

Mr. David Holland

19 November 2010

Dear Mr. Holland

**FREEDOM OF INFORMATION ACT 2000; ENVIRONMENTAL INFORMATION
REGULATIONS 2004 – INFORMATION REQUEST (FOI_10-112; EIR_10-14)**

Your request for information received on 22 October 2010 for information arising out of the Russell Review has now been considered and some of the information requested is enclosed herewith. However, it is not possible to satisfy all elements of your request directly.

In accordance with Regulation 14 of the Environmental Information Regulations 2004 this letter acts as a Refusal Notice, and I am not obliged to supply this information and the reasons for exception are as stated below:

Exception	Reason
Reg. 12(4)(a), Information not held	Some information was not held at the time of the request
Reg. 12(4)(b), Request is manifestly unreasonable	Some parts of the request are so wide in scope and labour intensive to answer as to be manifestly unreasonable
Reg. 12(4)(e), Internal communications	Some information requested would involve the disclosure of internal communications
Reg. 12(5)(a), Adverse effect on international relations	Release of some of the requested information would adversely effect relations with the IPCC
Reg. 12(5)(f), Adverse effects on person providing information	Release of the requested information would have an adverse effect on the persons providing the information
Reg.13(1), Personal information	Release of personal information would contravene the data protection principles

For your convenience, I have reproduced your request in the attachment to this letter and provided our response thereunder. In some cases, due to the length of the

response to the individual question, I have attached as an appendix to this letter. I trust this will be to your satisfaction.

Exceptions explanation

Regulation 12(4)(a) is cited in relation to some of the information requested, for the reason that some of this information was not in existence and therefore not held at the time that the request was received.

We cite Regulation 12(4)(b) in the belief that, in relation to the information requested that falls within the terms of FOI_08-23, the request for correspondence should be considered manifestly unreasonable in that it places a substantial burden on this institution involving reviewing information sources over a wide range of years. This takes staff away from duties in relation to climate change that they would otherwise be undertaking. Given the number of possible exceptions relevant to this request, there will also be extensive redaction necessary to preserve any of the information that is capable of release. Finally, given the wide array of material that is already made available by way of the IPCC process, little more public understanding is to be gained by the release of this information. Please refer to Appendix E for a full statement regarding our use of this exception.

Regulation 12(4)(e) is claimed on the basis that in relation to the information requested that falls within the terms of FOI_08-23, that request was for "...copies of any internal CRU correspondence in connection with the IPCC WG1 assessment process and discussion of IPCC principles, rules, or procedures", and we feel that any such information is excepted by virtue of Regulation 12(4)(e) in that this clearly involves the disclosure of internal communications.

We cite Regulation 12(5)(a) in relation to the information requested that falls within the terms of FOI_08-23, because the IPCC qualifies as an international organisation covered by the exception, and that, given the nature of the IPCC structure, information received from convening authors and authors of the Working Group, in effect, is communication received from the IPCC as an organisation. It is our belief that there would be an adverse impact on future UK involvement in international scientific initiatives, and that that there would be a reluctance to engage with UK academics if it was felt that correspondence clearly intended as confidential would be made public. Please refer to Appendix F for a full statement regarding our use of this exception.

Regulation 12(5)(f) is cited in relation to the information requested that falls within the terms of FOI_08-23 and FOI_08-31, in the belief the incoming correspondence to CRU staff members was clearly supplied voluntarily, there is no legal obligation to draft or send the correspondence, nor do we believe that there are any other circumstances that would allow us to release the information, and, as has been shown above, we have not received consent from the suppliers of this information for its release. Please refer to both Appendix E and F for a full statement regarding our use of this exception

With regard to our use of Regulation 13(1) in relation to the information requested that falls within the terms of FOI_08-23 and FOI_08-31, we would hold that, firstly, the requested information assuredly contains information that meets the definition of 'personal information' as defined by section 1(1) of the UK Data Protection Act 1998 (DPA). It is our belief that disclosure of this information would be contrary, at the very least, to the first data protection principle under the DPA; namely that information be processed in a fair and lawful fashion that also meets at least one of the conditions set out in Schedule 2 of the Act. Please refer to Appendix F for a full statement regarding our use of this exception.

Public interest

Pursuant to Regulation 12(1)(b), we must also apply a public interest test to any and all information excepted under Regulation 12 and this test must be applied as a whole to the entire request rather than exception by exception. It is our opinion that, in relation to the excepted material, the public interest lies in non-disclosure.

In regards the request for correspondence, we believe that there is a strong public interest in preserving the confidentiality of private correspondence between academics where such confidentiality is expected and requested. There must be a space in which researchers can exchange ideas, theories and alternatives without fear that information or a position never intended for public release would be disclosed. To disclose the requested information would be to close off this space, reducing the opportunity for academics to exchange such views and discussions, and altering substantially the content of such exchanges.

Indeed, disclosure of such information could be misleading as clearly much is discussed in such communications that is never published, for very good scientific and academic reasons. Published drafts and final papers contain the most valid and most rigorously tested information available; to publish correspondence leading to such drafts and reports would be to insert information that has been considered and rejected for good reason.

Finally, the implications of a decision to disclose such information are significant in that such a decision would not only effect the IPCC and UEA, but would apply potentially to all UK academics and researchers, and to all work they conduct with external academics, either with national governments, international organisations, or other higher education institutions. The public interest benefit by the disclosure of the requested information we feels pales in contrast with the harm that would be caused by the release of the requested information.

Please note that detailed statements regarding the application of the public interest test to information within the terms of FOI_08-23 and FOI_08-31 are put forth in Appendices E and F, respectively.

I would also add that any material released over which UEA has copyright is released subject to the understanding that you will comply with all relevant copyright rules regarding reproduction and/or transmission of the information released.

You have the right of appeal against this decision. If you wish to appeal please set out in writing your grounds of appeal and send to me at:

University of East Anglia
Norwich
NR4 7TJ
Telephone: 0160 359 3523
E-mail: foi@uea.ac.uk

You must appeal our decision within 60 calendar days of the date of this letter. Any appeal received after that date will not be considered nor acknowledged. This policy has been reviewed and approved by the Information Commissioner's Office.

You also have a subsequent right of appeal to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow, Cheshire
SK9 5AF
Telephone: 0303 123 1113
www.ico.gov.uk

Please quote our reference given at the head of this letter in all correspondence.

Yours sincerely

David Palmer
Information Policy & Compliance Manager
University of East Anglia

Response to Environmental Information Regulations request (FOI_10-112: EIR_10-14)

Outstanding Questions Regarding Climategate

With the House of Commons Select Committee on Science and Technology holding further hearings into Climategate, there are a number of loose ends that I would like to tie up. I am therefore asking a number of questions which you may have to treat as FoIA requests. However, it is in the public interest and I would greatly appreciate it if you could answer quickly those questions that UEA is willing to.

The FOI_08-31 Issue

My request to UEA for information of 27 May 2008, specifically included emails between Professors Keith Briffa and Dr Caspar Ammann in connection with AR4. It was given the reference FOI_08-31. Leaked UEA email 1212009215.txt shows that you forwarded my letter within the hour to numerous individuals at UEA including Professors Jones, Briffa, Dr Osborn, and Mr Michael McGarvie. It was followed almost immediately by email discussion between Osborn and Ammann. The existence of the this very specific request was accordingly widely known within UEA.

Two days later in an email exchange Professor Jones asked Professor Mann if he could delete any emails he might have had with Keith Briffa "re AR4" and stated "Keith will do likewise. ... We will be getting Caspar to do likewise". This is reported on page 92 of the Report of Sir Muir Russell's Review on the leaked UEA emails matter.

However, despite the substantial public debate and discussion of my request and Professor Jones' apparent reaction to it, no mention is made of FOI_08-31 in the Russell Report which concluded "There seems clear incitement to delete emails, although we have seen no evidence of any attempt to delete information in respect of a request already made."

On 13 July 2008, six days after the Russell Report was published, it was pointed out to you that FOI_08-31 was not included in Russell's Evidence Item 116 in which UEA listed "all FOI and EIR requests received relating to the Climatic Research Unit since 2005." You indicated on the same day, "We have now corrected the error on the master log and sent a revised version of the list to Sir Muir Russell".

As of today, Evidence Item 116 has still not been updated. Its 'document properties' indicate that it was created by Will[iam Hardie] from a Word document on 30 May 2010 and was last modified on 7 July 2010 at 11:49:40, shortly before the Russell Report was released. Only two FoIA requests to the Climatic Research Unit are shown for 2008, FOI_08-23, from me and FOI_08-50 from Mr McIntyre.

The Russell Review has published "notes" of the meeting on 18 December 2009 between Sir Muir, Jonathan Colam-French, Brian Summers and yourself. In its first note you are reported as stating, "DP - 198 FOI requests this year, 105 FOI on CRU this year. Last year 2 on CRU Previous high was 77 requests."

A further unattributed note states, "CRU had had prior correspondence with requesters of CRU information under FOI. David Holland is a name that has submitted FOI requests, and has also contacted MR to give evidence."

Information Requests:

1. When did you first send a list of FOI and EIR requests received relating to the Climatic Research Unit to the Russell Review and in what format?

This list was first sent to the Russell Review on 24 March 2010 and it was sent as an MSExcel file.

2. Has Sir Muir acknowledged receipt of the new list and if so when?

[Information excepted pursuant to Reg. 12(4)(a) Environmental Information Regulations]

There is no formal acknowledgement of the receipt of the email of 24 March 2010.

3. Please may I see all UEA email correspondence concerning FOI_08-31 or its subject matter, that was not addressed or copied to me, from 20 November 2009 to today.

[Information excepted pursuant to Reg. 12(4)(e), 12(5)(b) Environmental Information Regulations]

Some of the requested information is internal correspondence and therefore excepted under Reg. 12(4)(e), and some other requested information is subject to solicitor-client privilege and therefore excepted under 12(5)(b).

What is capable of disclosure is contained within Appendix G to this letter.

Professor Briffa's Response to Professor Boulton

In Evidence Item 120, published by the Russell Review, Professor Briffa and Dr Osborn respond to a letter sent to Briffa by Professor Boulton on 6 May 2010 and a supplementary one sent via Lisa Williams on 12 May 2010. These are shown as 'Supporting Documents A' and refer to an "annex" that was attached to the letter of 6 May 2010, but is not included in Evidence Item 120.

Included as 'Supporting Documents C' is a document entitled "Statements provided by IPCC AR5 WGI TSU, prepared in consultation with the former Co-Chair and TSU of WGI for the AR4."

Included as 'Supporting Documents F' is part of the information specifically requested in FOI_08-31 and precisely what was requested in FOI_09-174. You may recall advising me via this website that it had been deleted from the CRU server.

Briffa and Osborn also attach an annex to their response, which on inspection can be seen to include a significant part of my submission to Sir Muir Russell, which his Report claims has not been published at the Review website. However it does not include much of my evidence including my paragraph 108 in which I reported the information request made to UEA on 27 May 2008 for information, which included some that Jones specifically sought to delete both in the UK and the USA.

Information Requests:

1. Please supply me with a copy of the "annex" sent to Briffa by Boulton, or confirm to me that it was my entire submission.

Attached as Appendix A to this letter

2. Please tell me the names and positions or job titles of all UEA employees that had access to a copy of my Russell submission or Boulton's annex.

The University never received directly a copy of your submission to the Russell Review. We only had access to the information included with Prof. Boulton's letter to Keith Briffa.

The persons within the University that had access to the letter from Prof. Boulton to Keith Briffa were as follows:

Lisa Williams, Senior Assistant Registrar
Trevor Davies, Pro-Vice-Chancellor, Research
Peter Liss, Director, CRU (at that time)
Phil Jones, Professor of Environmental Sciences
Keith Briffa, Professor of Environmental Sciences
Tim Osborn, Reader of Environmental Sciences
Tom Melvin, Research Associate, School of Environmental Sciences

3. Please provide me copies of any emails sent from UEA to which my Russell submission or Boulton's annex was attached.

Attached as Appendix B to this letter. There was but one external email from UEA to which Boulton's annex was attached and that was the response of 19 May 2010 to Boulton's letter of 6 May 2010.

4. Please supply me with the original email or other document from which "Statements provided by IPCC AR5 WGI TSU, prepared in consultation with the former Co-Chair and TSU of WGI for the AR4" was taken. If you intend to redact any names please indicate the status of the individuals who were copied or sent the document, e.g. Co-Chair AR4/5 WGI Head of AR4/5 WGI TSU.

Attached as Appendix C to this letter

18th December Meeting with IT Personnel 11.15-12.15pm

The Russell Review has published "notes" of a meeting on 18 December 2009 with IT Personnel. In it Mr Colam-French is quoted, "JCF – For example Keith Briffa took home emails that were subject to FOI to ensure their safekeeping."

In March this year, shortly after requesting the information, later to be shown as 'Supporting Documents F' in Evidence Item 120, from Jonathan Overpeck, who was the sender of it, I was advised by the ICO that Professor Briffa had located a copy.

On 1 October 2010 MOD/Met Office released information which I had requested both from it and UEA on 27 May 2008. It is an email sent on 6 July 2006 by Jonathan Overpeck to wg1-ar4-ch06[at sign]joss.ucar.edu, that is all WGI Chapter 6 Authors, which included Briffa, and Review Editors.

The email begins, "Hi all – if you didn't get this already, this is worth looking at. As we discussed in Bergen, however, we would prefer to keep the addition of new references to a minimum ..."

Information Requests:

1. Please let me have a copy of the email as received by Briffa.

Attached as Appendix D to this letter.

2. Please advise me how many other emails and documents were kept safe from deletion by Briffa

There are 4337 separate items that were taken home by Keith Briffa

3. Please provide me with copies of any that meet the terms of FOI_08-23 or –31.

Our response in relation to FOI_08-23 is attached as Appendix E to this letter and our response in relation to FOI_08-31 is attached as Appendix F to this letter.

We are proceeding on the basis that, in regards FOI_08-23, you are requesting information covered by your original request of 5 May 2008, and not the other requests contained in subsequent correspondence.

I should note that the information considered at the time we provided the responses to both FOI_08-23 and FOI-08-31 included the information that Prof. Briffa took home with him. Therefore our answer to this question would be the same as our original response. The only caveat to this is that the ICO has ruled, in its' Decision Notice FER0238017 of 7 July 2010, that FOI_08-23 should have been considered under EIR. Therefore, Appendix E is an explanation of our position under that legislation.

4. Please provide me a copy of any email or other information received by Briffa that could have given rise to his concern that information requested under the FOIA might have been deleted if he did not take it home.

[Information excepted pursuant to Reg. 12(4)(a) Environmental Information Regulations]

We do not hold such information.

Preview of the Russell Review Report

Information Requests:

1. Please advise me on what dates if any prior to 7 July 2010 that UEA or UEA employees received copies of the draft and final Report of Sir Muir Russell.

A draft copy of the report was received at UEA on Friday 2 July 2010.

As Sir Muir Russell noted in his memo to the Select Committee dated 18 May 2010, "the Review was commissioned by the University to report on policies and practices within the University, and should the Review find matters of concern, then it clearly has a duty to inform the University. The Committee will also be aware that natural justice demands that both the University and members of CRU should be informed directly of any critical findings. Finally, it is also common practice in public and parliamentary life for the subjects of reports to be given embargoed copies of the documents shortly before publication. The CCER is mindful of the Committee's recommendation but sees no reason to depart from normal practice."

2. Please advise me of the names and positions or job titles of UEA employees who received copies of the draft or final Report prior to 7 July 2010 and any individuals outside UEA that were sent such copies.

[Information excepted pursuant to Reg. 12(4)(a) Environmental Information Regulations]

From a thorough search, we have discovered no recorded information on the names and job titles of those who received copies of the draft report prior to 7 July. However we can advise that in order to meet the objectives set out by Sir Muir Russell, for reasons of natural justice and checking for factual accuracy, both senior managers and those staff who were effectively subject to investigation arising from the terms of reference of the enquiry saw all or relevant parts of the draft report. No copies of the draft report were sent out or retained.

The Backup Server

Information Requests:

1. Does UEA have either the original backup server returned to its possession or a working copy of it.

No

2. Has any policy decision been made in respect of the retention of this information held in the backup server pending the final outcome of the House of Commons Select Committee and other possible enquiries?

[Information excepted pursuant to Reg. 12(4)(a) Environmental Information Regulations]

We do not hold such information – no policy decision has been made.

Disbursements

I understand that the entire costs of the Russell Review were paid for by UEA.

Information Requests:

1. Please provide me with the total cost of the Russell Review, preferably by categories such as payments to members of the Review Team, and various expenses.

Cost of Russell Review

Expense Category	Cost
Review team fees	£147,255.00
Travel	£9,968.03
Accommodation	£1,859.48
Subsistence	£1,320.91
Other	£302.96
Website management, report production, media advice	£52,666.68
Legal advice	£22, 641.55
Secretariat support	£42,436.50
Total	£278,451.11

2. Please provide details of any reimbursement of legal expenses including at least name and fee of any Solicitor or legal advisor.

Cost of Legal Services to Review

Expense Category	Cost
Legal fees	£22,641.55
Travel	£0.00
Accommodation	£0.00
Subsistence	£0.00
Other	£0.00
Website management, report production, media advice	£0.00
Media consultancy	£0.00
Secretariat support	£0.00
Total	£22,641.55

Two firms were employed by the Review, Olswang LLP and Taylor Wessing