

Rebecca Ewert <r.ewert@auckland.ac.nz>

Wed, Sep 9, 2020 at 2:31 PM

To: [REDACTED]

Dear [REDACTED]

I refer to your request of 7 September 2020 below. I understand you have made similar requests to other units within the University. For the purposes of the Official Information Act, the University is one organisation and accordingly all requests for official information are managed centrally. Could you send all your requests for official information under the Official Information Act to my email address, r.ewert@auckland.ac.nz, or to the generic address legal@auckland.ac.nz. The University will respond to your requests as soon as reasonably practicable, but no longer than 20 working days after receipt, in accordance with the Act.

Yours sincerely,

Rebecca Ewert

General Counsel

University of Auckland

From: [REDACTED]

Sent: Monday, 7 September 2020 12:54 PM

To: Peter Hunter <p.hunter@auckland.ac.nz>

Subject: OIA Request: re Isolation of SARS-COV-2

This is an Official Information Act Request to Auckland University's 'Auckland Bioengineering Institute'.

Description of Requested Records:

All records in the possession, custody or control of Auckland Bioengineering Institute 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 Auckland Bioengineering Institute or that pertain to work done by Auckland Bioengineering Institute. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that Auckland Bioengineering Institute has downloaded or printed.

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).

I will accept PDFs or links to PDFs.

King Regards

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Rebecca Ewert <r.ewert@auckland.ac.nz>

Thu, Sep 17, 2020 at 2:34 PM

To: [REDACTED]

Dear [REDACTED]

I refer to your requests of 7 September 2020. The University's response follows:

"All records in the possession, custody or control of Auckland Bioengineering Institute 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 also note that my request is not limited to records that were authored by Auckland Bioengineering Institute or that pertain to work done by Auckland Bioengineering Institute. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that Auckland Bioengineering Institute has downloaded or printed."

No such records have been authored by Auckland Bioengineering Institute staff or pertain to work done by Auckland Bioengineering Institute staff. Your request for these documents is refused under section 18(e) of the Official Information Act 1982, as the requested documents do not exist. Your request for any other such records – including published studies by third parties that Auckland Bioengineering Institute staff have downloaded or printed – would require substantial collation or research to provide, and unless this part of your request is amended or withdrawn the University would likely refuse it under section 18(f) of the Official Information Act. Please advise by 24 September 2020 whether you wish to amend or withdraw this part of your request.

"All records in the possession, custody or control of Auckland University's Science Department 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 also note that my request is not limited to records that were authored by Auckland University's Science Department or that pertain to work done by Auckland University's Science Department. My request includes any sort of record, for example (but not limited to) any published peer-reviewed study that Auckland University's Science Department has downloaded or printed."

No such records have been authored by University staff in the Faculty of Science or pertain to work done by staff in the Faculty of Science. Your request for these documents is refused under section 18(e) of the Official Information Act 1982, as the requested documents do not exist. Your request for any other such records – including published studies by third parties that University staff in the Faculty of Science have downloaded or printed – would require substantial collation or research to provide, and unless this part of your request is amended or withdrawn the University would likely refuse it under section 18(f) of the Official Information Act. Please advise by 24 September 2020 whether you wish to amend or withdraw this part of your request.

You have the right to make a complaint to an Ombudsman if you are dissatisfied with this response.

[Quoted text hidden]

Fri, Sep 18, 2020 at 8:25 AM

Reply-To: [REDACTED]
To: Rebecca Ewert <r.ewert@auckland.ac.nz>

Dear Rebecca,

"Your request for any other such records – including published studies by third parties that Auckland Bioengineering Institute staff have downloaded or printed – would require substantial collation or research to provide..."

"Your request for any other such records – including published studies by third parties that University staff in the Faculty of Science have downloaded or printed – would require substantial collation or research to provide..."

The first sentence of my request reads "***All records in the possession, custody or control of Auckland Bioengineering Institute ...***" and "***All records in the possession, custody or control of Auckland University's Science Department describing the isolation of a SARS-COV-2 virus***".

I have clearly **not** requested the University of Auckland to conduct research or do a literature search on the topic.

Given that:

- devastating lockdown measures have been imposed based on reports of "confirmed COVID-19 cases" and "COVID-19 deaths" said to be caused by a novel coronavirus called "SARS-COV-2", and
- isolation is one of the essential steps in determining scientifically whether a suspected pathogen causes any disease, and
- The Bioengineering Lab claims to have designed face shields that "... provide another layer of protection, to be worn over surgical face masks, to reduce the viral load that healthcare workers can be exposed to." (<https://www.auckland.ac.nz/en/abi/our-research/covid-19-research/face-shield-fast-effective-protection/about-our-face-shields.html>), and
- The Bioengineering Lab are researching the modeling of transmission and infection which would require background research (<https://www.auckland.ac.nz/en/abi/our-research/covid-19-research/covid-19-modelling-at-abi.html>), and
- The Bioengineering Lab is actively recruiting staff to research SARS-COV-2/COVID-19 (<https://www.auckland.ac.nz/en/abi/our-research/covid-19-research/join-abi.html>)

I would expect scientists and engineers at the University who are doing COVID-19 research to have all responsive records at their fingertips.

Thus I am **not** amending my request, and I look forward to the University's final, formal response.

Can I also please have the University's response in a signed PDF?

Thank you

[Quoted text hidden]

Rebecca Ewert <r.ewert@auckland.ac.nz>

Fri, Sep 18, 2020 at 4:16 PM

To: [REDACTED]

Dear [REDACTED]

I refer to your email of 18 September 2020.

"The first sentence of my request reads *"All records in the possession, custody or control of Auckland Bioengineering Institute ..."* and *"All records in the possession, custody or control of Auckland University's Science Department describing the isolation of a SARS-COV-2 virus"*.

I have clearly **not** requested the University of Auckland to conduct research or do a literature search on the topic."

Section 18(f) of the Official Information Act allows requests for official information to be refused where "the information requested cannot be made available without substantial collation or research". "Research" here means the work in finding the requested information held by the University; it does not mean conducting research to obtain new information (as the Official Information Act only applies to official information held by organisations). "Collation" refers to bringing the requested information together.

I note that you have identified particular projects which are of interest to you. If you wish to amend your request to be limited to records held by staff carrying out specified projects, so that we can narrow the search to a small number of staff, rather than records held by the Science Faculty and the Bioengineering Institute, then we may be able to proceed with your request rather than refuse it under section 18(f) as requiring substantial collation or research. Please advise whether you wish to amend your request in this way.

You should be aware, however, that if the substantial collation or research issue is addressed there are other potential issues which may result in all or part of your request being refused. For example:

1. The definition of "official information" excludes library material held for reference purposes, and this may exclude material obtained from our Library databases by our researchers.
2. Providing the requested material may breach agreements under which the material was supplied; for example, journal articles are copyright material and it may breach the University's licensing agreements with publishers to provide these to you.

Yours sincerely,

Rebecca Ewert

General Counsel

University of Auckland

Fri, Sep 18, 2020 at 4:44 PM

Reply-To: [REDACTED]
To: Rebecca Ewert <r.ewert@auckland.ac.nz>

Greetings Rebecca,

"Section 18(f) of the Official Information Act allows requests for official information to be refused where "the information requested cannot be made available without substantial collation or research". "Research" here means the work in finding the requested information held by the University; it does not mean conducting research to obtain new information (as the Official Information Act only applies to official information held by organisations). "Collation" refers to bringing the requested information together.

I note that you have identified particular projects which are of interest to you. If you wish to amend your request to be limited to records held by staff carrying out specified projects, so that we can narrow the search to a small number of staff, rather than records held by the Science Faculty and the Bioengineering Institute, then we may be able to proceed with your request rather than refuse it under section 18(f) as requiring substantial collation or research. Please advise whether you wish to amend your request in this way."

I have submitted and received responses from many organizations from the UK, Australia, and New Zealand. None of these organizations had any problem with responding. For instance, I submitted an OIA to the New Zealand Ministry of Health. Not only did the Ministry respond but they also inquired with ESR. ESR responded that they too did not have any responsive records.

I assume that each university department has an email list; it surely doesn't require 'research' to send an email to such lists. I hardly think that 'substantial collation' is required for reading the email responses and summarizing those responses. But maybe you can ask The Ministry of Health for help in responding to this request?

You should be aware, however, that if the substantial collation or research issue is addressed there are other potential issues which may result in all or part of your request being refused. For example:

1. The definition of "official information" excludes library material held for reference purposes, and this may exclude material obtained from our Library databases by our researchers.
2. Providing the requested material may breach agreements under which the material was supplied; for example, journal articles are copyright material and it may breach the University's licensing agreements with publishers to provide these to you.

I understand that my OIA is for publicly available information.

I would be extremely surprised if the most important research of our lifetime is hidden away behind a paywall. Again, none of the other organizations mentioned paywalls or IP issues when responding to my requests.

I won't be modifying my OIA as the Ministry of Health had no trouble providing a response of 18(e) as they had no records. I will certainly object to a response with an 18(f) rejection with the Ombudsmen as The Ministry of Health responded which has already set the precedence for this OIA request if you decide to go this route.

Regards

[Quoted text hidden]

Landon Watt <landon.watt@auckland.ac.nz>

Tue, Oct 6, 2020 at 8:40 PM

To: [REDACTED]

Dear [REDACTED]

I refer to your email of 18 September 2020, which clarifies that your Official Information Act request is for publicly available information. Accordingly, to the extent that the University holds the requested information, your request is refused under section 18(d) of the Official Information Act, on the basis that the information requested is publicly available. You have the right to make a complaint to an Ombudsman if you are dissatisfied with this response.

Yours sincerely,

Landon Watt
Legal Advisor

Office of the Vice Chancellor

University of Auckland

[REDACTED]
To: Landon Watt <landon.watt@auckland.ac.nz>

Tue, Oct 6, 2020 at 8:51 PM

Greeting Landon Watt,

Can you please provide links to the publicly available information according to 18(d) that satisfies my OIA request?

If you fail to provide this information, then I will be left with no other choice but to file against the university for fraudulently refusing my request.

Thank you.

[Quoted text hidden]