

**Stephen McIntyre  
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15 February 2012

First-tier Tribunal (Information Rights)  
General Regulatory Chamber  
Arnhem House Support Centre  
PO Box 9300  
Leicester LE1 8DJ

**McIntyre v Information Commissioner & University of East Anglia  
First Tier Tribunal (Information Rights) Case No: EA/2012/0051**

Dear Sirs,

Thank you for your consideration in the events leading to my request for a delay.

As discussed at the last Case Management Conference, I will re-submit a FOI/EIR request for Documents 5-8 since the intricate issues surrounding access to the server have been rendered moot by the return of the server. It is my understanding that the UEA have undertaken to preserve the records on the server.

At the last Case Conference, I undertook to identify the documents within the Bundle that pertained to the remaining dispute over Document 1, most of the facts of which had been more or less agreed to by the parties.

However, I would first like to formally complain that the UEA has provided another untrue account of the provenance of Document 1 in both their Response of 9 May 2012 (Bundle Tab 1, pages 55-71) and in their Submission of 12 July 2012. At the time of my Reply of 25 May 2012 (Bundle Tab 1, pages 71A-S) and my Submission of 12 July 2012, I was not aware that the UEA had provided a false account of the provenance of Document 1. I will set out particulars below.

In my opinion, the documents withheld by the UEA completely vindicate my argument in respect to Document 1 and rebut arguments made by UEA. I therefore request that the UEA simply withdraw its opposition to production of Document 1 and disclose it without putting the Tribunal to further trouble.

In the alternative, I wish to withdraw any agreement on the facts of the provenance of Document 1 as expressed in my Reply of 25 May 2012 (Bundle Tab 1, pages 71A-S) and Submission of 12 July 2012 and request an extension of three days (to 26 February 2012) for providing the amended bundle index as required in paragraph 3 of the Directions of 16 January 2013 as amended.

**The Provenance of Document 1**

UEA had originally stated that Document 1 had been provided to them by Wahl and Ammann, a story that was accepted by the Information Commissioner in his decision (Bundle Tab 1, pages 1ff). In the UEA Response of 9 May 2012 (Bundle Tab 1, pages 55 ff), the UEA changed its

story, now saying that Document 1 had not been sent to them by Wahl and Ammann, but had been sent by Michael Mann to Phil Jones on 30 December 2004 as a “confidential document”:

The paper [Document 1] was sent to Professor Jones under cover of an email from Professor Mann dated 30 December 2004 [CG1 - 458. 1104855751.txt]. Professor Mann made clear in his email that the paper was to be treated as a confidential document pending publication of the final version by the authors.

Against this, I argued in my Reply of 25 May 2012 (Bundle Tab 1, pages 71A ff) that Mann had sent Document 1, then in review at the Journal of Climate, to UEA in the expectation that Briffa would cite it in IPCC AR4. In their Submission of 12 July 2012, the UEA flatly rejected this claim, stating that there was “no evidence” to support my claim that Document 1 was the article which had been “submitted to Journal of Climate and was then in review” or that Mann expected the article to be cited in IPCC:

49. Mr McIntyre disputes that document 1 was in fact a draft of the article which was published in 2007. He claims that it was 'the article which was submitted to Journal of Climate [sic] and was then in review'. Mr McIntyre relies on the covering email from Professor Mann in support of this case (§61 of the Reply). Mr McIntyre's case on this issue cannot be sustained....

There is simply no evidence to substantiate the case which Mr McIntyre advances.

Against these assertions by the UEA, I submit two Climategate-2 emails from 13 December 2004 (CG2-3382 and especially CG2-380), attached to this email.

On 13 December 2004 (CG2-3382), following a telephone conversation, Briffa agreed that Mann could surreptitiously act as an undisclosed Contributing Author (“informal contributor”), as well as being a disclosed reviewer (“formal reviewer”). This arrangement violated IPCC rules in two respects: (1) not disclosing a Contributing Author; (2) conflict of interest in acting both as a Contributing Author and reviewer. Mann’s role as a Contributing Author was presumably concealed because of ongoing controversy about his work. As part of the agreement, Mann also undertook to include Briffa as a co-author in an article in preparation by Mann, Wahl and Ammann. Mann recognized the ethical problems, but said that he was “perfectly happy” as long as Briffa and Overpeck were “comfortable” with the surreptitious arrangement. Briffa appears to have asked Mann to contribute in respect to his disputes with us and with von Storch, since Mann confirmed to Briffa (CG2-3382) that “in the following emails, I'll attach some other materials (submitted papers) that deal w/ the McIntyre and Mckitrick matter, and the von Storch matter.”

Within 10 seconds (literally) of confirming his agreement to act as a secret Contributing Author, Mann sent Document 1 to Briffa (CG2-380). This was 17 days prior to the 30 December 2004 email to Jones, which UEA has falsely claimed to be the provenance of Document 1.

subject: email #2: paper in review in J. Climate (as a letter),

Keith, This paper is in review, and can be referred to (just clear w/ Caspar or Gene first) for IPCC draft purposes. They basically show that the McIntyre and McKitrick paper is total crap, and they provide an online version of the Mann et al method (and the proxy data), so individuals can confirm for themselves...  
Mike

Attachment Converted: "c:\eudora\attach\Wahl\_MBH\_Recreation\_JClimLett\_Nov22. pdf

This email directly and unequivocally shows the falsity of UEA's assertion (12 July 2012 Submission, paragraph 49) that there was "no evidence" to support my case that Document 1 was 'the article which was submitted to Journal of Climate [sic] and was then in review'. Indeed, it is hard to imagine a more direct confirmation of my position.

UEA had also denied the contention in my Reply of 25 May 2012 (Bundle Tab 1, pages 71A ff, paragraph 62) that Mann had "provided Document 1 in the expectation that Briffa would refer to it in the IPCC chapter assessing the Hockey Stick dispute" (UEA Submission of 12 July 2012, paragraph 50). However, the validity of my claim is established beyond doubt by Mann's own words in which he stated that Document 1 "can be referred to .. for IPCC draft purposes", clearly vindicating my argument that Mann had provided Document 1 to Briffa in the expectation that it would be cited in IPCC AR4 and rebutting the UEA on this point.

### **Conclusion**

The document withheld by UEA goes to the heart of their argument on the application of 12(4)(d) and I accordingly request that they now voluntarily disclose Document 1.

In the alternative, I wish to withdraw my previous acquiescence in UEA's account of the provenance of Document 1 (Reply of 25 May 2012, Bundle Tab 1, pages 71A ff, paragraph 47; McIntyre Submission of 12 July 2012, paragraphs 14-16)

Yours truly,

A handwritten signature in black ink, appearing to read 'S. McIntyre', with a stylized, cursive script.

Stephen McIntyre