

Mr. David Holland

11 February 2011

Dear Mr. Holland

**ENVIRONMENTAL INFORMATION REGULATIONS 2004 – INFORMATION  
REQUEST (FOI\_11-010; EIR\_11-001)**

Your request for information received on 12 January 2011 regarding meetings and materials related to various submissions made to the Independent Climate Change Email Review has now been considered and some of the information requested is enclosed herewith. Please accept our apologies for the delay in responding to your request.

For your convenience, we have reproduced your request in the attachment to this letter and provided our response in line with each question. I trust this will be to your satisfaction.

However, it is not possible to satisfy all elements of your request directly, and, in accordance with Regulation 14 of the Environmental Information Regulations 2004 this letter acts as a partial Refusal Notice. We are not obliged to supply certain information and the reasons for exemption are as stated below:

Exception	Reason
Reg. 6(1)(b), Information available to requester	The information is available on the ICCER website
Reg. 12(4)(a), Information not held	Requested information was not held at the time of the request
Reg.12(5)(b), Adverse effect on the course of justice	Some requested information is subject to legal professional privilege

Regulation 12(5)(b) is cited in relation to the request for the content of legal advice provided to the University, specifically the request for what advice was sought and received in connection with the Russell Review. We feel that this information clearly falls within the category of information covered by legal professional privilege and that its disclosure would adversely affect the course of justice.

Pursuant to Regulation 12(1)(b) of the EIR, 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, that as we did not possess it, clearly the public interest lies in non-disclosure.

It is a long-established principle that the disclosure of solicitor-client communications would adversely affect the course of justice. The very concept of legal professional privilege carries with it an inherent public interest test. In this case, despite the admitted public interest in the findings of the Russell Review, the existence of continuing investigations into, and requests for information regarding, the Review means that the advice is still very timely and the prospect of future legal action in regards the Russell Review still exists. It would be contrary to the public interest for legal advice given to any party involved in such matters to be disclosed and thereby prejudice the position of any party.

We 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: 01603 593 523  
E-mail: [foi@uea.ac.uk](mailto: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](http://www.ico.gov.uk)

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

Yours sincerely

David Palmer  
Information Policy and Compliance Manager  
University of East Anglia

## Response to Freedom of Information request (FOI\_11-010)

### Exceptions

- 1) *Please advise me on what and when legal advice was sought and received in connection with the Russell Review or any freedom of information requests.*

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

Legal advice was first sought from Mills and Reeve LLP, on 1 December 2009. For the most part, legal advice related to complaints made to the Information Commissioner's Office. The precise content of any legal advice received by the University is subject to legal professional privilege.

### The FOI\_08-31 Issue

- 2) *Can you confirm, for the avoidance of any doubt, that you were present at the meeting of 18 December 2009 referred to in my request and that, at that time, you wrongly stated that there were only 2 requests and not the 3 you now say?*

***[Information publicly available - Reg. 6(1)(b), Environmental Information Regulations]***

The minutes of all the meetings with the Review team on 18 December 2009 are on the ICCER website and comprise the official record of those meetings. It is clearly indicated in the relevant minutes that I stated that there were 2 requests.

- 3) *Please state if you were speaking from memory or had the complete formal log of FoIA/EIR requests in front of you.*

***[Information not held – Reg. 12(4)(a), Environmental Information Regulations]***

The minutes do not record what information was present at the meeting nor is there any other record of what material I had with me at that meeting.

- 4) *Please supply a copy of the notes Lisa Williams took.*

***[Information not held – Reg. 12(4)(a), Environmental Information Regulations]***

The handwritten notes of the meeting were not retained

***[Information excepted pursuant to Reg. 6(1)(b), Environmental Information Regulations]***

The minutes of all the meetings with the Review team on 18 December 2009 are on the ICCER website and comprise the official record of those meetings.

- 5) *When and in what form did the Russell Review Team get access to the complete formal log of FoIA/EIR requests referred to on page 90 of its Report?*

The formal log was sent to the ICCER on 24 March 2010 in the form of an Excel spreadsheet.

### Who had access to my Russell Submission

- 11) *Please let me know if Briffa received my submission by email or other means*

To elaborate on my letter of 23 November 2010 to you, While the University itself did not receive a copy of your submission from Muir Russell, Professor Keith Briffa acquired a full print copy of your submission by way of a request made to you by a third party.

## **Boulton's Annex**

*You say that Boulton's Annex was attached to Briffa's reply of 19 May 2010. This is wrong as Briffa himself refers to his Annex as his "version" of Boulton's rather than what he received. In fact his version actually includes a version of my Russell Submission edited to contain exactly the same text characters as Boulton's Annex but retained almost all my formatting.*

*Once again the provenance of what is shown at the Russell Review website as Briffa's reply is unsatisfactory since, according to its pdf properties, it was last modified at 11:45 on 7 July 2010. This was long after Briffa sent it to Russell but between the time when the UEA Decision Notice was issued and the Russell Report was published the same day.*

*12) Please send me an exact copy Briffa's reply as sent to Boulton on 19 May 2010.*

The 'exact copy' was appended to the email from Lisa Williams to Sir Muir Russell and Geoffrey Boulton on 19 May 2010 which was provided to you as Appendix B in the response to your prior request, FOI\_10-112; EIR\_10-14. There was but one response, sent on 19 May 2010. We attach the exact copy as .pdf document 'Appendix A – Response to Boulton' to this letter.

## **Preview of the Russell Review Report**

*In your answer to my request for the names of who had access to the preview of the Russell report, I am surprised that for a 5 day preview on a sensitive report there appeared to be no request for signed confidentiality undertakings or logging of comments and corrections. Those who had barely an hour's preview had to send an email accepting confidentiality. However, you say the objectives set out by Sir Muir included the "checking for factual accuracy".*

*13) Did you, Professors, Acton Jones, Briffa, Davies or anyone else notice and report to anyone on the omission of any reference to FOI\_08-31 and the misreporting of the number of requests received by CRU in 2008?*

**[Information not held – Reg. 12(4)(a), Environmental Information Regulations]**

There is no recorded information that notes any notice taken, or given, of the omission of a reference to FOI\_08-031 other than our emails to Sir Muir Russell on 13 July 2010 and thereafter.

*14) Did anyone checking the draft tell Sir Muir Russell's Team or anyone at UEA that Jones' email of 29 May 2008 was preceded by my FOI\_08-31 which specifically asked for what he was seeking to delete?*

**[Information not held – Reg. 12(4)(a), Environmental Information Regulations]**

There is no recorded information to indicate that any UEA staff member with access to the draft report informed Sir Muir that the email of 28 May 2008 was preceded by the request FOI\_08-031.

*15) Did anyone at UEA question the statement on page 92 of the Russell Report: "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"?*

**[Information not held – Reg. 12(4)(a), Environmental Information Regulations]**

There is no recorded information to indicate that any UEA staff member questioned the statement from the Report quoted.

- 16) *Did anyone at UEA report to the Review Team the inaccessibility of Briffa's response to Boulton referenced in footnote 31 on page 80?*

***[Information not held – Reg. 12(4)(a), Environmental Information Regulations]***

There is no recorded information to indicate that any UEA staff member either thought Briffa's response to Boulton was 'inaccessible' or stated any such opinion.

- 17) *Were there any changes requested as a result of the preview?*

***[Information not held – Reg. 12(4)(a), Environmental Information Regulations]***

There is no recorded information regarding any changes requested to be made to the Report. No drafts of the Report were retained by the University nor is there any record of communication with the Review to indicate the requesting of any changes to the Report.

However, we are aware that some factual changes were supplied by UEA and considered by the ICCER team but, as noted above, no copies of the submissions were retained..

- 18) *Was the draft supplied in paper or electronic form?*

***[Information not held – Reg. 12(4)(a), Environmental Information Regulations]***

There is no recorded information regarding the form in which the draft was supplied. As noted above, no drafts of the Report were retained by the University nor is there any communication with the Review to indicate the format of the draft.