

Additional Notes

1. In the present appeal, I appeal two essentially distinct decisions by the Commissioner: the refusal of Documents 5-8 and the refusal of Document 1. (I do not appeal the refusal of Document 3; Documents 2 and 4 were previously provided.) The issues involved in each refusal are distinct.

A. Documents 5-8 – Regulation 12(4)(a)

2. Documents 5-8 are attachments to correspondence sent from Eugene Wahl to Keith Briffa of the University of East Anglia (the University) in his capacity as Lead Author of the IPCC Fourth Assessment Report (AR4). The underlying correspondence was made public in the Climategate dossier; the attachments were referred to in the correspondence, but were not made public in the Climategate dossier.
3. The University refused my original request for the attachments under exemption 12(4)(a). In my appeal to the Commissioner, I drew attention to the contradictory statement by Vice Chancellor Acton (“Acton”) to the House of Commons Science and Technology in October 2010 that “all” the emails were then “available”.
4. I appeal the Commissioner’s decision on two separate grounds: (a) the Commissioner’s failure to properly consider the Tribunal’s decision in *Keiller* (EA/2011/0152); (b) the University’s failure to search “all available” locations, as they falsely claimed to the Commissioner. I also draw the Tribunal’s attention to further evidence of the University’s failure to secure documents even after Climategate and apparent deletion of documents since the controversy arose.

The Back-Up Server

5. In *Keiller* (EA/2011/0152), the Tribunal ruled that the back up server of the University of East Anglia (UEA) was held under EIR and should be searched.
6. The Commissioner purported to distinguish the present request from *Keiller* on the following grounds:

The Commissioner notes that the Tribunal has recently issued its decision in the case of *Keiller* (EA/2011/0152) and that the Tribunal found that the back up server was held under EIR. The case in question here is different to *Keiller* as the information request was made after the server was taken by the Police. In *Keiller* the server was held at the time of the request but was taken by the police subsequently.

7. I submit that the Commissioner's decision on this point is incorrect. The Tribunal has already ruled that the back up server is held under EIR. That is the end of the story. Whether it was taken by the police before or after a request is irrelevant.

The Thumb Drives

8. The Commissioner's report stated that "all possible locations were searched". I submit that this is incorrect and/or that the search of "private" locations was not carried out properly.
9. In April-May 2010, the Jones, Briffa and Osborn emails were extracted from the back-up server and placed on thumb drives. A late April 2010 email from James Norton of the Muir Russell panel to Julian Gregory of the Norfolk Police shows that these thumb drives were under the control of the University:

Dear Greg,

This is fine (and at £8910.00 ex VAT lower cost than expected which is always welcome) please ask Qinetiq to go ahead with all speed... **Could Lisa Williams from the UEA Vice Chancellor's Office (copied in) please confirm who should be the nominated contact at UEA to receive the portable hard drives as they become available from Monday 26th April?**

Once again many thanks for all your help with this – much appreciated.

All the very best.

Jim

Prof. M. J. Norton D.Eng

10. I submit that these thumb drives should have been searched but were not.

Briffa's "Private" Directories

11. In paragraph 23, the University stated that "whilst the emails were copied and saved onto private storage attachments were not".
12. This is contradicted by Climategate 2 email 3939 (October 12, 2009), which unambiguously described the existence of the attachments on University computers as of that date together with the copying of the attachments onto "private" computers:

For Keith [Briffa]'s Email :

1. Copied the full C:\Eudora directory to my portable.
 2. Deleted the 12000 temporary .gif files from C:\Eudora\Embedded.
 3. Copied 3.5 gig of attachments (1 year or older) from C:\Eudora\Attach to C:\OldAttach - this will need to be copied back to his PC
 4. He is left with a 1.5 gig C:\Eudora directory on my portable which can be copied back to his PC and readily be moved from PC to portable etc.
 5. When using my portable (via yellow cable (in office) or various WiFi networks) Keith logs in to VPN.
Tom [Melvin]
- PS. I need to take my portable to a conference w/c 26th Oct.

13. On December 18, 2009, University official Jonathan Colam-French (who was responsible for hearing FOI appeals) stated¹ that Briffa had removed emails “subject to FOI” to his home for “safekeeping”:

JCF [Colam-French] – For example Keith Briffa took home emails that were subject to FOI to ensure their safekeeping.

14. According to the Commissioner’s report, the University took no steps to secure documents on Briffa’s home computer even though Colam-French stated in December 19, 2009 that documents “subject to FOI” has been taken to Briffa’s “home” for “safekeeping”; or carry out an independent inspection of Briffa’s home computer for responsive documents (instead relying on Briffa himself to do so.)

15. Given the unambiguous evidence from Melvin’s email (Climategate 2- 3939) of the existence of the attachments as of October 2009, if the University is presently unable to produce these attachments, as it claims, it is evident that the attachments – both on the University computer and on Briffa’s home computer - have been deleted since the Climategate controversy arose

Other Untrue Evidence by the University

16. In paragraph 22, the University stated:

The documents at the heart of this present request, and the emails to which they were attached, all date from 2006. It is highly likely, even good records management practice, that such emails and attachments would have been deleted in the normal course of business between 2006 and 2008, well in advance of any request for either the emails or the attached documents.

17. These assertions are untrue, as the University either knew or ought to have known. As noted above, according to Colam-French’s evidence at his December 2009 meeting with Muir Russell, supported by Climategate-2 email 3939 cited above, the University knew that Briffa did not delete the requested emails and attachments “in the normal course of business between 2006 and 2008” and that it was deceptive to assert to the Commissioner that it was “highly likely, even good records management practice” that Briffa had done so.

18. In paragraph 22, the University continued:

The Vice-Chancellor was not aware of this request [the present FOI request], or these documents [the emails between Wahl and Briffa in 2006] , when he made his comments before the Select Committee, nor were his comments directed at these documents. The question and the answer pertained to an entirely different set of documents within a different time frame.”

19. No credence whatever can be given to this statement by the University, which is not only totally untrue, but the University either knew or should have known that the statement was untrue. Documents 1-4 of the present request were attachments to Wahl emails to Briffa in

¹ Minutes of Muir Russell’s meeting on Dec 18, 2009

July 2006 containing proposed changes to the IPCC Fourth Assessment Report (AR4). These emails were the heart of Jones' notorious deletion request in May 2008, which sought the destruction of documents containing AR4 review correspondence from Wahl, Ammann and Mann to Keith Briffa of CRU. The documents raised in MP Graham Stringer's question are neither from a "different time frame" nor a "different set of documents" from those in my request, as the University either knew or ought to have known. (I can speak with some personal certainty on this point as I corresponded with Stringer prior to the October 2010 of Acton and Muir Russell appearance before the House Science and Technology Committee.)

B. Document 1 – Regulation 12(5)(f)

20. Document 1 is "Wahl and Ammann (2004)", an unpublished article submitted to IPCC for consideration in the First Draft of the IPCC Fourth Assessment Report. Briffa obtained this document in his capacity as IPCC Lead Author, not as "ordinary" academic correspondence.
21. I submit that Wahl and Ammann consented to disclosure of this article by their decision to submit the article to an IPC Lead Author for consideration (and eventual use) in the IPCC
22. IPCC procedures² governing AR4 stated:

Preparation of the first draft of a Report should be undertaken by Coordinating Lead Authors and Lead Authors. Experts who wish to contribute material for consideration in the first draft should submit it directly to the Lead Authors. Contributions should be supported as far as possible with references from the peer-reviewed and internationally available literature, and with copies of any unpublished material cited. **Clear indications of how to access the latter [unpublished material] should be included in the contributions. For material available in electronic format only, a hard copy should be archived and the location where such material may be accessed should be cited.**

23. By submitting the then unpublished Wahl and Ammann (2004) to IPCC Lead Author Briffa for consideration (and subsequent use) in AR4, Wahl and Ammann were not engaging in "ordinary" academic correspondence. Under IPCC rules, they consented to the archiving of a hard copy of the document. Briffa was not only entitled but obligated to archive a hard copy together with the location where it could be accessed. The exemption in regulation 12(5)(f) is accordingly not engaged.
24. In the Commissioner's decision (especially paragraph 33), he failed to consider the special circumstances arising when an unpublished document is submitted to an IPCC Lead Author for consideration in an IPCC draft report.
25. The evidence from the University on "long-standing" academic practice is simply irrelevant for disclosure obligations arising from IPCC procedures.

² Appendix A to the Principles Governing IPCC Work, PROCEDURES FOR THE PREPARATION, REVIEW, ACCEPTANCE, ADOPTION, APPROVAL AND PUBLICATION OF IPCC REPORTS.

26. Similarly, the following argument of the University is irrelevant for the same reasons. They argued that Wahl and Ammann 2004 is “is an early and short draft of a much longer draft later produced and subsequently published. While it is substantially different in length, the concepts within the paper are all dealt with in an expanded fashion in the final paper.” When delivered to Briffa as an IPCC Lead Author, Wahl and Ammann 2004 was submitted to Journal of Climate. A different version was later published, but by submitting Wahl and Ammann 2004 to IPCC Lead Author Briffa for consideration (and eventual use) in the IPCC AR4 First Draft, Wahl and Ammann consented to its disclosure.

C. Public Interest

27. In paragraph 39, the Commissioner stated:

The activities of certain scientists at UEA have raised legitimate public interest questions to be asked about climate science in general and the work of UEA. There is a strong public interest in disclosure. However, the Commissioner also notes that were a number of independent inquiries and studies [1 – citing <http://www.uea.ac.uk/mac/comm/media/press/CRUstatements/independentreviews>. The Berkeley Earth Surface Temperature (BEST) study (October 2011)] following “climategate” and they did not call the validity of the climate science at UEA into question. The Commissioner must acknowledge the work of these expert inquiries and he finds that cannot give further weight to the public interest in disclosure given the external validation of UEA’s work.

28. The terms of reference of the so-called “independent inquiries and studies” were not the same as the Commissioner’s statutory obligations and do not entitle the Commissioner to evade his statutory obligation to consider the public interest argument.

29. In addition, the Commissioner has totally misconstrued the scope of the various “independent inquiries and studies”, none of which support the assertions made here by the Commissioner about their results.

30. CRU has two main “product lines”: their 1000-year temperature reconstructions from “proxies”, such as tree rings; and their 160-year CRUTEM temperature “anomaly” index calculated from thermometer readings at land stations. The vast majority of emails in the Climategate dossier concern proxy reconstructions, not CRUTEM. Indeed, CRUTEM is only mentioned in a few emails.

31. The Berkeley studies cited by the Commissioner (BEST) are restricted to CRUTEM. In respect to the proxy reconstructions (the primary Climategate issue), Richard Muller, the leader of the Berkeley study, has vigorously condemned the practices of CRU scientists and has unambiguously stated that the standards of CRU science were “not acceptable” and that their conduct was so deplorable that he would not even read articles by CRU authors in the future:

I now have a list of authors whose papers I won’t even read any more. You’re not allowed to do this in science. This is not up to our standards.³

³ <http://www.youtube.com/watch?v=8BQpciw8suk>

32. Nor did either the Oxburgh or Muir Russell inquiries carry out examinations of “the validity of the climate science at UEA”.
33. Although the Oxburgh inquiry was entitled the “Science Appraisal Panel” and people were led to believe that its purpose was to “appraise” UEA science, it did not. In an email to me (following an inquiry from me to Oxburgh asking about their failure to report an apparently damning admission from Jones about failings in their proxy reconstructions, that had been passed to me through backchannels), Oxburgh stated:
- “the science was not the subject of our study.”⁴
34. The former Chairman of the Science and Technology Committee, Phil Willis, in an interview with Roger Harrabin of the BBC, angrily described the conduct of the University as “sleight of hand”.⁵

D. Previous Appeals

35. I additionally rely on arguments presented in my previous appeals to the University and to the Commissioner.

Stephen McIntyre
March 1, 2012

⁴ <http://climateaudit.org/2010/07/01/oxburgh-and-the-jones-admission/>

⁵ http://news.bbc.co.uk/today/hi/today/newsid_8795000/8795643.stm; <http://climateaudit.org/2010/07/07/harrabin-on-ueas-sleight-of-hand-phil-willis/>