

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]

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**Fw: M60-36321\_20210316\_to [REDACTED] MfH Referred to DoH for response - FOI 1937 - Requesting Further Information**

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Thu, Jul 15, 2021 at 12:01 AM

Reply-To: [REDACTED]  
To: Christine Massey <cmssyc@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

2<sup>nd</sup> floor, B Block, 189 Royal Street, EAST PERTH WA 6004

T: (08) 9222 6411

E: [FOI.DOH@health.wa.gov.au](mailto:FOI.DOH@health.wa.gov.au)

[www.health.wa.gov.au](http://www.health.wa.gov.au)

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 **M60-36321\_Email and attachments.pdf**  
285K

[REDACTED]

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**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.

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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).*

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*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](mailto: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.*

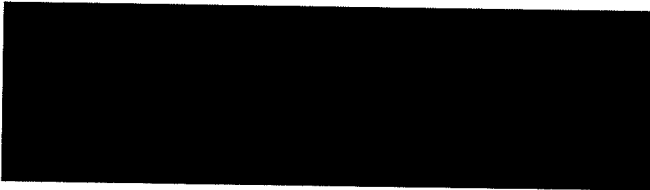
*If you receive this email in error, please delete it and contact the sender immediately.*



**Australian Government**

**Department of Health**

Department Reference: FOI 1937



**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).*

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*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](mailto: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](mailto: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-artg-legalsupply-australia](http://www.tga.gov.au/covid-19-test-kits-included-artg-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](http://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](mailto:FOI@health.gov.au).

Yours sincerely



K. Bishop  
Principal Lawyer  
Legal Advice & Legislation Branch

9 September 2020