

## **Independent Review Team – UEA/CRU**

### **In Strict Confidence - Working Paper – Final**

#### **Notes of Meeting with Mike Gorrill (Head of Enforcement) and Steve Wood (Assistant Commissioner FOI) – of the Information Commissioner’s Office (ICO) on 24<sup>th</sup> March at the ICO Office in Wilmslow**

##### Purpose

1. The purpose of the meeting was:
  - To ensure that the work of the Independent Review and that of the ICO were appropriately co-ordinated, noting that The Independent Review’s Terms of Reference in the areas of Freedom of Information (FoI), Environmental Impact Regulations (EIR) and the Data Protection Act (DPA) are to: “Review the Climatic Research Unit’s compliance or otherwise with the University of East Anglia’s policies and practices regarding requests under the Freedom of Information Act (‘the FOIA’) and the Environmental Information Regulations (‘the EIR’) for the release of data.” The Review’s work therefore addresses the compliance of the CRU with the University’s policies and practices rather than the Acts themselves.
  - To determine the timescale for the Section 50 FoI and DPA investigations being carried out by the ICO team.
  - To determine whether any further action was envisaged by the ICO on the alleged Section 77 of the Freedom of Information Act (knowingly withholding data) - a criminal offence.

##### Context

2. Mike Gorrill had previously been interviewed (along with David Clancy) by Sir Muir Russell and Jim Norton on 27<sup>th</sup> January at UEA in Norwich. At that time it was the impression that the various Section 50 investigations would be held over until the Independent Review had completed its work, such that the ICO team could build on the Review’s work.

##### Outcomes

3. The following areas were clarified:
  - 3.1 The various investigations (FOIA Section 50 - appropriate processing of FoI requests, DPA requests for access to personal information held on the requester and DPA appropriate safeguarding of personal information) were confirmed to have started with written requests for information sent to UEA.
  - 3.2 The Section 77 investigation was confirmed to have terminated, since the time period during which a prosecution could be brought had expired. The ICO team sought the support of the Review in seeking legislative change to either lengthen the period during which a prosecution could be brought or

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to start the window for prosecution from the point at which the alleged offence was drawn to the attention of the ICO.

3.3 The ICO team drew the attention of the Review to the following resources:

- Secretary of State’s Code of Practice under Section 45 of the FoI Act – guidance to public authorities on desirable practice. See: <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>
- Secretary of State’s Code of Practice under Section 46 of the FoI Act – guidance on the management of records. See: <http://www.justice.gov.uk/guidance/docs/foi-section46-code-of-practice.pdf>
- Joint Information Systems Committee (JISC) guidance to Universities. See: <http://www.jisc.ac.uk/aboutus/foi.aspx>
- DEFRA website materials, including guidance on the differences between the EIR and FOI regimes. See: <http://www.defra.gov.uk/corporate/policy/opengov/eir/pdf/article7report.pdf>

3.4 The ICO team pointed out that access to metadata, in order to make raw data more intelligible, is specifically reference in the Environmental Impact Regulations at Regulation 5 (5):

*“Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.”*

3.5 Ease of access also matters as outlined in EIR Regulation 6:

*“ (1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless (a) it is reasonable for it to make the information available in another form or format; or*

*(b) the information is already publicly available and easily accessible to the applicant in another form or format.*

*(2) If the information is not made available in the form or format requested, the public authority shall -*

*(a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;*

*(b) provide the explanation in writing if the applicant so requests; and(c) inform the applicant of the provisions of regulation 11 and of the enforcement*

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*and appeal provisions of the Act applied by regulation 18.*

- 3.6 It was agreed that the ICO and Independent Review Teams would keep each other apprised of their emerging conclusions.

Jim Norton

9<sup>th</sup> April 2010