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Accessing environmental information relating to climate change: a case study under UK freedom of information legislation

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The United Kingdom's Freedom of Information Act (FoIA) and the Environmental Information Regulations (EIRs) are intended to provide a mechanism whereby information held by public authorities can be accessed by the public. The House of Commons Science and Technology Committee recently considered the disclosure of information from the Climatic Research Unit (CRU) at the University of East Anglia and concluded that emails revealed scientists encouraged colleagues to resist disclosure and delete emails, apparently to prevent disclosure through FoI requests. The case study presented here focuses on requests under FoI legislation to obtain climate information from the Met Office, particularly relating to assessments of global warming and causal relationships with greenhouse gas emissions. Evidence suggests both the CRU and the Met Office are part of a culture where institutional climate scientists are antagonistic towards disclosure of information. This has serious implications for both the effective operation of FoI legislation and the openness and transparency of climate change assessments.

Introduction

The United Kingdom's Freedom of Information Act 2000 (FoIA) bestows a right, described without reference to subject matter, on every person to have disclosed by a public authority all information within the specific request. This right is, however, potentially limited by a series of specific exemptions defined as either 'qualified' or 'absolute'. Our case study involves requests by David Holland, a resident of the United Kingdom, for information relating to climate change from the Met Office that was determined to be in the public interest. Information relating to the environment should be easier to access than most because of the Environmental Information Regulations (EIRs), formulated in accordance with an EU directive. The definition of environmental information is intended to be broad, with a presumption in favour of disclosure.

These two considerations - public interest and environmental regulations - are relevant to our case study which demonstrates how requests for information under FoI legislation may be handled in practice. Of concern is evidence of a predisposition towards uncooperativeness on the part of the Met Office, which also used spurious claims of deleted correspondence and personal information in attempts to block the release of information.

Subsequent to Mr Holland's FoI requests, over 1,000 emails and 2,000 documents, illegally sourced from the Climatic Research Unit (CRU) of the University of East Anglia, were publicly released providing further evidence for a culture of non-compliance with obligations under FoI legislation within key UK institutions involved in climate research.

The information Mr Holland requested relates to the workings of the United Nation's Intergovernmental Panel on Climate Change (IPCC). The role of the IPCC is to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socioeconomic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation.

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1 The work of John Abbot is funded from the Macle Family Foundation.
2 Section 1(2) FoIA.
3 Corporate Officer of the House of Commons v Information Commissioner (26 February 2008) EA/2007/0060, 0061, 0062, 0063, 0122, 0123, 0131
4 Corporate Officer of the House of Commons v Information Commissioner [2008] EWHC 1084 (Admin).
5 A Dawar 'MPs Fight to Block Expenses Revelations' The Guardian (7 May 2008); Behind the Story: MPs Turn Fire on Andrew Walker, Man who Approved Claims The Times p 7 (15 May 2009) http://www.timesonline.co.uk/politics/article6289143.ece (accessed April 5, 2010).
6 A Dawar 'MPs Expenses: Scotland Yard Chief and DPP 'Consult on Possible Criminal Investigation' The Daily Telegraph (15 May 2009 http://www.telegraph.co.uk/news/newstopics/mps­expenses-S331162/MPs­expenses­Scotland­Yard­chief­and­DPP­consult­on­possible­criminal­investigation.html.)
8 House of Commons Science and Technology Committee Eighth Report of Session 2009–10 The Disclosure of Climate Data from the Climate Research Unit at the University of East Anglia (24 March 2009).
The first IPCC assessment report published in 1990 included a graph showing temperatures were warmer during the High Middle Ages, also known as the Medieval Warm Period, than during the twentieth century (Figure 1). In the third assessment report, however, it was concluded that temperatures were cooler during this period and that there has been a recent spike in temperatures as depicted in a graph now known as the 'hockey stick' (Figure 2). The hockey stick is still used to claim that twentieth century climate change is unprecedented in a millennial context. But the graph remains a focus of dispute with some statisticians and others discussing Mr Holland's request but alleged that all other records had been deleted, and were therefore not held by the Met Office. Mr Holland then requested the approximate date when Dr Mitchell claimed to have destroyed his emails and destroyed his paper records. Mr Holland pointed out that the information request was less than a year after the release of the IPCC Working Group I report. Furthermore, he wrote that it was surprising that a senior professional scientist, presumably with an ongoing professional relationship with the IPCC, would have destroyed all his working papers. In its response, the Met Office did not directly address the question of whether the information requested had actually been destroyed or deleted. Instead, it switched to an alternative rationale in support of non-disclosure, now alleging that the requested information consisted of Dr Mitchell’s personal documents.

Correspondence including emails between Dr Mitchell and other contributors to Chapter 6 were requested, as well as correspondence with the IPCC and CRU. Mr Holland pointed out that he had previously been given access to the five-page Working Group II Chapter 19 Review Editor’s Report of John Zillman, held by the Met Office, providing substantial detail on a far less controversial chapter.

Mr Holland also requested information from Defra (Department of Environment, Food and Rural Affairs) relating to assessments of material contributing to IPCC Reports. Defra processed the request in a relatively straightforward but protracted way, but still released limited information. Despite being the UK Focal Office for IPCC matters Defra did not have copies of any Review Editors’ Reports.

Initial responses to information requests

The Met Office Fol Manager, Marion Archer, acknowledged Mr Holland’s request for all Dr Mitchell’s correspondence in his capacity as an IPCC Review Editor. In reply, she disclosed six more recent emails between Dr Mitchell and others discussing Mr Holland’s request but alleged that all other records had been deleted, and were therefore not held by the Met Office. Mr Holland then requested the approximate date when Dr Mitchell claimed to have destroyed his emails and destroyed his paper records. Mr Holland pointed out that the information request was less than a year after the release of the IPCC Working Group I report. Furthermore, he wrote that it was surprising that a senior professional scientist, presumably with an ongoing professional relationship with the IPCC, would have destroyed all his working papers. In its response, the Met Office did not directly address the question of whether the information requested had actually been destroyed or deleted. Instead, it switched to an alternative rationale in support of non-disclosure, now alleging that the requested information consisted of Dr Mitchell’s personal documents.

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In other words, the Met Office claimed that any documents generated by Dr Mitchell in association with his work with the IPCC could not be accessed under the FoIA because Dr Mitchell’s role within the IPCC had been a purely personal undertaking, and not directly connected with his employment at the Met Office.

It is important to understand the distinction between two categories of ‘personal information’. The first category refers to information which may be under the control of a public authority, but was generated by an employee while acting outside the scope of his/her employment. There is also a specific exemption, ‘Personal Information’, under the FoIA which potentially excludes information about a person. The latter is dealt with in depth under the Data Protection Act.

Mr Holland challenged the assertion that the requested documents had been produced by Dr Mitchell while acting outside his official position at the Met Office. Supporting this challenge, Mr Holland cited the IPCC contributions by which report authors and editors had been originally identified and appointed:

Governing Bodies, and participating organisations and the Working Group/Task Force Bureaux should identify appropriate experts for each area in the Report who can act as potential Coordinating Lead Authors, Lead Authors, Contributing Authors, expert reviewers or Review Editors.

Mr Holland also cited the Met Office’s Annual Report and Accounts, which stated:

The Intergovernmental Panel on Climate Change (IPCC) published its Fourth Assessment Report in 2007. As the UK’s foremost climate research centre, the Met Office Hadley Centre was the single most influential scientific contributor to the Working Group I report – The Physical Science Basis of Climate Change.

It therefore appeared highly likely that Dr Mitchell was a nominee of the British Government while working for the IPCC, and not acting in a personal capacity, as alleged by the Met Office. In order to establish that Dr Mitchell was, in fact, an employee of the Met Office while performing his services for the IPCC, Mr Holland requested further information under FoIA, including:

(i) Did Dr Mitchell receive any salary from the Met Office while performing his duties for the IPCC? (Met Office response – Yes)
(ii) Was any of Dr Mitchell’s paid holiday entitlement used during his attendance at IPCC meetings? (Met Office response – No)
(iii) Were any of Dr Mitchell’s expenses for attending IPCC meetings or workshops paid by the British Government? (Met Office response – Yes)
(iv) Are there any documents evidencing agreement between the Met Office and Dr Mitchell that his IPCC participation was ‘personal’ rather than duties in the normal course of his employment? (Met Office response – No).

The responses from the Met Office amounted to an admission that Dr Mitchell was clearly an employee at the time of providing services to the IPCC. Although this contradicted earlier assertions that Dr Mitchell was acting purely in a personal capacity, no explanation was offered by the Met Office.

Having failed to maintain a case for non-disclosure on the grounds that Dr Mitchell was acting in a personal capacity when providing services for the IPCC, or that all the relevant documents had all been destroyed, the Met Office now considered various exemptions under FoIA legislation. This is described in the following sections, as well as the request to Defra.

The Freedom of Information Act and the Environmental Information Regulations

The FoIA and the EIRs stem from distinct legislative origins and there are some key differences between them. The FoIA is ‘home grown’ legislation while the EIRs have developed from the European Directive on Public Access to Environmental Information. In 1998 the United Kingdom signed the United Nation’s Economic Commission for Europe Aarhus Convention in Denmark providing access to information, public participation in

20 Section 1 FoIA.
21 Clause 4.2.1 of Appendix A to the Principles Governing IPCC Work.

Pelton and Thorley (n 6).
decision making, and access to justice in environmental matters. 24 In October 2003, the European Commission published a set of proposals derived from the Aarhus Convention, including the Directive on Access to Environmental Information (Directive 2003/4/EC). The UK Environmental Information Regulations 2004 are based on this directive, and give public access rights to environmental information held by a public authority.

Article 1 of the directive states that its object is 'to ensure freedom of access to, and dissemination of, information on the environment held by public authorities and to set out the basic terms and conditions on which that information should be made available'.

Given the different pathways to development of the legislation, it is not surprising that there are significant differences between the FoIA and the EIRs. This is particularly evident in regard to the exemptions (or exceptions) that can be applied, supporting the case for non-disclosure. Under the EIRs, there is an expressly stated presumption in favour of disclosure, and all the exemptions are qualified, so that the public interest test must be applied. In contrast, under the FoA, although some exemptions are qualified and therefore subject to the public interest test, others are absolute and do not require a balancing of public interest factors.

Furthermore, if environmental information relates to 'emissions' a more limited subset of qualified exemptions is potentially applicable under the EIRs. Thus, achieving disclosure is a much less arduous proposition for the applicant if the information is classified as environmental, and this is particularly so if the environmental information relates to emissions.

In many cases, information requested from a public authority clearly does not relate to the environment and the request will be dealt with under the FoA. However the FoA has an absolute exemption in s 39 for environmental information, the disclosure of which must be dealt with under the EIRs. There is no requirement in the FoA or EIRs for the applicant to state that the request is being made under either or to offer any reason for the request. Public authorities subject to FoA and/or the EIRs are responsible for the appropriate classification of the information. The critical factor in the determination of whether the request falls under the EIRs is whether the information requested is classified as 'environmental'.

What is environmental information?

Article 2 (f) of Directive 2003/4/EC provides a very broad definition of the term environmental information. This breadth of meaning as applied to the concept of environmental information has been recognised by the European Court of Justice. 25 The court held that 'information relating to the environment' under Article 2 (a) of the directive includes any information on the state of the various aspects of the environment. It also included activities or measures which may adversely affect or protect those aspects, including administrative measures and environmental management programmes. The court stated that the wording of the provision made it clear that the community legislature intended to make that concept a broad one, embracing both information and activities relating to the state of the environment. In addition, the use of the term 'including' indicated that 'administrative measures' was merely an example of the activities or 'measures' covered by the directive.

This broad concept of environmental information has been enacted in the United Kingdom through the EIRs, with Regulation 2 (1) stating that 'environmental information' has the same meaning as in Article 2 (1) of the Directive 2003/4/EC, namely any information in written, visual, aural, electronic or any other material form on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

Several cases considered under the UK legislation by the Information Commissioner and the Information Tribunal illustrate the broad ambit of the definition of environmental information. For example, the Information

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Commissioner considered whether a report into an application for a grant towards a proposed biomass generation plant was environmental information. The phrase 'any information ... on ...' should be interpreted widely and that this is in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC. Therefore 'any information on' will usually include information concerning, about or relating to a particular measure, activity or factor in question. In other words information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

In another case, the Information Tribunal found that information relating to energy, supply, demand and pricing policy constituted environmental information. We find that where there is information relating to energy policy then that information is covered by the definition of environmental information under EIR. Also we find that meetings held to consider 'climate change' are also covered by the definition.

This again shows the wide scope of the interpretation to be given to environmental information.

An Internal Review of Mr Holland's request to Defra considered whether the information sought should be classified as environmental. The review clearly found that the request for review comments for the IPCC Report should be classified as environmental information:

The Intergovernmental Panel on Climate Change (IPCC) was established to assess scientific information related to climate change, to evaluate the environmental and socio-economic consequences of climate change, and to formulate realistic response strategies. The assessment reports produced over the last few years therefore contain information on the elements of the environment and factors affecting them contributing to climate change. The review comments would have contributed to the IPCC assessment of any human influence on the current climate. Consequently we have concluded that the information held falls within the definition of environmental information under regulation 2(1)(c), relating to measures and activities (the assessment reports), affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.

Consequently the request was considered by Defra under the EIRs. In contrast, the Ministry of Defence (MoD), the entity responsible for managing the Met Office, processed Mr Holland's request under the FoIA rather than the EIRs. Prior to the Internal Review, Mr Holland had requested that the information he sought be classified as environmental. He particularly drew attention to the Information Tribunal's decision in DBERR v Information Commissioner and Friends of the Earth where meetings held to consider 'climate change' were found to be covered by the definition of environmental information. This view was also supported by reference to the decision from Defra's Internal Review of Mr Holland's request for similar information referred to above. In addressing this issue, the Internal Review from the MoD found that:

This review has found that this request for information was handled under the correct regime as the information requested, whilst relating to an environmental paper, concerned the editing of the paper rather than being a specific request for any environmental information contained in it.

This view is difficult to reconcile with the cases cited previously, including decisions from the European Court of Justice and the Information Tribunal, as well as the Defra Internal Review.

The information request to the Met Office under the FoIA and the EIRs

There is a strong case that the information requested should have been classified as environmental. Under the EIRs there are a set of exceptions and all are subject to the public interest test. Under the FoIA the right to have information disclosed is laid out in section 1(1)(b) of the FoIA. Exemptions from that right are then laid out in Part II of the Act and these exemptions can be divided into two types – those which are, and those which are not, subject to the public interest test. Those exemptions which are not subject to the public interest test are called absolute exemptions and are listed in s 2(3) of the Act. The exemptions subject to the public interest test are known as qualified exemptions.

Before examining Mr Holland's request, it is important to have an understanding of the public interest test itself, and how it is applied to qualified exemptions under FoIA and exceptions under the EIRs.

The public interest test

When a qualified exemption is being considered, an assessment needs to be carried out as to where the balance of public interest lies in relation to the requested

27 DBERR v Information Commissioner and Friends of the Earth (FoE) EA/2007/0072 (29 April 2008).
28 Email from Defra to Mr David Holland - Internal review of request for information - the IPCC Fourth Assessment Report - RFI 2292 & 2297 (10 October 2008).
29 Letter from Mr Holland to Mr Stuart Mathews Legal Manager Met Office (20 August 2008).
30 Note 27.
31 Email from Mr D Holland to Mr Millar Ministry of Defence (13 October 2008).
information. In Export Credits Guarantee Department v IC and Campaign Against Arms Trade\textsuperscript{32} the Information Tribunal provided a set of general principles for applying the public interest test. These principles, drawn from relevant case law, are generally material to the correct approach to weighing of competing public interest factors. The Tribunal noted that the principles did not form a rigid code or comprehensive set of rules, but regarded them as guidelines, bearing in mind that each case must be decided on its own facts.

Under these principles, the ‘default setting’ in FoIA is in favour of disclosure: information held by public authorities must be disclosed on request unless the Act permits it to be withheld. The balancing exercise begins with both scales empty and therefore level. The public authority must disclose information unless the public interest in maintaining the exemption outweighs the public interest in disclosing the information in all the circumstances of the case.

An additional consideration relates to aggregation of public interest factors. The Court of Appeal has held that, where several exemptions are in play, having considered each applicable exemption separately, it is necessary to weigh the aggregate public interest in maintaining the exemptions against the aggregate public interest in disclosure. This was decided under the EIRs and it is clear from a recent High Court decision\textsuperscript{33} that the Court of Appeal’s reasoning also applies in the context of the FoIA.

**Request to the Met Office under the FoIA**

In response to Mr Holland’s request, the Met Office cited one absolute exemption, information obtained in confidence,\textsuperscript{34} where such disclosure would be actionable by the party that had supplied the information. This exemption does not require any consideration of the public interest test and, if legitimately engaged, is sufficient to justify non-disclosure. The capacity to rely on this absolute exemption in turn rests on the classification of the information as not environmental.

The Met Office stated (email from Mr Mathews to Mr Holland 19 August 2008) that the majority of IPCC participants have stated categorically that they believed and still believe that all emails and correspondence are private and confidential. Despite these unequivocal assertions of confidential communications between participating scientists in the IPCC evaluation process, the emails from the CRU suggest a very different situation. One email sent from the CRU in circulation to a group of IPCC participants stated:\textsuperscript{35}

Our university has received a request, under the United Kingdom Freedom of Information law, from someone called David Holland for emails or other documents that you may have sent to us that discuss any matters related to the Intergovernmental Panel on Climate Change (IPCC) assessment process. We are not sure what our university’s response will be, nor have we even checked whether you sent us emails that relate to the IPCC assessment or that we retained any that you may have sent. However, it would be useful to know your opinion on this matter. In particular, we would like to know whether you consider any emails that you sent to us as confidential.

Megarry J in Coco v A N Clark Engineers Ltd\textsuperscript{36} stated that one of the elements normally required for a case of breach of confidence to succeed is that the information must ‘have been imparted in circumstances importing an obligation of confidence’. In Attorney General v Guardian Newspapers Ltd (No 2) Lord Goff of Chieveley stated that a duty of confidence arises when information comes to the knowledge of the person in circumstances where he has notice, or is held to have agreed, that the information is confidential.

In other words, it will generally be clear at the time of communication between the parties whether the information is to be regarded as confidential. In contrast to the alleged IPCC statement, this email suggests there was no consideration given to confidentiality between these IPCC participants until the prospect of disclosure under FoI became an issue.

The Met Office also cited qualified exemptions under ss 27 and 36 of the FOIA to prevent disclosure of information to Mr Holland.\textsuperscript{37} Section 27 covers information likely to prejudice relations between the United Kingdom and any international organisation\textsuperscript{38} and the Met Office gave the following reasons for non-disclosure:

The effective conduct of international relations depends upon maintaining trust and confidence between states and international organisations. This relationship of trust allows for the free and frank exchange of information on the understanding that it will be treated in confidence. If the United Kingdom does not respect such confidences, its ability to protect and promote United Kingdom interests through international relations may be hampered. As eminent scientists are nominated to represent national governments on the IPCC, the disclosure of confidential emails and correspondence would be likely to have a prejudicial impact on the relationship of the UK government with the IPCC. As a result of such disclosure, UK scientists may also be reluctant to become involved in international research processes and this would be likely to prejudice the UK’s standing in the scientific community and prejudice the development of international scientific dialogue in the United Kingdom.

\textsuperscript{32} EA/2009/0021 21/10/2009.
\textsuperscript{33} Home Office and Ministry of Justice v Information Commissioner [2009] EWHC 161 (Admin).
\textsuperscript{34} Section 41(1) FoIA.
\textsuperscript{35} Email from Tim Osborn to Casper Ammann, copying in Keith Briffa and Phil Jones (27 May 2008).

\textsuperscript{36} [1969] RPC 41 at 47.
\textsuperscript{37} Email communication to Mr D Holland from Marion Archer FoI Manager Met Office (22 July 2008).
\textsuperscript{38} Section 27(1)(b) FoIA.
In relation to s 36, confidential information obtained from an international organization, the Met Office replied (email from Mr Mathews 19 August) to Mr Holland that:

The Met Office has liaised with the IPCC Secretariat and has been instructed that the Met Office is not to allow any emails to be released without discussion with ALL participants concerned. The Met Office has learned that the majority of IPCC participants have stated categorically that they believed and still believe that these emails and correspondence are private and confidential because they were not, and were not meant to be, processed in accordance with the formal IPCC process. Any such exchanges were intended to allow for the free and frank exchange of information on the understanding that such exchanges would be treated in confidence.

This statement from the Internal Review presents a case for engaging s 27 exemptions, supporting non-disclosure. There was, however, no attempt properly to consider public interest issues for disclosure, or undertake a balancing process, as required under the legislation.

Under s 36(2)(b), information which would or would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation, the MoD considered the following to be overriding reasons why disclosure would not be in the public interest (email from Mr Mathews 19 August):

- The release of information considered to be confidential could deter other scientists from participating in the IPCC or other similar scientific processes.
- Scientists would be likely to be inhibited from the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. It is essential to protect a free space in which scientists can think through the implications of various options under consideration.
- Scientists may also be inhibited from sharing information on an impartial basis if such sharing is subject to disclosure.
- As a great deal of the IPCC process is undertaken during meetings and unrecorded telephone conversations, the requested information may not present a full picture, may not be representative of the IPCC and if taken out of context could do more to mislead the general public unnecessarily and on an unwarranted basis.

In considering s 36, the MoD very briefly considered the public interest factors in disclosing the requested information by briefly acknowledging:

Benefits of assisting scientists challenge the contents of Chapter VI of the IPCC Working Group I Fourth Assessment; the promotion of scientific dialogue; and reassuring the public that IPCC participants have taken decisions on an impartial basis.

This represents a very cursory assessment of public interest factors supporting disclosure, and stands in marked contrast to the efforts made to develop and present a public interest case for non-disclosure. The required balancing process based on aggregated public interest factors on both sides is clearly missing. The consequences of some prejudice to international relations may be acceptable if there is a strong enough public interest case for disclosure. This can only be assessed if the public interest factors supporting disclosure are adequately explored. Some of the relevant factors are discussed in the following section.

Request to the Met Office considered under the EIRs

Mr Holland's request was not considered by the MoD under the EIRs. However, there are reasonable grounds to support the proposition that the information should be considered as both environmental and relating to emissions.

Part 3 of the EIRs sets out exceptions to the duty to disclose environmental information, but the legislation explicitly states that a public authority shall apply a presumption in favour of disclosure. Under Regulation 12(b), a public authority may refuse to disclose environmental information requested if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. There are no absolute exceptions, and the public interest test must be applied to any exception engaged by the public authority.

Exceptions that can be engaged under the EIRs are more restricted where the environmental information requested relates to emissions. The information requested by Mr Holland relates to greenhouse gas emissions. This removes the potential for engagement of exception 12(5)(d) which relates to confidential information. The only remaining exception then to be considered is Regulation 12(5)(a) relating to international relations.

Public interest issues in the context of exemptions under the FoIA or exceptions under the EIRs relating to international relations have been considered relatively rarely by the Information Tribunal. It was an issue before the Tribunal in the context of whether to disclose Cabinet deliberations, deliberations at which ministers had decided to commit forces to military action in Iraq, in light of qualified exemptions relating to formulation of government policy (s 35) and international relations (s 27). At issue were formal minutes of two Cabinet meetings in March 2003. The decision to commit the
nations' armed forces to the invasion of another country had proven to be divisive within the Cabinet and at both national and international levels. The Information Tribunal upheld disclosure of the minutes but indicated that some redactions could be made (deletion of information) in order to respond to the concern of the Cabinet Office that the minutes included comments that would cause difficulty in diplomatic relations and thereby prejudice the UK's relations with certain other countries. Clearly, some detriment to international relations can be justified in relation to Foi if the case for disclosure is sufficiently strong.

The relevant time at which the balance of public interest is to be judged is the time when disclosure was refused by the public authority, not the time when the Commissioner made his decision or when the Tribunal hears the appeal. However, since the publication of emails from the CRU the case for the release of the information requested by David Holland has become more obvious. We have therefore included current public interest factors, which could be presented if a request for the same information was made at a future date.

On 31 March 2010 the House of Commons Science and Technology Committee released its report 'The Disclosure of Climate Data from the Climate Research Unit at the University of East Anglia'. In support of disclosing the information requested by Mr Holland, the final paragraph of the report states:

A great responsibility rests on the shoulders of climate science: to provide the planet's decision makers with the knowledge they need to secure our future. The challenge that this poses is extensive and some of these decisions risk our standard of living. When the prices to pay are so large, the knowledge on which these kinds of decisions are taken had better be right. The science must be irreproachable.

Much of the media coverage associated with what has become known as 'climategate' also puts the case for disclosure not only because of the far reaching consequences of the climate research, but also because of the need for public confidence as explained in the New York Times:

For months, climate scientists have taken a vicious beating in the media and on the Internet, accused of hiding data, covering up errors and suppressing alternate views. Their response until now has been largely to assert the legitimacy of the vast body of climate science and to mock their critics as cranks and know-nothings. But the volume of criticism and the depth of doubt have only grown, and many scientists now realise they are facing a crisis of public confidence.

And from an article appearing the same month in Newsweek:

The battle between 'alarmists' and 'deniers' has taken a huge toll, not just on the reputations of Jones and the other 'climategate'scientists. It has also damaged the credibility of climate science itself, and threatened more than a decade of diplomatic efforts to engineer a global reduction in greenhouse gas emissions.

And from an editorial in Nature:

Some polls in the United States and abroad suggest that it is eroding public confidence in climate science at a time when the fundamental understanding of the climate system, although far from complete, is stronger than ever. Ecologist Paul Ehrlich at Stanford University in California says that his climate colleagues are at a loss about how to counter the attacks. 'Everyone is scared shitless, but they don't know what to do,' he says.

These concerns extend to organisations representing the mainstream scientific community. For example, the Institute of Physics is a scientific organisation devoted to increasing the practice, understanding and application of physics. It has a worldwide membership of over 36,000 and is a leading communicator of physics-related science to all audiences, from specialists through to government and the general public. The Institute of Physics cited a number of implications of the disclosures from the CRU emails for the integrity of scientific research including:

The CRU e-mails as published on the internet provide prima facie evidence of determined and co-ordinated refusals to comply with honourable scientific traditions and freedom of information law. The principle that scientists should be willing to expose their ideas and results to independent testing and replication by others, which requires the open exchange of data, procedures and materials, is vital. The lack of compliance has been confirmed by the findings of the Information Commissioner. This extends well beyond the CRU itself - most of the e-mails were exchanged with researchers in a number of other international institutions who are also involved in the formulation of the IPCC's conclusions on climate change ...

The emails reveal doubts as to the reliability of some of the reconstructions and raise questions as to the way in which they have been represented; for example, the apparent suppression, in graphics widely

43 CAAT v Information Commissioner and Ministry of Defence EAT 2006/0240 at para 33.
45 F Cutter ‘Climate Controversy: Iceberg Ahead: Climate scientists who play fast and loose with the facts are imperilling not just their profession but the planet’ Newsweek (1 March 2010) 40.
used by the IPCC, of proxy results for recent decades that do not agree with contemporary instrumental temperature measurements ...

There is also reason for concern at the intolerance of the research community to challenge displayed in the emails. This impedes the process of scientific ‘self-correction’, which is vital to the integrity of the scientific process as a whole, and not just to the research itself. In that context, those CRU emails relating to the peer-review process suggest a need for a review of its adequacy and objectivity as practised in this field and its potential vulnerability to bias or manipulation ...

Fundamentally, we consider it should be inappropriate for the verification of the integrity of the scientific process to depend on appeals to Freedom of Information legislation. Nevertheless, the right to such appeals has been shown to be necessary. The e-mails illustrate the possibility of networks of like-minded researchers effectively excluding newcomers. Requiring data to be electronically accessible to all, at the time of publication, would remove this possibility.

Clearly, not only Mr Holland, but also the international community is demanding the disclosure of all information relating to climate research particularly as it has influenced IPCC deliberations.

A culture of non-disclosure within the UK climate research community

The present case study shows concerted efforts from within the Met Office and the MoD to avoid disclosure of information relating to climate change, particularly IPCC assessments. This conclusion becomes more compelling when examined in the context of revelations from the House of Commons Science and Technology Committee on the disclosure of climatic data from the CRU at the University of East Anglia. The Met Office and the CRU are two very prominent organisations in the UK climatic research community, and within the IPCC evaluation process. There have been strong linkages between the Met Office and the CRU in providing input to the IPCC reports, and some of the correspondence requested by Mr Holland includes communications between scientists at these two organisations.

In its report, the House of Commons Committee examined alleged breaches of the FoIA by the CRU. It found that some of the emails revealed scientists encouraging their colleagues to resist disclosure and to delete emails, apparently to prevent them from being revealed to people making FOIA requests, citing emails from Professor Phil Jones:

And don’t leave stuff lying around on ftp sites - you never know who is trawling them. The two MMs have been after the CRU station data for years. If they ever hear there is a Freedom of Information Act now in the UK, I think I’ll delete the file rather than send to anyone. Does your similar act in the US force you to respond to enquiries within 20 days? – our (sic) does! The UK works on precedents, so the first request will test it. We also have a data protection act, which I will hide behind. Tom Wigley has sent me a worried email when he heard about it - thought people could ask him for his model code ...

The FOI line we’re all using is this. IPCC is exempt from any countries FOI – the Sceptics have been told this. Even though we (MOHC, CRU/UEA) possibly hold relevant info the IPCC is not part our remit (mission statement, aims etc) therefore we don’t have an obligation to pass it on ...

You can delete this attachment if you want. Keep this quiet also, but this is the person [Mr David Holland] who is putting in FOI requests for all emails Keith [Briffa] and Tim have written and received re Ch 6 of AR4. We think we’ve found a way around this ...

And in an email to Professor Mann, originator of the hockey-stick graph:

Can you delete any emails you may have had with Keith re AR4? Keith [Briffa] will do likewise. Can you also email [Eu]Gene [Wahl] and get him to do the same? I don’t have his new email address. We will be getting Caspar [Ammann] to do likewise.

This clearly shows an antagonistic attitude towards public disclosure of information relating to climate change and the IPCC assessment process. It extends to the expressed intention of Professor Jones to delete information rather than disclose it, a criminal offence under the FoIA, as well as him encouraging other participants in the IPCC assessment process to do likewise. The legislation is referred to as something for climate scientists to ‘hide behind’ rather than as a respected mechanism to enable public access to information, and in this particular case to enable transparency and encourage scientific debate on a topic of profound importance globally. The references to Mr Holland’s FoI request for information from CRU relating to the IPCC Chapter 6 assessments and ‘finding a way around this’ suggests a similar approach to FoI disclosure to that apparently used by the Met Office.

Conclusions

In reviewing the first year of the operation of the FoIA, Lord Falconer, then Secretary of State for Constitutional Affairs, emphasised that ‘good government is open government’ and that since 2005 the United Kingdom
has a legally enforceable FoI regime.\textsuperscript{53} The IPCC also prides itself on its ‘open and transparent’ approach to information and this role has been enshrined in its governing principles since 1998. The Met Office claims: ‘We make substantial contributions to the Nobel Prize winning Intergovernmental Panel on Climate Change. We help inform government policy.’\textsuperscript{54} Yet it is clear from our case study that in reality the IPCC, the Met Office and the CRU have gone to great lengths to thwart the release of information relating to the assessment of climate research as requested by a UK citizen, David Holland.

This case study provides evidence that there is a culture of antagonism towards anyone who may wish to make independent appraisals of information relating to climate change and particularly if it relates to variations in global temperatures and greenhouse gas emissions. This is shown through both the CRU emails and the approach to Mr Holland’s request to the Met Office. The reluctance to comply with the FoI legislation does not result from bureaucratic misunderstanding of relatively recently enacted legislation. Instead it stems from an antagonism by institutional climate scientists towards those who may wish to independently examine evidence for climate change and its causes. The dangers revealed lie both in operating an effective FoI system, and openness and transparency in an area of immense scientific importance.

Governments around the world have relied on the outcome from these scientific assessments to justify far reaching economic interventions. This makes it all the more important for the climate research community through the Met Office to make this information publicly available including to Mr Holland under the FoIA.

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\caption{IPCC 2001}
\end{figure}


\textsuperscript{54} http://www.metoffice.gov.uk/climatechange/.
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