

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 by ACT Health Directorate (ACTHD) on **Wednesday 15 September 2021**.

This application requested access to:

- *A1: A certified copy of all written public health directions and/or emergency directions signed by Chief Health Officer Kerryn Coleman she claims to have issued specifically unto me and/or my PERSON, where the recipient is clearly identified in those documents, along with; (a) their expiration date, and (b) the statement of grounds on which they were made, and (c) confirmation of the date, time and location upon which they were personally served.*

Section 113 subsection 3 (a) of the Public Health Act 1997 clearly states: "A direction ... must be in writing signed by the chief health officer;"

Section 120 subsection 5 of the Public Health Act 1997 clearly states: "A direction ... may be given orally or in writing."

Section 245 of the Legislation Act 2001 clearly states: "This part [Part 19.5 Service of Documents] applies to a document that is authorised or required under a law to be served (whether the word 'serve', 'give', 'notify', 'send' or 'tell' or any other word is used)."

Section 247 of the Legislation Act 2001 clearly states: "A document may be served on an individual - (a) by giving it to the individual; or (b) by sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or (c) by faxing it to a fax number of the individual; or (d) by emailing it to an email address of the individual; or (e) by leaving it, addressed to the individual, at a home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address. "*

NOTICE - neither legislation state the service of documents on an individual may be transmitted by broadcast, or by telecommunications (except by fax or email), or by internet or likewise generally.

NOTICE - unlawful methods for serving a notifiable instrument on an individual (such as giving a direction) include radio, television, telephone conversation, news article, or likewise. See section 153 of the Emergency Act 2004 for reference.

NOTICE - neither legislation imply or state the chief health officer may issue directions to "individuals" or "all people" or "all persons" or anything in a plural sense by way of a single instrument.

Section 120 subsection 3 of the Public Health Act 2010 clearly states: "A direction ... takes effect immediately after it is given, unless otherwise directed."

- *B: A certified copy of every "signed written record" of all action taken and of each direction Chief Health Officer Kerry Coleman claims to have issued specifically unto me and/or my PERSON.*

Section 120 subsection 7 of the Public Health Act 1997 clearly states: "The chief health officer must make a signed written record of all action taken, and of each direction given ... "

Section 120 subsection 8 of the Public Health Act 1997 clearly states: "... a record of the direction made by the chief health officer ... is evidence that the direction was given ... "

- *A2: In relation to the above, a certified copy of all documents that prove prior to issuing a direction Chief Health Officer Kerry Coleman considered: the "reasonable grounds", along with the details of what those reasonable grounds are/were, including; (a) all evidence (in addition to how the personal health information was obtained) that proves without reasonable doubt my immune system was labouring under an infectious disease or was guaranteed to be at the time. And, (b) all evidence (in addition to how the personal health information was obtained) - provided by way of virological isolation and purification techniques - that proves without reasonable doubt there came to be found a "significant" particle detected on me or was guaranteed to be at the time, and it was determined to be in fact a serious and imminent risk to public health.*

Section 113 subsection 1 of the Public Health Act 1997 clearly states: "If the chief health officer has reasonable grounds for believing that it is necessary to prevent or alleviate a significant public health hazard, the chief health officer may issue 1 or more ... directions to a person ... "

Section 113 subsection 2 of the Public Health Act 1997 clearly states: "... a reference to a person who has a transmissible notifiable condition, or to a contact of such a person, is to be taken to be a reference to a person who the chief health officer has reasonable grounds for believing to have such a condition, or to be such a contact."

Section 116 subsection 2 of the Public Health Act 1997 clearly states: "An authorised officer must only implement a public health direction ... if the officer has reasonable grounds for believing that it is necessary to do so to avert an imminent and serious risk to public health."*

**The Dictionary in the Public Health Act 1997 page 149 defines authorised officer: "in relation to the exercise of a function under this Act [Public Health Act 1997], means-(a) the chief health officer;"*

- *A3: In relation to the above, a certified copy of all documents that prove prior to issuing a direction Chief Health Officer Kerry Coleman considered: to what extent the significant hazard might adversely affect me specifically, including my friends and my family. Also, all verified data that discloses the exact estimated percentage of people guaranteed to contract said hazard in the ACT and their expected outcomes in light of survivability rate.*

Section 113 subsection 4 (b) of the Public Health Act 1997 clearly states: "... the chief health officer must have regard to the following matters: the degree to which the public health hazard would affect individuals;"

Section 113 subsection 4 (a) of the Public Health Act 1997 clearly states: "... the chief health officer must have regard to the following matters: the number of people potentially affected by the public health hazard;"

- *A4: In relation to the above, a certified copy of all documents that prove prior to issuing a direction Chief Health Officer Kerry Coleman considered: the availability of other "control measures" to combat the significant health hazard, along with; (a) the details of what those control measures are/were, and (b) the detailed explanations as to why those control measures have not been used in favour of.*

Section 113 subsection 4 (c) of the Public Health Act 1997 clearly states: "... the chief health officer must have regard to the following matters: "the availability of other control measures."

- *A5: In relation to the above, a certified copy of all documents that prove prior to issuing a direction Chief Health Officer Kerry Coleman carried out: the "minimum action necessary" to prevent, alleviate or eliminate the significant health hazard, along with; (a) the details of the actions undertaken, and (b) any control measures used.*

Section 113 subsection 5 of the Public Health Act 1997 clearly states: "The chief health officer must undertake the minimum action necessary ... to prevent or alleviate the relevant public health hazard."

- *A6: In relation to the above, a certified copy of all documents that prove prior to issuing a direction Chief Health Officer Kerry Coleman carried out every endeavor to avoid imposing any undue infringement on my specific liberty and privacy, along with; all evidence that establishes imposing restrictions on my specific liberty and privacy is without reasonable doubt definitely the utmost, necessary, desirable, and effective way to prevent, alleviate or eliminate the significant hazard.*

Section 4 (e) of the Public Health Act 1997 clearly states: "This Act must be construed and administered in accordance with the following objectives: the avoidance of any undue infringement of individual liberty and! privacy in the exercise of functions under this Act."

Section 116 subsection 2 of the Public Health Act 1997 clearly states: "An authorised officer must only implement a public health direction ... if the officer has reasonable grounds for believing that it is necessary to do so to avert an imminent and serious risk to public health."*

Section 120 subsection 1 of the Public Health Act 1997 clearly states: "While an emergency declaration is in force, the chief health officer may take any action, or give any direction, the chief health officer considers to be necessary or desirable to alleviate the emergency specified in the declaration, ... "

NOTICE- see section 156 of the Emergencies Act 2004

- *A7: In relation to the above, a certified copy of all documents that prove prior to issuing a direction Chief Health Officer Kerry Coleman considered: the ramifications the issuing of*

a direction would indisputably bring about, taking into account my specific medical circumstances and the medical circumstances of my friends and family.

Section 9 subsection 1 (a) of the Public Health Act 1997 clearly states: "The functions of the chief health officer are as follows: to develop and implement strategies to promote and protect public health;"

The Dictionary in the Public Health Act 1997 page 154 defines public health: "(a) the health of individuals in the context of the wider health of the community;"

- *A8: In relation to the above, a certified copy of all documents that prove the directions Chief Health Officer Kerryn Coleman claims to have issued specifically unto me and/or my PERSON are exempt from sections 4, 9, 113, and 116 of the Public Health Act 1997 and/or sections 3, 4, 10, 13, 14, 245, 247 of the Legislation Act 2001 during: (a) a declared Covid-19 emergency or; (b) a declared Public Health Emergency, or (c) a declared State of Emergency; and (d) between 01/01/2019 - present day, despite legislation not allowing so.*

*Section 14 * of the Legislation Act 2001 clearly states: "An instrument is any writing or other document."*

Section 10 subsection 1 of the Legislation Act 2001 clearly states: "A notifiable instrument is a statutory instrument (whether or not legislative in nature) that is declared to be a notifiable instrument by an Act, subordinate law, disallowable instrument or another notifiable Instrument.

Section 13 subsections 1 and 2 of the Legislation Act 2001 clearly state: "A statutory instrument is an instrument (whether or not legislative in nature) made under- (a) an Act; ... (2) A statutory instrument includes a ... notifiable instrument ... "

Section 3 subsections 1, 2 (ciii) and 3 of the Legislation Act 2001 clearly state: "The main object of this Act is to make legislation more accessible. (2) This is to be achieved particularly by - providing rules about the interpretation of legislation; ... " (3) For this section, the 'life cycle' of legislation includes the making (where relevant), notification, commencement, presentation and disallowance (where relevant), operation, interpretation, proof, republication, amendment and repeal of legislation and instruments made under legislation.

**Section 4 subsections 1 and 2 of the Legislation Act 2001 clearly state: 'This Act applies to all Acts ... and statutory instrument. (2) In particular, Acts and statutory instruments are taken to be made on the basis that they will operate in conjunction with this Act.*

- *C: A certified copy of all documents that state whether or not public health directions and emergency directions intertwine with each other during: (a) a declared Covid-19 emergency or; (b) a declared Public Health Emergency, or (c) a declared State of Emergency; and (d) between 01/01/2019 - present day, with regard to sections 113 and 120 of the Public Health Act 1997 in spite of any social claim.*
- *D: A certified copy of all documents that state Chief Health Officer Kerryn Coleman is authorized (in addition to the validity of her authorization) to issue a public health direction and/or an emergency direction to "individuals" or "all people" or "all persons" (these exact words) by way of a single instrument, despite legislation not allowing so.*

Section 113 public subsection 1 of the Public Health Act 1997 clearly states: "... the chief health officer may issue ... directions to a person ... " NOTICE - the legislation clearly does NOT imply or say the chief health officer may issue directions to "individuals" or "all people" or "all persons" or anything in a plural sense by way of a single instrument.

Section 120 subsection 2 of the Public Health Act 1997 clearly states: "... the directions the chief health officer may give to a person ... " NOTICE - the legislation clearly does NOT imply or say the chief health officer may issue directions to "individuals" or "all people" or "all persons" or anything in a plural sense by way of a single instrument.

The Dictionary in the Legislation Act 2001 page 209 and the Dictionary in Section 195.1 of the A New Tax System (Goods and Services Tax) Act 1999 defines individual: "means a natural person". NOT to be confused with the intangible entity "person"!

The Dictionary in Section 195.1 of the A New Tax System (Goods and Services Tax) Act 1999 defines the intangible entity person: "includes a company".

Part 15.3 (1) References to various entities and things, Section 160 of the Legislation Act 2001 also defines, with examples of reference, the intangible entity - person:

(1) "... a reference to a person generally includes a reference to a corporation ... "

Section 5 of the Health Practitioner Regulation National Law {ACT} section 5 page 7 defines entity: "includes a person and an unincorporated body."

- *E: A certified copy of every "instrument of delegation" Chief Health Officer Kerry Coleman delegated upon all persons whom were directly and/or indirectly involved in issuing, personally serving and enforcing any said directions specifically unto me and/or my PERSON.*

Section 12A subsection 1 of the Public Health Act 1997 clearly states: "The chief health officer may, in writing, authorise a public health officer to be an authorised officer for this Act or a provision of this Act."

Section 121 subsection 2 The chief health officer may, by writing, authorise a person, or a person of a specified class, for the purposes of this section.

Section 121 subsection 4 of the Public Health Act 1997 clearly states: "In this section: authorised person means - (a) the chief health officer; or (b) a public health officer authorised for the purpose under section 12A (1); or (c) a member of the ambulance service; or (d) a police officer; or (e) a person authorised under subsection (2).

- *A9: In relation to the above, a certified copy of all documents that prove the directions Chief Health Officer Kerry Coleman claims to have issued specifically unto me and/or my PERSON are compatible, consistent, congruent and compliant with the entirety of the Commonwealth of Australia Constitution Act 1900 (UK), and the entirety of the Human Rights Act 2004, and the entirety of the Privacy Act 1988, and the entirety of the Biosecurity Act 2015, and the entirety of the Disability Discrimination Act 1992, and the entirety of the Information of Privacy Act 2014, and the entirety of the Health Records*

(Privacy and Access) Act 1997, and the entirety of the Medical Treatment (Health Directions) Act 2006.

Section 51 subsection ix and xxiiiA of the Commonwealth Constitution clearly states: "The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: (ix) quarantine; (xxiiiA) ... the provision of ... medical and dental services (but not so as to authorize any form of civil conscription), ... "

Section 10 subsection 2 of the Human Rights Act 2004 clearly states: "No-one maybe subjected to medical or scientific experimentation or treatment without his or her free consent. "

Section 18 subsection 2 of the Human Rights Act 2004 clearly states: "No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law. "

Section 94H subsection 1 of the Privacy Act 1988 clearly states: "A person commits an offence if the person requires another person to: (a) download COVIDSafe to a communication device; or (b) have COVIDSafe in operation on a communication device; or(c) consent to uploading COVID app data from a communication device to the National COVIDSafe Data Store. NOTICE - see section 109 of the Commonwealth Constitution.

Section 109 of the Commonwealth Constitution clearly states: "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid." NOTICE - this section applies to state and territory "complimentary" apps and systems likewise.

- *A10: In relation to the above, a certified copy of all documents, including a sworn affidavit, that prove the directions Chief Health Officer Kerry Coleman claims to have issued specifically unto me and/or my PERSON are lawfully part of a current, legal and valid law/Act in the Australian Capital Territory enacted by Her Majesty's Parliament of the Commonwealth, along with supporting documentation that substantiates her claim, including a Proclamation Certificate of said law/ Act, while giving full consideration to the 1988 Referendum that removed the continuing power of local government across the Commonwealth of Australia. NOTICE- The ONLY acceptable documents would be those that have been signed by Her Majesty the Queen of England or her legally authorized representative giving authority to enact the said law as per the Commonwealth of Australia Constitution Act 1900(UK) which was approved again as a result of the 1999 Referendum.*

Section 58 of the Commonwealth Constitution clearly states: "When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure."

Section 60 of the Commonwealth Constitution clearly states: "A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent."

- *F: If the documents requested in A1, B, A2, A3, A4, A5, A6, A7, A8, E, A9, and A10 could not be found, please provide a detailed, written explanation as to the reasons why so. (e.g., "the applicant is not subject to any public health directions", or "the documents you are requesting cannot be located because they were never issued" etc)*

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 **Thursday 14 October 2021**.

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

ACTHD does not hold documents relevant to the scope of your application in accordance with Section 35(1)(b) of the Act.

On 16 March 2020 a public health emergency under the ACT *Public Health Act 1997* (the Act) was declared by the ACT Minister for Health. The declaration of a public health emergency activates powers of the Chief Health Officer within the Act to take any action or give any direction the Chief Health Officer considers necessary or desirable to alleviate the declared emergency. Public Health Emergency Directions issued by the Chief Health Officer are laws, and as such are legally enforceable. Under the Act failure to comply with a public health emergency direction is an offence which carries a maximum penalty of \$8,000, which increases to \$40,500 if the offender is a corporation. Fines of \$1,000 or \$5,000 for corporations can also be issued for failing to comply with a Direction.

In accordance with the ACT's *Human Rights Act 2004* the Chief Health Officer considers the human rights implications of all public health emergency directions made, including the potential impacts on the right to privacy. The measures imposed have been determined to be human rights compliant. The impacts upon privacy and the limitations on human rights that arise from the Public Health Emergency Directions imposed are justifiable essentially due to the importance of safeguarding public health from the serious public health risks posed by COVID-19, combined with significant measures which been imposed to limit the extent of the intrusion on privacy.

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 and my decision 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
Website: 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.

Yours sincerely



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

13 October 2021