

Begründung für den Einspruch:

1. Der Bußgeldbescheid ist rechtswidrig.
2. Laut §1 IfSG gilt:
 - (1) Zweck des Gesetzes ist es, übertragbaren Krankheiten beim Menschen vorzubeugen, Infektionen frühzeitig zu erkennen und ihre Weiterverbreitung zu verhindern.
 - (2) Die hierfür notwendige Mitwirkung und Zusammenarbeit von Behörden des Bundes, der Länder und der Kommunen, Ärzten, Tierärzten, Krankenhäusern, wissenschaftlichen Einrichtungen sowie sonstigen Beteiligten **soll entsprechend dem jeweiligen Stand der medizinischen und epidemiologischen Wissenschaft und Technik gestaltet und unterstützt werden.**
3. Die Deutsche Forschungsgemeinschaft (DFG) hat bereits 1998 Leitlinien zur Sicherung guter wissenschaftlicher Praxis veröffentlicht. Mit Inkrafttreten des Kodex zum 1. August 2019 **müssen** alle Hochschulen und außerhochschulischen Forschungseinrichtungen die 19 Leitlinien und ihre Erläuterungen **rechtsverbindlich umsetzen** (siehe Beweisantrag 1a). Die allgemeinen Prinzipien wissenschaftlicher Arbeit sind laut DFG unter anderen:
 - Lege artis zu arbeiten
 - **Resultate zu dokumentieren**
 - **Alle Ergebnisse konsequent selbst anzuzweifeln**

Laut DFG gilt außerdem: „**Auch auf Arbeitsfeldern, wo intensiver Wettbewerb dazu zwingt, möglichst rasch zu publizieren, muss die Qualität der Arbeit und der Veröffentlichung oberstes Gebot sein. Ergebnisse müssen, wo immer tatsächlich möglich, kontrolliert und repliziert werden,** ehe sie zur Veröffentlichung eingereicht werden.“ (siehe Beweisantrag 1b)

In Leitlinie 11 des Kodex (Methoden und Standards) heißt es: „**Viele Methoden, die in lebenswissenschaftlichen Projekten zur Anwendung kommen, weisen Limitierungen auf. Die Stärken und Schwächen einer Methode sollten bei der Wahl der Methode berücksichtigt, dokumentiert und durch entsprechende Kontrollen ausgeglichen werden.**“ (siehe Beweisantrag 1c)

Auch das Robert Koch Institut (RKI) bekennt sich seit Mai 2002 zu den Regeln der DFG. Laut RKI dient dies der **wissenschaftlichen Selbstkontrolle** (siehe Beweisantrag 1d).

Die Virologen haben nicht nach dem Stand der medizinischen und epidemiologischen Wissenschaft und Technik gehandelt, so wie es in §1 IfSG gefordert ist, weil sie ihre Methoden und Ergebnisse nicht kontrolliert und dokumentiert haben.

Um meine Begründung zu beweisen stelle ich folgende Beweisanträge:

1. Zum Beweis der Tatsache, dass der Stand der Wissenschaft und Technik erfordert, seine Ergebnisse konsequent selbst anzuzweifeln, zu kontrollieren und zu dies zu dokumentieren, beantrage ich die Aufnahme folgender Dokumente bzw. Quellen:
 - a. „Leitlinien zur Sicherung guter wissenschaftlicher Praxis“ der Deutschen Forschungsgemeinschaft (DFG), aufzurufen unter <http://doi.org/10.1002/9783527679188.oth1>
 - b. Dokument der DFG zur Replizierbarkeit in der Klinischen Forschung, aufzurufen unter http://www.dfg.de/download/pdf/dfg_im_profil/gremien/senat/klinische_forschung/workshop_1515/foliensaetze_veranstaltung/replizierbarkeit_replikation_frank_wissing.pdf
 - c. Leitlinie 11 “Methoden und Standards in den Lebenswissenschaften” der DFG, nachzulesen unter <https://wissenschaftliche-integritaet.de/kommentare/methoden-und-standards-in-den-lebenswissenschaften/>
 - d. Auch das RKI bekennt und verpflichtet sich zur Einhaltung der Leitlinien der DFG, zu lesen unter https://www.rki.de/DE/Content/Forsch/Grundlagen/grundlagen_node.html
2. Zum Beweis der Tatsache, dass Virologen ihre Methoden nicht kontrollieren und dokumentieren, beantrage ich die Aufnahme des folgenden Dokumentes:

Das angehängte Dokument ist eine beantwortete Anfrage nach Informationsfreiheitsgesetz (Freedom of Information Act, FOIA) durch das australische *Peter Doherty Institute for Infection and Immunity* an der Universität von Melbourne. Forscher des Doherty Institutes haben Anfang 2020 mit der Publikation „Isolation and rapid sharing of the 2019 novel coronavirus (SARS-CoV-2) from the first patient diagnosed with COVID-19 in Australia“ eine der weltweit Maßgebenden Publikationen zum behaupteten Erregernachweis für das sogenannte „SARS-CoV-2“ Virus publiziert. Der Fragesteller fragte bei den Autoren der Studie nach, ob diese die wissenschaftlich vorgeschriebenen Kontrollversuche für ihre Methoden durchgeführt und dokumentiert haben. **Laut den Autoren wurden in der gesamten Publikation keine Kontrollversuche dokumentiert und für die gesamte Genomsequenzierung auch nicht durchgeführt.** Damit sind zwei zentrale Bestandteile der wissenschaftlichen Methode verletzt (Dokumentation und Kontrolle).
3. Zum Beweis der Tatsache, dass keine der publizierten Studien zum sogenannten Erregernachweis für „Sars-CoV-2“ durchgeführte und dokumentierte Kontrollversuche für die verwendeten Methoden - inklusive der Genomsequenzierung - beinhaltet beantrage ich, dass das Gericht ein Sachgutachten eines Sars-Cov-2-Virologen hierzu einholt. Der SARS-CoV-2-Virologe sollte anhand von mindestens einer wissenschaftlichen Originalpublikation belegen, dass eine virale Struktur, die als SARS-CoV-2 benannt wurde, durch Isolation und biochemische Charakterisierung seiner Bestandteile entdeckt wurde. **Die wissenschaftliche Publikation muss die Durchführung und Dokumentation aller Kontrollversuche enthalten.**

marvin.haberland@berkeley.edu

Von: foi-officer <foi-officer@unimelb.edu.au>
Gesendet: Dienstag, 22. Februar 2022 06:23
An: marvin.haberland@berkeley.edu
Cc: foi-officer
Betreff: 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 SARS-CoV-2. In order to maximise the number of sequencing reads for nCoV-2019 (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

Von: foi-officer <foi-officer@unimelb.edu.au>
Gesendet: Dienstag, 8. Februar 2022 04:01
An: marvin.haberland@berkeley.edu
Cc: foi-officer <foi-officer@unimelb.edu.au>
Betreff: 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.

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?

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 Wuhan-1 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.



This email and any attachments may contain personal information or information that is otherwise confidential or the subject of copyright. Any use, disclosure or copying of any part of it is prohibited. The University does not warrant that this email or any attachments are free from viruses or defects. Please check any attachments for viruses and defects before opening them. If this email is received in error, please delete it and notify us by return email.

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

Sent: Wednesday, 2 February 2022 9:40 AM

To: marvin.haberland@berkeley.edu

Cc: foi-officer <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>

Sent: Tuesday, 1 February 2022 4:55 AM

To: foi-officer <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.

Many thanks

Marvin Haberland

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

Gesendet: Donnerstag, 23. Dezember 2021 01:45

An: marvin.haberland@berkeley.edu

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

Betreff: 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 mid-late 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.



This email and any attachments may contain personal information or information that is otherwise confidential or the subject of copyright. Any use, disclosure or copying of any part of it is prohibited. The University does not warrant that this email or any attachments are free from viruses or defects. Please check any attachments for viruses and defects before opening them. If this email is received in error, please delete it and notify us by return email.

From: foi-officer <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?

2. Could you please provide me with the exact documentation of the negative control experiment.
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?
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?
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?

Please send your answer to marvin.haberland@berkeley.edu.

Please confirm that you received this FOIA request.

Many thanks and kind regards

Marvin Haberland