

Dear [REDACTED]

### **DECISION ON YOUR ACCESS APPLICATION**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (FOI Act), received originally by Chief Minister, Treasury and Economic Development Directorate (CMTEDD) and transferred under Section 57 of the FOI Act to the ACT Health Directorate (ACTHD) on **Monday 30 August 2021**. In accordance with section 43(2) of the FOI Act this application was combined and treated as one application with another received on **Wednesday 1 September 2021**.

This application requested access to:

*'All records in the possession, custody or control of the ACT Health Agency. All records in the possession, custody or control of all, the Canberra Health Agencies, providing the Canberra Government, & the Canberra Media with evidence that a virus exists while describing the isolation of a SARS-COV-2 virus, directly from a sample taken from a live patient, or 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.'*

I am an Information Officer appointed by the Director-General of ACT Health Directorate (ACTHD) under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. ACTHD was required to provide a decision on your access application by **Monday 27 September 2021**.

My access decisions are detailed further in the following statement of reasons. In reaching my access decision, I have taken the following into account:

- The FOI Act;
- The contents of the documents that fall within the scope of your request; and
- The *Human Rights Act 2004*.

#### **Decisions on access**

I have decided to refuse to deal with the application in accordance with;

Section 43 (1) A respondent may refuse to deal with an access application wholly or in part only if – (f) an earlier access application for the same government information –

- (i) was made in the 12 months before the application was made; and
- (ii) access to the information was refused; and
- (iii) the relevant public interest factors are materially the same as those considered in deciding the earlier application.

Please see the below links to the relevant earlier applications available on the ACTHD disclosure log;

[https://www.health.act.gov.au/sites/default/files/2021-09/ACTHDFOI21-22.10%20ACTHD%20Response\\_DL.pdf](https://www.health.act.gov.au/sites/default/files/2021-09/ACTHDFOI21-22.10%20ACTHD%20Response_DL.pdf)

Also, Canberra Health Services has previously made the decision that ACT Pathology does not hold any documents and is outlined in the response within the below link;

<https://www.health.act.gov.au/sites/default/files/2021-03/FOI21-10%20-%20CHS%20Response%20-%20Disclosure%20Log.pdf>

Therefore, I am satisfied that ACTHD 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, ACTHD 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](mailto:ACTFOI@ombudsman.gov.au)  
Website: [ombudsman.act.gov.au](http://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](mailto:HealthFOI@act.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Shadbolt', written in a cursive style.

Associate Professor Bruce Shadbolt  
**Executive Branch Manager**  
Centre for Health and Medical Research

20 September 2021