

Reason for the objection:

1. the penalty notice is unlawful.
2. according to §1 IfSG applies:
 - (1) The purpose of the law is to prevent communicable diseases in humans, to detect infections at an early stage and to prevent their further spread.
 - (2) The necessary cooperation and collaboration of federal, state and local authorities, physicians, veterinarians, hospitals, scientific institutions and other stakeholders **should be organized and supported in accordance with the respective state of medical and epidemiological science and technology.**
3. the German Research Foundation (DFG) published guidelines to ensure good scientific practice as early as 1998. When the Code comes into force on August 1, 2019, all universities and non-university research institutions **must implement** the 19 guidelines and their explanatory notes in a **legally binding manner** (see Proposal for Evidence 1a). According to the DFG, the general principles of scientific work include:
 - Lege artis to work
 - **Document results**
 - **Consistently self-doubt all results**

According to the DFG, the following also applies: **Even in fields of work where intense competition forces researchers to publish as quickly as possible, the quality of the work and the publication must be the top priority. Results must be checked and replicated wherever actually possible** before they are submitted for publication." (see Request for Evidence 1b)

Guideline 11 of the Code (Methods and Standards) states, **Many methods used in life science projects have limitations. The strengths and weaknesses of a method should be considered in the choice of method, documented, and balanced by appropriate controls.** (see Evidence Request 1c)

The Robert Koch Institute (RKI) has also been committed to the DFG rules since May 2002. According to the RKI, this serves **scientific self-control** (see Proposition of Evidence 1d).

The virologists did not act according to the state of the art of medical and epidemiological science and technology, as required by §1 IfSG, because they did not control and document their methods and results.

To prove my case, I submit the following evidentiary motions:

1. in order to prove that the state of the art in science and technology requires that its results be consistently self-doubted, checked and documented, I request that the following documents or sources be included:
 - (3) "Guidelines for Safeguarding Good Scientific Practice" of the German Research Foundation (DFG), available at <http://www.dfg.de/download/pdf/dfgimprofil/gremien/senat/klinischefors>

chung/workshop1515/foiensatzveranstaltung/replizierbarkeitreplikationfrankwissing.pdf.

(4) DFG document on replicability in clinical research, available at <http://www.dfg.de/download/pdf/dfgimprofil/gremien/senat/klinischeforschung/workshop1515/foiensatzveranstaltung/replizierbarkeitreplikationfrankwissing.pdf>.

(5) Guideline 11 "Methods and Standards in the Life Sciences" of the DFG, available at <https://wissenschaftliche-integritaet.de/kommentare/methoden-und-standards-in-den-lebenswissenschaften/>

(6) The RKI also acknowledges and commits to compliance with the DFG guidelines, which can be read at <https://www.rki.de/DE/Content/Forsch/Grundlagen/grundlagennode.html>

2. to prove that virologists do not control and document their methods, I request the inclusion of the following document:

The attached document is a responded Freedom of Information Act (FOIA) request by Australia's *Peter Doherty Institute for Infection and Immunity* at the University of Melbourne. Researchers at the Doherty Institute began publishing the document in early 2020 with the publication of

"Isolation and rapid sharing of the 2019 novel coronavirus (SARS-CoV-2) from the first patient diagnosed with COVID-19 in Australia" published one of the world's authoritative publications on the claimed pathogen detection for the so-called "SARS-CoV-2" virus. The questioner asked the authors of the study whether they had performed and documented the scientifically prescribed control experiments for their methods.

According to the authors, no control experiments were documented throughout the publication and were not performed for the whole genome sequencing. Thus, two central components of the scientific method are violated (documentation and control).

3. to prove that none of the published studies on the so-called pathogen detection for "Sars-CoV-2" includes performed and documented control experiments for the methods used - including genome sequencing.

I request that the court obtain a factual opinion from a SARS-Cov-2 virologist on this matter. The SARS-CoV-2 virologist should provide evidence, based on at least one original scientific publication, that a viral structure designated as SARS-CoV-2 was discovered through isolation and biochemical characterization of its components. **The scientific publication must include the performance and documentation of all control experiments.**

<mailto:marvin.haberland@berkeley.edu>

marvin.haberland@berkeley.edu

From: [foi-officer](mailto:foi-officer@unimelb.edu.au) <foi-officer@unimelb.edu.au>

Sent: Tuesday, 22 February 2022 06:23

To: marvin.haberland@berkeley.edu

Cc: foi-officer

Subject: RE: [EXT] Request under FOI Act

Dear Marvin,

I have followed up with the Doherty Institute in response to your final question. The answer below was provided:

At the time there was no established method for sequencing SARSCoV2 In order to maximise the number of sequencing reads for nCoV2019 (named at the time) we elected to dedicate an entire flow cell to the positive culture sample to maximise our recovery of the viral reads and not spend reads on sequencing a negative sample.

I trust this is of assistance and

wish you well. Kind regards,

Eugene

From: marvin.haberland@berkeley.edu
<marvin.haberland@berkeley.edu> **Sent:** Tuesday, 8 February 2022 7:57 PM
To: foi-officer <foi-officer@unimelb.edu.au>
Subject: AW: [EXT] Request under FOI Act

External email: Please exercise caution

Dear Eugene,

Thank you very much.
Your answer fully satisfies my request.

Is there any specific reason why the authors of the study did not perform negative controls for all the genome sequencing methodology?

Many thanks,

Marvin

From: foi-officer
<foi-officer@unimelb.edu.au>
Sent: Tuesday, February 8, 2022 04:01
To: marvin.haberland@berkeley.edu
Cc: foi-officer
<foi-officer@unimelb.edu.au>
Subject: RE: [EXT] Request under FOI Act.

Dear Marvin,

Apologies for the delay in response - I have made some preliminary enquiries and write to advise that the Doherty Institute can provide the following answers to your questions regarding the **"Isolation and rapid sharing of the 2019 novel coronavirus (SARS- CoV- 2) from the first patient diagnosed with COVID- 19 in Australia"** publication.

- (7) Can you confirm that the negative control culture was grown in the same conditions (37°C, 5% CO₂) and maintenance media (consisting of 10mL EMEM, 7% FBS, 2mM L-glutamine, 1 mM sodium pyruvate, 1500mg/L sodium bicarbonate, 15 mM HEPES and 0.4mg/ml geneticin) to 95% confluency in 25cm² flasks, and that, for the negative control, maintenance media was removed and 10 mL viral culture media (EMEM as above but FBS reduced to 2%) was added?

As background, Doherty researchers define a control to be a component of an experiment intended to eliminate alternative explanations for experimental results, due to 'confounding variables'. It does this by as closely as is feasible replicating all components of the experiment other than the variable being measured. In this case, it means our negative controls have been treated in the same media conditions and changes as our positives.

2. Could you please provide me with the exact documentation of the negative control experiment. There is no specific documentation for this experiment. Assuming your question relates to the methodology used to create this control, these are not documented or included in publications. As mentioned above, they are presumed to follow as much as it is feasible the original experiment, replicating all components of the experiment other than the variable being measured.
3. Regarding genome sequencing from the infected cell culture, did you perform control experiments to exclude that also other virus genomes could have been assembled de novo or via alignment using other reference genomes? We did not look for other viral genomes. Our assembly was performed against the released Wuhan1 reference sequence as we were looking for SARS-CoV-2.

4. Did you perform control experiments to exclude that the target virus genome could have been assembled de novo or via alignment from the negative control culture?

Sequencing and denovo assembly was only performed on positive, infected material.

5. If the answer for 3. and 4. is yes, could you please provide to me the documented negative control procedure for the genome sequencing?

N/A - see responses to 3 and 4.

I trust these responses satisfy

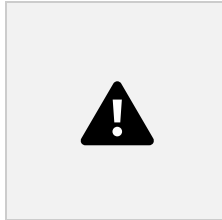
your queries. Kind regards,

Eugene

Eugene Toh (he/him) | Information Regulation Officer

Information Regulation | Information Governance Services |
Legal and Risk The University of Melbourne
T: +61 3 834 427 04 / MS Teams (preferred) E: eugene.toh@unimelb.edu.au

I acknowledge the Traditional Owners of the land on which I work, and pay my respects to the Elders, past and present.



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From: foi-officer
[<foi-officer@unimelb.edu.au>](mailto:foi-officer@unimelb.edu.au)
Sent: Wednesday, 2 February
2022 9:40 AM **To:**
marvin.haberland@berkeley.edu

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Cc: foi-officer
[<foi-officer@unimelb.edu.au>](mailto:foi-officer@unimelb.edu.au)
Subject: RE: [EXT] Request
under FOI Act.

Dear Marvin,

Thanks for your email and apologies for the delay - I've followed up w/ relevant authors of the publication and am hoping to have an answer to your questions soon. I'll keep you updated.

Regards,

Eugene

From: marvin.haberland@berkeley.edu
[<marvin.haberland@berkeley.edu>](mailto:marvin.haberland@berkeley.edu) **Sent:** Tuesday, 1 February
2022 4:55 AM
To: foi-officer [<foi-officer@unimelb.edu.au>](mailto:foi-officer@unimelb.edu.au)
Subject: AW: [EXT] Request under FOI Act

External email: Please exercise caution

Dear Sir or Madam,

This is a kind reminder regarding my request.

Marvin Haberland

From: foi-officer
[<foi-officer@unimelb.edu.au>](mailto:foi-officer@unimelb.edu.au) **Sent:**
Thursday, 23 December 2021 01:45
To: marvin.haberland@berkeley.edu
Cc: foi-officer
[<foi-officer@unimelb.edu.au>](mailto:foi-officer@unimelb.edu.au)
Subject: FW: [EXT] Request
under FOI Act.

Dear Marvin,

We have received preliminary advice from the Doherty Institute that your questions can be answered directly, outside of the formal FOI process. However, as the University is entering its shutdown period (24th Dec - 3rd Jan), we will not have a response until midlate January. If you're happy to proceed on this basis, we will continue liaising with the Doherty and get answers to your questions as soon as possible.

Please don't hesitate to contact me if you have

any questions. Kind regards,

Eugene

Eugene Toh (he/him) | Information Regulation Officer
Information Regulation | Information Governance Services |
Legal and Risk The University of Melbourne
T: +61 3 834 427 04 / MS Teams (preferred) **E:** eugene.toh@unimelb.edu.au

I acknowledge the Traditional Owners of the land on which I work, and pay my respects to the Elders, past and present.



From: foi-officer
[<foi-officer@unimelb.edu.au>](mailto:foi-officer@unimelb.edu.au)
Sent: Tuesday, 14 December 2021
9:01 AM
To: marvin.haberland@berkeley.edu

Cc: foi-officer
<foi-officer@unimelb.edu.au>

Subject: FW: [EXT] Request
under FOI Act.

Dear Marvin,

I write to acknowledge receipt of your below email to The Peter Doherty Institute for Infection and Immunity. We will make preliminary enquiries and come back to you with further advice in due course.

Kind regards,

Susan Maye [she/her/hers](#). | **Manager, Information Regulation**
Information Governance Services | Legal and Risk | Chief Operating
Officer Portfolio The University of Melbourne, Parkville Campus,
Victoria, Australia
E: susan.maye@unimelb.edu.au T: +61 3 903 54268 / MS Teams **Meet:** Zoom / Teams

Please note that the University is closed for business from 25 December to 3 January, reopening on Tuesday, 4 January 2022.

To manage end of year workload and resourcing, we ask that you engage with us as early as possible. The team will be managing urgent matters on a priority basis during December and January as we will have reduced staff available during this period.

Many University staff remain working remotely. My usual hours of work are Monday to Thursday 9:30am to 5:30pm and every second Friday.

From: marvin.haberland@mailbox.org
<marvin.haberland@mailbox.org> Sent: Friday, 10 December
2021 2:48 AM
To: Doherty Reception
<doherty-reception@unimelb.edu.au> Subject:
[EXT] Request under FOI Act.

External email: Please exercise caution

Dear Sir or Madam,

Under the FOI Act, I would like to request the following information and/or documentation regarding the publication "**Isolation and rapid sharing of the 2019 novel coronavirus (SARS-CoV- 2) from the first patient diagnosed with COVID- 19 in Australia**" published by several authors of your house.

1. can you confirm that the negative control culture was grown in the same conditions (37°C, 5% CO2) and maintenance media (consisting of 10mL EMEM, 7% FBS, 2mM L-glutamine, 1 mM sodium pyruvate, 1500mg/L sodium bicarbonate, 15 mM HEPES and 0.4mg/ml geneticin) to

95% confluency in 25cm² flasks, and that, for the negative control, maintenance media was removed and 10 mL viral culture media (EMEM as above but FBS reduced to 2%) was added?

(8) Could you please provide me with the exact documentation of the negative control experiment.

(9) Regarding genome sequencing from the infected cell culture, did you perform control experiments to exclude that also other virus genomes could have been assembled de novo or via alignment using other reference genomes?

(10) Did you perform control experiments to exclude that the target virus genome could have been assembled de novo or via alignment from the negative control culture?

(11) If the answer for 3. and 4. is yes, could you please provide to me the documented negative control procedure for the genome sequencing?

Please send your answer to

marvin.haberland@berkeley.edu. Please confirm

that you received this FOIA request.

Many thanks and kind regards

Marvin Haberland