



U.S. RIGHT TO KNOW

Pursuing truth and transparency for public health

December 12, 2022

Dr. Kate Cumming
University Archivist and Manager, Privacy Compliance Manager, Archives and Records
Management Services
A14 - Quadrangle
The University of Sydney
NSW 2006 Australia

RE: Request for internal review of GIPA Act denial for 2022/3531

Dear Dr. Cumming:

This letter is a request for an internal review for U.S. Right to Know's application made on 9 September 2022 under the *General Information (Public Access) Act 2009 (NSW) (GIPA Act)* to the University of Sydney (File Ref # 2022/3531) (**the Application**). The Application was denied by the University of Sydney on 15 November 2022.

U.S. Right to Know is a nonprofit investigative public health research group. We requested University of Sydney Professor Edward C. Holmes's correspondence about an article he co-authored, titled "*The proximal origin of SARS-CoV-2*" ("**Proximal Origin**") because we are investigating the origins of COVID-19, as well as the scientific operations, communications, and activities of public institutions in relation to the COVID-19 pandemic. The University of Sydney denied our Application on the basis that, on balance, the public interest considerations against disclosure outweighed the public interest considerations in favour of disclosure.¹

Under section 5 of the GIPA Act, there is a presumption in favour of disclosure of government information unless there is "*an overriding interest against disclosure*". We understand that under section 13 of the GIPA Act, there is an overriding public interest against disclosure of government information if (and only if) a decision-maker assesses that, on balance, the public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure.

The Notice of Decision, as it has been drafted, does not provide our organisation with any confidence that the public interest considerations in favour of disclosure were adequately balanced against the public interest considerations against disclosure. This is because the Notice of Decision does not engage with any specific public interest considerations in favour of disclosure, and only identifies two generic public interest considerations in favour of disclosure

¹ [Notice of Decision](#) dated 15 November 2022, section 4.3 – 'Public interest considerations against disclosure', pg 2.

that have not been adequately assessed or explained. The two public interest considerations in favour of disclosure that were referred to are as follows.

- (a) The general public interest considerations in favour of disclosure of government information.
- (b) Disclosure of information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability, or contribute to positive informed debate on issues of public importance.

There is no evidence in the Notice of Decision that demonstrates the decision-maker assessed the identified public interest considerations in favour of disclosure in the context of the requested documents. We are of the view that the decision thus fails to take into account the gravity of the public interest considerations in favour of disclosure when balanced with the public interest considerations against disclosure.

To assist the University in its review of the Application, we have set out below several specific public interest considerations in favour of disclosure that we ask the University to consider in its balancing exercise to assess whether the requested documents should be released. We have also provided commentary from the Civil and Administrative Tribunal of New South Wales (**the Tribunal**) on the significance of the below public interest considerations in favour of disclosure, which we request that the University of Sydney consider in its internal review of the decision.

1. Disclosure should improve understanding of the events that led to the COVID-19 pandemic and governments' initial health response to it.

- a. Since its publication in March 2020, "Proximal Origin" has been highly influential. Across the world, it has shaped public discourse and policy by guiding the understanding of scientists, government officials, and the wider public about the origins of SARS-CoV-2. It was the most read article on *Nature Medicine* in 2020, achieving about 6 million views. It was cited in more than 2,000 news articles.² It was the most widely discussed article on any medical science topic in 2020, a year that the COVID-19 pandemic dominated public life.³ The publication's reach and power in the early stages of the pandemic make it a crucial document to understand not only in pure content but also in regards to how it came into being. These primary source documents may well be important to historians, regardless of one's opinion about the origins of the virus.
- b. The information we seek pertains to the scientific work that led to the publication of this paper, rather than the result, which is widely available. Correspondence between Professor Holmes and other scientists is one crucial

² *Nature Medicine* [2022]. "[Article Metrics: The Proximal Origin of SARS-CoV-2](#)".

³ Altmetric [2020]. "[Top 100: Medical and Health Sciences](#)".

piece of data that can shed light on this scientific process.

- c. COVID-19 has killed approximately 20 million people worldwide,⁴ and has had drastic effects on so many aspects of life. Although it has affected so much of the global population, it was particularly devastating for the most socially and economically vulnerable populations – those who are on the receiving end of decisions made by large government institutions, collaborating organizations, and world-renowned scientists.⁵ This request is therefore of legitimate interest worldwide. A better understanding of this publication would contribute to critical scientific discussion about the origins of the virus. It would assist an evaluation of how institutions responded to the threat of a rapidly emerging pandemic. In other words, the disclosure of this information is a matter of pandemic history as much as it is about science. In both avenues of impact, it is vital information in the effort to prevent future calamities of the same scale as the present pandemic. We hope that the University of Sydney, as an institution of higher learning, will help the public to learn all that can be learned about the pandemic and its origins, and not to try to hide or obscure such lessons.
 - d. In *Kang v University of Sydney*, which the University frequently referred to and relied on in the Notice of Refusal, the Tribunal placed significant weight on this consideration in favour of disclosure. The Tribunal found that a better understanding of the origins of the pandemic as well as the health response is important, not only in managing the current pandemic, but also in reducing future pandemic risk and preparing for the next pandemic.⁶
2. **Disclosure of the information could reveal or substantiate that a scientist or an agency (or a member of an agency) engaged in scientific misconduct or negligent, improper or unlawful conduct.**⁷
- a. We acknowledge that Professor Holmes has played an influential role in shaping our collective understanding of this pandemic through both scientific publications and media interviews.
 - b. However, some investigations have brought to light serious undisclosed conflicts of interest in “Proximal Origin”, such as the unacknowledged participation of U.S. National Institute of Allergy and Infectious Diseases (NIAID) Director Anthony

⁴ The Economist [2022]. [“The pandemic’s true death toll”](#).

⁵ United Nations Department of Economic and Social Affairs [2022]. [“Everyone Included: Social Impact of Covid-19”](#).

⁶ *Kang v University of Sydney* [2022] NSWCATAD 135 [28] – [29].

⁷ We have laid out these arguments at great length in our [timeline](#) on the proximal origins paper, and we urge you to read it.

Fauci,^{8 9} then-National Institutes of Health (NIH) Director Francis Collins,¹⁰ and virologist Ron Fouchier, who is a prominent proponent of gain-of-function research.¹¹ NIH, through NIAID, had funded the Wuhan Institute of Virology through a grant to its American partner, EcoHealth Alliance.¹² A Freedom Of Information Act (FOIA) investigation in the USA revealed that EcoHealth Alliance President Peter Daszak had participated in a call with one author of “Proximal Origin,” but this fact was omitted from the article’s final drafts.¹³ The undisclosed conflicts of interest raise questions about the motivations behind “Proximal Origin,” including whether any of the co-authors or unacknowledged participants were trying to mislead the public, or whether there was any other scientific misconduct such as plagiarism. The public deserves to know how and why “Proximal Origin” came into being.

- c. We are of the view that Professor Holmes has been less than fully transparent about his involvement with research that relates to SARS-CoV-2 and RaTG13 (a virus 96 percent similar to SARS-CoV-2, which was kept at the Wuhan Institute of Virology (WIV)). We set out our reasons below.
 - i. In July 2022, uploads to National Center for Biotechnology Information (NCBI) indicated that Professor Holmes is a coauthor¹⁴ alongside Shi Zhengli from the WIV on partial sequences of RaTG13 and eight other viruses discovered by the WIV that are related to SARS-CoV-2.¹⁵ These partial sequences were submitted in 2018, but published in 2022. Professor Holmes failed to disclose his work on RaTG13 and the WIV on the following occasions:

⁸ USA Today [2021]. [“I remember it very well’: Dr. Fauci describes a secret 2020 meeting to talk about COVID origins”](#). By Alison Young.

⁹ National Institutes of Health [2022]. “Anthony Fauci emails”. Obtained through FOIA on April 27, 2022 in [FOIA Amended Response](#).

¹⁰ National Institutes of Health [2022]. “Anthony Fauci emails”. Obtained through FOIA on April 27, 2022 in [FOIA Amended Response](#).

¹¹ U.S. Right to Know [2022]. [“Paper critical of ‘lab leak theory’ cribbed ideas from controversial gain-of-function virologist.”](#)

¹² Bulletin of the Atomic Scientists [2022]. [“NIH to terminate part of EcoHealth Alliance grant after its Wuhan partners refuse to deliver information on coronavirus studies.”](#)

¹³ [North Carolina Public Records Act request](#) [2020]. [“Andersen emails”](#). Obtained through public records request.

¹⁴ National Library of Medicine [2022]. Genbank: [“Bat SARS-like coronavirus strain RaTG13 Yunnan ORF8 gene, complete cds”](#).

¹⁵ National Library of Medicine [2022]. Genbank: [“Bat SARS-like coronavirus strain RaTG13 Yunnan RNA-dependent RNA polymerase \(RdRp\) gene, partial cds”](#).

1. His April 2020 statement¹⁶ that SARS-CoV-2 was most likely of natural origin and that SARS-CoV-2 was not derived from RaTG13. This statement had immense influence; when a reporter asked the NIH about COVID-19's origins, Dr. Anthony Fauci replied and directed the reporter to this statement.¹⁷
2. In "Proximal Origin" in *Nature Medicine*.
3. In communications with his coauthors leading up to the publication of "Proximal Origin", when they expressed concerns about RaTG13.¹⁸
4. In a review article in *Cell* titled, "*The origins of SARS-CoV-2: A critical review*",¹⁹ for which he is corresponding author.
5. There were concerns among internet sleuths that the WIV changed the name of RaTG13, perhaps to obscure its relationship to an outbreak of pneumonia in 2012. Holmes assured a reporter the name change was "very logical", without disclosing his involvement.²⁰

3. Disclosure will likely improve public trust in university research.

- a. Scientific transparency is crucial to the trustworthiness of university research, especially in matters of public health. It is important for higher education institutions to be open and transparent about research and decisions that concern public safety, as well as the future of taxpayer-funded government operations, research projects and information releases.
- b. Research is more credible and better serves its purpose when the public is confident that it was carried out with honesty and integrity. This is especially true in this case, as other investigations have revealed undisclosed conflicts of interest in "Proximal Origins" and Professor Holmes's alleged failure to disclose his work involving RaTG13 and the WIV.

¹⁶ Edward Holmes [2022]. "[Statement from Prof Edward Holmes on the SARS-CoV-2 virus](#)".

¹⁷ Washington Examiner [2021]. "[Fauci worked behind the scenes to cast doubt on Wuhan lab leak hypothesis, emails show](#)".

¹⁸ U.S. Right to Know [2022]. "[Timeline: The Proximal Origin of SARS-CoV-2](#)" by Emily Kopp.

¹⁹ Holmes et al. [2021]. "[The origins of SARS-CoV-2: A critical review](#)". *Cell*, Volume 184, Issue 19, p. 4848-4856.

²⁰ Science [2022]. "[Coronavirus hunter Shi Zhengli speaks out.](#)"

- c. In *Kang v University of Sydney*²¹, the Tribunal accepted this as a significant consideration in favour of disclosure. It was found to be particularly pertinent as university research involves the expenditure of public funds as well as from private sources.

We wish to offer our views on the following public interest concerns cited as arguments against disclosure:

4. Disclosure could reasonably prejudice the effective exercise by an agency of the agency's functions.²²
 - a. In its Notice of Decision, the University stated that disclosure is against the public interest because it would adversely impact its ability to perform functions that contribute to its purpose, "*the promotion of scholarship, research, free inquiry, the interaction of research and teaching and academic excellence*",²³ which Professor Holmes contributes to. Section 6 (2) (b) of The University of Sydney Act 1989 states that principal functions for the promotion of the University's purpose include "*the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry*".²⁴ We believe that knowledge is not informed by free inquiry if influenced by serious undisclosed conflicts of interest. Moreover, Section 26F states that it is the duty of a Fellow to "*act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions*".²⁵ There is a fundamental assumption that research should be honest research, and that collaborations between researchers should be with honesty and integrity. Therefore, disclosure of the requested documents does not conflict with the public interest consideration against disclosure of protecting the effective exercise of the agency's functions.
5. Disclosure could reasonably result in the disclosure of information provided to the University in confidence/ prejudice any person's legitimate business, commercial, professional or financial interests.²⁶

²¹ *Kang v University of Sydney* [2022] NSWCATAD 135 [28] – [29].

²² Notice of Decision dated 15 November 2022, section 4.3 – 'Public interest considerations against disclosure', pgs 5 – 7.

²³ *The University of Sydney Act* [1989] Section 6 (1).

²⁴ *The University of Sydney Act* [1989] Section 6 (2).

²⁵ *The University of Sydney Act* [1989] Section 26F (2).

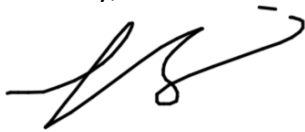
²⁶ Notice of Decision dated 15 November 2022, section 4.3 – 'Public interest considerations against disclosure', pg 11.

- a. In its Notice of Decision, the University stated that disclosure of the records is against public interest due to their status as personal and confidential data. However, it is also university data that belongs to taxpayers. Because of its great import, it is also data that belongs, in real ways, to every person on this earth, and especially to every surviving member of every family that has lost a loved one to Covid-19. Nearly all of the world's population has been impacted by Covid-19. We individually and collectively have a right to know where it came from, and whether there was any scientific misconduct involved in explaining its origins.
- b. The University stated that disclosure is against public interest due to "its potential impact on the professional positions and reputations of the researchers".²⁷ We ask whether protecting the professional reputations of the few prominent scientists should outweigh the potentially enormous ramifications for public health, with millions of lives and trillions of dollars at stake, which may result from nondisclosure. As found in *Kang v University of Sydney*, there is a strong public interest in the disclosure of all information relating to SARS-CoV-2, and we urge the University to reconsider its refusal decision in light of this finding.²⁸

Taking into account these arguments in favour of disclosure, we respectfully ask whether any or all the 367 email chains identified by the University contain any information that could reasonably be argued to favour disclosure in the public interest when balanced against the considerations against disclosure.

The disclosure of information in this matter relates to issues of accountability; oversight of expenditure of public funds; critical information related to public health and safety; clarification of the presence or absence of scientific misconduct; and contribution to a debate on a matter of public interest. We hope that these public interest considerations, especially as they concern a pandemic that has killed millions, will not be weighed lightly.

Sincerely,



Hana Mensendiek
Investigator



Gary Ruskin
Executive Director

²⁷ Notice of Decision dated 15 November 2022, section 4.3 – 'Public interest considerations against disclosure', pg 11.

²⁸ *Kang v University of Sydney* [2022] NSWCATAD 135 [112].