

Mr. Steven McIntyre

28 March 2011

Dear Mr. McIntyre

ENVIRONMENTAL INFORMATION REGULATIONS 2004 – INFORMATION REQUEST (FOI_11-047; EIR_11-04)

Your request for information received on 28 February 2011 regarding a data set held by the Climatic Research Unit has now been considered and we have determined that we are not obliged to supply the information you have requested under the Regulations.

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.

In accordance with Regulation 14 of the Environmental Information Regulations 2004 this letter acts as a 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	Some of the requested information is available on various websites
Reg. 12(4)(a), Information not held at time of request	Some of the requested information was not in existence at the time of the request
Reg. 12(4)(d), Material in course of completion	Some of the requested information is incomplete and is subject to further work
Reg.12(5)(c), Adverse effect on intellectual property rights	Release of some of the requested information would adversely affect the intellectual property rights of CRU staff

Exceptions Explanation

To provide some context, a brief description of our interpretation of the information requested is required. The request in your email of 28 February 2011 refers to an email sent by Dr. T. Osborn on April 28, 2006. We have identified four (4) components to your request:

1. A digital version of the “composite” identified as “URALS”. No such composite was attached to or identified by the 2006 email, which applied the term ‘URALS’ solely to groups of trees. However, 1,001 composites were later generated from the ring-width data from these groups of trees, and we interpret your request to be for those 1,001 composites.
2. A list of all the measurement data sets used to make this URALS composite, including the ITRDB identifier or equivalent.
3. A list of the measurement data sets used to make the Polar Urals long chronology, including the ITRDB identifier or equivalent.
4. Any of the measurement data that are not in a public archive.

It is necessary to provide this detail as different Regulations apply to each one of the items noted above.

Regulation 6(1)(b) is cited in relation to items 2, 3 and 4. Although the specific lists of sites are not being released, we are providing the general coordinates to identify the “URALS” study region from which data were selected. All of the data that we have used within this area are publicly available (including their ITRDB identifiers or equivalent) on several websites. In the attachment to this letter we provide the general regional parameters for this study and the data (including ITRDB identifiers where they exist) from which the selection was made can be found on the ITRDB website:

(<http://web.utk.edu/~grissino/itrdb.htm>). Additional data are available at other websites: (<http://www.ncdc.noaa.gov/paleo/treering.html>) and (<http://www.cru.uea.ac.uk/cru/people/briffa/yamal2009/data/>). There are some Russian sites not within the ITRDB database and the identifiers for those can be found on a Russian website <http://lib.ipae.uran.ru/dchrono> (in Russian).

In regards Regulation 12(4)(a), as noted all the data used to construct the composites and all the data that comprises the ‘Polar Urals’ set identified in the request, are all available on publicly accessible websites. Therefore, there was not in existence, nor as a consequence did the University possess, ‘any of the measurement data that are not in a public archive’.

Regulation 12(4)(d) is cited because the 1,001 composite data sets and the lists of sites from which the data is drawn was created in 2006 as a first ‘draft’ of work that was meant to be carried forward and refined with a view to future publication. Whilst there has been the passage of some time since the creation of the first set of 1,001 composite records, staff at the CRU have returned to this data recently as part of a project funded by NERC, which commenced in May 2010, that encapsulates this NW Eurasian tree-ring study, and which will be completed no later than October 2012. The data will be revised in the near future as the project moves towards publication of papers based on the work in constructing the composites.

In regards to Regulation 12(5)(c), it is our contention that there are intellectual property rights in the form of both copyright and database right in the composite data sets. Creative work went into the selection of the site locations to include, and the arrangement of the data within the data sets, thus leading to a database right. Additionally, the data itself within the composite data sets represents the intellectual effort of developing the processing of the ‘raw’ data obtained from the site datasets themselves and therefore attracts copyright. The ‘adverse affect’ to intellectual property rights is based upon the fact that release of these data sets and the methodology used in their construction would, effectively, be publication of the creative work of the CRU staff. This would seriously reduce the likelihood that any high impact journal would publish the results pertaining to this work, thus effectively causing the University financial harm via adverse impact upon reputation, ability to attract research funding, and funding arising from the citation of the publications within the REF process by which universities in the United Kingdom receive funding based on the quality of research undertaken.

Public interest argument

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.

There is little public interest in the release of unfinished or incomplete data – i.e. which does not contain a description of how it was created or why the “selected” methods were chosen – and so does not reflect the full breadth of academic rigour and thought applied to it. The information may well be incorrect, untested, unreviewed and may not accurately reflect the proper outcome of the research. Incorrect or misapplied conclusions could be drawn from the publication of unfinished data and any assessment of the merit of the work should be based upon a final, approved version of the data. The requested information will be made available in finished form at the time of publication of the results, which is expected to be no later than October 2012, and that should stand as the output of record of this research process.

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 financial gain from.

There is also clearly a public interest in the maintenance of intellectual property rights so that creative work is protected, fostered and encouraged via protection against exploitation of the work by persons who have not invested the time or intellectual effort in the creation of the work. Premature release of material that has both copyright and a database right attached to it would harm the interests of the CRU and University by denying them the economic and professional benefits arising from their work. The requested material will be published in due course, thereby satisfying the public interest in the release of the data and the advance in knowledge represented by the research output. Were premature release of such material to become common, the willingness and ability of academics to engage in published research would be harmed and this cannot be in the public interest.

I would finally 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 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 Freedom of Information request (FOI_11-047; EIR_11-04)

Climategate email 684. 1146252894.txt of Apr 28, 2006 refers to a tree ring composite identified as follows:

"URALS" (which includes the Yamal and Polar Urals long chronologies, plus other shorter ones).

Could you please provide me a digital version of this series together with a list of all the measurement data sets used to make this composite, denoting each data set by ITRDB identification or equivalent. For the Polar Urals site, would you please identify the individual data sets used by ITRDB identification or equivalent. If any of the data is not in a public archive, please provide the measurement data.

It would probably simplify matters if you also provided the measurement data used for the "URALS" chronology in a digital form.

1. A digital version of the "composite" identified as "URALS". No such composite was attached to or identified by the 2006 email, which referred to groups of trees. However, 1001 composites were later generated from these groups of trees, and we interpret your request to be for those 1001 composites.

[Information excepted pursuant to Reg. 12(4)(d), & 12(5)(c), Environmental Information Regulations]

The 1,001 composite data sets and the list of sites used to construct the data sets are incomplete and subject to further work and modification. Additionally, release at this time of the 1,001 composite data sets and the selection of sites used to construct them would also adversely affect the intellectual property rights of the University.

2. A list of all the measurement data sets used to make this URALS composite, including the ITRDB identifier or equivalent.

[Information excepted pursuant to Reg. 6(1)(b), 12(4)(d), & 12(5)(c), Environmental Information Regulations]

Although the specific lists of sites used at the time of the 2006 email (and as modified in subsequent work) are not being released, the primary data from which the selections were made, including the site identifiers, are available publicly on a variety of websites as noted in the above text. In addition we can release the general parameters for the sites from which the data for the URALS group were drawn: we used only ring-width data, and the sites were from within the domain bounded by 45°E and 75°E and north of 60°N

See also answer to question 1 above as the same reasoning applies to the measurement data sets.

3. A list of the measurement data sets used to make the Polar Urals long chronology, including the ITRDB identifier or equivalent.

[Information excepted pursuant to Reg. 6(1)(b), 12(4)(d), & 12(5)(c), Environmental Information Regulations]

See answer to question 1 and 2 above

4. Any of the measurement data that are not in a public archive.

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

All of the data that is relevant to this request are publicly available (including their ITRDB identifiers or equivalent) on several websites. Therefore, there are no measurement data that are not in a public archive