

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 9 August 2012

**Public Authority:** Department for Business Innovation and Skills  
(BIS)

**Address:** 1 Victoria Street  
London  
SW1H 0ET

#### **Decision (including any steps ordered)**

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1. The complainant has requested copies of all the information held by the Met Office in relation to a specific meeting of the Intergovernmental Panel on Climate Change (IPCC).
2. The Met Office withheld the information under regulations 12(3), 12(4)(d), 12(5)(a) and 12(5)(f) of the EIR. The Information Commissioner's (the Commissioner) decision is that the Met Office has applied regulation 12(5)(a) appropriately.
3. The Commissioner does not require the Met Office do take any further steps.

#### **Request and response**

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4. The Commissioner notes that under the Act the Met Office is not a public authority itself, but was actually an executive agency of the Ministry of Defence (MoD) at the time of the request (but is now an executive agency of BIS) which has responsibility for it. This decision notice is therefore served on BIS. However, for the sake of clarity this decision notice refers to the Met Office as if it were the public authority.
5. On 24 July 2011 the complainant wrote to the Met Office (MO) and requested information in the following terms:

*'Second IPCC AR5 WGI Lead Authors' Meeting*

*You are no doubt aware of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), with which Council Directive 2003/4/EC requires our Environmental Information Regulations 2004 to be consistent. The process of IPCC Fifth Assessment of the science, impacts and mitigation, of climate change, in which you as a public authority are engaged, is one of the most important environmental decision-making processes of all and in which I wish to exercise my rights. Accordingly I am asking for exact copies of all the information held by you as a result of the participation of your employees in the Second Lead Authors Meeting (LA2), 18-22 July 2011, at Brest, France. In particular, but without prejudicing my rights to all the information I wish to have an exact copy of what is referred to as the zero order draft of the AR5 WGI Assessment Report, together with the comments on of its reviewers and a list of their names. I believe that strictly speaking this environmental information is of such public interest and importance that under EIR regulation 4 you should proactively disseminate it by electronic means and I will be satisfied with a link to where it is held in your publication scheme.'*

6. The MO responded on 28 July 2011. It explained that it regarded his request as having two parts:

(i) *'I am asking for exact copies of all the information held by you as a result of the participation of your employees in the Second Lead Authors Meeting (LA2), 18-22 July 2011, at Brest, France'*, which the MO regarded as a new request.

(ii) *'I wish to have an exact copy of what is referred to as the zero order draft of the AR5 WGI Assessment Report, together with the comments on of its reviewers and a list of their names'*, which it considered to be a repeat request, as the complainant had already asked for this information in a previous request which was already the subject of an internal review.

7. On 19 August 2011 the MO issued a refusal notice. It explained that it was withholding the requested information under regulations 12(3), 12(4)(d), 12(5)(a) and 12(5)(f). It also provided the complainant with two links to information relating to his request.

8. On 28 September and 3 October 2011 the complainant requested an internal review. He wrote the following:

*'This request for a review is limited to any and all ZODs of AR5 WGI chapters that you hold. Should you still refuse to disclose*

*them, please give me a proper account of how you reach your conclusion on any of the exceptions you seek to maintain and how you arrive at the balance of the public interest in this matter.'*

9. Following an internal review the MO wrote to the complainant on 18 November 2011. It acknowledged that the complainant had explained what he wanted the review to consider and confirmed that it was withholding that information on the same grounds.

## **Background**

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10. The Met Office website<sup>1</sup> explains that they are the UK's National Weather Service. They have a long history of weather forecasting and have been working in the area of climate change for more than two decades.
11. The MO Hadley Centre produces guidance on the science of climate change and provides a focus in the UK for the scientific issues associated with climate science. Largely co-funded by Department of Energy and Climate Change and the Department for Environment, Food and Rural Affairs, the Hadley Centre provides in-depth information to the Government and advises it on climate science issues. As one of the world's leading centres for climate science research, its scientists make significant contributions to peer-reviewed literature and to a variety of climate science reports, including the Assessment Report of the Intergovernmental Panel on Climate Change (IPCC)<sup>2</sup>.
12. The IPCC<sup>3</sup> was established in 1988 by two United Nations Organisations, the World Meteorological Organisation and the United Nations Environment Programme to assess the scientific, technical and socioeconomic information relevant to the understanding of the risk of human-induced climate change.
13. It does not carry out new research but seeks to summarise the state of scientific understanding with respect to global climate change and has published four assessment reports. The first was published in 1990, the second in 1995, the third in 2001, the fourth in 2007. The fifth is due to

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<sup>1</sup> <http://www.metoffice.gov.uk/about-us>

<sup>2</sup> <http://www.metoffice.gov.uk/climate-change/resources/hadley>

<sup>3</sup> <http://www.ipcc.ch/>

be published in September 2013. The IPCC bases its assessments mainly on published scientific literature.

14. The IPCC divides its work for the assessment reports between three separate working groups covering different aspects of climate change. Authors, contributors, reviewers and other experts who participate in the preparation of the reports are selected from a list of nominations received from governments and participating organisations and those identified by the IPCC as having special expertise. None of them are paid by the IPCC.
15. IPCC assessment reports have been very influential in the development of national and international policies on climate change and are widely cited in debates on the subject.

### **Scope of the case**

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16. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that he had not received the information he had requested. The complainant also complained that the MO had not carried out its duties under regulation 4 which deals with the dissemination of environmental information. The Commissioner notes that the complainant has complained about regulation 4 to him before.
17. The Commissioner's view is that complaints about regulation 4 are not valid complaints under regulation 18. The complainant has appealed to the First-tier Tribunal (the Tribunal) about regulation 4 previously, with regard to a complaint he made to the Commissioner. The Commissioner had concluded the complaint via a letter as he could not issue a decision notice as a valid complaint had not been made. The Tribunal found that it was not within its jurisdiction to hear the appeal<sup>4</sup> and struck out the appeal of the letter. The Commissioner has therefore not considered the complaint related to regulation 4 in this notice.
18. The Commissioner contacted the complainant to clarify whether he was complaining about his request of 24 July 2011 or his refined request submitted for internal review on 28 September 2011. The complainant confirmed that he was complaining about his refined request of 28 September 2011 as set out above.

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<sup>4</sup> EA/2011/0304

19. The Commissioner considers that regulation 12(5)(a) applies to all of the withheld information and he has therefore considered this first.

### **Reasons for decision**

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20. Having considered the withheld information the Commissioner considers that regulation 12(5)(a) applies to the information.
21. Regulation 12(5)(a) of the 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"*. Regulation 12(5)(a) is subject to the public interest test and a public authority must apply a presumption in favour of disclosure.
22. The MO explained that disclosure of the requested information would adversely affect international relations. The withheld information consisted of the WG1 AR5 ZOD, which has 14 chapters in it; an extended outline of the WG1 AR5; and frequently asked questions document regarding the WG1 AR5. The MO also explained that the IPCC's WG1 Technical Support Unit had made it clear that the release of confidential documents would mean it would have to reconsider working arrangements with the MO and others within the United Kingdom. The IPCC also pointed out that disclosure would therefore have a *"deleterious effect on the internal relations between the IPCC and the United Kingdom"*.
23. The MO argued that a specific harm arising from disclosure would be the damage caused to its reputation as a key contributor to the international debate on climate change if it divulged information that had universally been agreed as confidential. It explained that disclosure would mean that it would be excluded from any further participation in the IPCC process, thus prejudicing the UK's standing in the international scientific community.
24. The MO also argued that further specific harms would arise from disclosure. If the IPCC was reluctant to use UK scientists in international research processes this would adversely affect the UK's standing in the scientific community and adversely affect the development of cutting-edge internal scientific dialogue in the UK. Further, the MO argued that if UK experts were denied the opportunity to participate in international projects of this nature they might choose to seek employments in universities and research institutions outside the UK. This would undermine the UK's ability to undertake science and participate in international scientific research projects such as IPCC.

25. When considering the adverse effect under 12(5)(a) it is relevant to consider whether the information was obtained from a State other than the UK or from an international organisation or international court. This is analogous to the section 27(2) exemption in the Freedom of Information Act 2000). In this case the Commissioner is satisfied that the withheld information was obtained from an international organisation; in this case, the IPCC. The Commissioner considers the IPCC to be an international organisation as it was established by the United Nations environment programme and it is an intergovernmental body.
26. It is clear to the Commissioner that the MO's relationship with the IPCC would be adversely affected if the information was disclosed; however, he must consider whether there is an adverse affect on international relations. The Commissioner notes the analysis in another decision notice involving the University of East Anglia (FER0282488), paragraphs 43-45, which also alludes to the MO. He has focused on the adverse effect on the UK's international relations (with the IPCC), and not the impact on relevant institutions.
27. It is clear to the Commissioner that there would be a broad, overall effect on the UK's relations with the IPCC. It is also important to note the timing of the request and the specific impact disclosure would have had whilst the IPCC fifth assessment process was on-going.
28. The Commissioner would challenge the MO's evidence that the UK would be completely excluded from IPCC process if this information was disclosed as the IPCC would surely take balanced view considering the leading role the UK plays in the process. However, he accepts that there would be an adverse effect based on the evidence presented. In reaching this conclusion he has followed the guidance set out in the Information Tribunal's decision in *CAAT v ICO and MOD (EA/2006/040)*. When considering prejudice to international relations the Tribunal noted:

*"However, we would make clear that in our judgment prejudice can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage which would not otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage. For example, in our view there would or could be prejudice to the interests of the UK abroad or the promotion of those interests if the consequence of disclosure was to expose those interests to the risk of an adverse reaction from the KSA or to make them vulnerable to such a reaction, notwithstanding that the precise reaction of the KSA would not be predictable either as*



*a matter of probability or certainty. The prejudice would lie in the exposure and vulnerability to that risk.” (paragraph 81)*

29. Having considered the context of the information and the context of the UK's involvement with 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 in disclosing the information***

30. The MO accepts that there is a strong public interest in transparency and openness in the operation of public authorities. It also accepts that anything to do with climate change and, in particular, the work of the IPCC, is of strong public interest. Disclosure would mean there would be an appropriate level of public scrutiny.
31. The MO acknowledged that disclosure would also mean that the public might understand, discuss and assess the work of the IPCC WG1 AR5 at the pre-first draft stage of their assessment.
32. The Commissioner also considers that there is a strong public interest in disclosure of information which may add to and further inform debate on the issue of research into climate change.
33. The Commissioner also notes that there has been considerable public debate about the validity of different scientific techniques used to assess climate change. The activities of certain scientists at the University of East Anglia (UEA) have led to legitimate public interest questions being asked about climate science in general. Legitimate questions have also been raised about whether climate science is as open as other branches of science. The Commissioner also notes that there have been a number of independent inquiries<sup>5</sup> and studies following “climategate” and that they did not call the validity of the climate science at UEA into question.

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<sup>5</sup> <http://www.uea.ac.uk/mac/comm/media/press/CRUstatements/independentreviews>

- The Berkeley Earth Surface Temperature (BEST) study (October 2011) - Deutsche Bank report (September 2010) - Muir Russell Review (July 2010) - US Environmental Protection Agency (July 2010) - Lord Oxburgh Scientific Assessment Panel (April 2010) - Parliamentary Science and Technology Select Committee (March 2010)

34. The MO also pointed out that the public interest in disclosure of the information is already served by the proactive disclosure of information on the IPCC website, as evidenced by the multiple links provided the complainant.

***Public interest in maintaining the exception***

35. The MO explained that the relationship between it and the IPCC allows for the free and frank exchange of views on the understanding that it would be treated in confidence. If the UK does not respect such confidences, its ability to protect and promote UK interests through international relations will be adversely affected.
36. The Mo also argued that it would be against the public interest to disclose confidential information in breach of an express duty of confidence. This would have an adverse effect by deterring participant organisations from sharing confidential information with the UK institutions in future.
37. The MO also explained that the information was provided to the MO for a specific purpose and readership and was not intended for public distribution. All participants sign confidentiality terms when they agree to participate in the formal IPCC process.

***Balance of the public interest***

38. The Commissioner considers that there is a very strong public interest in openness and transparency regarding 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. The disclosure of the requested information would support these factors. The Commissioner accepts that the IPCC and MO do place considerable information into the public domain, which indicates the process does have a reasonable level of transparency but there is still a strong public interest in disclosing this particular information.
39. When considering how strong the public interest in disclosure is the Commissioner must note the previous studies and investigations into climate science, which have broadly upheld the key facets of the science. Therefore, although the public interest in disclosure is strong the Commissioner has to be guided by the expert evidence, such as the studies cited above; this does not point to fundamental problems with the science. If significant, peer reviewed, independent evidence existed that the IPCC was ignoring important evidence this would raise the public interest in disclosure to a higher level. No such evidence has been presented. It is not role of the Commissioner to judge climate



science, and he does not have the expertise to do so, but he must have due regard to expert evidence that informs the level of public interest in disclosure.

40. The Commissioner considers that there is also a very strong 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. There is a very strong public interest that the UK's involvement in the IPCC process not damaged by disclosure of this information.
41. The Commissioner considers that, whilst there is a 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.
42. The Commissioner notes that in this case the MO has confirmed that 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. Therefore, the Commissioner 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.
43. The Commissioner acknowledges that there is a presumption in favour of disclosure under EIR. However, in this particular case the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exception.

## Right of appeal

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44. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

45. 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.
46. 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** .....

**Steve Wood**  
**Head of Policy**  
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