

**Freedom of Information Act 2000 (FOIA)**

**Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 10 April 2014

**Public Authority:** The Governing Body of University of Cambridge  
**Address:** The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

**Decision (including any steps ordered)**

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1. The complainant made a freedom of information request to the University of Cambridge ("the University") for a copy of the Review Editors' Reports of the Working Group One contribution to the Intergovernmental Panel on Climate Change's 5th Assessment Report and related information. The University dealt with the request under both the FOIA and the EIR and said that the requested information was not held.
2. The Commissioner's decision is that as regards that element of the complainant's request that falls to be considered under FOIA, the requested information is not held. For the information that falls to be dealt with under the EIR the Commissioner has also decided that the requested information is not held and therefore the regulation 12(4)(a) exception applies. The Commissioner requires no steps to be taken.

## Background

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3. The Intergovernmental Panel on Climate Change (IPCC) is the leading international body for the assessment of climate change. It operates under the auspices of the United Nations (UN) and reviews and assesses the most recent scientific, technical and socio-economic information produced worldwide relevant to the understanding of climate change. It does not conduct any new research but seeks to consolidate the state of scientific understanding on global climate change. The IPCC has produced four assessment reports reviewing the latest climate science (AR1, AR2, AR3 and AR4), in 1990, 1995, 2001 and 2007. The assessment reports are prepared as a result of a lengthy process involving three separate working groups, Working Group 1 (WG1), Working Group 2 (WG2) and Working Group 3 (WG3), each covering different aspects of climate change.
4. The assessment reports are regarded as very influential in the development of national and international policies on climate change. Authors, contributors and reviewers and other experts who participate in the preparation of the assessment reports are selected by the IPCC 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.
5. 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.

## Request and response

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6. On 12 November 2013 the complainant made a request to the University for the following information:

[1] A copy of any and all AR5 WGI Review Editors' Reports held by the University.

[2] Any instructions held relating to the preparation and submission of the Reports.

[3] Any instructions held relating to the retention, disclosure or deletion of paper or electronic copies of the Reports.

[4] Information held on which UK government departments if any have received from the University copies of the Reports.

[5] In the event that you refuse to disclose any of the Review Editors Reports that you do hold, please provide any information that you

hold indicating that the Review Editors Reports will be published by you or elsewhere at some date after your response.

7. In making his request the complainant noted that a named professor at the University was listed by the Intergovernmental Panel on Climate Change (IPCC) as having served as a Review Editor of the Working Group One (WG1) contribution to the IPCC 5<sup>th</sup> Assessment Report (AR5).
8. The University responded on 10 December 2013 when it explained that the requested information was not held under FOIA and not in the University's possession under the EIR. It said that the role of the named Professor as a review Editor for the IPCC report was not connected to his contractual employment by, or professional role within, the University.
9. On the same day the complainant asked the University to carry out an internal review of its handling of his request. In doing so he noted that the professor was listed by the IPCC as affiliated to the University and that if the editors' reports were created or received by the University then they were held regardless of this individual's employment status.
10. The university presented the findings of the internal review on 9 January 2014. It now said that it had concluded that part 1 of the complainant's request fell to be considered under the EIR while questions 2 to 5 fell to be considered under the FOIA. It acknowledged that this distinction should have been made clear in its initial response.
11. As regards part 1 of the request for the AR5 WG1 Review Editors Reports ("the reports") the University explained that it had made proper enquiry of the professor referred to by the complainant and that he stated that the work undertaken for the IPCC had been undertaken by him personally on a voluntary basis and that he considered the reports to be confidential to the IPCC secretariat. It went on to say that the work does not form any part of his University duties and consequently, even if the information were held within the University, it is not held to any extent for its own purposes. The University concluded that the reports were not in the University's possession under the EIR because the information was not held to any extent for the purposes of the University.
12. For parts 2, 3 and 5 of the requests it concluded that the information was not held under FOIA for the same reasons given in respect of part 1 of the request. For part 4 of the request it said it would have perhaps been more correct to say that the University had not forwarded the reports to any UK government departments.

## **Scope of the case**

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13. On 13 January 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
14. The Commissioner considers the scope of his investigation to be to consider whether the University holds any information falling within the scope of the complainant's request.

## **Reasons for decision**

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### **Environmental information**

15. The University's decision to deal with part 1 of the request under the EIR and the remaining parts of the request under FOIA does not appear to be in dispute by the complainant. However, for completeness the Commissioner would record here that in his view this was the correct approach to take. The Commissioner accepts that if the reports were held then they would fall within the definition of environmental information in regulation 2(1)(a) of the EIR. The remaining parts of the request instead concern how the University may have handled the reports. This information, if held, does not itself relate to elements of the environment and therefore it is more appropriate for this information to be dealt with under the FOIA.

### **Regulation 12(4)(a) – Information is not held**

16. The University has argued that it does not hold the report and therefore the exception in regulation 12(4)(a) applies. Regulation 12(4)(a) provides that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
17. The complainant's view is that the work undertaken by the professor in his role as a review editor for the IPCC AR5 should not be seen as separate from his role at the University. He argues that this individual was in the employment of the University during the years that he acted as a Review Editor and that if the reports were created or received by the University they are held for the purposes of the EIR.
18. Regulation 3(2) clarifies that for the purposes of the EIR, environmental information is held by a public authority if the information-

- (a) is in the authority's possession and has been produced or received by the authority;*  
*(b) or if held by another person on behalf of the public authority.*

19. In its internal review the University referred to the Commissioner's guidance on when information is held by a public authority for the purposes of the EIR. Paragraph 7 of the guidance states:

*"The use of the phrase 'in the authority's possession' could indicate that the scope of what is held under the EIR is much wider than under FOIA, as this may include information that is not held for the authority's own purposes. However, the Commissioner considers that information is not in the public authority's 'possession' if it is not being held to any extent for its own purposes. This means, for example, that information which is simply stored by an authority on behalf of someone else is not 'held' for the purposes of the EIR."<sup>1</sup>*

20. When deciding whether information is held by a public authority in its own right, the Commissioner will consider a public authority's level of interest and use of the information as well as the control and access it exercises over the information. With this in mind, the Commissioner asked the University to explain why it considers that it does not hold the report and any associated information for the purposes of the EIR or FOIA. In doing so, the Commissioner asked the University to respond to the following questions.

- Is the information to any extent held for the University's own purposes?
- Was the information created using University facilities?
- Is the information stored on or at University facilities?
- Does the University have access to the information?
- On what basis was the Professor able to undertake his work as a Review Editor for WGI? For instance, did the University give its approval for him to undertake this work? Was it agreed that the information would be undertaken in a private capacity?

21. In response the University confirmed that no information specified in the request was created using University facilities; no such information was or is stored on or at University facilities and the University does not have access to any such information. It added that, insofar as the

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<sup>1</sup>[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Detailed\\_specialist\\_guides/information\\_held\\_for\\_the\\_purposes\\_of\\_eir.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/information_held_for_the_purposes_of_eir.pdf)

information is held by any other person or body, it is not held to any extent for the University's purposes.

22. In answer to the Commissioner's questions regarding whether approval was given to undertake this work, it explained that its contracts of employment for academic staff contain a standard term to the effect that the University does not expect to be informed about remuneration for private work or consultancy. The Commissioner was referred to the University's Financial Regulations which require that staff engaging in consultancy in a private capacity must not hold themselves out as acting on behalf of the University and that the University accepts no responsibility for any work done, advice given or activity undertaken by staff in a private capacity.<sup>2</sup> Similarly, the Finance Regulations specifically state that unless the Head of Department gives prior written consent and an appropriate contractual agreement with the University is put in place, non-University activities may not be carried out on University premises nor University facilities or resources used for such activities.
23. The University has confirmed that the information is not held on University facilities and it has no access to it. Therefore, the Commissioner's view is that the information cannot be said to be in the possession of the public authority. Moreover it appears that any work undertaken by the Professor named in the request was independent of the University. It seems both parties considered the work to be undertaken in a personal capacity and outside of the control of the University. Therefore, even if the information was physically held within the University or on its facilities, which the University has confirmed it is not, the information is not held to any extent for the University's own purposes. Consequently, there is no basis on which to find that the information was held by the University and therefore the Commissioner finds that the regulation 12(4)(a) exception was applied correctly.
24. Regulation 12(4)(a) is subject to the public interest test but since the Commissioner has decided that the information is not held he finds the public interest clearly favours maintaining the exception.

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<sup>2</sup> <http://www.admin.cam.ac.uk/offices/finance/regulations/finregs/commercial.html>

**Section 1 – Information not held**

25. The Commissioner has found that the reports are not held by the University and that any work carried out by the named Professor was undertaken independently of the University. Therefore, it follows that parts 2, 3 and 5 of the request, which fall under FOIA, are also not held by the University.

## Right of appeal

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23. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**