



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

August 18, 2021

*Sent Via Electronic Mail*

Timothy C. Martin



Re: Response-August 16, 2021 Public Records Request

Dear Mr. Martin:

On behalf of the Arizona Department of Health Services (“ADHS”), I am responding to your August 16, 2021 public records request (the “Request”). In your Request, you ask for communicable disease related information, specifically 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, lung cells from a lung cancer patient).”

In response to your Request, ADHS does not have any 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.” Please note that available de-identified COVID-19 data, including case data, may be reviewed at: <https://www.azdhs.gov/covid19/data/index.php>. You may also wish to check with the Centers for Disease Control and Prevention for information that may be useful to you. See <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

In addition, even if ADHS had records responsive to your Request, A.R.S. § 36-664(A) states: “[a] person who obtains **communicable disease related information** in the course of providing a **health service** or obtains that information from a health care provider pursuant to an authorization **shall not disclose or be compelled to disclose** that information except as authorized by state or federal law....” (Emphasis added). See also A.R.S. §§ 36-661(5), (14), (21), 36-664(C), 36-665 and 36-666(A)(2) (it is a class 3 misdemeanor to disclose communicable disease related information in violation of A.R.S. Title 36, Chapter 6, Article 4); May 29, 2020 Under Advisement Ruling issued in Maricopa County Superior Court Case No. CV2020-005385; January 29, 2021 Minute Entry issued in Maricopa County Superior Court Case No. CV2020-012030.

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

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*Health and Wellness for all Arizonans*

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Further, A.R.S. § 36-784(C) states: “[a]ny medical information or other information from which a person might be identified that is received by the department or local health authority in the course of an enhanced surveillance advisory is **confidential and is not available to the public.**” (Emphasis added). *See also* A.R.S. §§ 36-136(I)(11),<sup>1</sup> 36-785(C) (information from which a person might be identified that is received by ADHS in the course of an enhanced surveillance advisory is confidential and not available to the public), 36-790(A) (requiring ADHS to maintain the confidentiality of the medical information and personal identifiers received), May 29, 2020 Under Advisement Ruling issued in Maricopa County Superior Court Case No. CV2020-005385; January 29, 2021 Minute Entry issued in Maricopa County Superior Court Case No. CV2020-012030.

Based on the foregoing, ADHS does not have the records you seek, and in the event your Request seeks more than the publicly available COVID-19 data accessible through the aforementioned ADHS webpage, ADHS cannot make those records available to you as a matter of law. Either way, ADHS is unable to fulfill your Request.

Sincerely,



Stephanie Elzenga, Administrative Counsel  
Division of Policy and Intergovernmental Affairs, Administrative Counsel and Rules

cc: Greg Falls and Craig Morgan, Sherman and Howard

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<sup>1</sup> The Arizona Administrative Code (“A.A.C.”) supports the foregoing legal interpretation. A.A.C. R9-1-301(6) and -303(D) require ADHS to “ensure that public health records disclosed pursuant to a public records request are de-identified” pursuant to 45 C.F.R. 164.514(b)(2)(i). *See* [https://apps.azsos.gov/public\\_services/register/2020/25/contents.pdf](https://apps.azsos.gov/public_services/register/2020/25/contents.pdf).

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