



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

**EA2012/0142**

**BETWEEN:**

**DAVID HOLLAND**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**Respondent**

**and**

**UNIVERSITY OF EAST ANGLIA**

**Second Respondent**

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**CONSENT ORDER**

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Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (attached to this order in Annex A).

IT IS ORDERED BY CONSENT THAT:

1. The parties having agreed terms as per the attached statement, the appeal be withdrawn.
2. There be no order for costs.

[Signed on the original]

**Anisa Dhanji**  
Judge

4 March 2013

## **ANNEX A**

### **Statement of reasons for consent order**

1. This appeal concerned the Commissioner's Decision Notice FER0385852 ("the DN"). That Notice sets out the terms of three of the Appellant's information requests to the Second Respondent (the "University") at paragraphs 4, 8, 13 and 30. The Appellant appealed against the DN. His appeal related to two of the three requests (namely to the requests referred to as the "first" and "second" requests at paragraph 4 of the DN), including parts one and two of the first request.
2. In summary, the Commissioner concluded that the Appellant's first request (as identified in paragraphs 4(i), 13 and 30 of the DN) was lawfully refused on the application of a number of different exemptions. Materially for present purposes, so far as the first part of the first request was concerned, the Commissioner held that this part had been lawfully refused by the University on the basis that: (a) the request, which was very wide in scope, fell within the ambit of the manifestly unreasonable exception provided for under r. 12(4)(b) and (b) the public interest balance weighed in favour of non-disclosure.
3. With respect to the second request, the Commissioner concluded that certain of the information falling within the ambit of this request ought to have been disclosed by the University. This information has since been disclosed by the University. However, the Commissioner also found that the University had been lawfully entitled to withhold certain legally privileged information on an application of r. 12(5)(b) of the Environmental Information Regulations 2004 ("the EIR").
4. During a directions hearing which took place on 28 November 2012 ("the Directions Hearing") it was made clear by the Appellant that his principal concern in this appeal was that, with respect to the first part of his first request, the University ought at least to have searched a memory stick containing data which had been placed on the stick by a member of the University's Climatic Research Unit, Professor Briffa ("the memory stick").

5. The University does not concede that it was required to conduct a search of the memory stick in response to the first part of Mr Holland's first request. However, in light of the Appellant's position at the Directions Hearing, and in the interests of seeking a compromise in this appeal, discussions took place between the Appellant and the University on the issue of whether the appeal might be disposed of on the basis that the University would conduct a search of the memory stick on agreed terms.
6. Thereafter, the University conducted a preliminary search of the original Eudora file within the memory stick with a view to seeking to identify the number of emails falling within a particular date range (1 December 2005 to 1 September 2006). That preliminary search indicated that there were 1117 emails on the memory stick falling within the date range ("the core emails").
7. The University has also confirmed to the Appellant the number of core emails located by it as having been sent from the specified email addresses on a list provided by the Appellant. The total number of core emails identified as having been sent from such email addresses is 633.
8. The Appellant has also confirmed that he does not require disclosure of any emails that are already in the public domain.
9. The University has also searched for an email identified with the date and time stamp "28 July 2006 08:28:26 – 0600".
10. Subject to the qualification that the public domain emails referred to at paragraph 8 above are outside the scope of such request, the University has agreed to accept the Appellant's request for the information in the emails identified at paragraph 7 and at paragraph 9 above (referred to collectively as 'the requested information') as a fresh request for information pursuant to the EIR, such request to be deemed as having been made at the date of this order. For the avoidance of doubt, the requested information also excludes the information contained in any attachments to such emails. Any request for attachments will be dealt with pursuant to paragraph 13 below.

11. The University has now:
  - a. reviewed the emails identified at paragraph 7 and searched for the email at paragraph 9 above, and after removing those falling within the scope of paragraph 8
  - b. considered whether any statutory exceptions from disclosure under the EIR might apply to the requested information.
  
12. The Appellant accordingly withdraws his whole appeal on the basis that the University will within two working days of this order being approved by the Tribunal release the requested information to him other than in respect of such of the requested information which the University considers is exempt information under the EIR and, should any of the requested information be so refused, the University will at the same time provide the Appellant with a refusal notice which complies with regulation 14 EIR.
  
13. The Appellant has agreed to limit any subsequent request for attachments to emails released to him pursuant to this order to a maximum of 50 attachments in total. For the avoidance of doubt, should the Appellant make more than one request for such attachments, the number of attachments from all such requests are to be aggregated so that no more than 50 attachments are to be requested in total, regardless of the number of underlying requests. In this context, "attachments" refers to the files attached to such emails and the information contained in those files. This paragraph is without prejudice to the Appellant's rights under section 50 of the Freedom of Information Act 2000 (as amended).
  
14. The parties therefore jointly submit that it is appropriate for these proceedings to be concluded by way of consent order, and that it is appropriate for the Tribunal to consider their joint application without holding a hearing (as envisaged by rule 37(2)).