

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 01 March 2012

Public Authority: The University of East Anglia
Address: Norwich
NR4 7TJ

Decision (including any steps ordered)

1. The complainant has requested various specified emails and attachments and information in relation to these. The University of East Anglia (UEA) provided a response to the complainant in which it provided him with some of the information he had requested, but refused to provide the information requested at points 3 of the request under regulation 12(5)(a) and regulation 12(5)(f) and the information requested at point 4 of the request under regulation 13(1).
2. The Commissioner's decision is that UEA has correctly applied regulation 12(5)(a), and regulation 13 in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made a request to UEA on 7 May 2011 for the following information:

On 30 March 2011, in response to FOI_11-048 you released in Appendix A Correspondence.zip, an updated email from Prof Briffa to Profs Overpeck and Jansen with the subject "urgent request". It included the text:

"The attached file documents one of a series of allegations/questions that we have been asked to answer. We are forwarding it in confidence (thus please do not circulate

further nor retain it unnecessarily) because we would value your input in responding to this allegation.”

[1] Please tell me the date of the email

[2] Please give me a copy of “the attached file

In the same Appendix A you also released an email dated 26 February 2010 from the IPCC WGI TSU to which had been attached a file referred to as
“c:\Eudora\attach\Letter_WG1AR4Authors_2602210.pdf”

[3] Please give me a copy of the attached file

[4] Please indicate the status of individual whose name you redacted, if it is one of the individuals who appears at <http://www.ipcc-wg1.unibe.ch/organizati...>

On 30 December 2009 I sent by email two files to the Information Commissioner’s Office, “DH Exhibits.zip” and “ICO Statement.doc”. I subsequently received a request from the ICO to permit it to give UEA a copy. I/.

[5] Please let me know if you did receive either or both files and if so on what date and who at UEA were given access to it.

5. UEA provided a response to the complainant on 6 June 2011 in which it provided him with some of the information he had requested, but refused to provide the information requested at points 3 of the request under regulation 12(5)(a) and regulation 12(5)(f) and the information requested at point 4 of the request under regulation 13(1). It said the information requested at point 5 was not held.
6. The complainant requested an internal review of the public authority’s decision on 7 June 2011 in relation to its refusal to provide the information requested at points 3 and point 4 of the request. On 1 August 2011 the public authority wrote to the complainant with the details of the result of the internal review it had carried out. It upheld its decision to withhold the information requested at point 3 and point 4 of the request.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner will consider whether UEA was correct to withhold the information requested

at point 3 of the request under regulation 12(5)(a) and regulation 12(5)(f) and whether it was correct to withhold the information requested at point 4 of the request under regulation 13(1).

Reasons for decision

Point 3 of the Request

Regulation 12(5)(a)

8. Regulation 12(5)(a) of EIR provides that, a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
9. In this case UEA has explained that disclosure would adversely affect international relations. It has explained that the withheld information is an email and attachment from the International Panel on Climate Change (IPCC) Working Group 1 (WG1) Technical Support Unit (TSU). UEA said that the IPCC is an international organisation which the United Kingdom freely joined. It said that the IPCC has made it clear that the release of confidential documents would force them to reconsider working arrangements both with UEA and others within the United Kingdom. The IPCC has provided the Commissioner with its guidance documents on how information obtained through the IPCC should be handled, and it is clear that the IPCC intends emails and attachments sent by it to researchers or institutions to be treated as confidential and that such information should not be disclosed into the public domain.
10. UEA also confirmed that it contacted the IPCC WR1 TSU to ask for its views on disclosure of the withheld information. In letters dated 6 June 2011, 13 July 2011 and 16 November 2011, the IPCC WR1 TSU confirmed that all material sent by them to members of the IPCC WG1 author teams is not intended for public distribution and it would not give permission to release the information.
11. UEA explained that in the letter dated 6 June 2011, the IPCC WR1 TSU stated that "In consequence, there would be an adverse effect on international relations between IPCC WG1 and academic institutions within the United Kingdom because it would force us to reconsider our working arrangements with those experts who have been selected for an active role in WG1 AR5 from your institution and others in the UK". In the letter of 13 July 2011 it stated that, "...the succession of requests in the UK has already led us to reconsider some of our working arrangements in order to protect the freedom of the author team to work undisturbed, and to preserve the integrity of the IPCC process including confidentiality of interim documents in accordance with IPCC

procedures". It said that this position was reaffirmed in the letter dated 16 November 2011.

12. UEA said that there is evidence that the IPCC is dealing with academics from the UK in a different manner than other nations. It explained that at the most recent meeting of the IPCC WG1, a special meeting was convened to discuss the IPCC process in light of the existence of the EIRs within the UK, with the IPCC WG1 noting the special circumstances that attach to the working relationship with UK-based academics because of the EIRs.
13. When considering the adverse affect under 12(5)(a) it is relevant to consider whether the information was obtained from a State other than the United Kingdom or from an international organisation or international court. This is contained in the 27(2) exemption in the Freedom of Information Act. In this case the Commissioner is satisfied that the withheld information was obtained from an international organisation, the international organisation being the IPCC. The Commissioner finds that the IPCC is an international organisation because it is established by the United Nations environment programme and it is an intergovernmental body.
14. UEA has explained that the adverse affect would be that the IPCC would have to review its working arrangements with experts from UK institutions. It has explained that this affect would occur and has provided the Commissioner with evidence that the IPCC is already dealing with academics from the UK differently because of the potential for disclosure of information through a number of previous requests for information in the UK under the EIRs.
15. It is clear to the Commissioner that the UK Universities involved with IPCC would be adversely affected if the information was disclosed, however he must consider whether there is an adverse affect to international relations. The Commissioner notes the analysis in another decision notice involving UEA (FER0282488) paragraphs 43-45. He has focused on the adverse affect to the UK's international relations (with the IPCC) not the impact on Universities as institutions. It is clear to the Commissioner that there would be a broad, overall affect on the UK's relations with the IPCC. Having considered the context of the information and the context of the UK's involvement in the IPCC the Commissioner accepts that disclosure of the requested information would adversely affect international relations between the UK and the IPCC. The Commissioner will therefore go on to consider the public interest arguments in this case.

Public interest arguments in favour of disclosure

16. UEA said that there was a strong public interest in the work undertaken by the IPCC and in ensuring openness and transparency in its workings.
17. The Commissioner also considers that there is a strong public interest in disclosure of information which may add to and further inform public debate on the issue of research into climate change.

Public interest arguments in favour of maintaining the exemption

18. UEA explained that there is a strong public interest in the continuing working relationship between UK experts on climate change and the IPCC. It explained that the opportunity to work on international projects with organisations such as the IPCC is vital to UK research into climate change.
19. UEA also said that the UK joined the IPCC freely and therefore implicitly agreed to abide by the rules, regulations and agreements of that organisation. It explained that it would not be in the public interest for the UK to disclose confidential information in breach of the IPCC's rules, regulations and agreements.
20. UEA also explained that there is a strong public interest in preserving some private space within the international sphere within which institutions and scientists can communicate with each other freely and openly and exchange frank and robust views. It said that guidance issued by the IPCC has been explicitly designed to facilitate this open and honest exchange of views (this has been provided to the Commissioner). It would not be in the public interest for the IPCC or international scientists to share information less freely and openly with scientists from the UK.

Balance of the public interest arguments

21. The Commissioner considers that due to the subject matter in this case there is a very strong public interest in openness and transparency of the work of the IPCC. He also considers that there is a very strong public interest in the disclosure of information which would further inform public debate on the issue of climate change and in particular in relation to research into this subject matter.
22. The Commissioner considers that there is a very strong public interest in not impeding the working relationship between UK researchers or institutions and international organisations or international scientists. He also considers that there is a very strong public interest in the UK not disregarding the IPCC's rules, regulations and agreements by disclosing information provided by the IPCC which it considers to be confidential.

23. The Commissioner considers that whilst there is a very strong public interest in openness, transparency and furthering public debate in relation to scientific reports that inform international policies on climate change, he also considers that there is a very strong public interest in maintaining working relationships between UK researchers or institutions and international organisations or international scientists. In this case the IPCC has explicitly stated that it does consider the withheld information to be confidential and that it does not expect the UK to disclose this information into the public domain. The Commissioner therefore considers that disclosure would go explicitly against the expectations of the IPCC and would therefore hinder the UK's working relationship with this international organisation which would not be in the public interest.
24. Whilst acknowledging the presumption in favour of disclosure under EIR, in this case the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exception.
25. As the Commissioner has found that regulation 12(5)(a) was correctly applied in this case to withhold the information requested at point 3 of the request, he has not gone on to consider the application of regulation 12(5)(f) any further.

Point 4 of the Request

Regulation 13

26. The Commissioner is aware that UEA has disclosed to the complainant an email with the senders name redacted. The complainant has requested the status of the individual whose name had been redacted. UEA has explained that disclosure of this information would reveal the identity of the individual as releasing information about the position of an individual would amount to the same as releasing their name as each staff member has a specific job title. It has argued that this is the individual's personal data as it would link the individual to the IPCC and particularly this email and attachment. The Commissioner does consider that the requested information would be the individual's personal data and has therefore gone on to consider whether disclosure of this information would breach any of the data protection principles.
27. UEA has confirmed that it considers that disclosure would breach the first principle, that personal data should be processed fairly and lawfully. When considering whether or not disclosure would be fair the Commissioner looks at a number of factors.

Expectations of the data subject

28. UEA has explained that the data subject does not reside nor is employed in the UK. The data subject has different expectations in relation to privacy than may be expected in the UK. UEA has contacted the IPCC in relation to this and the IPCC has confirmed that the data subject would not expect their job title to be disclosed into the public domain as this would identify them and would link them to the IPCC.
29. UEA has explained that the data subject's role at the IPCC is not public facing but is an administrative post. UEA has explained that the data subject is not a 'public official' or an 'employee' in the same way as a person is an employee of a public authority in the UK. It said that the data subject works for an international body that is a creation of member states and is tasked to undertake work for that body. It confirmed that the data subject is not solely funded by nor governed by any UK based organisation and has no public role within the UK.
30. The Commissioner accepts that the data subject would not expect the redacted information to be disclosed into the public domain as UEA has explained that as the data has a very specific job title this would in effect be disclosing their name into the public domain.

Legitimate interests of the data subject

31. The Commissioner does not consider that there is a legitimate public interest in knowing the status of the individual who sent the requested email as part of an administrative role.
32. In this case the Commissioner does not consider that the data subject would have any expectation that the requested information would be disclosed into the public domain and furthermore there is no legitimate public interest in this information being disclosed. Disclosure of the information would be unfair and in breach of the first data protection principle. The Commissioner therefore considers that regulation 13 was correctly applied to withhold this information.

Right of appeal

33. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

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