

David Holland
[request-171026-
55ba38b6@whatdotheyknow.com](mailto:request-171026-55ba38b6@whatdotheyknow.com)

enquiries@metoffice.gov.uk
Direct tel: +44(0)1392 885680
Direct fax: +44(0)1392 885681

13 November 2013

Our ref: 0029281/IR

Dear Mr Holland,

Internal Review under the Environmental Information Regulations 2004.

I am writing in response to your email of 25 September 2013 in which you asked for internal review of Met Office's processing of your request for information of 1 August 2013 under the Environmental Information Regulations 2004.

The purpose of this review is to consider whether the requirements of the Regulations have been fulfilled.

This is my formal response following the independent review.

Handling of the request

Your request for information of 1 August 2013, received on the same day, was as follows:

Please supply me with electronic copies of all the 'Zero Order Drafts' also referred to as the ZODs, of the 2007 Fourth Assessment Report of the Intergovernmental Panel on Climate change, or IPCC AR4 for short, held by the Met Office.

An acknowledgement was issued by the Met Office on 1 August 2013. Although not a requirement of EIR, it is considered best practice to acknowledge requests.

The final response was issued on 25 September 2013. This represents a period of 40 working days between receipt of the request and the response being issued.

The response was outside the target deadline of 20 working days as specified in EIR regulation 5(2). However, the 20 working day deadline is extendable by virtue of Regulation 7 if due to the complexity of the information that you have requested. This regulation allows an extension of up to 40 working days to fully assess the information requested and prepare a response.

In this case, the extension letter was issued on the 9 August 2012, within the original 20 working day deadline, the letter explained which exceptions were being considered and gave a new deadline of 24 September 2012. The letter did not reference regulation 7, however this was specified in the full response dated 25 September.

Given your concern that this extension was improper as the grounds for refusal were similar of the pleadings in EA/2012/0193, I have asked for the reasoning behind the decision to extend. The FOI Manager confirms that although the same exceptions were used, this request required discussion with a large number of scientists to ensure we had searched every possible source of information held by the Met Office. Once located, the information in question was reviewed, and while the outcomes were similar, the process and considerations were considerably different. One major difference included taking account of the difference in

timing between this request for AR4 ZOD's (after publication of the final report) and those arguments considered in EA/2012/0193 (prior to publication of the final report of AR5).

The request was dealt with under the Environmental Information Regulations instead of the FOIA due to its relation to the climate.

You were correctly advised of your right to request an independent internal review of the handling of your request, and your right of complaint to the Information Commissioner, as set out in 17(7) of the EIR's.

I therefore find that your request was handled in accordance with the EIR's. However it is noted that regulation 7 should have been referenced in the extension letter.

Substance of the reply

In the full response dated 25 September 2013, you were informed whether or not the Met Office held the information requested.

The Met Office withheld the information requested. This information was withheld in accordance with the following qualified exceptions:

Regulation 12(5)(a): *disclosure would have an adverse effect on relations with an international organisation; and*

Regulation 12(5)(f): *disclosure would adversely affect the interests of the person who provided the information where information has been provided on a voluntary basis on the understanding that this would not be released to a third party and where that person has not consented to its disclosure.*

The exceptions considered required public interest tests. The original response informed you that it was in the public interest to withhold the information. The response included arguments in favour of, and against, releasing the information.

Further consideration of regulation 12(5)(a):

When considering the adverse effect under regulation 12(5)(a) it is important to confirm that the information was obtained from a State other than the UK or from an international organisation or international court. In this case the withheld information was obtained from an international organisation; the IPCC. The IPCC was established by the United Nations environment programme and it is an intergovernmental body.

It is also relevant to consider if there would be a broad, overall effect on the UK's relations with the IPCC. Our response explained that if UK experts were denied the opportunity to participate to the fullest extent possible in international projects of this nature that denial would undermine the reputation and standing of the UK within international relationships. Following concern over the release of confidential documents (including via disclosure legislation), there has been a trend by the IPCC to restrict the material to which authors are given access.

While the international relations may be hampered, it is important to consider the balance in favour of public interest. There is a very strong public interest in openness and transparency regarding the work of the IPCC and climate change in general. The IPCC understands this interest and it places considerable information into the public domain to fulfil it. The Co-Chairs of IPCC WG1 indicate the process has a reasonable level of transparency, stating; *the subsequent drafts, review comments and author responses are published in full, which gives a traceable account of the development of the report for those interested to follow it.*

This level of transparency appears to meet the wider public interest, however, I acknowledge there is a further level of interest to those individuals with a keen interest in climate science. Regulation 12(1)(b) refers to the public interest, and disclosures under EIR are in effect to the world at large, not just to the individual requester. The requester's private interests are not in themselves the same as the public interest, and what may serve those private interests does not necessarily serve a wider public interest.

There is also a very strong interest in not impeding the working relationship between UK researchers or institutions and international organisations or international scientists.

Having considered the context of the information and the context of the UK's involvement with the IPCC, I conclude that public interest is best served by withholding the requested information.

Further consideration of regulation 12(5)(f):

It is important to first clarify the difference between the IPCC and the Co-Chairs of IPCC Working Group I (WGI) which was not clearly explained in the original response. The views of the Co-Chairs of IPCC WG1 were sought and not those of the IPCC.

I have clarified some points with the Co-Chairs of IPCC WGI, who confirm that ZOD's are not considered as 'drafts' under Appendix A to the Principles Governing IPCC Work, because they are informal documents developed by the WGs. ZOD's are not required by the IPCC Procedures, unlike all the other drafts, therefore Annex A should not have been referenced. You are correct that the written statement in the IPCC Procedures about the confidentiality of drafts refers to only those drafts that undergo formal review (First, Second, Final).

Consequently, the IPCC's position on ZOD's is not expressed in writing, however, there is an unwritten agreement of confidence in relation to ZOD's and the understanding that they are not for public disclosure. The CO-Chairs of the IPCC WG1 have confirmed this in a letter dated 21 October 2013, by stating that ZOD's are "*embryonic working documents that are incomplete and not intended for public disclosure*".

Each WG decide how to commence their work and can do so via a ZOD. The WG's have a clear understanding that any preliminary documents such as ZOD's are confidential, internal working documents and should not be distributed outside of the WG. The IPCC WG1 and lead authors we have consulted with confirm that there is an unwritten agreement that draft work prior to the FOD should remain confidential. The information held by the Met Office under scrutiny of this request is covered by understanding of confidentiality.

To refuse environmental information under the exception in regulation 12(5)(f), the Met Office is required to consider a five-stage test, as recognised by the Information Rights Tribunal in *John Kuschner v Information Commissioner and Shropshire Council (EA/2011/0273; 25 April 2012)*:

- Would disclosure adversely affect the interests of the person who provided the information to the public authority?
- Was the person under, or could they have been put under, any legal obligation to supply the information to the public authority?
- Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?
- Has the person supplying the information consented to its disclosure?
- Does the public interest in maintaining the exception outweigh that in disclosure?

The starting point is to consider whether disclosure would adversely affect the interests of the third party who provided the information. The exception can only apply where disclosure would result in an adverse effect on that person's interests. The copies of the ZOD's in the Met Office's possession were provided by lead authors and the IPCC WG1.

The lead authors and WG members have participated in, and contributed to an exercise on the understanding that it will be treated in confidence, it is clearly adverse to their interests for the Met Office to breach that confidence unilaterally.

There are also a number of future implications that breaching this confidence may have, release of information considered to be confidential could deter scientists from participating in

the IPCC or other similar scientific processes, which would adversely affect the interests of the IPCC WG and lead authors.

I can confirm that there was no legal obligation to supply the information to the Met Office. The Met Office was not entitled to disclose this information, due to the understanding that ZOD's should remain confidential and only disclosed within the WG. The IPCC WG and lead authors who supplied this information did so on the understanding that it would not be distributed beyond the WG, and none of them have since consented to its onwards disclosure.

It is important to also consider the balance in favour of public interest as previously mentioned. There is a very strong public interest in openness and transparency regarding the work of the IPCC and climate change in general. With particular reference to regulation 12 (5) (f), there is strong public interest in not disregarding the IPCC's position by disclosing information which it considers to be confidential. Scientists (including lead authors and members of the WG) would be likely to be inhibited from the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation if there is no understanding that it will be treated in confidence.

To summarise, it is clear there is an unwritten agreement of confidentiality covering the information requested. While it was a misinterpretation to reference Appendix A, the remaining public interest arguments mentioned in our response are relevant, and meet the criteria under regulation 12 (5) (f). Therefore, the public interest in maintaining the exception outweighs that in disclosure.

I would also like to take this opportunity to address your particular concerns about the Tribunal ruling EA/2012/0193. The ruling in EA/2012/0193 was taken into consideration when assessing the public interest. However, the ruling did not order disclosure at any future date. If you feel the IPCC's principles of confidentiality in relation to ZOD's should be reviewed in light of the tribunal's indication, you may wish to contact them.

We have considered the evidence and circumstances available, and in light of the Co-Chairs of IPCC WG1's position that ZOD's should not be disclosed, the understanding of confidence relating to ZOD's, and the implications of breaching that confidence, we find that the public interest in maintaining the exceptions outweighs the public interest in disclosure, and can confirm the exceptions referenced in the original response were applied correctly.

Conclusion

The Met Office was not in breach of regulation 5(2). The response was issued outside the 20 day deadline, however, this was extended under regulation 7.

The Met Office stated it held the requested information.

If any aspect of this review is unclear, I would be happy to explain it.

If you are dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of section 50 of the Act. Further details of the role and powers of the Commissioner can be found on his website at: www.ico.gov.uk. His address is:

Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524 510.

Yours Sincerely



Nick Benson
Head of Legal