from the latter statement, no material facts or circumstances are advanced in his founding

affidavit wherein he claims that he will not be afforded substantial redress at a hearing in due course.

25. The Respondents contend that the only reasonable inference which could be drawn from the lack of any particularity or facts, in the founding affidavit, about the substantial redress, stems from the fact that the Applicant, in essence, is seeking *final* relief in this matter. In other words, the granting of an interdict, in the manner framed by the Applicant, would be dispositive of any matter between the parties. This is so because the Applicant is not seeking the relief in paragraph 2 of the Notice of Motion *pending* the resolution of the main (or other) proceedings.

26. Thus, the Applicant in paragraph 2, *supra*, is seeking final relief or relief with final effect. In any event, the Applicant is not suggesting that he is seeking (through the interdict) any "freezing" of existing rights which are threatened by irreparable harm.

27. The above, notwithstanding, the Respondents contend that the urgency in this matter appears to be self-created. Although it lacks the requisite factors to show urgency, the only allegation in the founding affidavit which contains some '*elements*' of alleged urgency appears in paragraph 20, where he alleged that:

> "*In South Africa, there is vast unemployment and poverty as such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste*".

28. The Respondents contend that the above allegation should be read against, amongst others, the allegations contained in paragraph 62 where the Applicant asserted that he *has a reasonable suspicion about the existence of SARS-CoV-2 virus*'. On the Applicant's version, if the SARS COV 2-virus does not exist then, amongst other restrictions, the lockdown restrictions are unlawful or irregular and as such violates his fundamental rights.

29. The Respondents contend that the Applicant commits an elementary error, in that, no right is absolute and may in appropriate circumstances be limited in terms of section 36 of the Constitution.

30. In any event, the Respondents contend that there appears to be a disconnect, on the one hand between the claim for urgency and on the other, the allegations in paragraph 10 to 21 of the founding affidavit in support thereof. Put differently, the allegations in the founding affidavit do not support the Applicant's cause of action

31. Nevertheless, the Respondents contend that if the Applicant failed to comply with the requirements of section 3 of the NHA Regulations then this Court may, in any event, not exercise its discretion in favour of the Applicant. In addition, the relief sought contains the risk that the Court, in granting the relief sought, might thereby enters, into the exclusive domain of the Executive or organs of state (in circumstances where no case is made out that the Executive or the organ of state commit an irregularity or violate the Constitution.)

32 I turn to the self-created urgency which emerge from the allegations in paragraphs 51 to 57 of the founding affidavit. Due to the repetition of the latter allegations, I only restate the gist of the allegations set out in the founding affidavit, below:

32.1 The Applicant knew about the National Lockdown restrictions, at least since 15 March 2020.

32.2. On the Applicant's own version, he knew or reasonable should have known that in or during January 2020 the world became aware of the so-called Coronavirus.

32.3. He knew or reasonably should have learnt about the vaccination rollout programs in this country, since March 2021 or earlier.

32.4. In addition, the reported case of infected persons in the country are in the public domain, on a daily or weekly basis.

32.5. The instances when the President address the citizens of the country about restrictions is, similarly, in the public domain. The President mostly recently in or during the beginning of April 2021 address the citizens of the country.

33. Despite all the above information at his disposal, at the time, the Applicant now wishes to leapfrog the court procedures and insist that he must be heard on an urgent basis, whilst no discernable case is made out in his founding affidavit.

34. More importantly, the Applicant rushes to Court, despite, the fact that he on his own case has an alternative remedy. This is evident from paragraph 132 of his affidavit that *"the applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here."*

35. The Applicant put up no grounds or facts why he omitted to invoke his right to access to information. The Respondents contend that it is, in any event, not suggested by the Applicant in his affidavit that he in or during March or April 2021 submitted a request for information and his request was declined by the Respondents.

36. Accordingly, the Respondents contend that it is plain, that on his own version, the Applicant has an alternative remedy which he should have invoked before launching this urgent application.

37. In the circumstances, the Respondents contend that the Applicant's failure to do so, should be regarded as an abuse of the Court process. This is so because, not only is he requesting relief with far reaching consequences for how the Executive and organs of state should positively comply with their constitutional obligations

(by protecting the population and the health resources) but the net effect of his relief might very well place the lives of millions at risk. Because the Applicant establishes no factual basis how he will come with the provisions of the NHA Regulations. Accordingly, the handover the physical virus to him, as requested, poses serious dangers for the effective protections of the population.

38. In the premises the Respondents contend that this Applicant's application fell to be dismissed on this ground also. Should the Court, nevertheless, be amenable to consider his application (which ought to be rejected) then the Respondents contend his application should be dismiss on the ground set out below.

THE THIRD POINT IN LIMINE

39. The Respondent contends that the Applicant's application for a mandatory interdict is not an *ordinary interdict*. The Respondents contend that it is common cause that the Applicant is seeking a mandatory interdict against the Executive and organs of state (first, second and fourth Respondents).

40. The Respondents contend that in the absence of *male fides* on the part of the Reespondents, the Court does not readily grant such an interdict. Moreover, the Respondents contend that the Court only grants an interdict, such as that sought by the Applicant in the present instance upon a strong case being made out for

that relief. The Applicant failed to make out such a **string case** and for the reason(s) referred to above and hereunder.

41. In terms of the Notice of Motion (read with paragraphs 129 to 141) of the founding affidavit the Applicant seeks the following relief:

> *"That the Respondents "produce" the isolated and purified physical SARS-COV-2 virus (not a culture isolate of any mixture within which the supposed virus is, nor a photograph or the RNA- sequence only) to the Applicant at a place in terms of their security measures of choice, within 7 days."*

42. The Respondents contend that in terms of paragraph 2 of his Notice of Motion, if the relief is granted, they would be obliged to perform a positive act, *viz.*: to "produce" the isolated and purified SARS-COV-2 virus to the Applicant" even if the Applicant failed to comply with the provisions of section 3 of the NHA Regulations. The Respondent contend that since the Applicant has no legal basis to request the relief, this should be end of the matter. However, for consistency I, nevertheless, deal with the grounds advance in the founding affidavit, below.

Whether the Applicant has made out a prima facie case in the founding affidavit

Ad paragraphs 129 to 141 of the founding affidavit

43. The Applicant in his founding affidavit sets out the alleged basis for the relief sought in the Notice of Motion. The Applicant in paragraph 129(a) to (i) to thereof, allegec that he (and the public have the following undisputed *prima facie* rights, viz.:

Prima facie right

43.1. **Ad paragraph 129**

"The Applicant and the public have the following undisputable prima facie right to (a) to human dignity; (b) life; (c) bodily and psychological integrity; (d) to make decisions concerning the security and control over their body; (e) freedom to practice their trade, occupation and professional; (f) not to be treated in a cruel, inhumane and degrading way; (g) the right to have access to health care services; (h) freedom to movement; and (i) just administration."

43.2. **Ad paragraph 130**

"Not to have limitations imposed on their rights entrenching the Bill of Rights and if so that it must be restrictively interpreted, so as to impose minimum limitation on those rights, in accordance with section 36 of the Constitution."

43.3. **Ad paragraph 131**

"*That the Bill of Rights be applied to all law, including the DMA.*"

43.4. **Ad paragraph 132**

"*The Applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here.*"

43.5. **Ad paragraph 133**

"*From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of, have at least prima facie right.*"

44. The Respondents contend that there appears to be a disconnect between the relief sought in paragraph 2 of the Notice of Motion and the fundamental rights claimed in the paragraphs set out in paragraphs 129 to 133, *supra*. Because the Applicant failed to show which, if any of the rights referred to above, is/are threatened by an impending or imminent irreparable harm. In addition, the Applicant failed whether any member of the public (which he claims to represent) right(s) was/were threatened by an impending or imminent irreparable.

45. The Respondent contend that on the Applicant's case the prima facie right which he must establish is not merely a catalogue of rights, as envisage in paragraph 129 (a) to (i), *supra*, in order, for the Court to grant an order in terms whereof the Respondents would be compelled "*to produce of the isolated and purified physical*

SARS-COV-2 virus." The Respondents contend that the prima facie right must be a right to which, if not protected by an interdict, irreparable harm would ensue. I have already pointed out in paragraph 44, *supra*, no such case is made out on the papers by the Applicant.

46. In any event, the Respondents contend that the allegations contained, *inter alia*, in paragraphs 129 (read with 134 to 138) of the founding affidavit failed to demonstrate a *prima facie* right that is threatened by an impending or imminent irreparable harm. Alternatively, the above facts in the founding affidavit failed to demonstrate a prima facie case for the relief sought in the Notice of Motion.

47. Similarly, the facts set out in, *inter alia*, paragraphs 129 (read with paragraph 134 to 138) of the founding affidavit failed to demonstrate a clear right that is threatened by an impending or imminent irreparable harm.

***Reasonable** apprehension of **irreparable** and imminent harm*

48. In paragraph 134 the Applicant in support of the assertion of reasonable apprehension of irreparable and imminent harm alleged that:

48.1. <u>**At paragraph 134**</u>

> "*I submit that harm is apparent in this instance, as set out throughout this founding affidavit.*"

48.2. **Ad paragraph 135**

"Without the relief sought to prevent further harm the Applicant and the rest of South Africa will continue to suffer irreparable financial, material, physical and psychological harm."

48.3. **Ad paragraph 138**

"From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of the existence of the reasonable apprehension of irreparable and imminent harm."

49. The Respondents contend that there is another difficulty with the Applicant's assertion that he has prima facie right to an interim urgent interdict against the Respondents, is this: He is seeking the interim interdict ostensibly to protect the catalogue of rights set out in paragraph 129(a) to (l) of the founding affidavit. However, the difficulty with the Applicant's case is that he established no facts or circumstances how the "production" of the isolated and purified physical SARS-COV-2 virus would protect those fundamental rights. To this end he commits an elementary error by not establishing facts or circumstances to support his cause of action.

50. What is, however, plain from paragraph 136 to 137 of the founding affidavit is that he is, essentially, complaining about the lockdown restrictions. If this is the case, then, the Respondents contend no case is made out for an attack on those restrictions. Put more accurately, no case is made out to show the declaration of a national state of disaster (RM7) and the subsequent regulations ad directive were are unconstitutional. Because it is not suggested in his founding affidavit (in addition to the interdict) that he complains that the lockdown restrictions are unlawful or otherwise offend the provisions of the Constitution.

51 The allegations on paragraphs 136 to 137 reads:

52. **Ad paragraph 136**

"The public further stands severely prejudiced with the arbitrary infringements of their fundamental rights should the Respondents continue to ignore their rights."

53. **Ad paragraph 137**

"At the current rate, the South African Government will run out of money to pay the salaries of state employees, it is submitted that if South Africa's present economically restricted lockdown measures are not discontinued immediately, the Respondents may cause 29 times more deaths with the measures aimed to prevent the spread than the virus itself."

54. In all the circumstances the Respondents contend that there is misalignment between the relief sought for an interdict and source of the harm.

55. The Respondents further contend that it is plain from the structure of the Notice of Motion, the Applicant seems to pray for final relief or a mandatory interdict with final effect. This is evident from prayers 1 and 2 of the Notice of Motion. It is also evidence from allegations in paragraphs 129 to 141 of the founding affidavit. Put differently, the Applicant is not seeking a provisional order which is designed to protect his rights pending an (the main) application to be brought to establish his rights. That is the purpose of the interim interdict is to freeze the position until the Courts decides where his rights lie

56. In the premises, the Respondents contend that the Applicant's application fell to be dismissed with costs.

Hearsay evidence

57. The Respondents contend that the Applicant's application is largely, if not, exclusively founded on statements and documents, the authenticity of which are disputed. Notwithstanding the dispute about the authenticity of those documents, the Respondents contend that a large, if not, the entire case in support of the relief sought under paragraph 2 of the Notice of Motion, appears to consist of hearsay evidence.

58. I will, accordingly, not deal with those individual paragraphs and documents which offend the rules of evidence and the Uniform Rules of Court in this affidavit. The Respondents intend to launch an interlocutory application in this regard. Accordingly, my responses below will be confined to those allegations which invite a scientific response.

59. I will, similarly, not expressly deal with those averments which relates to CoGTA. In this regard, a supporting affidavit, explanatory and confirmatory affidavits will be deposed to by the relevant employees.

THE AVERMENTS CONTAINED IN THE FOUNDING AFFIDAVIT

60. Ad paragraphs 1 to 2 thereof:

61. Denied.

61.1. As is evident from paragraph 2 of the founding affidavit, the Applicant's expertise falls within the domain of 'social science'. In particular, he appears to specialise in, amongst others, Post-cold war world order, international security, intelligence, and US foreign policy.

61.2. Whereas the subject matter of SARS-COV2 seems to fall within the broader branches of microbiology, virology, and epidemiology. There is no evidence that the Applicant is a specialist or had otherwise gain expert knowledge in

any of the branches of science. To this end the NDOH dispute the Applicant's claim about his personal knowledge and his expertise in the relevant branch of science.

61.3. I am advised that the documentary material attached to his founding affidavit constitutes hearsay evidence. The NDOH denies that it consented to the submission or use of those documents.

61.4. Save as aforesaid, the balance of the allegations contained in this paragraph are denied.

62. **Ad paragraphs 3 to 5 thereof:**

The allegations contained in these paragraphs are noted but not disputed.

63. **Ad paragraphs 6 to 9 thereof:**

64. Denied.

64.1. The NDOH denies that this matter is urgent. The NDOH repeats the submissions set out in paragraphs 22 to 38, *supra*.

64.2. The NDOH denies that the Applicant is entitled to the relief sought in paragraph 7 (read with paragraph 2 of his Notice of Motion). The grounds

upon which the NDOH claims that the Applicant is not entitled to the relief sought are more fully traverse in paragraphs 13 to 21 and 39 to 56, *supra*.

64.3. In particular, the NDOH denies that the Applicant is registered as a microbiological laboratory. The NDOH avers that there are minimum requirements which must be met before a person or laboratory can be registered. For ease of reference, I attached hereto a copy of the minimum requirements for laboratories, marked ("**AP1**")

64.4. When a person/laboratory is so registered the NDOH issued a permit to the laboratory. I also attached hereto, a flow chart of how a permit is obtained, marked ("**AP2**").

64.5. Save as aforesaid the balance of the averments is denied.

65. **Ad paragraphs 10 to 24 thereof:**

66. Denied.

66.1. The NDOH repeat the submissions in paragraphs 25 to 28, *supra*.

67. **Ad paragraphs 25 to 31 thereof:**

The allegations herein are noted, but not admitted.

68. **Ad paragraph 32 thereof:**

The allegations herein are noted.

69. **Ad paragraph 33 thereof:**

70. Denied.

71. The NDOH avers that the allegations in this paragraph amounts to a statement which are not supported by any material facts or circumstances.

72. In any event, there are no corroborating evidence in support of the Applicant's claim that he acts for or in the interests of the public.

73. **Ad paragraphs 34 to 39 thereof:**

The allegations contained herein are noted, but not admitted.

74. **Ad paragraphs 40 to 44 (read with paragraphs 46, 47, 48 and 49) thereof.**

75. Denied.

76. The NDOH avers that the allegations contained in the above paragraphs are argumentative and fell to be struck from the affidavit.

77. In any event, the NDOH denies that the Applicant could have any personal knowledge in respect of the matters set out in paragraphs 40 to 42, above.

78. **Ad paragraphs 45 thereof:**

79. Denied.

79.1. The NDOH dispute the basis upon which the Applicant advance the submission in this paragraph.

79.2. It is common cause that he is not qualified as an expert or otherwise expertise in the fields of microbiology or epidemiology.

79.3. Despite the patent lack of the requisite expertise the Applicant seeks to venture deep into branches of science, without the benefit of a qualified expert.

79.4. More importantly, despite the grave knowledge deficits, the Applicant persist with this application on an urgent basis.

79.5. The NDOH avers that the Applicant does not only (through this application) place the Court a great disadvantage, in that, the Court is not qualified nor possess the requisite scientific knowledge. But, in doing so, I am advised, he also contravene the Rules of this Court, in particular Rule 36(9).

80. **Ad paragraph 50 thereof:**

The allegations contained herein are noted but not admitted.

81. **Ad paragraphs 51 to 60 thereof:**

The NDOH avers that these averments are dealt with in the supporting affidavit deposed to by Deputy-Director General from CoGTA.

82. **Ad paragraphs 61 to 63 thereof:**

83. The NDOH avers that in lockdown restrictions were lawfully impose in the context of the prevailing COVID 19 pandemic to, amongst others, to save lives and control the rapid spread of infections in the country.

83.1. The NDOH avers that assertions by the Applicant that "some disruption is lives may only be necessary if we are assured beyond doubt of the existence of the SARS-COV2, appears to be baseless.

83.2. It is not plain what is the source of the opinion advanced in paragraph 61 of the founding affidavit, in particular, his claim that such disruptions depend on an assurance beyond doubt. In addition, the Applicant failed to provide any qualified expert opinion or any peer review which supports his claim.

83.3. In any event, he is not qualified as an expert in the relevant field, it is accordingly unclear on what basis if any, he advanced his findings.

83.4. Save as aforesaid the balance of the allegations is denied.

84. **Ad paragraphs 84 to 71 thereof:**

85. Denied.

86. In amplification of the aforesaid denial the NDOH avers as follows:

86.1. Protocols for isolation and culturing of "physical virus" are now well established. There are many clear review manuscripts to support this statement. It is not done routinely for diagnosis, as it will be impractical and will not be conducive to patient management.

86.2. The nature of the SARS COV-2 has been established not only through RT-PCR in sequencing but also in electron microscopy.

86.3. I confirm that this has been achieved by the NICD where I carry out my principal duties. I refer below to certain criteria/methodologies use, viz. Koch and the Bradford-Hill criteria/methodologies.

The Koch criteria

86.4. Koch postulates that the following needs to be satisfied to determine causation of a disease:

(a) the organisms must be regularly associated with the disease and its characteristic lesions.

(b) the organisms must be regularly associated with the disease host and grown in culture.

(c) the disease must be reproduced when a pure culture of the organism is introduced into a healthy susceptible host.

(d) the same organisms must be re-isolated from the experimentally infected host.

86.5. There have been significant advances with new diagnostic methodologies and sequencing, and further associations are made:

86.5.1. A nucleic acid sequencing belonging to a putative pathogen should be present in most cases of an infectious disease. Microbial nucleic acids should be found preferentially in those organs or gross anatomic sites known to be diseased and not in those organs that lack pathology. Fewer, or no, copy numbers of

pathogens-associated nucleic acid sequences should occur in hosts or tissues without disease. With resolution of disease, the copy number of pathogen-associated nucleic acid sequence should decrease or become undetectable. With clinical relapse, the opposite should occur.

86.5.2. When sequence detection predates disease, or sequence copy number correlates with severity of disease or pathology, the sequence-disease association is more likely to be a causal relationship.

86.6. The nature of the micro-organism inferred from the available sequence should be consistent with the known biological characteristic of that group or organisms.

86.7. Tissue-sequence correlates should be sought at the cellular level: efforts should be made to demonstrate specific in situ hybridization of microbial sequence to areas of tissue pathology and to visible micro-organisms or to areas where micro-organisms are presumed to be located. These sequence base forms with evidence for microbial causation should be reproducible

The Bradford-Hill criteria

86.8. Causation may also be determined by the Bradford-Hill criteria (Koch postulates are not possible for all pathogens):

86.9. Strength (effect size): the association between SARS COV-2 infections and COVID-19 presentation is strong.

86.10. Consistency (reproducibility): consistent findings observed by persons in different places with different samples strengthens the likelihood of an effect. This has been done for SARS-COV-2 and COVID-19 in many ways by many different groups around the world.

86.11. Specificity: causation is likely if there is a very specific population at a specific site and disease with no other likely explanation. The more specific an association between a factor and an effect is, the bigger the probability of a causal relationship. These criteria may be a bit problematic for COVID-19.

86.12. I think one supporting evidence here is that one Island that is free from COVID-19 and no SARS COV-2 detected.

86.13. Temporality: the effect is to occur after the cause (and if there is an expected delay between the cause and the expected effect, then the effect must occur after the delay. COVID-19 was not reported before the emergence of SARS COV-2.

86.14 Biological gradient (dose-response relationship): greater exposure should generally lead to greater incidents of the effect.

86.15. I think the effect of lockdown measures etc. can be named here, i.e. reduced risk, reduced cases, this is but one example there are many other exemples which could be identified.

86.16. Plausibility: a plausible mechanism between cause and effect is helpful (but Bradford-Hill noted that knowledge of the mechanisms is limited by current knowledge).

86.17. We know from SARS and MERS that zoonotic coronavirus is involved in respiratory illness.

86.18. Coherence: coherence between epidemiological and laboratory findings increased the likelihood of an effect. This has also been found now many times.

86.19. Experiment: occasionally it is possible to appeal to experimental evidence. This is where the animal models can come in. For ease of reference, I attached a recent article which comments on: Animal models for SARS-Cov2/COVID 19 research- A commentary, marked ("NM3")

86.20. Analogy: the use of analogies or similarities between the observed association and any other associations. SARS and MERS sets the precedent for zoonotic coronaviruses emerging to cause respiratory diseases in humans, although no difference in epidemiology/clinical spectrum

87. **Ad paragraphs 72 to 128 thereof:**

88. The NDOH avers that the allegations (including the annexures thereto) constitute hearsay evidence and as such fell to be strike out from this affidavit.

89. The NDOH further avers that the complaint about the hearsay evidence forms part of an interlocutory application (which will be heard with the application).

90. Save as aforesaid the allegations contained in paragraphs 72 to 79 are denied, as if specifically, traverse, herein.

91. **Ad paragraphs 129 to 141 thereof:**

92. Denied.

93. The NDOH repeats the submission set out in paragraphs 42 to 56.

94. Save as aforesaid the balance of the averments contained in paragraphs 129 to 141 are denies, as if, specifically, traverse, herein.

95. **Ad paragraphs 134 to 138:**

The allegations contained herein are denied.

96 **Ad paragraph 142 thereof:**

97. Denied.

97.1. The NDOH avers that the Applicant is not permitted and/or competent to received, and/or handle and/or otherwise deal with this or any other infectious virus.

97.2. The NDOH repeals the grounds set out in paragraphs 13 to 21, **supra**, in support of the aforesaid averments.

97.3. Save as aforesaid the balance of the averments is denied.

98. **Ad paragraph 143 thereof:**

99. Denied.

100. The NDOH avers that on the Applicant's own case, he established in paragraph 132 that he does have an alternative remedy.

101. In any event, the NDOH avers that the must first overcome the hurdles referred to in paragraphs 13 to 21, supra; before he could possibly assert any claim to the existence of a right.

102 Save as aforesaid the balance of the averments is denied.

Professor Adrian J Puren

I certify that:-

The deponent signed this affidavit and swore, and acknowledged that he/she: -

a) knew and understood the contents thereof;

b) had no objection to taking the oath; and,

c) considered the oath to be binding on his/her conscience.

The deponent then uttered the words, "*I swear that the contents of this declaration are true, so help me God*"

COMMISSIONER OF OATHS

Full names:
Designation and area:
Street address:

SOUTH AFRICAN POLICE SERVICE
25 MAY 2021
CSC

"AP1"

Annexure A

health
Department:
Health
REPUBLIC OF SOUTH AFRICA

Private Bag X828, **PRETORIA**, 0001 Civitas Building, c/o **Struben and** Thabo Sehume Streets
Enquiries: send to emails: registrationlaboratories@health.gov.za & DOH.COVID19@nhls.ac.za

MINIMUM REQUIREMENTS FOR LABORATORIES CONDUCTING SARS CoV-2 DIAGNOSTIC TESTING

AUGUST 2020

Introduction

Diagnostic Laboratories in South Africa are required to comply with a number of legislative requirements in order to perform diagnostic testing for human subjects. A set of minimum requirements were drafted for laboratories who wish to conduct SARS-CoV-2 diagnostic testing in consultation with the National Health Laboratory Service (NHLS), including the National Institute for Communicable Diseases (NICD) and National Institute for Occupational Health (NIOH) for the National Department of Health (NDoH). The minimum requirements checklist takes into consideration the legislative requirements as set out by the Department of Health (DOH), the Department of Employment and Labour (DEL), the Council for the Non-Proliferation of Weapons of Mass Destruction (NPC) and the Health Professionals Council of South Africa (HPCSA).

One of the major regulations relevant to laboratories that wish to embark on clinical diagnostic testing, is Regulation 178. This Regulation stipulates that all laboratories that acquire, receive or import human pathogens; or handle, manipulate, maintain, store, culture or in any way process, issue and/or dispose of human pathogens, must be in possession of a permit issued by the Department of Health (DoH), authorizing the laboratory to conduct the work as described above.

Scope

This checklist is relevant to all South African laboratories, in both the public and in the private sector, that perform diagnostic testing in response to the current SARS-CoV-2 pandemic.

Instructions to Laboratories:

1. *All laboratories intending to do diagnostic SARS COV-2 testing should complete the checklist; this checklist represents the minimum requirements to be met by laboratories, that will be allowed to conduct diagnostic testing for SARS COV-2;*
2. *First step is to ensure the laboratories are compliant with the requirements described in the checklist (Annexure A);*
3. *Complete the checklist providing descriptions of compliance in the "comments" section, and return the completed checklist to registrationlaboratories@health.gov.za and copy the DOH.COVID19@nhls.ac.za within seven (7) working days of receiving the checklist;*
4. *Should you fail to return the minimum checklist within the allotted time, your laboratory will be removed from the testing & reporting register.*

5. Regardless of the information presented in the initial checklist, the laboratory will be afforded a period of one (1) calendar month to achieve compliance with the minimum requirements listed.
6. If compliant, an application form for authorisation to handle the SARS CoV-2 will be sent to the laboratory/facility. If non-compliant after this one month period, the laboratory may request an extension of an additional 1 month, but may not provide SARS-CoV-2 testing until compliance is achieved. Laboratories that still fail to show compliance will be required to cease with their SARS-CoV-2 testing.
7. The laboratory/facility will be allowed to report results and will be issued with a permit (valid for one year), to conduct SARS-CoV-2 diagnostic testing.

Conclusion

Patient specimen testing is a highly valued capacity for South Africa during this pandemic and these minimum requirements are not intended to be restrictive or hindering on the country's response efforts to this global pandemic. This unique and previously uncharted territory has highlighted opportunities for the enhancement and strengthening of biosafety and biosecurity regulations to better serve the country and its people. This ultimately brings us closer to 2021 International Health Regulations (IHR) requirements and will ultimately ensure that the diagnostic results are of the highest standard. It also paves a way to a legally compliant medical laboratory sector and greater government oversight regarding patient testing and pathogen security.

Annexure A: Minimum requirements to be met by laboratories conducting SARS-CoV-2 testing

1.	Personnel	Requirement	Yes/No	Comments
1.1	• A minimum of one Health Professions Council of South Africa (HPCSA) registered person working in the lab • Registration with the HPCSA in any medical laboratory discipline e.g. Microbiology, Virology, Chemical Pathology, Haematology, Cytology etc. • Provide registration numbers for people working in the laboratory/facility.	Person must have physical presence in the lab – There has to be a physical presence of an HPCSA registered person in the testing laboratory.		
2.	Quality requirements			
2.1	Participate in External Quality Assessment/ Proficiency Testing (PT) program/s for existing test(s) if laboratory is already participating in PT for SARS-CoV-2 please provide proof)	Once approved – register for SARS-CoV-2 testing in first month		
2.2	Must undergo a quality assurance audit	Applicants will be required to provide evidence of a quality management system in effect at the laboratory		
2.2.1	Proof of accreditation if laboratory is accredited	NOTE: Even though accreditation is not a requirement it will guide the audit process mentioned above		
2.2.2	Provide proof that the laboratory was testing for other coronaviruses before March 2020.	Example of a test results showing method excluding personal patient identifiers and information		
3.	Occupational Health and Safety requirements			

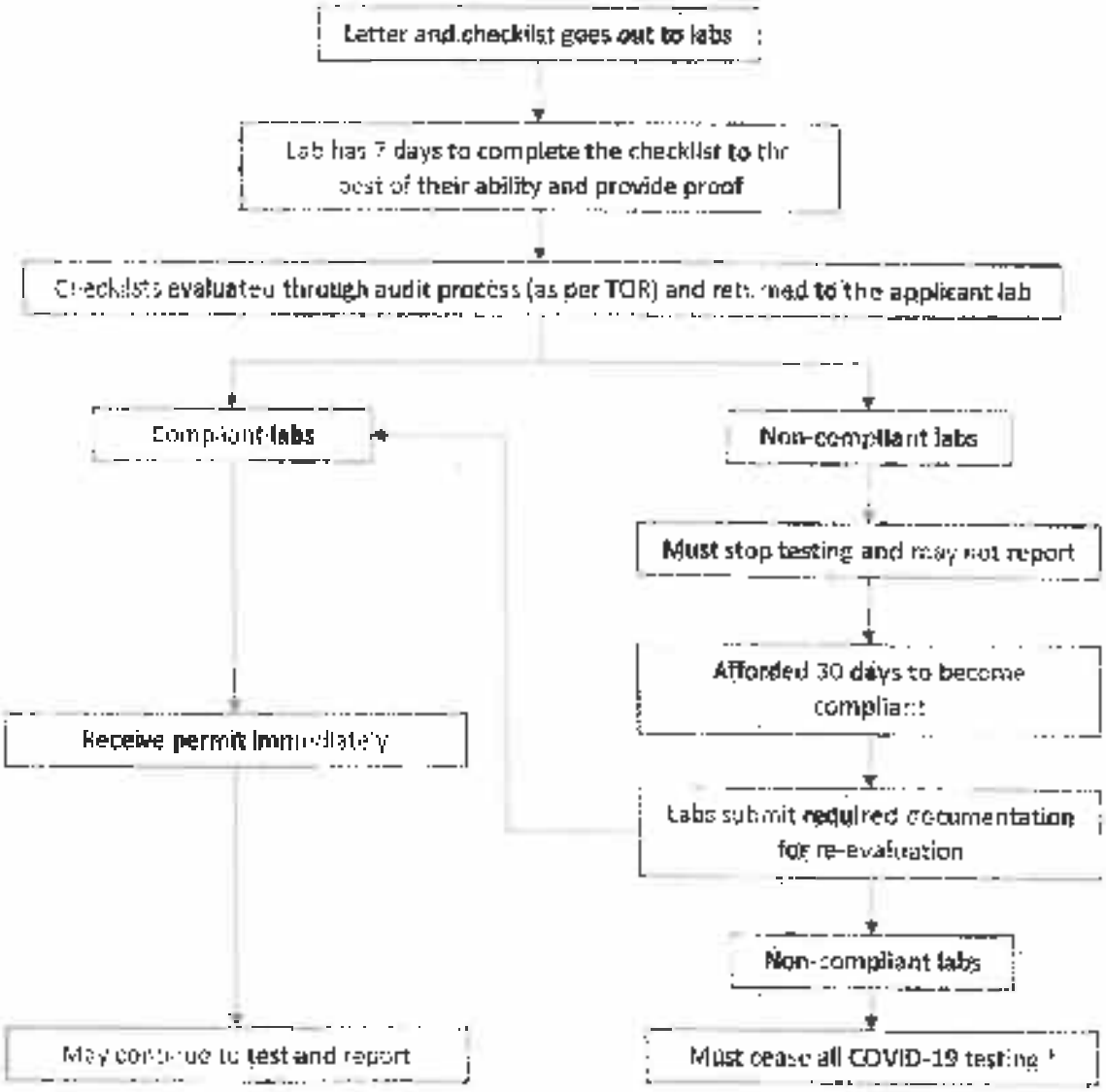
3.1	Must have a valid documented risk assessment that includes but is not limited to biological, chemical, physical and ergonomic risks	Include emergency procedures, training decontamination, Personal Protective Equipment (PPE), Occupational Health and Safety Policies		
3.2	The risk assessment must include control measures to be implemented to minimise the risks identified.	All control measures to be considered, engineering, administrative and PPE		
3.3	A record of control measures implemented and where relevant including any maintenance validation records to be provided	Risk assessment control measure e.g. Equipment service verification/validation		
3.4	If the employer has assigned any duties in terms of the Occupation Health & Safety (OHS) Act, a copy of the assignment in terms of Section 16.2 of the OHS Act to be provided.	E.g. Assignment letter describing the delegation of responsibilities for occupational health and employee safety.		
3.5	Provide proof of a process for the appointment of health and safety representative(s) HSR and the appointment thereof. Provide evidence that health and safety committees have been established and meetings are held, where applicable (number of HSRs dependent on the number of employees i.e. 1 HSR per < 50 laboratory employees)	Establish a Committee if more than one HSR		
3.6	Emergency procedures in place	Documented procedures		
3.7	Access control to facility	Photograph of the facility main lab access signage		
3.8	Provide details of the manager appointed as the COVID-19 Compliance Officer	Appointment letter		
4.	**Requirements for transport of dangerous goods**			
4.1	The vehicle on registration should be registered as a transporter of "Dangerous Goods". Vehicles should be appropriately marked and monitored by tracking devices	Registration – license disc		

4.2	Licensed driver trained to transport UN3373 Category B biological substances by training organisation that is registered with the Transport & Education Training Authority (TETA)	Public Drivers Permit Certificate with TETA full registration number		
5.	**Waste Management**			
5.1	Provide details of registration of either the Provincial or National Waste Information System in terms of the National Waste Information Regulations as a generator of waste	Copy of registration Online process put link		
5.2	Provide proof of an agreement between the facility and a registered health care risk waste management service provider for the removal, treatment and/ or disposal of chemical waste.	PO for company to safely remove waste.		
6.	**Laboratory registrations and permits**			
6.1	Laboratory is in possession of a permit issued in terms of Regulation 178 to conduct the activities as described in Regulation 178 in respect of human pathogens in accordance with the Biosafety Level (BSL) code of the laboratory indicated on the permit; (i.e. BSL2)	Regulation 178 Permit or temporary approval		
6.2	Laboratory issued with a permit from the National Department of Health as a Microbiological Laboratory that handles SARS-CoV-2 (excluding normal labs that test for other coronaviruses) – relevant for all labs that do not regularly test for coronaviruses)	Expiry date of permit – valid for one year from date of issue of permit and will then be reviewed		
7.	**Information Technology for Reporting Data to NICD**			
7.1	Laboratory Information Management System (LIMS) in place to submit data to NICD/NHLS/NDOH	Access to a LIS system to submit data		
7.2	Able to submit result data (negative and positive) to SOAP web. service	All results must ultimately be reported to the NICD as SARS-CoV-2 is a notifiable medical condition. For more information on the process please see:		

		https://www.niod.ac.za/nmc-overview/		
7.3	Data submitted per XML specification			
7.4	Quality data in line with requirements as stipulated in NMC regulations	Must have quality checks in place		

"AP2"

Annex B – Process flow for obtaining a Permit to conduct SARS-CoV-2 diagnostic testing



** extra month extension may be granted at the discretion of the evaluator – i.e. if there is a legitimate reason that cannot be met in the allotted first month, possibly outside the control of the lab e.g. rebranding and recruitment of an HPCSA registered person*

This would only be based on exceptional circumstances if there is a legitimate reason for the extra time, AND on condition that the lab does not conduct testing until the permit is in hand

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SABELO NYABONGA SANDILE BUTHELEZI

do hereby make oath and say:

455

1. I am an adult male and employed as the Director-General in the office of the Fourth Respondent.

2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent.

3. The facts contained herein are within my personal knowledge, and are both true and correct, unless the context indicates otherwise.

4. I have read the main answering affidavit deposed to by Professor Adrian J Puren on behalf of the Fourth Respondent, the supporting affidavit on behalf of CoGTA and/or the National Disaster Management Centre and I confirm that the facts set out therein, insofar as they pertain to the Fourth Respondent and such facts fall within my knowledge or are based on institutional knowledge of the Fourth Respondent gained in the course of my work as the Director-General and from documents now under my control, unless the context indicates otherwise, and are true and correct.

Sabelo Siyabonga Sandile Buthelezi

I certify that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice R1648 of 19 August 1977, as amended, have been complied with

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2021 -05- 25
DIVISIONAL VISIBLE POLICING
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

EXPLANATORY AFFIDAVIT

I, the undersigned,

PROFESSOR KOLEKA MLISANA

do hereby make oath and say:

1. I am an adult female. The principal place where I carry out my duties is at 1 Modderfontein Road, Sandringham, Johannesburg.

2. I am duly authorised to depose to this affidavit on behalf of the Government Covid 19 Advisory Committee.

3. The facts set out in this affidavit are within my personal knowledge and are derived from documents and information under my control, unless the context indicates otherwise and are true.

4. I have read the affidavits of the Applicant, including the answering affidavit of Professor Adrian J Puren and the supporting affidavits thereto and I confirm the correctness of the contents thereof insofar as it relates to the recommendations of the Ministerial Advisory Committee on COVID-19.

5. The purpose of this affidavit is to explain the position of Professor Salim Abdool Karim the Third Respondent, who is cited in his official capacity as the head of the Ministerial Advisory Committee on COVID-19 (the Committee). I confirm that Professor Karim resigned as chairperson of the Committee on 26 March 2021.

6. I confirm that I am the chairperson of the committee and that I am duly authorised to deal with all matters pertaining to the Committee.

PROFESSOR KOLEKA MLISANA

I certify that the deponent has acknowledged that she knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice .R1648 of 19 August 1977, as amended, have been complied with

COMMISSIONER OF OATHS

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case NO: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
And	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

FILING NOTICE

KINDLY TAKE NOTICE THAT the Respondents herein file their Answering, Confirmatory ant Explanatory Affidavits evenly herewith.

SIGNED AT **CAPE TOWN** ON THIS 25th DAY OF **MAY** 2021

THE STATE ATTORNEY

Per: **M Nkabini**

First to Fourth Respondents' Attorneys
4th Floor

THE STATE ATTORNEY
Per: Mr M Nkabini
Tel: 021-441-9200

22 Long Street
CAPE TOWN
Ref No: 891/21/P6

TO: **THE REGISTRAR**
Western Cape High Court
CAPE TOWN

AND TO: **T VICTOR & ASSOCIATES**
24 Viola Road
BLOUBERGSTRAND
CAPE TOWN
Tel: 077078168

C/o **ROB GREEN ATTORNEYS**
Room 305
Benzal House
3 Barrack Street
CAPE TOWN

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PROFESSOR ADRIAN J PUREN

do hereby make oath and say:

INTRODUCTION

1. I am an adult male and employed as the Acting Executive Director of the National Institute for Communicable Diseases ("NICD") I am carrying out my principal duties at 1 Modderfontein Road, Sandringham, Johannesburg, Gauteng Province,

2. The NICD is a national public health institute of the South Africa, providing reference to microbiology, virology, epidemiology, surveillance, and public health research to support the South African Government's response to communicable disease threats. The NICD thus serves as a resource of knowledge and expertise of communicable diseases to the South African Government, Southern African Development Community countries and the African continent. The main goal of the NICD is to be the national organ for South Africa for public health surveillance of communicable disease.

3. Before commenced my employment with the NICD: I graduated as a medical doctor from the University of the Witwatersrand and obtained a Medical degree (1986) and a Ph (1993). I received further training at the University of Oxford and University of Colorado Health Sciences Center in the fields of immunology and Cytokines.

4. I was appointed at the NICD to implement a HIV diagnostic and vaccine laboratory in July 1999. Subsequently, I was appointed as a Deputy Director for Virology Division that included several sections including Centres for Respiratory Diseases

and Meningitis, Centre for Vaccines and Immunology and Centre for HIV and STIs. I have thus gained extensive experience and practical knowledge in virology, virology diagnostics and surveillance.

5. I serve as the technical manager for quality assurance at the NICD and have a knowledge and understanding of the matters relating to requirements for providing accurate and key results in line with the ISO standards.

6. I am accordingly duly authorised to depose to this affidavit on behalf of the Fourth Respondent. In the interest of simplicity, the first, second and fourth Respondents will be referred to, herein, by their abbreviated title (the first Respondent as "the President", the second Respondent as "CoGTA" and the fourth Respondent as "the NDOH" or the Respondents.)

7. The facts set out in this affidavit are within my personal knowledge or are derived from documents and information under my control, unless the context indicates otherwise, and are true.

8. As will appear from the allegations (including the annexures thereto) in the founding affidavit, the Applicant's application turns, to a large extent, if not exclusively, on the documents he attached to his founding affidavit, the authenticity and contents whereof are disputed and which I have perused.

9. Where required, the facts set out in this affidavit are supported and confirmed by affidavits depose to by the appropriate persons in CoGTA or NDOH or both, with

personal knowledge of the relevant facts and will be filed together with this affidavit. Where legal submissions are made during this affidavit, they are based upon the advice of my legal representatives. I believe such advice to be correct.

10. I have read the founding affidavit of the Applicant and respond thereto as follows:

POINTS *IN LIMINE*

11. At the outset I point out that there are several legal issues which arise from the averments set out in the Applicant's founding affidavit, which requires comment before I deal with the balance of the averments, therein.

12. The comments below will be raised by way of legal objections/points *in limine* in relation to three issues, viz: non-compliance with the regulations, self-created urgency and no prima facie or strong case for the relief sought.

THE FIRST POINT IN LIMINE:

Non-compliance with the National Health Act, 2003

13. In terms of paragraph 2 of the Notice of Motion the Applicant seeks an order that the Respondents "*produce the isolated and purified physical SARS-COV-2 virus, not a culture isolate or any mixture within which the supposed virus is, nor a*

photograph or the RNA sequence only, to the Applicant at the place in terms of their safety measures of choice within 7 days".

14. NDOH contends that on the face of the relief in paragraph 2, *supra*, the Applicant's request amounts to, *inter alia*, an acquisition or importation or handling of human pathogens. Because the Applicant requested the Court to order that the Respondents "produce" the isolated and purified physical SARS-CoV2 to him within 7 days.

15. The NDOH contends that any, one (or more) of the processes, contemplated in paragraph 2, above, seem to fall within the scope of the National Health Act, 2003, Regulations relating to the registration of microbiological laboratories and the acquisition, importation, handling, maintenance, and supply of the human pathogens ("the NHA Regulations"). Put differently, to give effect to his relief, he would, amongst others, be required to "acquire" "receive" or "handle" human pathogens, as contemplated in the NHA Regulations.

16. Accordingly, the NDOH contends that the Applicant, before, he can claim that he has a right to the relief under paragraph 2, *supra*, he must comply with the express requirements of the NHA Regulations.

17. Section 1(a) of the NHA Regulations defines "human pathogen" means-

> "*an infectious substance (b) the toxin of an infectious substance, or (c) any diagnostic specimen, vector or other material that contains, or that is*

reasonably suspected to contain **an infectious substance** or a toxin of an *infectious substance*"

"*infectious substance*" **means- (a)** a micro-organism, virus or parasite that is capable of causing human disease or (b) an artificial produced hybrid or mutant micro-organism that contains genetic components of any micro-organism capable of causing human disease."

"*microbiological laboratory*" means a laboratory which handles human pathogens capable of colonising in humans, irrespective of whether or not the laboratory undertakes specific culture of such human pathogens or merely receives and handles tissue and other specimens potentially infected or infested which such human pathogens, and including laboratories which handle infected or infested, or potentially infected or infested, indigenous vectors of human pathogens, or exotic vector species irrespective of whether they are infected or infested."

18. Section 3 of the NHA Regulations 2003 provides that-

No person shall:

"(a) acquire, receive or import human pathogens; or

(b) *handle, manipulate, maintain, store, culture or in any way process, issue or in any way dispose of human pathogens so acquired, received, or imported, unless the person -*

(i) is registered with the department as a microbiological laboratory in terms of regulation 6(1)(a)(ii);

(ii) is assigned a BSL code in terms of regulation 6(1)(a)(iii)

(iii) is in possession of permit issued in terms of regulation 6(1)(b) to conduct the activities referred to in paragraph (a) or (b) in respect of human pathogens in accordance with the BSL code of the laboratory indicated in the permit; and

(iv) conduct an activity referred to in (a) or (b) as the case may be, in accordance with the provisions of these regulations and the standards."

19. The NDOH contends that the Applicant, on his own case, he is not competent nor permitted to request the relief sought referred to in paragraph 2 above. Accordingly, the NDOH contends that the Applicant on, at least, two grounds would be disqualified to request the relief in his Notice of Motion.

19.1. Firstly, in paragraph 2 of the founding affidavit the Applicant merely describes himself as "an adult male, Ricardo Mazman who holds an MA International Politics obtained at the University of Leicester in the UK. He specialises in post-cold World Order, International Security intelligence and

Security & US Foreign Policy". Thus, on his own description he would not qualify.

19.2. Secondly, his founding affidavit contains no positive or other averments which indicates or show that he, was registered as a microbiological laboratory with the Department, as contemplated in section 3(a) of the NHA Regulations. In addition, it not suggested by the Applicant that he is in the process or doing so. In any event, even if he was (which is denied) his expertise or lack thereof would still preclude him from requesting the relief sought.

20. In all the circumstances, the NDOH the contends that the Applicant's relief sought in paragraph 2 of his Notice of Motion appears to be unlawful, in that, it is contrary to the requirements of the NHA Regulations.

21. In the premises his application fell to be dismissed with costs. Should the Court nevertheless consider his application, then the NDOH contends that his applications must be dismissed on the grounds set out, below.

THE SECOND POINT IN LIMINE

Whether the Applicant has made out a case for urgency in his affidavit

22. In paragraph 1 of the Notice of Motion (read with paragraphs 10 to 24 of the founding affidavit) the Applicant prays for an order along the following lines:

> *"That this application is heard as a matter of urgency and that the Applicant's failure to comply with the time limits imposed by the Rules of this Honourable Court be condoned in terms of Rule 6(12)."*

23. In support of his urgent application the Applicant in paragraphs 10 to 21 of the founding affidavit set out the purported grounds which he asserted renders this matter urgent. To avoid unnecessary repetition, herein, I will only refer some of the Applicant's averments set out in his founding affidavit, below. In doing so, I do not thereby concede and/or acknowledge the correctness or otherwise of his averments set out below (or those expressly excluded, herein). I turn to the Applicant's averments, below:

> *"I respectfully submit that this matter cannot wait to be dealt with in the ordinary course, as such, I ask the Court to dispense with the forms and service provided for in the Rules and in my non-adherence with the normal rules procedure as set out in Rule 6.*
>
> *This matter is of such urgency that it simply cannot wait for the normal procedure to be complied with. I respectfully submit that this application should be heard other than in the normal course, otherwise the relief which we seek will be rendered ineffective.*
>
> *Currently the entire state is under lockdown level 1, which is a serious violation of the citizens' fundamental rights. To date, the Minister of Health has uttered and there are circulating discussions that the lockdown*

measures will be tightened which begs for those measures to be scrutinised.

There is a massive nationwide rollout of a vaccine claimed by the Respondent that must be used in the prevention of being infected by the alleged virus.
This vaccine rollout has begun in other countries and it has resulted in deaths and vaccine injuries.
The National disaster has been declared and is ongoing for almost a year affecting the entire nation with dire consequences.

The outcome of the order could very well mean a quick recovery to normal circumstances for the entire nation.
In South Africa, there is vast unemployment and poverty. As such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste.

...And each week of continual lockdown will, in the long run, cause more loss of lives than the virus itself."

24. The Respondents (CoGTA and NDOH) contend that the Applicant's application to I to be dismissed, in that, he failed to, amongst other factors, show that he will not otherwise be afforded substantial redress at a hearing in due course. The Respondents (CoGTA and NDOH) contend that the Applicant *faintly* asserted in paragraph 11, without more, that *"this matter is of such urgency that it simply cannot wait for the normal procedures to be complied with"*. Apart from the latter statement, no material facts or circumstances are advanced in his founding

affidavit wherein he claims that he will not be afforded substantial redress at a hearing in due course.

25. The Respondents contend that the only reasonable inference which could be drawn from the lack of any particularity or facts, in the founding affidavit, about the substantial redress, stems from the fact that the Applicant, in essence, is seeking *final* relief in this matter. In other words, the granting of an interdict, in the manner framed by the Applicant, would be dispositive of any matter between the parties. This is so because the Applicant is not seeking the relief in paragraph 2 of the Notice of Motion *pending* the resolution of the main (or other) proceedings.

26. Thus, the Applicant in paragraph 2, *supra*, is seeking final relief or relief with final effect. In any event, the Applicant is not suggesting that he is seeking (through the interdict) any "freezing" of existing rights which are threatened by irreparable harm.

27. The above, notwithstanding, the Respondents contend that the urgency in this matter appears to be self-created. Although it lacks the requisite factors to show urgency, the only allegation in the founding affidavit which contains some '*elements*' of alleged urgency appears in paragraph 20, where he alleged that:

> "*In South Africa, there is vast unemployment and poverty as such, the question of the very cause threatens to drastically increase the already desperate circumstances must at least be thoroughly investigated and with utmost haste*".

28. The Respondents contend that the above allegation should be read against, amongst others, the allegations contained in paragraph 62 where the Applicant asserted that he *has a reasonable suspicion about the existence of SARS-CoV-2 virus*'. On the Applicant's version, if the SARS COV 2-virus does not exist then, amongst other restrictions, the lockdown restrictions are unlawful or irregular and as such violates his fundamental rights.

29. The Respondents contend that the Applicant commits an elementary error, in that, no right is absolute and may in appropriate circumstances be limited in terms of section 36 of the Constitution.

30. In any event, the Respondents contend that there appears to be a disconnect, on the one hand between the claim for urgency and on the other, the allegations in paragraph 10 to 21 of the founding affidavit in support thereof. Put differently, the allegations in the founding affidavit do not support the Applicant's cause of action

31. Nevertheless, the Respondents contend that if the Applicant failed to comply with the requirements of section 3 of the NHA Regulations then this Court may, in any event, not exercise its discretion in favour of the Applicant. In addition, the relief sought contains the risk that the Court, in granting the relief sought, might thereby enters, into the exclusive domain of the Executive or organs of state (in circumstances where no case is made out that the Executive or the organ of state commit an irregularity or violate the Constitution.)

32 I turn to the self-created urgency which emerge from the allegations in paragraphs 51 to 57 of the founding affidavit. Due to the repetition of the latter allegations, I only restate the gist of the allegations set out in the founding affidavit, below:

32.1 The Applicant knew about the National Lockdown restrictions, at least since 15 March 2020.

32.2. On the Applicant's own version, he knew or reasonable should have known that in or during January 2020 the world became aware of the so-called Coronavirus.

32.3. He knew or reasonably should have learnt about the vaccination rollout programs in this country, since March 2021 or earlier.

32.4. In addition, the reported case of infected persons in the country are in the public domain, on a daily or weekly basis.

32.5. The instances when the President address the citizens of the country about restrictions is, similarly, in the public domain. The President mostly recently in or during the beginning of April 2021 address the citizens of the country.

33. Despite all the above information at his disposal, at the time, the Applicant now wishes to leapfrog the court procedures and insist that he must be heard on an urgent basis, whilst no discernable case is made out in his founding affidavit.

34. More importantly, the Applicant rushes to Court, despite, the fact that he on his own case has an alternative remedy. This is evident from paragraph 132 of his affidavit that *"the applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here."*

35. The Applicant put up no grounds or facts why he omitted to invoke his right to access to information. The Respondents contend that it is, in any event, not suggested by the Applicant in his affidavit that he in or during March or April 2021 submitted a request for information and his request was declined by the Respondents.

36. Accordingly, the Respondents contend that it is plain, that on his own version, the Applicant has an alternative remedy which he should have invoked before launching this urgent application.

37. In the circumstances, the Respondents contend that the Applicant's failure to do so, should be regarded as an abuse of the Court process. This is so because, not only is he requesting relief with far reaching consequences for how the Executive and organs of state should positively comply with their constitutional obligations

(by protecting the population and the health resources) but the net effect of his relief might very well place the lives of millions at risk. Because the Applicant establishes no factual basis how he will come with the provisions of the NHA Regulations. Accordingly, the handover the physical virus to him, as requested, poses serious dangers for the effective protections of the population.

38. In the premises the Respondents contend that this Applicant's application fell to be dismissed on this ground also. Should the Court, nevertheless, be amenable to consider his application (which ought to be rejected) then the Respondents contend his application should be dismiss on the ground set out below.

THE THIRD POINT IN LIMINE

39. The Respondent contends that the Applicant's application for a mandatory interdict is not an *ordinary interdict*. The Respondents contend that it is common cause that the Applicant is seeking a mandatory interdict against the Executive and organs of state (first, second and fourth Respondents).

40. The Respondents contend that in the absence of *male fides* on the part of the Reespondents, the Court does not readily grant such an interdict. Moreover, the Respondents contend that the Court only grants an interdict, such as that sought by the Applicant in the present instance upon a strong case being made out for

that relief. The Applicant failed to make out such a **string case** and for the reason(s) referred to above and hereunder.

41. In terms of the Notice of Motion (read with paragraphs 129 to 141) of the founding affidavit the Applicant seeks the following relief:

> *"That the Respondents "produce" the isolated and purified physical SARS-COV-2 virus (not a culture isolate of any mixture within which the supposed virus is, nor a photograph or the RNA- sequence only) to the Applicant at a place in terms of their security measures of choice, within 7 days."*

42. The Respondents contend that in terms of paragraph 2 of his Notice of Motion, if the relief is granted, they would be obliged to perform a positive act, *viz.*: to "produce" the isolated and purified SARS-COV-2 virus to the Applicant" even if the Applicant failed to comply with the provisions of section 3 of the NHA Regulations. The Respondent contend that since the Applicant has no legal basis to request the relief, this should be end of the matter. However, for consistency I, nevertheless, deal with the grounds advance in the founding affidavit, below.

Whether the Applicant has made out a prima facie case in the founding affidavit

Ad paragraphs 129 to 141 of the founding affidavit

43. The Applicant in his founding affidavit sets out the alleged basis for the relief sought in the Notice of Motion. The Applicant in paragraph 129(a) to (i) to thereof, allegec that he (and the public have the following undisputed *prima facie* rights, viz.:

Prima facie right

43.1. **Ad paragraph 129**

"The Applicant and the public have the following undisputable prima facie right to (a) to human dignity; (b) life; (c) bodily and psychological integrity; (d) to make decisions concerning the security and control over their body; (e) freedom to practice their trade, occupation and professional; (f) not to be treated in a cruel, inhumane and degrading way; (g) the right to have access to health care services; (h) freedom to movement; and (i) just administration."

43.2. **Ad paragraph 130**

"Not to have limitations imposed on their rights entrenching the Bill of Rights and if so that it must be restrictively interpreted, so as to impose minimum limitation on those rights, in accordance with section 36 of the Constitution."

43.3. **Ad paragraph 131**

"*That the Bill of Rights be applied to all law, including the DMA.*"

43.4. **Ad paragraph 132**

"*The Applicant has a right to access to information in terms of section 32 of our Constitution, and that is what he is essentially requesting here.*"

43.5. **Ad paragraph 133**

"*From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of, have at least prima facie right.*"

44. The Respondents contend that there appears to be a disconnect between the relief sought in paragraph 2 of the Notice of Motion and the fundamental rights claimed in the paragraphs set out in paragraphs 129 to 133, *supra*. Because the Applicant failed to show which, if any of the rights referred to above, is/are threatened by an impending or imminent irreparable harm. In addition, the Applicant failed whether any member of the public (which he claims to represent) right(s) was/were threatened by an impending or imminent irreparable.

45. The Respondent contend that on the Applicant's case the prima facie right which he must establish is not merely a catalogue of rights, as envisage in paragraph 129 (a) to (i), *supra*, in order, for the Court to grant an order in terms whereof the Respondents would be compelled "*to produce of the isolated and purified physical*

SARS-COV-2 virus." The Respondents contend that the prima facie right must be a right to which, if not protected by an interdict, irreparable harm would ensue. I have already pointed out in paragraph 44, *supra*, no such case is made out on the papers by the Applicant.

46. In any event, the Respondents contend that the allegations contained, *inter alia*, in paragraphs 129 (read with 134 to 138) of the founding affidavit failed to demonstrate a *prima facie* right that is threatened by an impending or imminent irreparable harm. Alternatively, the above facts in the founding affidavit failed to demonstrate a prima facie case for the relief sought in the Notice of Motion.

47. Similarly, the facts set out in, *inter alia*, paragraphs 129 (read with paragraph 134 to 138) of the founding affidavit failed to demonstrate a clear right that is threatened by an impending or imminent irreparable harm.

***Reasonable** apprehension of **irreparable** and imminent harm*

48. In paragraph 134 the Applicant in support of the assertion of reasonable apprehension of irreparable and imminent harm alleged that:

48.1. <u>**At paragraph 134**</u>

> "*I submit that harm is apparent in this instance, as set out throughout this founding affidavit.*"

48.2. **Ad paragraph 135**

"Without the relief sought to prevent further harm the Applicant and the rest of South Africa will continue to suffer irreparable financial, material, physical and psychological harm."

48.3. **Ad paragraph 138**

"From the above it is clear that a strong case has been made out by the Applicant and those it is acting on behalf of the existence of the reasonable apprehension of irreparable and imminent harm."

49. The Respondents contend that there is another difficulty with the Applicant's assertion that he has prima facie right to an interim urgent interdict against the Respondents, is this: He is seeking the interim interdict ostensibly to protect the catalogue of rights set out in paragraph 129(a) to (l) of the founding affidavit. However, the difficulty with the Applicant's case is that he established no facts or circumstances how the "production" of the isolated and purified physical SARS-COV-2 virus would protect those fundamental rights. To this end he commits an elementary error by not establishing facts or circumstances to support his cause of action.

50. What is, however, plain from paragraph 136 to 137 of the founding affidavit is that he is, essentially, complaining about the lockdown restrictions. If this is the case, then, the Respondents contend no case is made out for an attack on those restrictions. Put more accurately, no case is made out to show the declaration of a national state of disaster (RM7) and the subsequent regulations ad directive were are unconstitutional. Because it is not suggested in his founding affidavit (in addition to the interdict) that he complains that the lockdown restrictions are unlawful or otherwise offend the provisions of the Constitution.

51 The allegations on paragraphs 136 to 137 reads:

52. **Ad paragraph 136**

"The public further stands severely prejudiced with the arbitrary infringements of their fundamental rights should the Respondents continue to ignore their rights."

53. **Ad paragraph 137**

"At the current rate, the South African Government will run out of money to pay the salaries of state employees, it is submitted that if South Africa's present economically restricted lockdown measures are not discontinued immediately, the Respondents may cause 29 times more deaths with the measures aimed to prevent the spread than the virus itself."

54. In all the circumstances the Respondents contend that there is misalignment between the relief sought for an interdict and source of the harm.

55. The Respondents further contend that it is plain from the structure of the Notice of Motion, the Applicant seems to pray for final relief or a mandatory interdict with final effect. This is evident from prayers 1 and 2 of the Notice of Motion. It is also evidence from allegations in paragraphs 129 to 141 of the founding affidavit. Put differently, the Applicant is not seeking a provisional order which is designed to protect his rights pending an (the main) application to be brought to establish his rights. That is the purpose of the interim interdict is to freeze the position until the Courts decides where his rights lie

56. In the premises, the Respondents contend that the Applicant's application fell to be dismissed with costs.

Hearsay evidence

57. The Respondents contend that the Applicant's application is largely, if not, exclusively founded on statements and documents, the authenticity of which are disputed. Notwithstanding the dispute about the authenticity of those documents, the Respondents contend that a large, if not, the entire case in support of the relief sought under paragraph 2 of the Notice of Motion, appears to consist of hearsay evidence.

58. I will, accordingly, not deal with those individual paragraphs and documents which offend the rules of evidence and the Uniform Rules of Court in this affidavit. The Respondents intend to launch an interlocutory application in this regard. Accordingly, my responses below will be confined to those allegations which invite a scientific response.

59. I will, similarly, not expressly deal with those averments which relates to CoGTA. In this regard, a supporting affidavit, explanatory and confirmatory affidavits will be deposed to by the relevant employees.

THE AVERMENTS CONTAINED IN THE FOUNDING AFFIDAVIT

60. Ad paragraphs 1 to 2 thereof:

61. Denied.

61.1. As is evident from paragraph 2 of the founding affidavit, the Applicant's expertise falls within the domain of 'social science'. In particular, he appears to specialise in, amongst others, Post-cold war world order, international security, intelligence, and US foreign policy.

61.2. Whereas the subject matter of SARS-COV2 seems to fall within the broader branches of microbiology, virology, and epidemiology. There is no evidence that the Applicant is a specialist or had otherwise gain expert knowledge in

any of the branches of science. To this end the NDOH dispute the Applicant's claim about his personal knowledge and his expertise in the relevant branch of science.

61.3. I am advised that the documentary material attached to his founding affidavit constitutes hearsay evidence. The NDOH denies that it consented to the submission or use of those documents.

61.4. Save as aforesaid, the balance of the allegations contained in this paragraph are denied.

62. **Ad paragraphs 3 to 5 thereof:**

The allegations contained in these paragraphs are noted but not disputed.

63. **Ad paragraphs 6 to 9 thereof:**

64. Denied.

64.1. The NDOH denies that this matter is urgent. The NDOH repeats the submissions set out in paragraphs 22 to 38, *supra*.

64.2. The NDOH denies that the Applicant is entitled to the relief sought in paragraph 7 (read with paragraph 2 of his Notice of Motion). The grounds

upon which the NDOH claims that the Applicant is not entitled to the relief sought are more fully traverse in paragraphs 13 to 21 and 39 to 56, *supra*.

64.3. In particular, the NDOH denies that the Applicant is registered as a microbiological laboratory. The NDOH avers that there are minimum requirements which must be met before a person or laboratory can be registered. For ease of reference, I attached hereto a copy of the minimum requirements for laboratories, marked ("**AP1**")

64.4. When a person/laboratory is so registered the NDOH issued a permit to the laboratory. I also attached hereto, a flow chart of how a permit is obtained, marked ("**AP2**").

64.5. Save as aforesaid the balance of the averments is denied.

65. **Ad paragraphs 10 to 24 thereof:**

66. Denied.

66.1. The NDOH repeat the submissions in paragraphs 25 to 28, *supra*.

67. **Ad paragraphs 25 to 31 thereof:**

The allegations herein are noted, but not admitted.

68. **Ad paragraph 32 thereof:**

The allegations herein are noted.

69. **Ad paragraph 33 thereof:**

70. Denied.

71. The NDOH avers that the allegations in this paragraph amounts to a statement which are not supported by any material facts or circumstances.

72. In any event, there are no corroborating evidence in support of the Applicant's claim that he acts for or in the interests of the public.

73. **Ad paragraphs 34 to 39 thereof:**

The allegations contained herein are noted, but not admitted.

74. **Ad paragraphs 40 to 44 (read with paragraphs 46, 47, 48 and 49) thereof.**

75. Denied.

76. The NDOH avers that the allegations contained in the above paragraphs are argumentative and fell to be struck from the affidavit.

77. In any event, the NDOH denies that the Applicant could have any personal knowledge in respect of the matters set out in paragraphs 40 to 42, above.

78. **Ad paragraphs 45 thereof:**

79. Denied.

79.1. The NDOH dispute the basis upon which the Applicant advance the submission in this paragraph.

79.2. It is common cause that he is not qualified as an expert or otherwise expertise in the fields of microbiology or epidemiology.

79.3. Despite the patent lack of the requisite expertise the Applicant seeks to venture deep into branches of science, without the benefit of a qualified expert.

79.4. More importantly, despite the grave knowledge deficits, the Applicant persist with this application on an urgent basis.

79.5. The NDOH avers that the Applicant does not only (through this application) place the Court a great disadvantage, in that, the Court is not qualified nor possess the requisite scientific knowledge. But, in doing so, I am advised, he also contravene the Rules of this Court, in particular Rule 36(9).

80. **Ad paragraph 50 thereof:**

The allegations contained herein are noted but not admitted.

81. **Ad paragraphs 51 to 60 thereof:**

The NDOH avers that these averments are dealt with in the supporting affidavit deposed to by Deputy-Director General from CoGTA.

82. **Ad paragraphs 61 to 63 thereof:**

83. The NDOH avers that in lockdown restrictions were lawfully impose in the context of the prevailing COVID 19 pandemic to, amongst others, to save lives and control the rapid spread of infections in the country.

83.1. The NDOH avers that assertions by the Applicant that "some disruption is lives may only be necessary if we are assured beyond doubt of the existence of the SARS-COV2, appears to be baseless.

83.2. It is not plain what is the source of the opinion advanced in paragraph 61 of the founding affidavit, in particular, his claim that such disruptions depend on an assurance beyond doubt. In addition, the Applicant failed to provide any qualified expert opinion or any peer review which supports his claim.

83.3. In any event, he is not qualified as an expert in the relevant field, it is accordingly unclear on what basis if any, he advanced his findings.

83.4. Save as aforesaid the balance of the allegations is denied.

84. **Ad paragraphs 84 to 71 thereof:**

85. Denied.

86. In amplification of the aforesaid denial the NDOH avers as follows:

86.1. Protocols for isolation and culturing of "physical virus" are now well established. There are many clear review manuscripts to support this statement. It is not done routinely for diagnosis, as it will be impractical and will not be conducive to patient management.

86.2. The nature of the SARS COV-2 has been established not only through RT-PCR in sequencing but also in electron microscopy.

86.3. I confirm that this has been achieved by the NICD where I carry out my principal duties. I refer below to certain criteria/methodologies use, viz. Koch and the Bradford-Hill criteria/methodologies.

The Koch criteria

86.4. Koch postulates that the following needs to be satisfied to determine causation of a disease:

(a) the organisms must be regularly associated with the disease and its characteristic lesions.

(b) the organisms must be regularly associated with the disease host and grown in culture.

(c) the disease must be reproduced when a pure culture of the organism is introduced into a healthy susceptible host.

(d) the same organisms must be re-isolated from the experimentally infected host.

86.5. There have been significant advances with new diagnostic methodologies and sequencing, and further associations are made:

86.5.1. A nucleic acid sequencing belonging to a putative pathogen should be present in most cases of an infectious disease. Microbial nucleic acids should be found preferentially in those organs or gross anatomic sites known to be diseased and not in those organs that lack pathology. Fewer, or no, copy numbers of

pathogens-associated nucleic acid sequences should occur in hosts or tissues without disease. With resolution of disease, the copy number of pathogen-associated nucleic acid sequence should decrease or become undetectable. With clinical relapse, the opposite should occur.

86.5.2. When sequence detection predates disease, or sequence copy number correlates with severity of disease or pathology, the sequence-disease association is more likely to be a causal relationship.

86.6. The nature of the micro-organism inferred from the available sequence should be consistent with the known biological characteristic of that group or organisms.

86.7. Tissue-sequence correlates should be sought at the cellular level: efforts should be made to demonstrate specific in situ hybridization of microbial sequence to areas of tissue pathology and to visible micro-organisms or to areas where micro-organisms are presumed to be located. These sequence base forms with evidence for microbial causation should be reproducible

The Bradford-Hill criteria

86.8. Causation may also be determined by the Bradford-Hill criteria (Koch postulates are not possible for all pathogens):

86.9. Strength (effect size): the association between SARS COV-2 infections and COVID-19 presentation is strong.

86.10. Consistency (reproducibility): consistent findings observed by persons in different places with different samples strengthens the likelihood of an effect. This has been done for SARS-COV-2 and COVID-19 in many ways by many different groups around the world.

86.11. Specificity: causation is likely if there is a very specific population at a specific site and disease with no other likely explanation. The more specific an association between a factor and an effect is, the bigger the probability of a causal relationship. These criteria may be a bit problematic for COVID-19.

86.12. I think one supporting evidence here is that one Island that is free from COVID-19 and no SARS COV-2 detected.

86.13. Temporality: the effect is to occur after the cause (and if there is an expected delay between the cause and the expected effect, then the effect must occur after the delay. COVID-19 was not reported before the emergence of SARS COV-2.

86.14 Biological gradient (dose-response relationship): greater exposure should generally lead to greater incidents of the effect.

86.15. I think the effect of lockdown measures etc. can be named here, i.e. reduced risk, reduced cases, this is but one example there are many other exemples which could be identified.

86.16. Plausibility: a plausible mechanism between cause and effect is helpful (but Bradford-Hill noted that knowledge of the mechanisms is limited by current knowledge).

86.17. We know from SARS and MERS that zoonotic coronavirus is involved in respiratory illness.

86.18. Coherence: coherence between epidemiological and laboratory findings increased the likelihood of an effect. This has also been found now many times.

86.19. Experiment: occasionally it is possible to appeal to experimental evidence. This is where the animal models can come in. For ease of reference, I attached a recent article which comments on: Animal models for SARS-Cov2/COVID 19 research- A commentary, marked ("NM3")

86.20. Analogy: the use of analogies or similarities between the observed association and any other associations. SARS and MERS sets the precedent for zoonotic coronaviruses emerging to cause respiratory diseases in humans, although no difference in epidemiology/clinical spectrum

87. **Ad paragraphs 72 to 128 thereof:**

88. The NDOH avers that the allegations (including the annexures thereto) constitute hearsay evidence and as such fell to be strike out from this affidavit.

89. The NDOH further avers that the complaint about the hearsay evidence forms part of an interlocutory application (which will be heard with the application).

90. Save as aforesaid the allegations contained in paragraphs 72 to 79 are denied, as if specifically, traverse, herein.

91. **Ad paragraphs 129 to 141 thereof:**

92. Denied.

93. The NDOH repeats the submission set out in paragraphs 42 to 56.

94. Save as aforesaid the balance of the averments contained in paragraphs 129 to 141 are denies, as if, specifically, traverse, herein.

95. **Ad paragraphs 134 to 138:**

The allegations contained herein are denied.

96 **Ad paragraph 142 thereof:**

97. Denied.

97.1. The NDOH avers that the Applicant is not permitted and/or competent to received, and/or handle and/or otherwise deal with this or any other infectious virus.

97.2. The NDOH repeals the grounds set out in paragraphs 13 to 21, **supra**, in support of the aforesaid averments.

97.3. Save as aforesaid the balance of the averments is denied.

98. **Ad paragraph 143 thereof:**

99. Denied.

100. The NDOH avers that on the Applicant's own case, he established in paragraph 132 that he does have an alternative remedy.

101. In any event, the NDOH avers that the must first overcome the hurdles referred to in paragraphs 13 to 21, supra; before he could possibly assert any claim to the existence of a right.

102 Save as aforesaid the balance of the averments is denied.

Professor Adrian J Puren

I certify that:-

The deponent signed this affidavit and swore, and acknowledged that he/she: -

a) knew and understood the contents thereof;

b) had no objection to taking the oath; and,

c) considered the oath to be binding on his/her conscience.

The deponent then uttered the words, "*I swear that the contents of this declaration are true, so help me God*"

COMMISSIONER OF OATHS

Full names:
Designation and area:
Street address:

SOUTH AFRICAN POLICE SERVICE
25 MAY 2021
CSC

"AP1"

Annexure A

health
Department:
Health
REPUBLIC OF SOUTH AFRICA

Private Bag X828, **PRETORIA**, 0001 Civitas Building, c/o **Struben and** Thabo Sehume Streets
Enquiries: send to emails: registrationlaboratories@health.gov.za & DOH.COVID19@nhls.ac.za

MINIMUM REQUIREMENTS FOR LABORATORIES CONDUCTING SARS CoV-2 DIAGNOSTIC TESTING

AUGUST 2020

Introduction

Diagnostic Laboratories in South Africa are required to comply with a number of legislative requirements in order to perform diagnostic testing for human subjects. A set of minimum requirements were drafted for laboratories who wish to conduct SARS-CoV-2 diagnostic testing in consultation with the National Health Laboratory Service (NHLS), including the National Institute for Communicable Diseases (NICD) and National Institute for Occupational Health (NIOH) for the National Department of Health (NDoH). The minimum requirements checklist takes into consideration the legislative requirements as set out by the Department of Health (DOH), the Department of Employment and Labour (DEL), the Council for the Non-Proliferation of Weapons of Mass Destruction (NPC) and the Health Professionals Council of South Africa (HPCSA).

One of the major regulations relevant to laboratories that wish to embark on clinical diagnostic testing, is Regulation 178. This Regulation stipulates that all laboratories that acquire, receive or import human pathogens; or handle, manipulate, maintain, store, culture or in any way process, issue and/or dispose of human pathogens, must be in possession of a permit issued by the Department of Health (DoH), authorizing the laboratory to conduct the work as described above.

Scope

This checklist is relevant to all South African laboratories, in both the public and in the private sector, that perform diagnostic testing in response to the current SARS-CoV-2 pandemic.

Instructions to Laboratories:

1. *All laboratories intending to do diagnostic SARS COV-2 testing should complete the checklist; this checklist represents the minimum requirements to be met by laboratories, that will be allowed to conduct diagnostic testing for SARS COV-2;*
2. *First step is to ensure the laboratories are compliant with the requirements described in the checklist (Annexure A);*
3. *Complete the checklist providing descriptions of compliance in the "comments" section, and return the completed checklist to registrationlaboratories@health.gov.za and copy the DOH.COVID19@nhls.ac.za within seven (7) working days of receiving the checklist;*
4. *Should you fail to return the minimum checklist within the allotted time, your laboratory will be removed from the testing & reporting register.*

5. Regardless of the information presented in the initial checklist, the laboratory will be afforded a period of one (1) calendar month to achieve compliance with the minimum requirements listed.
6. If compliant, an application form for authorisation to handle the SARS CoV-2 will be sent to the laboratory/facility. If non-compliant after this one month period, the laboratory may request an extension of an additional 1 month, but may not provide SARS-CoV-2 testing until compliance is achieved. Laboratories that still fail to show compliance will be required to cease with their SARS-CoV-2 testing.
7. The laboratory/facility will be allowed to report results and will be issued with a permit (valid for one year), to conduct SARS-CoV-2 diagnostic testing.

Conclusion

Patient specimen testing is a highly valued capacity for South Africa during this pandemic and these minimum requirements are not intended to be restrictive or hindering on the country's response efforts to this global pandemic. This unique and previously uncharted territory has highlighted opportunities for the enhancement and strengthening of biosafety and biosecurity regulations to better serve the country and its people. This ultimately brings us closer to 2021 International Health Regulations (IHR) requirements and will ultimately ensure that the diagnostic results are of the highest standard. It also paves a way to a legally compliant medical laboratory sector and greater government oversight regarding patient testing and pathogen security.

Annexure A: Minimum requirements to be met by laboratories conducting SARS-CoV-2 testing

1.	Personnel	Requirement	Yes/No	Comments
1.1	• A minimum of one Health Professions Council of South Africa (HPCSA) registered person working in the lab • Registration with the HPCSA in any medical laboratory discipline e.g. Microbiology, Virology, Chemical Pathology, Haematology, Cytology etc. • Provide registration numbers for people working in the laboratory/facility.	Person must have physical presence in the lab – There has to be a physical presence of an HPCSA registered person in the testing laboratory.		
2.	Quality requirements			
2.1	Participate in External Quality Assessment/ Proficiency Testing (PT) program/s for existing test(s) if laboratory is already participating in PT for SARS-CoV-2 please provide proof)	Once approved – register for SARS-CoV-2 testing in first month		
2.2	Must undergo a quality assurance audit	Applicants will be required to provide evidence of a quality management system in effect at the laboratory		
2.2.1	Proof of accreditation if laboratory is accredited	NOTE: Even though accreditation is not a requirement it will guide the audit process mentioned above		
2.2.2	Provide proof that the laboratory was testing for other coronaviruses before March 2020.	Example of a test results showing method excluding personal patient identifiers and information		
3.	Occupational Health and Safety requirements			

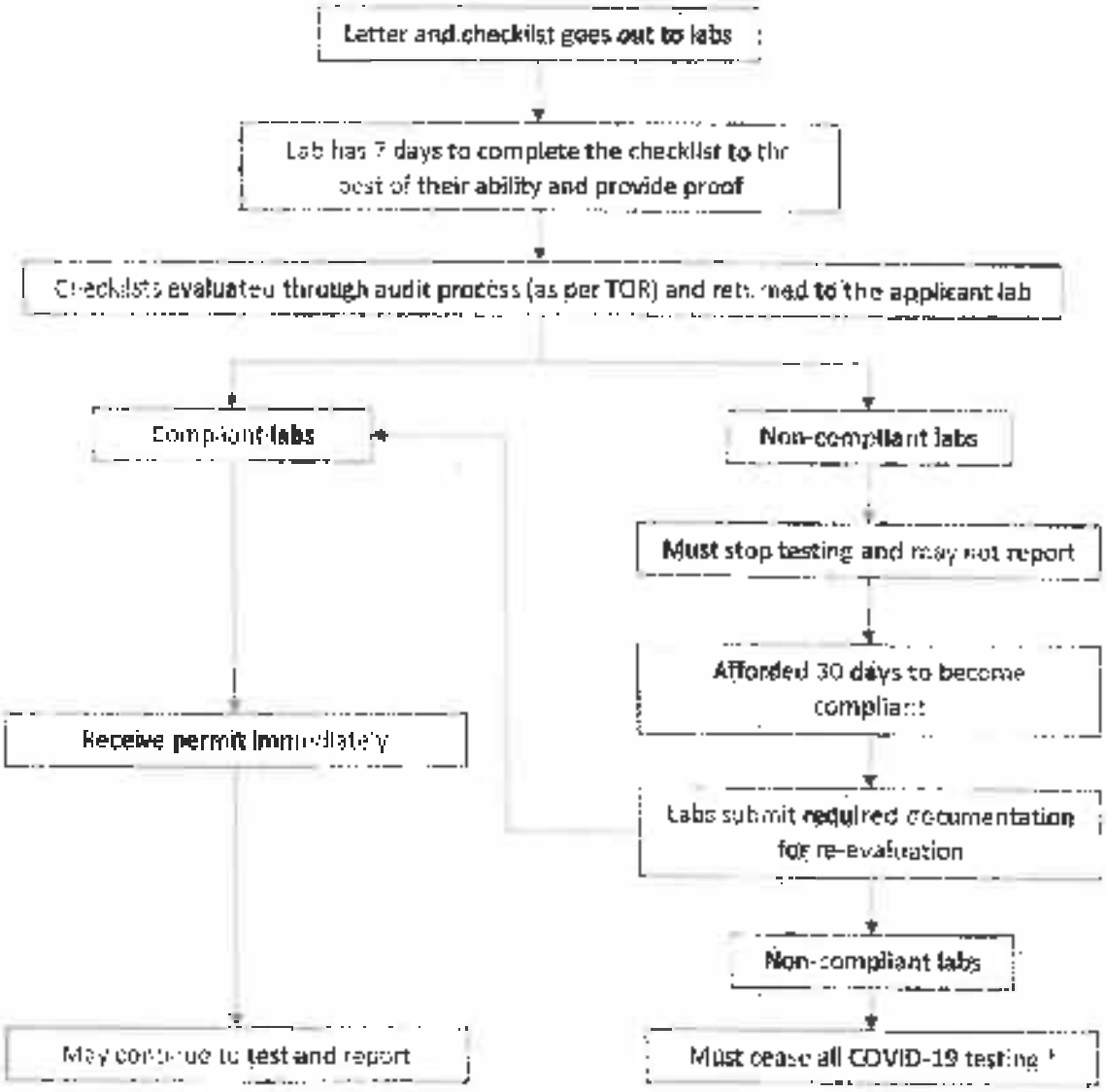
3.1	Must have a valid documented risk assessment that includes but is not limited to biological, chemical, physical and ergonomic risks	Include emergency procedures, training decontamination, Personal Protective Equipment (PPE), Occupational Health and Safety Policies		
3.2	The risk assessment must include control measures to be implemented to minimise the risks identified.	All control measures to be considered, engineering, administrative and PPE		
3.3	A record of control measures implemented and where relevant including any maintenance validation records to be provided	Risk assessment control measure e.g. Equipment service verification/validation		
3.4	If the employer has assigned any duties in terms of the Occupation Health & Safety (OHS) Act, a copy of the assignment in terms of Section 16.2 of the OHS Act to be provided.	E.g. Assignment letter describing the delegation of responsibilities for occupational health and employee safety.		
3.5	Provide proof of a process for the appointment of health and safety representative(s) HSR and the appointment thereof. Provide evidence that health and safety committees have been established and meetings are held, where applicable (number of HSRs dependent on the number of employees i.e. 1 HSR per < 50 laboratory employees)	Establish a Committee if more than one HSR		
3.6	Emergency procedures in place	Documented procedures		
3.7	Access control to facility	Photograph of the facility main lab access signage		
3.8	Provide details of the manager appointed as the COVID-19 Compliance Officer	Appointment letter		
4.	**Requirements for transport of dangerous goods**			
4.1	The vehicle on registration should be registered as a transporter of "Dangerous Goods". Vehicles should be appropriately marked and monitored by tracking devices	Registration – license disc		

4.2	Licensed driver trained to transport UN3373 Category B biological substances by training organisation that is registered with the Transport & Education Training Authority (TETA)	Public Drivers Permit Certificate with TETA full registration number		
5.	**Waste Management**			
5.1	Provide details of registration of either the Provincial or National Waste Information System in terms of the National Waste Information Regulations as a generator of waste	Copy of registration Online process put link		
5.2	Provide proof of an agreement between the facility and a registered health care risk waste management service provider for the removal, treatment and/ or disposal of chemical waste.	PO for company to safely remove waste.		
6.	**Laboratory registrations and permits**			
6.1	Laboratory is in possession of a permit issued in terms of Regulation 178 to conduct the activities as described in Regulation 178 in respect of human pathogens in accordance with the Biosafety Level (BSL) code of the laboratory indicated on the permit; (i.e. BSL2)	Regulation 178 Permit or temporary approval		
6.2	Laboratory issued with a permit from the National Department of Health as a Microbiological Laboratory that handles SARS-CoV-2 (excluding normal labs that test for other coronaviruses) – relevant for all labs that do not regularly test for coronaviruses)	Expiry date of permit – valid for one year from date of issue of permit and will then be reviewed		
7.	**Information Technology for Reporting Data to NICD**			
7.1	Laboratory Information Management System (LIMS) in place to submit data to NICD/NHLS/NDOH	Access to a LIS system to submit data		
7.2	Able to submit result data (negative and positive) to SOAP web. service	All results must ultimately be reported to the NICD as SARS-CoV-2 is a notifiable medical condition. For more information on the process please see:		

		https://www.niod.ac.za/nmc-overview/		
7.3	Data submitted per XML specification			
7.4	Quality data in line with requirements as stipulated in NMC regulations	Must have quality checks in place		

"AP2"

Annex B – Process flow for obtaining a Permit to conduct SARS-CoV-2 diagnostic testing



** extra month extension may be granted at the discretion of the evaluator – i.e. if there is a legitimate reason that cannot be met in the allotted first month, possibly outside the control of the lab e.g. rebranding and recruitment of an HPCSA registered person*

This would only be based on exceptional circumstances if there is a legitimate reason for the extra time, AND on condition that the lab does not conduct testing until the permit is in hand

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5852/2021

In the matter between:

RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SABELO NYABONGA SANDILE BUTHELEZI

do hereby make oath and say:

455

1. I am an adult male and employed as the Director-General in the office of the Fourth Respondent.

2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent.

3. The facts contained herein are within my personal knowledge, and are both true and correct, unless the context indicates otherwise.

4. I have read the main answering affidavit deposed to by Professor Adrian J Puren on behalf of the Fourth Respondent, the supporting affidavit on behalf of CoGTA and/or the National Disaster Management Centre and I confirm that the facts set out therein, insofar as they pertain to the Fourth Respondent and such facts fall within my knowledge or are based on institutional knowledge of the Fourth Respondent gained in the course of my work as the Director-General and from documents now under my control, unless the context indicates otherwise, and are true and correct.

Sabelo Siyabonga Sandile Buthelezi

I certify that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice R1648 of 19 August 1977, as amended, have been complied with

SUID-AFRIKAANSE POLISIEDIENS
AFDELING: SIGBASIEPOLISIERING
2021 -05- 25
DIVISIONAL VISIBLE POLICING
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

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RICARDO MAARMAN	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
PROFESSOR SALIM ABDUL KARRIEM obo THE GOVERNMENTAL COVID-19 ADVISORY COMMITTEE	Third Respondent
THE NATIONAL DEPARTMENT OF HEALTH	Fourth Respondent

EXPLANATORY AFFIDAVIT

I, the undersigned,

PROFESSOR KOLEKA MLISANA

do hereby make oath and say:

1. I am an adult female. The principal place where I carry out my duties is at 1 Modderfontein Road, Sandringham, Johannesburg.

2. I am duly authorised to depose to this affidavit on behalf of the Government Covid 19 Advisory Committee.

3. The facts set out in this affidavit are within my personal knowledge and are derived from documents and information under my control, unless the context indicates otherwise and are true.

4. I have read the affidavits of the Applicant, including the answering affidavit of Professor Adrian J Puren and the supporting affidavits thereto and I confirm the correctness of the contents thereof insofar as it relates to the recommendations of the Ministerial Advisory Committee on COVID-19.

5. The purpose of this affidavit is to explain the position of Professor Salim Abdool Karim the Third Respondent, who is cited in his official capacity as the head of the Ministerial Advisory Committee on COVID-19 (the Committee). I confirm that Professor Karim resigned as chairperson of the Committee on 26 March 2021.

6. I confirm that I am the chairperson of the committee and that I am duly authorised to deal with all matters pertaining to the Committee.

PROFESSOR KOLEKA MLISANA

I certify that the deponent has acknowledged that she knows and understand the contents of this affidavit, which was signed and deposed to before me at Pretoria on this the 25 day of **MAY 2021** and the provisions of the regulations contained in the Government Gazette Notice R1258 of 21 July 1972, as amended, and the government Gazette Notice .R1648 of 19 August 1977, as amended, have been complied with

COMMISSIONER OF OATHS

Oifig Dli UCD

Caisleán an Ruabhoic,
An Coláiste Ollscoile, Baile Átha Cliath,
Belfield, Baile Átha Cliath 4, Eire

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University College Dublin,
Belfield, Dublin 4, Ireland

T +353 1 716 8708

Mr James McCumiskey
By email: jl_mccumiskey@yahoo.ie

22 June 2020

Reference: FOI12_1_544 Internal Review

Dear Mr McCumiskey,

I refer to your application for an internal review under the Freedom of Information Act 2014 of a decision by Ms Debbie Scanlan, dated 22 May 2020, concerning item 1 of your request for access to records of the National Virus Reference Laboratory (NVRL), as follows: *"1) I am looking for a scientific paper, which demonstrates how the Novel Coronavirus was purified? Surely, if the NVRL is able to detect the Novel Coronavirus, it should also be able to demonstrate how it is purified?"*

In the original decision, Ms Scanlan refused part 1 of your request on grounds that the University do not hold records to answer your request (Section 15 (1) (a)).

I have now conducted an internal review in accordance with Section 21 of the Act. I wish to inform you that I affirm the original decision.

The University's position is that matters of academic debate cannot be conducted under FOI and we would not regard academic research material as administrative records of an FOI body that would make them available for release under the legislation. The NVRL have advised that they do not culture live SARS-CoV-2 or purify SARS CoV 2 antigens. They detect SARS-CoV-2 RNA in diagnostic samples, as per the PCR assay that was shared with you previously. As such, there are no relevant records held and no further searches that may be taken for records that would provide an answer to your query. Section 15 (1) (a) of the FOI applies.

The University is committed to its obligations under the Act to provide requesters with access to records held by it and with reasons for its decisions that affect them. In this case, we regret that we cannot assist you further.

Under the Act, the University is required to advise you of your right, following receipt of your internal review decision, to make a further review application by writing to the Information Commissioner, 18 Lower Leeson Street, Dublin 2.

Yours sincerely,

Mr Julian Bostridge
Director of Legal Services

Public Health Scotland

Date 7 October 2020]
Our Ref 2020-000133
Enquiries to phs.foi@nhs.net

Dear Athanasios Kandias

Freedom of Information Reference: 2020-000133

I refer to your request of 9 September 2020 under the above legislation for information about:

All records in the possession, custody or control of Public Health Scotland, describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; liver cancer cells).
*Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers *instead* to:*

- *the culturing of something, or*
- *the performance of an amplification test (i.e. a PCR test), or*
- *the sequencing of something.*

Please also note that my request is not limited to records that were authored by the PHS or that pertain to work done by the PHS. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that the PHS has downloaded or printed.

I am writing to advise you that following a search of our records, I have established that under Section 17(1) of the Freedom of Information (Scotland) Act 2002, Public Health Scotland (PHS) does not hold the information you requested.

PHS has not been involved in any studies where methods of isolation described have been performed. Such studies may have been performed in a number of Universities but PHS is not aware of any specific studies to be able to direct you to them for more information.

If you have any questions please contact me on phs.foi@nhs.net.

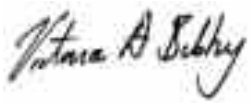
If you are unhappy with our response to your request, you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this correspondence, and we will reply within 20 working days of receipt.

The review will be undertaken by a reviewer who was not involved in the original decision-making process. The reviewer can be contacted as follows:

The FOI Reviewer
.
Public Health Scotland
Gyle Square
1 South Gyle Crescent
Edinburgh
EH12 9EB
Email: phs.foi@phs.scot

If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner within 6 months of receipt of our review response. You can do this by using the Scottish Information Commissioner's Office online appeals service at www.itspublicknowledge.info/Appeal. If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

Yours sincerely



Vicki Bibby
Head of Strategy, Governance and Performance
Public Health Scotland

ACT Government | **Canberra Health Services**

Our reference: **FOI21-10**

Ms Mary-Jane Liddicoat

[redacted]

Dear Ms Liddicoat

DECISION ON YOUR ACCESS APPLICATION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (FOI Act), received by ACT Health Directorate (ACTHD) and transferred to Canberra Health Services (CHS) on **Tuesday 9 March 2021.** In accordance with section 57 of the FOI Act, the information you are seeking is in their possession.

This application requested access to:

> *"I am writing to you on advice from the Australian Department of Health (the Department) to seek clarification on information requested in a Freedom of Information (FOI) request that was sent to the Department.*
> ***I am therefore writing to you to on initial advice by the Department of Health to confirm whether you do hold the information requested in the original request to the Department, as shown in attachment "FOI 1937" and pasted again below:***
> *"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
> *- the culturing of something,*
> *- or the performance of an amplification test (i.e. a PCR test),*
> *- or the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed.""*

I am an Information Officer appointed by the Chief Executive Officer of Canberra Health Services (CHS) under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. CHS was required to provide a decision on your access application by **Thursday 8 April 2021**.

Decisions

ACT Pathology does not have the ability to isolate the virus from patient samples. I am therefore satisfied that in accordance with section 35(1)(b), CHS does not hold any documents relevant to the scope of your request.

Charges
Processing charges are not applicable to this request.

Disclosure Log
Under section 28 of the FOI Act, CHS maintains an online record of access applications called a disclosure log. The scope of your access application, my decision and documents released to you will be published in the disclosure log not less than three days but not more than 10 days after the date of this decision. Your personal contact details will not be published.
https://www.health.act.gov.au/about-our-health-system/freedom-information/disclosure-log.

Ombudsman review
My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in ACT Health's disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: ACTFOI@ombudsman.gov.au
Website: ombudsman.act.gov.au

ACT Civil and Administrative Tribunal (ACAT) review
Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
http://www.acat.act.gov.au/

Further assistance
Should you have any queries in relation to your request, please do not hesitate to contact the FOI Coordinator on (02) 5124 9831 or email HealthFOI@act.gov.au.

Yours sincerely

Dr Nick Coatsworth
Executive Director of Medical Services
Canberra Health Services

22 March 2021

LEGAL
www.csiro.au

GPO Box 1700 Canberra ACT 2601
Telephone (02) 6276 6431 • **ABN** 41 687 119 230
Email: foi@csiro.au

4 February 2021

Our ref: FOI2021/2

[redacted]

FREEDOM OF INFORMATION REQUEST – DECISION FOI2021/2

I refer to your request of 5 January 2021, under which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

> *"All records in the possession, custody or control of CSIRO describing the isolation of any Viruses on the Australia's National Immunisation Program Schedule, directly from a sample taken from a human patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of virus" refers instead to:*
>
> - *the culturing of something, or*
> - *the performance of an amplification test (i.e. a PCR test), or*
> - *the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by CSIRO or that pertain to work done by CSIRO. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that CSIRO has downloaded or printed.*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).*
>
> *Format: PDF documents or links to PDFs sent to me via email; I do not wish for anything to be shipped to me.*
>
> *The list of diseased allegedly caused by viruses that are currently on Australia's National Immunisation Program Schedule:*
>
> - *Influenza*
> - *Diptheria*
> - *Rotavirus*
> - *Hepatitis B*
> - *Polio*
> - *Haemophilus influenzae type b*
> - *Measles*
> - *Mumps*
> - *Rubella*
> - *Varicella*

- *Human Papillomavirus*
- *Herpes Zoster*

Please include any virus that I may have missed in the list above that is on the Ministry of Health's Vaccination Schedule."

Decision maker

I am an authorised decision maker under section 23 of the FOI Act. This letter sets out my decision and reasons for the decision in relation to your request.

Decision

Despite an extensive search, CSIRO has been unable to identify any document relevant to your request. I must therefore refuse access, pursuant to section 24A of the FOI Act.

Searches conducted

Searches were conducted by The Australian Centre for Disease Preparedness (formerly the Australian Animal Health Laboratory) and relevant staff and it was confirmed that CSIRO does not hold any documents relevant to the scope of your request. In this regard, CSIRO does not conduct work in relation to "isolation" that does not constitute "the culturing of something, or the performance of an amplification test (i.e. a PCR test), or the sequencing of something".

To assist I note that documentation containing scientific proof the virus known as SARS CoV-2 has been isolated and purified can be found here:
https://www.mja.com.au/system/files/issues/212_10/mja250569.pdf

Rights of Review

In accordance with section 26(1)(c) of the FOI Act, a statement setting out your rights of review under the Act is at Attachment A. Since my decision is that no documents exist, an application for review would be limited to a situation where you consider that I have not identified all the documents in the CSIRO's possession that are relevant to your request.

Yours sincerely

Beth Cribb
Senior Legal Counsel
CSIRO

Attachment A

Review rights

You are entitled to seek review of this decision.

Internal Review

Firstly, under section 54 of the FOI Act, you may apply for an internal review of the decision. 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.

An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

FOI Coordinator,
FOI@csiro.au

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

External review by the Australian Information Commissioner

Alternatively, under 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Information Commissioner's website www.oaic.gov.au.

You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commissioner at:

GPO Box 2999
Canberra ACT 2601

Complaints to Ombudsman or Information Commissioner

You may complain to either the Commonwealth Ombudsman or the Information Commissioner about action taken by CSIRO in relation to the application. The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:
Phone 1300 362 072 (local call charge)
Email ombudsman@ombudsman.gov.au

Your enquiries to the Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Ombudsman or the Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify CSIRO as the relevant agency.

On Wednesday, February 24th, 2021 at 10:15 PM, [redacted] <[redacted]> wrote:

Dear Health Ministers,

I am writing to you on advice from the Australian Department of Health (the Department) to seek clarification on information requested in a Freedom of Information (FOI) request that was sent to the Department.

The Department's initial response on 24th August 2020 (attached: "Initial FOI 1937 Response"), stated: "To obtain the information you are seeking please direct your request to the various State and territory Departments of Health".

After further correspondence between the FOI author and the Department, a more formal response was given (attached: "FOI 1937"), yet the outcome remained the same.

I am therefore writing to you to on initial advice by the Department of Health to confirm whether you do hold the information requested in the original request to the Department, as shown in attachment "FOI 1937" and pasted again below:

"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something,*
- *or the performance of an amplification test (i.e. a PCR test),*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."

I look forward to your response.

[redacted]

—— Original Message ——
On Wednesday, May 26th, 2021 at 12:58 PM, MOH-GIPA <MOH-GIPA@health.nsw.gov.au> wrote:

Dear [redacted]

Please find attached correspondence with regard to your recent inquiry.

Kind regards

Lisa Yezghatlian

GIPA Officer | Corporate Governance and Risk Management, **Legal and Regulatory Services**

NSW Ministry of Health | 1 Reserve Road , St Leonards, New South Wales 2065

www.health.nsw.gov.au

GIPA21-60[redacted]Do not hold - information publicly available - 25 May 2021.pdf
157K

NSW GOVERNMENT Health

File No: GIPA21/60
Doc No: G21/652

[redacted]

Dear [redacted]

Informal request for information

I refer to your informal request for information held by the NSW Ministry of Health for the following information:

> *"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
>
> - *the culturing of something,*
> - *Or the performance of an amplification test (i.e. a PCR test),*
> - *Or the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."*

Preliminary searches for information were undertaken by the relevant areas within the Ministry of Health, and it was confirmed, that from our understanding of the scope of your application, we do not hold the information requested.

It has been suggested internally that you contact NSW Health Pathology to discuss your request further to determine whether they may or may not hold any relevant information.

However, information has been identified that may assist with your inquiry this information is publicly available.

Information publicly available

The following information is publicly available. Please find below resources that may be of use to answer queries the Ministry has received in regards to SARS-COV-2 testing. They are:

NSW Ministry of Health
ABN: 92 697 899 630
[redacted]
Website: www.health.nsw.gov.au

- https://www.pathology.health.nsw.gov.au/covid-19-info/covid-19-testing-information
- https://www.health.nsw.gov.au/Infectious/covid-19/communities-of-practice/Pages/clinical-guidance-and-resources.aspx

If you have any questions regarding this matter, please contact the Ministry's GIPA office via email to MOH-GIPA@health.nsw.gov.au.

Yours sincerely

Sonia Makira
GIPA Specialist, Corporate Governance & Risk Management

Date: 25 May 2021

The Peter Doherty Institute
for Infection and Immunity

792 Elizabeth Street
Melbourne, Victoria
Australia
3000

+61 (0) 3 9035 3555

doherty.edu.au

29 September 2020

[redacted]

I refer to your email dated 12 September 2020 in which you have requested documents under the *Freedom of Information Act 1982* ("***Act***"). Please be advised that at this stage, we do not consider that a valid Freedom of Information (FOI) request has been lodged.

We note that you have requested documents in the possession, custody or control of The Peter Doherty Institute for Infection and Immunity ("**Doherty Institute**"). Please note that the institute is an incorporated joint venture between The University of Melbourne ("**Unimelb**") and Melbourne Health ("**MH**").

As such, the Doherty Institute does not accept FOI applications directly; however, you may wish to refer to the below FOI resource pages for Unimelb and MH should you wish to lodge an application with either of those organisations.

These resources outline the requirements for an FOI request to be considered valid with the relevant agency.

https://about.unimelb.edu.au/strategy/governance/compliance-obligations/freedom-of-information/how-to-make-an-foi-request

https://www.thermh.org.au/patients-visitors/coming-hospital/medical-records

We have undertaken a preliminary review of your request to determine if it may be appropriate to provide you with documents outside of the *Act*. Following this review, we can inform you your request relates to a process which is outside the scope of the usual operations of the Doherty Institute and therefore no documentation is available.

On that basis, insofar as your request relates specifically to the Doherty Institute, it is unlikely that any relevant documents would be located if you choose to lodge a formal FOI request.

Thank you for your interest in this matter.

Yours sincerely

Professor Sharon Lewin AO, FRACP, PhD, FAAHMS
Director, The Peter Doherty Institute for Infection and Immunity, The University of Melbourne and Royal Melbourne Hospital,

Professor of Infectious Diseases, Melbourne Medical School and Head, Doherty Department, The University of Melbourne,

Consultant Physician, Victorian Infectious Diseases Service, Royal Melbourne Hospital, Melbourne, Australia

Consultant Physician and Adjunct Professor, Department of Infectious Diseases, Alfred Hospital and Monash University, Melbourne, Australia

On Wednesday, February 24th, 2021 at 10:15 PM, [redacted] <[redacted]> wrote:

Dear Health Ministers,

I am writing to you on advice from the Australian Department of Health (the Department) to seek clarification on information requested in a Freedom of Information (FOI) request that was sent to the Department.

The Department's initial response on 24th August 2020 (attached: "Initial FOI 1937 Response"), stated: "To obtain the information you are seeking please direct your request to the various State and territory Departments of Health".

After further correspondence between the FOI author and the Department, a more formal response was given (attached: "FOI 1937"), yet the outcome remained the same.

I am therefore writing to you to on initial advice by the Department of Health to confirm whether you do hold the information requested in the original request to the Department, as shown in attachment "FOI 1937" and pasted again below:

"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something,*
- *or the performance of an amplification test (i.e. a PCR test),*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."

I look forward to your response.

[redacted]

Gmail

Christine Massey <cmassyo@gmail.com>

Fw: MHW-H21-1039 - letter to [redacted]

[redacted]

Wed, Jul 14, 2021 at 11:59 PM

To: Christine Massey <cmassyo@gmail.com>, "Christine.Massey@protonmail.com" <Christine.Massey@protonmail.com>

Sent with ProtonMail Secure Email.

------ Original Message ------
On Wednesday, April 28th, 2021 at 6:23 PM, Health:Minister for Health <ministerforhealth@sa.gov.au> wrote:

> Our ref: MHW-H21-1039
>
> Please find attached a letter from the office of the Minister for Health and Wellbeing.
>
> Kind regards
>
> **Office of Hon Stephen Wade MLC**
>
> **Minister for Health and Wellbeing**
>
> Level 9, Citi Centre Building, 11 Hindmarsh Square | GPO Box 2555 Adelaide SA 5001
>
> T: (08) 8463 6270| F: (08) 8463 6277 | E: ministerforhealth@sa.gov.au | W: www.sahealth.sa.gov.au
>
> *This e-mail may contain confidential information, which also may be legally privileged. Only the intended recipient(s) may access, use, distribute or copy this e-mail. If this e-mail is received in error, please inform the sender by return e-mail and delete the original. If there are doubts about the validity of this message, please contact the sender by telephone. It is the recipient's responsibility to check the e-mail and any attached files for viruses.*

Letter to [redacted].pdf
689K

Government of South Australia

MHW-H21-1039

[redacted]
Email: [redacted]

Dear [redacted]

I refer to your email dated 24 February 2021, seeking access to information under the *Freedom of Information Act 1991* (SA) (the FOI Act) regarding:

> "All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:
> • the culturing of something,
> • or the performance of an amplification test (i.e. a PCR test),
> • or the sequencing of something.
> Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."

These documents are not held by this agency.

The Office of the Minister for Health and Wellbeing is a separate agency to SA Health under the FOI Act, and is a separate agency for record keeping purposes. I am not able to advise if an agency within SA Health has the documents you are seeking.

However, you may consider making an application under the FOI Act, to SA Pathology.

Office of the Hon Stephen Wade MLC
Level 9, City Centre Building, 11 Hindmarsh Square, ADELAIDE SA 5000 | GPO Box 2533 ADELAIDE SA 5001 | DX 243
Tel (08) 8463 6150 | Fax (08) 8463 6177 | Email: minister@health.sa.gov.au

SOUTH AUSTRALIA

Please note that there is a $37.50 FOI application fee that must be paid to the agency that holds the documents at the time you lodge your application. Processing charges may also be applicable. The agency will advise you of these charges once it receives your application and begins processing it.

If you are the holder of a current concession card, or if you can satisfy the agency that the payment of the fee or charge would cause financial hardship, the agency must waive or remit (reduce or refund) the application fee.

Information on how to apply under the FOI Act in South Australia, including direct links to an application document or an online form, can be found at https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/department+for+health+and+wellbeing/freedom+of+information+department+for+health+and+wellbeing

Kind regards

Margaret Klass
Accredited FOI Officer
Office of the Minister for Health and Wellbeing

28 April 2021

THE UNIVERSITY OF WESTERN AUSTRALIA

Information Governance
Governance Directorate

Ms Christine Massey
[redacted]
Email: cmassyc@gmail.com

Our ref: F21/1125
16 June 2021

Sent by email

Dear Ms Massey

FREEDOM OF INFORMATION APPLICATION

On 29 April 2021, the University of Western Australia (University) received a *Freedom of Information Act 1992* (WA) (**FOI Act**) request from you requesting access to documents which you believed the University held.

You paid the required application fee of $30.00 on the 1 June 2021 validating your application and requiring the University to provide its decision no later than the 16 July 2021.

I now attach the University's decision in this matter, by way of a Notice of Decision.

The Notice of Decision provides the following details –

- the background to your Application including any agreements as to scope.
- the findings relating to documents requested in your Application.
- the decision on whether any documents or content therein is exempt from release under Schedule 1 of the FOI Act; and
- the decision whether access to those documents is granted in full, with redaction or refused.

If you wish to discuss this application, please email foi@uwa.edu.au.

Yours sincerely

Jay Guyver
Manager - Information Governance, Governance Directorate

NOTICE OF DECISION

FREEDOM OF INFORMATION ACT 1992
SECTION 26

APPLICANT:	**MS CHRSITINE MASSEY**
DECISION MAKER:	**JAY GUYVER** **MANAGER - INFORMATION GOVERNANCE, GOVERNANCE DIRECTORATE** **THE UNIVERSITY OF WESTERN AUSTRALIA**
DATE OF DECISION:	**16 June 2021**

For the reasons set below, I have made the following decision in relation to your access application:

It is not possible to provide access as all reasonable steps have been taken to find documents within the scope of your application; and I am satisfied that documents do not exist which meet the scope of your application.

BACKGROUND

On 29 April 2021, the University of Western Australia (the **University**) received a *Freedom of Information Act 1992* (WA) (**FOI Act**) request from you for access to the following documents:

1. *All studies and/or reports in the possession, custody or control of Christine Carson (Senior Research Fellow, UWA Medical School, Pathology & Laboratory Medicine) or the University of Western Australia's President, Faculties, Vice-Chancellor, Senate, Officers, Executive Board, Secretary, or any health or science department head at the University of Western Australia describing the purification of any "COVID-19 virus" (aka "SARS-COV-2", including any alleged "variants" i.e. "B.1.1.7", "B.1.351", "P.1") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).*

2. *Please also note that my request includes any study/report matching the above description, for example (but not limited to) a published peer-reviewed study authored by anyone, anywhere since December 2019 and relied on by Christine Carson or any of the above-mentioned people/bodies as evidence of a disease-causing "virus" circulating in humans.*

In the same application you sought to clarify the scope of your application by further stating:

1. *Please note that I am not requesting studies/reports where researchers failed to purify the suspected "virus" from a patient sample and instead:*

    a. *cultured an unpurified sample or other unpurified substance, and/or*
    b. *performed an amplification test (i.e. a PCR test) on the total RNA from a patient sample or from a cell culture, or on genetic material from any unpurified substance, and/or*
    c. *fabricated a genome based on PCR-detected sequences in the total RNA from a patient sample or from a cell culture or from any unpurified substance, and/or*
    d. *produced electron microscopy images of unpurified things in a cell culture.*

2. *For further clarity, please note I am already aware that according to virus theory a "virus" requires host cells in order to replicate, and I am not requesting records describing the replication of a "virus" without host cells.*

    a. *Further, I am not requesting private patient records, or records that describe a suspected "virus" floating in a vacuum; I am simply requesting records that describe its purification (separation from everything else in the patient sample, as per standard laboratory practices for the purification of other very small things).*

    b. *Please note that despite the fact that purification is an essential (but not sufficient) step in proving the existence of a disease-causing "virus", as of today 54 institutions globally have all failed to provide or cite any such records, therefore to my knowledge no such records exist and if they do exist I cannot access them until I am provided a citation or URL.*

    c. *Therefore, if any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.*

On the 29 April 2021, my office wrote to indicating your application lacked validity under s12 of the Act, namely no Australian address nor payment had been provided. You responded with an Australian address on the 12 May 2021.

On the 17 May 2021 I wrote to you advising you my office were making preliminary enquiries to ascertain the volume of documents involved in the scope of your application. You replied affirmatively on the 18 May 2021.

I then wrote to you on the 25 May 2021 indicating our preliminary enquiries suggested there may be no documents and asked you if you wish to continue and pay the application fee of $30 on that basis. You replied the same day indicating you wished to continue with the application.

At this time in your email of the 25 May 2021 you reasserted:

a. *Also I would like to remind that my request is not limited to studies/reports produced by, or based on work performed at, the University. It includes any study/report in the custody/control/possession of the University matching the description that I provided, for example any published peer-reviewed study authored by anyone.*

b. *I also understand that studies that are already available elsewhere may not be subject to the Act. However, because I cannot access studies that to my knowledge do not exist, in the spirit of transparency as per the purpose of Freedom of Information legislation I request citations for any such studies that are in the custody/control/possession of the University and match my description of requested records, so that I may access them elsewhere.*

As the application is for other than 'Personal Information' as that term is defined within the FOI Act, an application fee of $30 was required. I requested this this fee on the 26 May 2021, and it was paid on 1 June 2021 and the application was accepted as valid. The permitted period requires a decision to be received by you on or before the 16 July 2021.

The Application

Based on your original application and further requests in consultation with you via email, I have summarised the scope of your application to be -

A. *All studies and/or reports in the possession, custody or control of Christine Carson (Senior Research Fellow, UWA Medical School, Pathology & Laboratory Medicine) or the University of Western Australia's President, Faculties, Vice-Chancellor, Senate, Officers, Executive Board, Secretary, or any health or science department head at the University of Western Australia describing the purification of any "COVID-19 virus" (aka "SARS-COV-2", including any alleged "variants" i.e. "B.1.1.7", "B.1.351", "P.1") (via maceration, filtration and use of an ultracentrifuge; also referred to at times by some people as "isolation"), directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka Vero cells; fetal bovine serum).*

B. *Please also note that my request includes any study/report matching the above description, for example (but not limited to) a published peer-reviewed study authored by anyone, anywhere since December 2019 and relied on by Christine Carson or any of the above-mentioned people/bodies as evidence of a disease-causing "virus" circulating in humans.*

C. *Also I would like to remind that my request is not limited to studies/reports produced by, or based on work performed at, the University. It includes any study/report in the custody/control/possession of the University matching the description that I provided, for example any published peer-reviewed study authored by anyone.*

This then became the agreed scope ('**the Application**'}, comprised of parts A, B and C.

SEARCHES

Following receipt and agreement of the Application, searches for documents were undertaken within the University's Electronic Document and Records Management System (known as 'TRIM'). TRIM searches by keyword, title word and document content were conducted by our office using appropriate keywords concerning your request. Searches were particularly focused on records relating to research projects, grants, approvals and publications.

Further searches were made with the assistance of relevant officers within the University including specific enquiries to the Portfolio of the Deputy Vice-Chancellor Research, and to Dr Christine Carson (*the named respondent in your application*), and other researchers.

All the searches ("**Searches**") were documented, and results recorded as evidence that the University conducted best and reasonable steps to find documents in scope of your application.

REQUESTED DOCUMENTS

Searches found some 329 documents which met our search criteria -

- 202 proved to be false positives (i.e., where terms such as 'COVID*', and/or 'SARS*' were found with terms such as 'purification', 'isolation" within the same document, or within a certain number of words from each other but were unrelated to any scientific endeavours to isolate/purify the virus e.g., isolation leave for COVID).

- 2 PhD Thesis met our criteria however the research was into unrelated matters which had been impacted by the pandemic, hence included words which met our criteria but not your scope

- 125 documents of a research type were reviewed, however this related in their entirety to policy issues, grant application criteria for SARS-COV-2 / COVID-19 research, or research into the effects of COVID-19 (the disease) on various social communities, or on resources, mental health or into antibody / antigen tools. These did not meet the exacting criteria of your scope.

Therefore, from our Searches, **no** documents were discovered which met the scope of your application.

No documents met the precise and specific criteria within part (A) of your application, and thereby there were no supporting documents / publications which were relied on by those documents or authors which would comprise part (B).

In relation to part (C) of the scope of your application no documents fall into this definition for which the Freedom of the Information Act 1992 (WA) would apply (*see my decision below*).

DECISION

In consideration of the above, I, Jay Guyver, Manager - Information Governance, Governance Directorate have today made the decision that:

In relation to part (A) of your application,

- despite reasonable steps, such as searches and enquiries being made, no documents have been found or surrendered which meet the specific and precise requirements of your scope.
- Enquiries of Dr Carson have yielded no such documents relating to the precise and exact isolation or purification of the virus you talk about, and research she has and is engaged in does not meet the criteria, indeed is specifically excluded by your criteria.

Part (B) of your application is subject to documentation or similar being found in relation to part (A) of your application.

- There are no documents meeting this part of your scope as there are no documents including but not limited to peer reviewed articles cited or relied up on by Dr Carson or any others in documents which meet part (A) of your scope
- Further, it would not be for the University to search for, enquire for or otherwise elucidate documents which *"for example (but not limited to) a published peer-reviewed study authored* ***by anyone, anywhere*** *since December 2019 and relied on by Christine Carson or any of the above-mentioned people/bodies as evidence of a disease-causing "virus" circulating in humans."* unless these formed part of the documents which met your scope in Part (A) and were '*documents of this Agency*'. As there were none no further searches would fall under the purpose of the FOI Act.

Part (C) of your application requires documents which were "*not limited to studies/reports produced by, or based on work performed at, the University. It includes any study/report in the custody/control/possession of the University matching the description that I provided, for example any published peer-reviewed study authored by anyone".* I do not believe that such a request is an obligation under the FOI Act for the University, namely -

- Peer-reviewed studies, reports, publications and similar authored by anyone, and potentially anywhere, if published and available whether at a fee or not are excluded specifically under s6 of the FOI Act such as
    - (a) available for purchase by the public or free distribution to the public; or
    - (d) publicly available library material held by agencies for reference purposes.
- Further access to documents which an agency may have access to, hold or otherwise control is limited under 27(2) (c) where (emphasis is mine)
    - (2) If the applicant has requested that access to a document be given in a particular way the agency has to comply with the request unless giving access in that way —
        - (c) would involve an infringement of copyright belonging to a person other than the State,

- Releasing studies which the University may simply have relating to 'COVID-19 virus, SARS-COV-2' within its libraries, or those which researchers may have access to are subject to copyright and licensing requirements.

- In response to your request that where I am unable to provide documents as detailed above you have asked for citations. Given that documents which do not meet your scope or are not subject to the FOI Act would not be returned or surrendered to my office, I am not able to provide such citations.

It is not possible to provide access as all reasonable steps have been taken to find documents within the scope of your application; and I am satisfied that documents do not exist which meet the scope of your application**.**

INTERNAL REVIEW

If you are aggrieved by the Decision of this agency, you may apply for an Internal Review within **30 days** of being provided this Notice. There are no charges for requesting an internal review and, once a request is received, UWA must review any disputed decision within 15 days.

An application for an internal review must:

- be in writing.
- set out the particulars of the decision that you wish to have reviewed.
- give an address in Australia for correspondence, to which notices under the FOI Act can be sent; and
- be lodged at an office of UWA (see below).

An internal review request may be sent by at foi@uwa.edu.au, delivered in person or by post to the following address:

Manager, Information Governance
Information Governance Team M461
University of Western Australia
35 Stirling Highway
CRAWLEY WA 6009

Should you require further information or assistance in preparing an internal review application, please contact foi@uwa.edu.au. Reference can also be made to:
http://www.spp.uwa.edu.au/riskandlegal/freedom-of-information/freedom-of-information-process#review.

Yours sincerely

Jay Guyver,
Manager - Information Governance, Governance Directorate

On Wednesday, February 24th, 2021 at 10:15 PM, [redacted] <[redacted]> wrote:

Dear Health Ministers,

I am writing to you on advice from the Australian Department of Health (the Department) to seek clarification on information requested in a Freedom of Information (FOI) request that was sent to the Department.

The Department's initial response on 24th August 2020 (attached: "Initial FOI 1937 Response"), stated: "To obtain the information you are seeking please direct your request to the various State and territory Departments of Health".

After further correspondence between the FOI author and the Department, a more formal response was given (attached: "FOI 1937"), yet the outcome remained the same.

I am therefore writing to you to on initial advice by the Department of Health to confirm whether you do hold the information requested in the original request to the Department, as shown in attachment "FOI 1937" and pasted again below:

"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something,*
- *or the performance of an amplification test (i.e. a PCR test),*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."

I look forward to your response.

[redacted]

Fw: M60-36321_20210316_to[redacted]MfH Referred to DoH for response - FOI 1937 - Requesting Further Information

[redacted] Thu, Jul 15, 2021 at 12:01 AM
Reply-To: [redacted]
To: Christine Massey <cmseyc@gmail.com>, "Christine.Massey@protonmail.com" <Christine.Massey@protonmail.com>

Sent with ProtonMail Secure Email.

------ Original Message ------
On Tuesday, March 16th, 2021 at 11:41 AM, DOH, FOI <FOI.DOH@health.wa.gov.au> wrote:

Our ref: M60-36321

Dear [redacted]

I refer to your email sent to the office of the WA Minister for Health, Minister Cook, on 24 February 2021 (attached for reference).

The email refers to an initial request to access records under the (Cth) *Freedom of Information Act 1982*, submitted to the Australian Department of Health (Aust DoH). Attached to your email is the emailed request to Aust DoH, together with the Aust DoH Notice of Decision, confirming no records were identified relevant to the scope of your application.

The Aust DoH also recommended you refer your request to each of the Health Departments of the Australian states and territories; and hence the referral of your request to the separate Ministers for Health.

The office of the WA Minister for Health referred your emailed request to the WA Department of Health (DoH) for direct response.

Prior to progressing the validation of your request to be a formal request to access records under the WA *Freedom of Information Act 1992* (FOI Act), which requires payment of the statutory FOI application fee and other required information, action was undertaken by DoH to identify whether any records within the scope of your request were available.

Your request was referred to various areas within DoH, and advice received that if any records were available they would be held by PathWest Laboratory Medicine WA (a part of the WA health system, and a separate agency under the FOI Act). The request was then referred to PathWest for consideration.

It is confirmed that no records have been identified relevant to the scope of your request, except for all of the modalities specifically excluded in your request.

That is, no material pertaining to SARS-CoV-2 isolation without the use of propagator cells. As an organisation for SARS-CoV-2 virus testing PathWest has only been involved in:

- Virus culture using the cells described in the FOI application to Aust DoH.
- Virus PCR.
- Virus sequencing.

I trust this assists.

Best regards

Nareen Burnell | Senior Integrity Officer – FOI

Technology and Information Services | Corporate Services | Office of the Director General

Department of Health

2nd floor, B Block, 189 Royal Street, EAST PERTH WA 6004

T: (08) 9222 8411

E: FOI.DOH@health.wa.gov.au

www.health.wa.gov.au

M60-36321_Email and attachments.pdf
285K

[redacted]

From: [redacted]
Sent: Wednesday, 24 February 2021 7:15 PM
To: office@hazzard.minister.nsw.gov.au; martin.foley@parliament.vic.gov.au; minister.fyles@nt.gov.au; Ministerforhealth@sa.gov.au; Cook, Minister; sarah.courtney@dpac.tas.gov.au; health@ministerial.qld.gov.au; stephen-smith@act.gov.au
Subject: HPECM: FOI 1937 - Requesting Further Information
Attachments: Initial FOI 1937 Response.pdf; FOI 1937.pdf

Categories: In queue to be logged

Dear Health Ministers,

I am writing to you on advice from the Australian Department of Health (the Department) to seek clarification on information requested in a Freedom of Information (FOI) request that was sent to the Department.

The Department's initial response on 24th August 2020 (attached: "Initial FOI 1937 Response"), stated: "To obtain the information you are seeking please direct your request to the various State and territory Departments of Health".

After further correspondence between the FOI author and the Department, a more formal response was given (attached: "FOI 1937"), yet the outcome remained the same.

I am therefore writing to you to on initial advice by the Department of Health to confirm whether you do hold the information requested in the original request to the Department, as shown in attachment "FOI 1937" and pasted again below:

"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something;*
- *or the performance of an amplification test (i.e. a PCR test);*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."

I look forward to your response.

[redacted]

---------- Forwarded message ---------
From: **FOI** <FOI@health.gov.au>
Date: Mon, 24 Aug 2020, 12:10
Subject: Freedom of Information Request - Studies re isolation of SARS-COV-2 [SEC=UNOFFICIAL]
To: [redacted]

Dear [redacted]

I refer to your request to the Australian Government Department of Health (department) below:

'All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word; the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something,*
- *or the performance of an amplification test (i.e. a PCR test),*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that The Department of Health has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).

The department does not hold the documents you are seeking access too.

To obtain the information you are seeking please direct your request to the various State and Territory Departments of Health.

Kind regards

FOI Officer

FOI Team - FOI and Legislation Support Section

Legal & Assurance Division | Corporate Operations Group

Legal Advice & Legislation Branch

Australian Government Department of Health

T: 02 6289 1666 | E: FOI@health.gov.au

GPO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

Australian Government

Department of Health

Department Reference: FOI 1937

[redacted]

NOTICE OF DECISION: UNDER SECTION 24A OF THE FREEDOM OF INFORMATION ACT 1982

I refer to your request of 11 August 2020 to the Department of Health (department) seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

> *"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
>
> - *the culturing of something,*
> - *the performance of an amplification test (i.e. a PCR test),*
> - *or the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that The Department of Health has downloaded or printed.*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it)."*

On 24 August 2020, the department sent you an email advising the department does not hold any documents relating to the scope of your request and referring you to the states and territories. You responded the same day, seeking a PDF response and asking questions about SARS-COV-2 Virus Isolation.

I am writing to advise you of my decision.

FOI decision

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to Freedom of Information requests. I am writing to notify you of my decision on your request.

All reasonable steps have been taken to find documents referred to in your request including consultation with relevant policy and program areas, thorough searches of departmental file management systems, electronic documents on shared and personal drives and departmental data bases.

I am satisfied the consultation undertaken and the searches conducted were thorough and all reasonable steps have been taken to locate documents relevant to your request. I am satisfied the documents referred to in your request do not exist.

As a consequence, relying on section 24A of the FOI Act, I cannot provide access to the documents you requested.

FOI review rights

If you are dissatisfied with my decision, you may apply for an internal review or Australian Information Commissioner (Information Commissioner) review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the department for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as the department allows). Where possible please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer of this department within 30 days.

An application for an internal review should be addressed to:

Email:	FOI@health.gov.au
Mail:	FOI Unit (MDP 516) Department of Health GPO Box 9848 CANBERRA ACT 2601

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review must be made in writing, within 60 days of this notice (if you do not request an internal review).

The Australian Information Commissioner can be contacted by:
Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at:
https://www.oaic.gov.au/freedom-of-information/reviews/

You may also make a complaint to the Information Commissioner about action taken by the department in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions of the FOI Act

The FOI Act, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website:
https://www.legislation.gov.au/Details/C2020C00110

Additional information

As mentioned in the department's email to you of 25 August 2020, the FOI Act provides a mechanism for individuals to access 'documents' held by entities such as the department. It does not provide a mechanism for making enquiries or asking questions about issues.

However, outside the FOI Act, I can provide you with the following information that may be of assistance to you.

Point-of-care testing is a form of testing in which the analysis is performed where healthcare is provided, close to or near the patient. All point-of-care test kits for identifying the SARS CoV-2 virus (COVID-19 test kits) approved by the Therapeutic Goods Administration (TGA) for supply within Australia and inclusion in the Australian Register of Therapeutic Goods are listed on the TGA website at: www.tga.gov.au/covid-19-test-kits-included-arty-legalsupply- australia.

Information about the regulation of in vitro diagnostic medical devices in Australia, including the COVID-19 test kits, is also available on the TGA website at: www.tga.gov.au/overview-regulatory-framework-vitro-diagnostic-medical-devices

Additionally, there is a publically available paper on the isolation of SARS-CoV-2 at VIDRL (which describes inoculation of Vero/hSLAM cells which led to the isolation of SARS-CoV-2 in culture), which can be located at the following link: https://www.mja.com.au/journal/2020/212/10/isolation-and-rapid-sharing-2019-novel-coronavirus-sars-cov-2-first-patient

Contacts

If you require clarification of any of the matters discussed in this letter you should contact Freedom of Information Unit on (02) 6289 1666 or at FOI@health.gov.au.

Yours sincerely

K Bishop

K. Bishop
Principal Lawyer
Legal Advice & Legislation Branch

9 September 2020

On Wednesday, February 24th, 2021 at 10:15 PM, [redacted] <[redacted]> wrote:

Dear Health Ministers,

I am writing to you on advice from the Australian Department of Health (the Department) to seek clarification on information requested in a Freedom of Information (FOI) request that was sent to the Department.

The Department's initial response on 24th August 2020 (attached: "Initial FOI 1937 Response"), stated: "To obtain the information you are seeking please direct your request to the various State and territory Departments of Health".

After further correspondence between the FOI author and the Department, a more formal response was given (attached: "FOI 1937"), yet the outcome remained the same.

I am therefore writing to you to on initial advice by the Department of Health to confirm whether you do hold the information requested in the original request to the Department, as shown in attachment "FOI 1937" and pasted again below:

"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something,*
- *or the performance of an amplification test (i.e. a PCR test),*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."

I look forward to your response.

[redacted]

Fw: M60-36321_20210316_to[redacted]MfH Referred to DoH for response - FOI 1937 - Requesting Further Information

[redacted] Thu, Jul 15, 2021 at 12:01 AM
Reply-To: [redacted]
To: Christine Massey <cmseyc@gmail.com>, "Christine.Massey@protonmail.com" <Christine.Massey@protonmail.com>

Sent with ProtonMail Secure Email.

------ Original Message ------
On Tuesday, March 16th, 2021 at 11:41 AM, DOH, FOI <FOI.DOH@health.wa.gov.au> wrote:

Our ref: M60-36321

Dear [redacted]

I refer to your email sent to the office of the WA Minister for Health, Minister Cook, on 24 February 2021 (attached for reference).

The email refers to an initial request to access records under the (Cth) *Freedom of Information Act 1982*, submitted to the Australian Department of Health (Aust DoH). Attached to your email is the emailed request to Aust DoH, together with the Aust DoH Notice of Decision, confirming no records were identified relevant to the scope of your application.

The Aust DoH also recommended you refer your request to each of the Health Departments of the Australian states and territories; and hence the referral of your request to the separate Ministers for Health.

The office of the WA Minister for Health referred your emailed request to the WA Department of Health (DoH) for direct response.

Prior to progressing the validation of your request to be a formal request to access records under the WA *Freedom of Information Act 1992* (FOI Act), which requires payment of the statutory FOI application fee and other required information, action was undertaken by DoH to identify whether any records within the scope of your request were available.

Your request was referred to various areas within DoH, and advice received that if any records were available they would be held by PathWest Laboratory Medicine WA (a part of the WA health system, and a separate agency under the FOI Act). The request was then referred to PathWest for consideration.

It is confirmed that no records have been identified relevant to the scope of your request, except for all of the modalities specifically excluded in your request.

That is, no material pertaining to SARS-CoV-2 isolation without the use of propagator cells. As an organisation for SARS-CoV-2 virus testing PathWest has only been involved in:

- Virus culture using the cells described in the FOI application to Aust DoH.
- Virus PCR.
- Virus sequencing.

I trust this assists.

Best regards

Nareen Burnell | Senior Integrity Officer – FOI

Technology and Information Services | Corporate Services | Office of the Director General

Department of Health

2nd floor, B Block, 189 Royal Street, EAST PERTH WA 6004

T: (08) 9222 8411

E: FOI.DOH@health.wa.gov.au

www.health.wa.gov.au

M60-36321_Email and attachments.pdf
285K

[redacted]

From: [redacted]
Sent: Wednesday, 24 February 2021 7:15 PM
To: office@hazzard.minister.nsw.gov.au; martin.foley@parliament.vic.gov.au; minister.fyles@nt.gov.au; Ministerforhealth@sa.gov.au; Cook, Minister; sarah.courtney@dpac.tas.gov.au; health@ministerial.qld.gov.au; stephen-smith@act.gov.au
Subject: HPECM: FOI 1937 - Requesting Further Information
Attachments: Initial FOI 1937 Response.pdf; FOI 1937.pdf

Categories: In queue to be logged

Dear Health Ministers,

I am writing to you on advice from the Australian Department of Health (the Department) to seek clarification on information requested in a Freedom of Information (FOI) request that was sent to the Department.

The Department's initial response on 24th August 2020 (attached: "Initial FOI 1937 Response"), stated: "To obtain the information you are seeking please direct your request to the various State and territory Departments of Health".

After further correspondence between the FOI author and the Department, a more formal response was given (attached: "FOI 1937"), yet the outcome remained the same.

I am therefore writing to you to on initial advice by the Department of Health to confirm whether you do hold the information requested in the original request to the Department, as shown in attachment "FOI 1937" and pasted again below:

"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient). Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something;*
- *or the performance of an amplification test (i.e. a PCR test);*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer reviewed study that The Department of Health has downloaded or printed."

I look forward to your response.

[redacted]

---------- Forwarded message ---------
From: **FOI** <FOI@health.gov.au>
Date: Mon, 24 Aug 2020, 12:10
Subject: Freedom of Information Request - Studies re isolation of SARS-COV-2 [SEC=UNOFFICIAL]
To: [redacted]

Dear [redacted]

I refer to your request to the Australian Government Department of Health (department) below:

'All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).

Please note that I am using "isolation" in the every-day sense of the word; the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:

- *the culturing of something,*
- *or the performance of an amplification test (i.e. a PCR test),*
- *or the sequencing of something.*

Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that The Department of Health has downloaded or printed.

If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it).

The department does not hold the documents you are seeking access too.

To obtain the information you are seeking please direct your request to the various State and Territory Departments of Health.

Kind regards

FOI Officer

FOI Team - FOI and Legislation Support Section

Legal & Assurance Division | Corporate Operations Group

Legal Advice & Legislation Branch

Australian Government Department of Health

T: 02 6289 1666 | E: FOI@health.gov.au

GPO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

Australian Government

Department of Health

Department Reference: FOI 1937

[redacted]

NOTICE OF DECISION: UNDER SECTION 24A OF THE FREEDOM OF INFORMATION ACT 1982

I refer to your request of 11 August 2020 to the Department of Health (department) seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

> *"All records in the possession, custody or control of The Department of Health describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a diseased patient, where the patient sample was not first combined with any other source of genetic material (i.e. monkey kidney cells aka vero cells; lung cells from a lung cancer patient).*
>
> *Please note that I am using "isolation" in the every-day sense of the word: the act of separating a thing(s) from everything else. I am not requesting records where "isolation of SARS-COV-2" refers instead to:*
>
> - *the culturing of something,*
> - *the performance of an amplification test (i.e. a PCR test),*
> - *or the sequencing of something.*
>
> *Please also note that my request is not limited to records that were authored by The Department of Health or that pertain to work done by The Department of Health. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that The Department of Health has downloaded or printed.*
>
> *If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each record with certainty (i.e. title, author(s), date, journal, where the public may access it)."*

On 24 August 2020, the department sent you an email advising the department does not hold any documents relating to the scope of your request and referring you to the states and territories. You responded the same day, seeking a PDF response and asking questions about SARS-COV-2 Virus Isolation.

I am writing to advise you of my decision.

FOI decision

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to Freedom of Information requests. I am writing to notify you of my decision on your request.

All reasonable steps have been taken to find documents referred to in your request including consultation with relevant policy and program areas, thorough searches of departmental file management systems, electronic documents on shared and personal drives and departmental data bases.

I am satisfied the consultation undertaken and the searches conducted were thorough and all reasonable steps have been taken to locate documents relevant to your request. I am satisfied the documents referred to in your request do not exist.

As a consequence, relying on section 24A of the FOI Act, I cannot provide access to the documents you requested.

FOI review rights

If you are dissatisfied with my decision, you may apply for an internal review or Australian Information Commissioner (Information Commissioner) review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the department for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as the department allows). Where possible please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer of this department within 30 days.

An application for an internal review should be addressed to:

Email:	FOI@health.gov.au
Mail:	FOI Unit (MDP 516) Department of Health GPO Box 9848 CANBERRA ACT 2601

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review must be made in writing, within 60 days of this notice (if you do not request an internal review).

The Australian Information Commissioner can be contacted by:
Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at:
https://www.oaic.gov.au/freedom-of-information/reviews/

You may also make a complaint to the Information Commissioner about action taken by the department in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions of the FOI Act

The FOI Act, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website:
https://www.legislation.gov.au/Details/C2020C00110

Additional information

As mentioned in the department's email to you of 25 August 2020, the FOI Act provides a mechanism for individuals to access 'documents' held by entities such as the department. It does not provide a mechanism for making enquiries or asking questions about issues.

However, outside the FOI Act, I can provide you with the following information that may be of assistance to you.

Point-of-care testing is a form of testing in which the analysis is performed where healthcare is provided, close to or near the patient. All point-of-care test kits for identifying the SARS CoV-2 virus (COVID-19 test kits) approved by the Therapeutic Goods Administration (TGA) for supply within Australia and inclusion in the Australian Register of Therapeutic Goods are listed on the TGA website at: www.tga.gov.au/covid-19-test-kits-included-arty-legalsupply- australia.

Information about the regulation of in vitro diagnostic medical devices in Australia, including the COVID-19 test kits, is also available on the TGA website at: www.tga.gov.au/overview-regulatory-framework-vitro-diagnostic-medical-devices

Additionally, there is a publically available paper on the isolation of SARS-CoV-2 at VIDRL (which describes inoculation of Vero/hSLAM cells which led to the isolation of SARS-CoV-2 in culture), which can be located at the following link: https://www.mja.com.au/journal/2020/212/10/isolation-and-rapid-sharing-2019-novel-coronavirus-sars-cov-2-first-patient

Contacts

If you require clarification of any of the matters discussed in this letter you should contact Freedom of Information Unit on (02) 6289 1666 or at FOI@health.gov.au.

Yours sincerely

K Bishop

K. Bishop
Principal Lawyer
Legal Advice & Legislation Branch

9 September 2020