

Dear Sir Muir.

I note the following CRU statement with great interest.

Statement from Professor Edward Acton, Vice-Chancellor, University of East Anglia

Thu, 28 Jan 2010

The University of East Anglia has released the following statement from the Vice-Chancellor Professor Edward Acton.

"The University learnt yesterday that the Information Commissioner's Office (the ICO) had made a statement to the media regarding the University's handling of requests under the terms of the Freedom of Information Act (FOI). We have not received any further information from the ICO although we are urgently trying to contact them. The ICO's opinion that we had breached the terms of Section 77 is a source of grave concern to the University as we would always seek to comply with the terms of the Act. During this case we have sought the advice of the ICO and responded fully to any requests for information.

"Sir Muir Russell is currently conducting an Independent Review of the issues surrounding what has become known as Climategate and we very deliberately made our handling of FOI requests part of the terms of reference. I look forward to receiving his report and as I have said before it will be published and I will act accordingly if he finds there is indeed substance in these allegations."

The reason I do so is because I have a letter (attached) from the Information Commissioner's Office (ICO), which flatly contradicts Professor Acton's statement.

Thus;

One of the emails exchanged between IPCC authors and related parties placed in the public domain contains the following sentence:

Keith and Tim are still getting Freedom Of Information (FOI) requests, as are the Meteorological Office Hadley Centre and the University of Reading. All our FOI officers have been in discussions and are now using the same exceptions not to respond-advice they got from the Information Commissioner.

Viewed in isolation, this sentence may have created the false impression that the ICO provided advice to the University of East Anglia encouraging it to withhold information.

The Commissioner does not accept this view and wants to stress that such action would be in direct conflict with the vision, aims, and values of the ICO and would undermine his role as statutory regulator. The ICO would not, in any circumstances, encourage an authority to avoid compliance with the law. To do so would undermine the Commissioner's role as an impartial regulator and compromise his duty to support the presumption of disclosure implicit within Freedom of Information (FOI) Act and Environmental Information Regulations (EIR).

Furthermore whilst we are on the subject of information availability and release, Professor Jones has recently claimed, in effect, that the original data underpinning the CRU (CRUTEMP) database has been [redacted].

I find this rather difficult to believe for the following reason.

Except for his 1994 update, Professor Jones tended to publish with many co-authors.

So what about all these co-authors, presumably some of them worked on the data too, otherwise why would they be co-authors?

Is their data too, as Professor Jones stated not well enough organised ?

They are all from reputable organisations did none of them place this data or their systems?

Dr. D.R. Keiller

Dr Keiller

By email to: Keiller@

17 February 2010

Case reference number: FER0280XXX

Dear Dr Keiller

I am responding to the enquiry that you made regarding what advice may have been provided by the ICO to the University of East Anglia in relation to its handling of requests for information related to its Climatic Research Unit. This has been looked into and I have outlined below the ICO's view on this matter.

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Both FOI and EIR assume a default position of disclosure in response to requests made to public authorities, and this presumption is the default position adopted by the Commissioner in responding to enquiries and considering complaints. It underpins all of the Commissioner's work in relation to FOI and EIR and his officer's would not provide advice encouraging an authority to avoid compliance with the legislation.

It is unclear what the 'advice' noted in the email consisted of, or indeed whether the use of exemptions being proposed resulted from contact with the ICO's staff or interpretation of the ICO's existing guidance. The Commissioner has a statutory duty to disseminate advice and guidance on the operation of FOI and the EIR. This takes the form of guidance documents, responses to written queries, and telephone contacts (usually through his help

line).

Although the Commissioner's Officers seek to address enquiries as satisfactorily as possible, they only provide general and impartial advice. When responding to queries the ICO gives high level, non-specific guidance on how an authority might consider approaching a request. This can involve directing them to published good practice guidance or to relevant ICO Decision Notices or the findings of the First-Tier Tribunal. The ICO deliberately provides this advice at a general level to minimise the possibility of being drawn into specific discussions about individual requests, as the ICO may subsequently be required to adjudicate on a related complaint.

The written queries are recorded on the ICO's electronic case management system. Telephone enquiries are more numerous, with over 2,000 per week, and given their volume it is not practical to record the content of each (assuming that the caller consented to identify themselves, which they are under no obligation to do). The ICO has checked its records and can trace two examples of written advice provided to UEA which predate the email in question, but these were on unrelated topics with no bearing on the climate-data issue. If the University had sought verbal advice before then, the ICO would only have provided general advice, and certainly would not have explicitly supported or endorsed the use of a particular exemption or exception.

I hope that this goes someway to explaining the ICO's position and provides some reassurance on this matter.

I hope to be able to provide you with a response to your other query regarding time limits for criminal prosecutions under the Freedom of Information Act shortly.

Yours sincerely

Andrew Battersby
Senior Complaints Officer
FOI Team 1