

Mr. Steven McIntyre

10 August 2010

Dear Mr. McIntyre

ENVIRONMENTAL INFORMATION REGULATIONS 2004 – INFORMATION REQUEST (FOI_10-51; EIR_10-03)

Your request for a review of the University's determination of your request of 5th April 2010 made under the Environmental Information Regulations has been passed to me for review under the University's appeal process as described in our code of practice¹.

In requesting a review you have raised the following questions:

I hereby request a review of this ruling. In its submission to the Muir Russell inquiry, the University of East Anglia stated: "The cycles of review and revision of IPCC Reports from the First Order Draft onwards are fully transparent and overseen by review editors. All comments and responses are publicly available."

Obviously the information refused is not "publicly available" as represented by the University. The review comments sent to Briffa were their final comments and were not drafts of their review comments. UEA policies discourage employees from entering into confidentiality agreements if there are reasonable alternatives. Given that IPCC policies require the archiving of review comments, it was improper for Briffa to purport to enter into a confidentiality agreement with Wahl and Ammann that violated IPCC procedures.

Your interpretation of the public interest test surely needs reconsidering. This correspondence has been the topic of extreme public controversy and was supposed to have been consulted by the Muir Russell inquiry. It was the subject of the notorious "delete all emails" request of May 2008.

Your original request was for eight documents and in our response on 2nd June 2010 we provided you with the following two documents:

Wahl-Ammann_3321_Figures.pdf

¹ <http://www.uea.ac.uk/is/strategies/infregs/FOIA+Code+of+Practice+for+Responding+to+Requests>

Wahl_Ammann_3321_Final_21Feb-Revision1.doc

We were unable to provide the following four documents as we had determined that these were no longer held by the University and cited Reg. 12(4)(a):

AW_Editorial_July15.doc

AR4SOR_BatchAB_Ch06_ERW_comments.doc

Ch06_SOD_Text_TSU_FINAL_2000_12jul06_ERW_suggestions.doc

Ch06_SOD_Text_TSU_FINAL_2000_25jul06KRB-FJ-RV_ERW_suggestions.doc

There is no single repository in which all information is held and in order to determine whether the University holds specific information searches are required in a number of locations. I have reviewed the criteria and searches that were undertaken to locate the requested documents and agree with the assessment that these documents are no longer held and agree that Reg. 12(4)(a) applies in this instance.

We refused to release the remaining two documents citing Reg. 6(1)(b), 12(4)(d) and 12(5)(f).

Wahl_MBH_Recreation_JClimLett_Nov22.pdf - document 1

Wahl_Ammann_3321_Final_21Feb.doc - document 2

Regulation 6(1)(b)

In citing Reg. 6(1)(b), Information already publicly available, we stated:

much of the information requested within several of the draft documents, particularly that pertaining to results, findings and interpretations is available within the final published version of the document and is therefore publicly available and easily accessible to you in another form.

Dr. Wahl and Dr. Ammann have confirmed that:

In the case of (document 1), this is a very early component of the much larger article later published by Climate Change, Wahl-Ammann (2007, Climatic Change, vol. 85, 33-69, doi: <http://dx.doi.org/10.1007/s10584-006-9105-7>)

On this basis I believe that our use of Reg. 6(1)(b) in relation to document 1 was appropriate.

In their note Dr. Wahl and Dr. Ammann also explain that document 2 is the penultimate version leading up to Wahl_Ammann_3321_Final_21Feb-Revision1.doc. The document Wahl_Ammann_3321_Final_21Feb-Revision1.doc was accepted for publication and is one of the two documents that we released to you on 2nd June 2010. On this basis I believe that our use of Reg. 6(1)(b) in relation to document 2 was appropriate.

Regulation 12(4)(d)

In citing Reg. 12(4)(d), Unfinished documents, we stated;

both ICO and DEFRA guidance indicates that a draft document is to be considered as an 'unfinished document' and this position has been upheld by a recent information Tribunal decision which stated that "However, the opinion of the majority and, ultimately our unanimous conclusion, is that the Draft Report is, by its very name and giving the words their logical meaning, an unfinished document."

In their note of 21st May 2010 Dr. Wahl and Dr. Ammann explain that both documents were indeed provided as drafts. Following the guidance above both documents are

therefore unfinished documents and on this basis I believe that our use of Reg. 12(4)(d) in relation to both documents was appropriate.

Regulation 12(5)(f)

In citing Reg. 12(5)(f), Adverse effects on the person providing information, we stated:

We also cite Regulation 12(5)(f) as Doctors Wahl and Amman have indicated, and we are minded to agree, that several documents were provided to this University on the understanding that they were not public documents and that release would have an adverse effect on future sharing of scientific information between researchers and would limit their ability to openly explore ideas and approaches in draft formats. They made it clear that they felt that the proper fora [sic] to access this information was by way of the completed version.

Doctors Wahl and Amman have identified that release of these documents would have an adverse effects on the future sharing of scientific information between researchers and by extension on them personally. On this basis I believe that our use of Reg. 12(5)(f) in relation to both documents was appropriate.

Regulation 12(1)(b) – Public interest test

In considering the public interest test we stated:

there is a public interest in providing 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. There is also a public interest in ensuring that the information available to the public has been properly reviewed and assessed as takes place in the academic publication process. This lessens the possibility that the public could be misled or confused by earlier, less well-examined versions of the information.

Additionally, the intellectual property rights of the copyright holder in the final version are protected by ensuring that earlier, non-published versions of copyrighted work are not made available ‘in competition’ with the copyrighted version that the copyright holder has an expectation of making a profit from.

I agree with our original assessment of the public interest test in this case, in particular that it is imperative that researchers are able to exchange and explore ideas in a private space. I am therefore upholding our original decision not to release the two documents:

Wahl_MBH_Recreation_JClimLett_Nov22.pdf - document 1

Wahl_Ammann_3321_Final_21Feb.doc - document 2

In your request for this review you raise two further questions that I will address below:

In its submission to the Muir Russell inquiry, the University of East Anglia stated: “The cycles of review and revision of IPCC Reports from the First Order Draft onwards are fully transparent and overseen by review editors. All comments and responses are publicly available.”

Obviously the information refused is not “publicly available” as represented by the University. The review comments sent to Briffa were their final comments and were not drafts of their review comments.

Prof. Briffa and Dr. Osborn have confirmed that neither of the 2 withheld documents are final versions or drafts of IPCC reports nor were they final versions or drafts of review comments or of responses to review comments. They are unfinished drafts of

a scientific paper that was later published as Wahl and Ammann (2007) in the journal *Climatic Change*. Therefore the University's submission to the Muir Russell inquiry concerning the availability of IPCC report drafts, reviews and responses is correct.

UEA policies discourage employees from entering into confidentiality agreements if there are reasonable alternatives. Given that IPCC policies require the archiving of review comments, it was improper for Briffa to purport to enter into a confidentiality agreement with Wahl and Ammann that violated IPCC procedures.

Prof. Briffa and Dr. Osborn have confirmed that at no stage have we entered into a confidentiality agreement with Doctors Wahl and Ammann. They have also stated that IPCC policies require the archiving of official review comments but not every communication received by the authors over the three years during which these reports were prepared. The official review comments have been archived and are publicly available here at <http://hcl.harvard.edu/collections/ipcc/index.html>.

If you are dissatisfied with this response, you may exercise your right of appeal to the Information Commissioner at:

Information Commissioner's Office

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Telephone: 0303 123 1113
Website: www.ico.gov.uk

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

Yours sincerely

Jonathan Colam-French
Director of Information Services
University of East Anglia