Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004

Decision Notice

Date: 23 June 2011

Public Authority: The Governing Body of the University of East Anglia
Address: Norwich
NR4 7TJ

Summary

The complainant requested a copy of any digital version of a weather station dataset sent from the Climatic Research Unit ("CRU") at the University of East Anglia ("UEA") to Georgia Tech between certain specified dates. He also requested a copy of any instructions or stipulations accompanying the sending of the data.

UEA withheld the datasets under regulation 6 (information already publicly available and easily accessible) and the exceptions contained in regulation 12(5)(a) (adverse affect on international relations), 12(5)(c) (adverse affect on intellectual property rights) and 12(5)(f) (adverse affect on the interests of the information provider) of the Environmental Information Regulations ("EIR").

The Commissioner has decided, based on the evidence provided to him, that regulation 6 and 12(5)(a),(c) and (f) were not applicable to the datasets. He has therefore ordered that they be disclosed to the complainant.

In relation to the request for a copy of any instructions or stipulations accompanying the sending of the data, the Commissioner has decided that UEA did not hold any information falling within the scope of this request and that it correctly applied regulation 12(4)(a).

The Commissioner's Role

1. The Environmental Information Regulations ("EIR") were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information

Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. There are a number of international climate datasets which have been built up from temperature measurements on land and sea at weather stations all around the world. One of these datasets is CRUTEM3 which is a gridded dataset of global historical land surface temperature anomalies which has been produced by the Climatic Research Unit ("CRU") at the University of East Anglia ("UEA") and the Met Office Hadley Centre. Data are available for each month since January 1850, on a 5 degree grid.

3. The complainant requested a copy of any digital version of the CRUTEM dataset that had been sent to Georgia Tech in the USA between 1 January 2007 and 25 June 2009. UEA explained that the actual CRUTEM3 gridded temperature data set ("CRUTEM3") from 2006 was never sent to Georgia Tech. The only information that was sent was a part of the station database that was used to develop CRUTEM3 was sent to Georgia Tech around 15 January 2009. This part covered the latitude zones 30°N to 40°S. It included monthly mean temperatures for stations that reported regularly in this zone up to November 2008.

The Request

4. On 14 August 2009 the complainant requested the following from UEA:

> *"1. A copy of any digital version of the CRUTEM station data set that has been sent from CRU to [a named individual] and/or any other person at Georgia Tech between January 1, 2007 and June 25, 2009*
>
> *2. A copy of any instructions or stipulations accompanying the transmissions of data to [a named individual] and/or any other person at Georgia Tech between January 1, 2007 and June 25, 2009 limiting its further dissemination or disclosure."*

5. On 11 September 2009 UEA refused the request on the basis that the exceptions contained in regulation 12(4)(a) (information not held), 12(4)(b) (request is manifestly unreasonable), 12(5)(a) (adverse affect on international relations) and 12(5)(f) (adverse affect on the interests of the information provider) applied. It explained that regulation 12(4)(a) applied to the request for stipulations accompanying the

transmission of the data to Georgia Tech as no instructions or stipulations were held by the University. Any instructions or stipulations related the dataset were verbal and made between the parties at the time.

6. UEA explained that regulation 12(4)(b) applied to the request as the requested information was a subset of highly similar data already available in another format from other sources, namely the Global Historical Climatology Network ("GHCN") and CRU at UEA.

7. In relation to regulation 12(5)(a) it explained that much of the requested data came from both individual scientists and institutions from countries around the world. Its release, contrary to the conditions under which UEA received it, would damage the trust that other national scientists and institutions have in UK based public sector organisations and would likely result in them becoming reluctant to share information and participate in scientific projects in future. This would damage the ability of UEA and other UK institutions to cooperate with meteorological organisations and governments of other countries.

8. UEA informed the complainant that regulation 12(5)(f) applied as the requested data had been received by UEA on terms that limited further transmission. It believed that there would be an adverse effect on the institutions that supplied data under those agreements if the information were disclosed as it would undermine the conditions under which they supplied the data to CRU.

9. UEA identified public interest factors in favour and against disclosure and informed the complainant that it believed that the balance of those factors favoured withholding the information.

10. UEA explained that it was working in concert with the Met Office Hadley Centre to seek permission from data suppliers to provide public access to the data.

11. On 18 September 2009 the complainant requested that UEA carry out an internal review of its decision.

12. On 30 October 2009 UEA confirmed that the result of the internal review was to uphold its initial decision.

The Investigation

Scope of the case

13. On 24 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled, including UEA's failure to disclose the information that he had requested and its contention that it did not hold a copy of any instructions or stipulations to Georgia Tech limiting the further dissemination of the data.

Chronology

14. Between March 2010 and May 2011 the Commissioner was provided with a significant amount of information by UEA explaining its position, in particular he was given detailed arguments as to why it believed that it was correct to withhold the information requested by the complainant. These arguments are discussed in detail in the 'Analysis' section of this notice. He was also provided with a copy of the datasets that had been sent to Georgia Tech.

Analysis

Substantive Procedural Matters

Is the requested information environmental information?

15. The EIR provides a definition of "environmental information" in regulation 2(1). The withheld information consists of average temperatures from weather stations around the world taken over varying time periods. This clearly falls within regulation 2(1)(a) which defines environmental information as information on:

> *"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;"*

16. The Commissioner considered UEA's response to each part of the request, firstly, for the information contained in the datasets and, secondly, for any instructions or stipulations accompanying the transmission of the datasets, in turn.

1. The request for information contained in the datasets

(i) Clarification of the nature of the requested datasets

17. The Commissioner initially sought to clarify what information falling within the scope of the request was held by UEA. UEA confirmed that the actual CRUTEM3 from 2006 was never sent to Georgia Tech. However, a part of the station database that was used to develop CRUTEM3 was sent to Georgia Tech once, and only once, on, or a few days after, 15 January 2009 ("dataset A"). This part covered the latitude zones 30°N to 40°S. Accompanying the detailed dataset, UEA confirmed that it had sent a separate file detailing the names of the weather stations included in data set A and other related information ("dataset B"). No other information was sent.

18. Data set A consists of a heading for each weather station that is included in the dataset detailing the name of the weather station, the name of the country in which it is located, a station identifier number, the latitude and longitude of the station, its height in metres and the first and last year of the temperature data for the station. Underneath the heading are listed the average monthly temperature for each month for each year of record for that station in degrees Celsius (multiplied by 10) up to November 2008. These values of monthly average temperature for the length of a weather station's record are referred to as a "station time series" (for example a series that ran from January 1901 to December 2000 would have 1200 values in its time series).

19. UEA confirmed that this version of the dataset A was unique as the file was updated monthly and that this version of the dataset was created on 15 January 2009.

20. Dataset B is a list of the weather stations contained in dataset A. It comprises the same information contained in the heading for each weather station in dataset A (the name of the weather station, the name of the country in which it is located, a station identifier number, the latitude and longitude of the station, its height in metres and the first and last year of the temperature data for the station) but does not contain any of the average monthly temperatures for the stations.

21. UEA explained that the data that comprised the average monthly temperatures for the weather stations (that were used to construct CRUTEM3) came from two principal sources.

22. The first of the principal sources was collations of data obtained:

- from the World Weather Records ("WWR") – available from the National Center for Atmospheric Research ("NCAR").
- from the Global Historical Climatological Network ("GHCN").

- by direct contact with some of the National Meteorological Services ("NMSs") or from their web sites (these data were often adjusted by the NMSs to account for issues such as site changes and changes to observational procedures).

23. The second principal source for monthly station averages was monthly updates (and sometimes late data for previous months) sent over the CLIMAT system of the Global Telecommunications System ("GTS"), which is part of a closed system of the World Meteorological Organization ("WMO") for transmission of hourly, daily and monthly data between NMSs. UEA explained that only NMSs could access the GTS. However, historical CLIMAT data were publicly available for the last 10 years from the Met Office Hadley Centre Observed Datasets web site. CRU accessed this web site for CLIMAT data.

24. UEA explained that CLIMAT updates were augmented by data from the publication "Monthly Climatic Data for the World". These updates had been available in this way since 1994.

25. The Commissioner was informed by UEA that the current version of the station time series that comprise CRUTEM3 had only been adjusted by CRU in the 1980s and these adjustments had been described in the peer-review scientific literature at that time. Some of the data used by CRU since that time had also been adjusted, but by NMSs before it was obtained by CRU.

26. UEA argued that it was not under an obligation to disclose some of the requested information as regulation 6 applied. In relation to the remainder of the requested information, it believed that this was subject to the exceptions under regulation 12(5)(a), 12(5)(c) and 12(5)(f). In addition, UEA initially sought to rely on the exception contained in regulation 12(4)(b) (manifestly unreasonable). However, it subsequently informed the Commissioner that it believed regulation 6 applied to the information to which it had previously applied regulation 12(4)(b).

27. The Commissioner considered in turn the application of each of the regulations identified by UEA to the withheld information.

(ii) Regulation 6 – Form and format of the information

28. Regulation 6(1) provides that

> *"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."

29. UEA argued that the requested data is an aggregation of a number of datasets provided by NMSs and other sources. There was no obligation under the EIR to make the requested data available in a digital form as most of it was already publicly available and easily accessible. Therefore regulation 6(1)(b) applied.

30. In its letter to the Commissioner of 5 April 2011, UEA identified the weather stations in relation to which the same information as that in the withheld datasets was available on the GHCN website. The Commissioner subsequently asked UEA to explain, step by step, the process the complainant would have needed to follow to identify which weather stations on the GHCN website were contained in the datasets sent to Georgia Tech and how they would then have located the data for those weather stations on the GHCN website.

31. On 11 May 2011 UEA provided a very detailed explanation as to how the information to which it believed regulation 6 applied could be obtained from the publicly available GHCN website. It explained that the format of the data on the GHCN website was somewhat different from its own datasets. Consequently it was not reasonable to expect to be able to match its own temperature series with any GHCN counterparts by the simple reliance on a matching of respective station codes. Having regard to all the potential difficulties in matching station series between the two different datasets it suggested a four stage process to achieve this.

32. Stage 1 involved the matching of stations in UEA's dataset with its nearest equivalent on GHCN using latitude and longitude only. Stage 2 involved the extraction of the GHCN station series according to the nearest matches from stage 1. Stage 3 involved a dummy merger of the two matching subsets in order to generate differences files for common subsets and stage 4 required an assessment of the differences files. Each stage required the use of a different computer program to carry out. UEA provided these to the Commissioner.

33. The Commissioner's view is that the phrase *"…already publicly available…"* contained in regulation 6 refers to whether an applicant can reasonably obtain all the information to which the regulation has been applied. It does not refer to whether the applicant can access a reasonable proportion of the information to which it has been applied.

34. He is also of the view that information is easily accessible if a public authority is able to direct the applicant to where they can locate the same information that has been requested. The public authority has to

be able to be reasonably specific as to the location of the information to ensure that it is found without difficulty and not hidden within a mass of other information. If it is able to do this, in the Commissioner's view, the public authority will have discharged its duty under regulation 5 which requires it to make environmental information available on request.

35. The dataset available on the GHCN website contains data for a much larger number of weather stations than that contained in the withheld datasets. The Commissioner notes that the public authority did not inform the complainant which weather stations on the GHCN website were included in the datasets that were withheld. Consequently, it is not apparent how the complainant would have been able to identify on the GHCN website the information that had been withheld under regulation 6.

36. In addition, the process that UEA described that the complainant would have needed to follow to obtain the same information as it held is by no means straightforward and would appear to require information technology skills beyond those possessed by many members of the public.

37. Based on the evidence provided to him, the Commissioner is not satisfied that the information to which UEA has applied regulation 6 in datasets A and B is publicly available and easily accessible. He has therefore determined that regulation 6 is not applicable to any of the withheld information.

(iii) Exceptions

Regulation 12(5) – Adverse affect

38. The Commissioner notes that for an exception under regulation 12(5) to be applicable a public authority must establish an "adverse affect" from disclosure. He is of the view that the threshold to justify non-disclosure because of adverse affect is a high one. It is not sufficient that disclosure would simply have an affect, the affect must be "adverse".

39. It is also necessary to show that disclosure "would" have an adverse affect, not that it could or might have an adverse affect. The Commissioner has interpreted this to mean that, although it was not necessary for the public authority to prove that prejudice would occur beyond any doubt whatsoever, prejudice must be at least more probable than not.

40. Even if disclosure would have an adverse affect, under the provisions of the EIR, the information must be disclosed unless in all the

circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. The approach outlined above has also been taken by the Information Tribunal in a number of cases, most notably in *Archer v The Information Commissioner and Salisbury District Council* (EA/2006/037).

41. Regulation 12(2) explains that the public authority must apply a presumption of disclosure when considering the information. This means that in the event that the weight of public interest in favour of maintaining the exception is balanced with the public interest in disclosure, the information should be disclosed.

(a) Regulation 12(5)(a) – International relations

42. Regulation 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect

> *"international relations, defence, national security or public safety"*

43. UEA argued that the disclosure of the withheld information would have adversely affected international relations.

44. In relation to the information covered by "international relations", Defra's "Environmental Information Regulations 2004 Detailed Guidance" states that

> *"This may comprise information obtained from (or which relates to) a foreign state, an international organisation or overseas territories where disclosure might compromise future co-operation with the UK in areas of our vital interests or information which has the potential to undermine the relationship between UK and other countries or international organisations."* (para 7.5.2.1 page 11)

45. The Commissioner accepts that UEA is one of the UK's leading research establishments in relation to the area of climate change. It works closely with other UK research establishments on this area, including the Met Office which is the UK's National Weather Service and is part of the Ministry of Defence.

46. In light of the above, it is clearly possible to mount a case that any actions taken by UEA in relation to its research on climate change could reflect on other establishments involved in climate change research in the UK and, possibly, even on the wider UK academic and wider research community. If this were to happen an affect on the UK's

national interests and international agreements and negotiations around this area is not implausible. Consequently the Commissioner accepts the potential link between the disclosure of the withheld information and the impact on international relations.

47. The Commissioner therefore went on to consider whether the disclosure of the withheld datasets would damage the relationship between UEA and foreign NMSs to such an extent that the UK climate research community would be seen as no longer being able to assure that research data would be kept confidential where this was appropriate. He then went on to consider whether the disclosure of the withheld information would adversely affect international relations.

48. UEA informed the Commissioner that much of the requested data was obtained from the NMSs of other countries. The data was obtained from hundreds of weather stations located in those countries and was the product of considerable investment and manpower. It was invariably the case that most NMSs only released information under licences, both written and verbal, that prohibited the further transfer of the information. There was no standard form for such licences but they were all similar in that they prohibit the onward transmission of the data to third parties.

49. UEA provided an example of a licence used by the UK Met Office which stated that

> *"Datasets must not be passed on to third parties under any circumstances. Once the project work using the data has been completed, copies of the datasets and software held by the end user should be deleted, unless permission has been obtained for them to be retained for some alternative use."*

50. It explained that conditions on release imposed by other NMSs could be equally stringent. There were also verbal arrangements whereby it was agreed that there would be no further transmission of data, albeit that there was no formal record kept of such arrangements.

51. UEA believed that the importance of continuing to honour these arrangements (both written and verbal) could not be overstated. A breach of the arrangements would have deleterious consequences both for the research facility seeking to rely upon a continuous and complete flow of up-to-date data and for the wider research community in the country of the entity in breach. There were several reasons for this:

(i) The NMSs are often (though not always) organs of the state concerned. There are, accordingly, high expectations of public authorities in other countries with regard to information provided.

(ii) The sanction for the release of the information in breach of the licence arrangements would in some cases be the withholding of further information rather than any legal action for breach (although the possibility of such legal action could not be discounted). The state organ of another country is unlikely to engage in cross-border legal action but will take the simplest step to protect its information, which is to cease supplying it. For example, in the early 2000's, the NCDC blocked access to data from France and other European countries to attempt to appease some European NMSs (particularly France) who wanted access to their data to be through their NMS. The issue was resolved a couple of years later.

(iii) The NMS will not usually enter into an exclusive arrangement with a particular research facility. Accordingly, the release of information by one institute in a particular country would in some cases cause the NMS to stop its supply to the institute in breach as well as all other institutes in that country.

(iv) It is not only the relationship between the research facilities reliant upon the flow of information and the NMS of another country that could be affected but also the relationship between that NMS and the NMS of the UK. The NMS of the other country would legitimately query why it is that the UK NMS (namely the UK Met Office) should expect its information not to be released to third parties whereas the information from other NMSs is not afforded the same protection. Disclosure in breach of agreements would lessen the confidence that other NMSs would place in UK research facilities and the UK NMS as well as their reputation for honouring cross-border commitments and obligations. None of this would be conducive to good international relations insofar as these are based on communications between the public authorities of different states.

(v) Valid research into climate change is dependent on accurate, up-to-date data from weather stations across the globe. It is important to UEA that as much station data as possible is available to fully characterise global and regional-scale changes. It is inevitable that the cessation of the flow of data from other NMSs would severely adversely affect the quality, value and reputation of climate research done in the UK.

52. UEA informed the Commissioner that it had been working with the Met Office on a process of contacting NMSs around the world, not just those that provided data for datasets A and B, to seek their permission to release data contained in the datasets that it held. An email and letter request was sent on 1 December 2009 on behalf of CRU/UEA by the UK Met Office. This was sent to the Permanent Representatives (to the World Meteorological Organization ("WMO")) of each NMS around the world. UEA believed that if CRU had sent this request, it is highly unlikely it would have been responded to by many of the NMSs. A much better reply rate was achieved by the Met Office sending the request.

53. UEA provided the Commissioner with updates as to the progress of this consultation exercise. The final update was provided in its letter to the Commissioner of 5 April 2011.

54. The Commissioner's view, as reflected in a number of Information Tribunal decisions, is that the consideration of exceptions and the public interest by public authorities should be based on the circumstances as they existed at the time of the request. The results of the consultation exercise outlined above became available after the request was made and after UEA's response had been provided. It therefore raises an issue as to whether any of the outcomes from that exercise should be taken into account by the Commissioner in assessing the application of the exceptions by UEA.

55. The Commissioner considers that it is appropriate to take into account matters which may be relevant to the application of exceptions at the time that a request was made but which only comes to light later.

56. In relation to the responses of the NMSs to the consultation exercise carried out by the Met Office/UEA, the Commissioner believes that it is reasonable to assume, given the context, that those responses would not have been significantly different if the consultation exercise had been carried out at the time of the request. Therefore, he is satisfied that it is appropriate to consider the information obtained from the consultation exercise as this may provide evidence as to the views of the NMSs at the time of the request.

57. UEA attached to its letter of 5 April 2011 a list of all of the weather stations included in datasets A and B. The list included details of the result of the consultation exercise for each weather station in respect of which a letter had been sent by the Met Office. UEA confirmed that a letter was sent to the relevant NMSs in respect of 1687 of the stations covered by the datasets but that no letter was sent in respect of 65 stations.

58. The result of the exercise in respect of the weather stations contained in the datasets was:

(i) Unconditional agreement to release - 144 (8.2%)

(ii) Conditional agreement to release – usually minor requirement re links to alternative NMS data source - 424 (24.2%)

(iii) Agreement to release of most series - a few are excluded - 51 (2.9%)

(iv) The NMS did not respond or, in some cases, did respond but did not provide a final decision on public release - 1063 (60.8%)

(v) Refusal by NMS of release of data into the public domain - 2 (0.1%)

(vi) The NMS was not contacted - 65 (3.7%)

59. UEA explained that there could be various reasons for the lack of replies from NMSs. One explanation might be language difficulties, as the letter was only sent in English. In other cases, they may not have thought they had the capacity to reply, as the data was not owned by them and it would prove too difficult or costly for them to get approvals. In many cases, it may be that the failure to reply indicates that there is no intention to consent. It believed that this would be unsurprising, for the reasons that it had previously given.

60. Where overseas NMSs had not been forthcoming with explicit reasons for their negative responses to releasing their data to the public, UEA informed the Commissioner that it was concerned about the prejudice to its relationships with those critically important third parties which would be caused by further correspondence and questioning of their positions.

61. In addition, UEA informed the Commissioner that some NMSs clearly distinguished between making data available for academic research, while charging for commercial companies. The Met Office in the UK applied this principle. Academic users could gain access to the Met Office's data, but could not pass the data on to third parties.

62. UEA stated that, in climatology, it was common practice for some NMSs to allow academics to have access to their station data for the development of gridded datasets. The latter could be released to anybody, but some of the station data could not. An example of this is Deutscher Wetterdienst (the German Weather Service), which

produces gridded datasets of precipitation totals, but which does not release any of the basic station precipitation data.

63. UEA explained that it was essential to understand that, in addition to stations where there was an explicit refusal of release, CRU practice was to assume that where there was no response and also where the data is not available on the GHCN website, the data was not to be released to the public. In other words, in the absence of any direction from the relevant NMS, where data was not within the GHCN, CRU practice has been to not release such data and treat it as if there was an explicit refusal to release.

64. It went on to explain that the reason for this approach was that CRU staff felt that it was not in their remit to make a judgement regarding the release of data by a NMS without some indication from the NMS that the data could, or should, be released. Presence on the GHCN website, and other datasets such as the WWR, could reasonably be inferred to grant a right of public release.

65. UEA confirmed that the temperature information for 1496 (85.5%) of the weather stations contained in dataset A was publicly available from the GHCN website. In relation to another 206 weather stations, there was a difference between the weather station data in dataset A compared with that on the GHCN website. Finally, there were 47 weather stations contained in dataset A for which there was no data available through GHCN.

66. The Commissioner was informed by UEA that it had contacted the Met Office regarding their appreciation of the attitude of NMSs in general to release of data in the absence of explicit consent. The Met Office's response was that:

> *"The exchange of data between National Met Services is governed by a Resolution of the World Meteorological Congress (Resolution 40, Cg-XII) agreed by Governments in 1995. This defines the data which should be exchanged between National Met Services without any restrictions on re-use, and guidelines on data which National Met Services exchange with restrictions on re-use. A large amount of climate data is included within the Resolution as data which should be exchanged without restriction, and all data which fell into this category within the CRU dataset has been made publicly available. However, National Met Services are able to place restrictions on all data exchanged outside of that category and those National Met Services which have not granted permission to CRU to release their data are perfectly entitled to do so.*

The UK Government is required to do its utmost to implement decisions of the Congress (Article 9(a) of the Convention of the World Meteorological Organisation, WMO) and as such should respect and implement the policy for exchange of data outlined in Resolution 40, Cg-XII. Clearly, if Member States of the WMO decided to ignore the rules for exchange of data the result would be a reduction in the amount of data which would be freely exchanged which would have negative impacts on weather forecasting and climate research in all Member States of the WMO, including the UK."

67. UEA explained that, as noted, data that fell within the WMO Resolution 40 was made publicly available and this roughly coincided with the data that it had noted is available within the GHCN data set. It went on to state that there was also data which fell outside the Resolution over which restrictions could be placed, and some NMSs had the policy discretion to ignore the Resolution as well.

68. Additionally, it pointed to the fact that there was only one explicit 'No' response from a NMS that is relevant to the datasets that were sent to Georgia Tech, namely that of Trinidad and Tobago.

69. UEA went on to explain that the responses received from the NMSs that withheld consent for further transmission of data did not include any reason for their position, nor did the Met Office consider it part of their remit to inquire as to such reasons when contacting each NMS. In its view, the mere fact of withdrawal of consent implied some adverse effect, otherwise, the conclusion would have to be drawn that each such NMS was simply being arbitrary in their attitude.

70. UEA provided the Commissioner with copies of refusals to the disclosure of station data that had been received from five NMSs, four of which related to stations not included in the withheld datasets A and B. Despite the fact that four of these refusals related to information which did not form part of the withheld information, the Commissioner considered these refusals to see if they provided any evidence as to the adverse impact that disclosure of station data might have on NMSs contained within the datasets A and B.

71. In each case the NMS refused consent without any accompanying explanation. UEA argued that it was not unreasonable to assume that many of the reasons for non-disclosure by NMSs that it had provided to the Commissioner would apply.

72. The Commissioner asked UEA to provide details of any verbal agreements regarding the restrictions on the onward transmission of

data in relation to NMSs that supplied information included in the withheld datasets. UEA explained that some undertakings were given by a member of staff. However, these agreements were entered into at least 10 years ago and no written record was kept at the time of the agreement itself or the parties to it. It confirmed that it had not given any verbal assurances about the release of data to any of the NMSs in receipt of the letter from the UK Met Office.

73. As the Commissioner has noted the threshold to justify non-disclosure under the EIR is a high one. It is not sufficient that disclosure would simply have an effect, the effect must be "adverse". It is also necessary to show that disclosure "would" have an adverse affect, not that it could or might have an adverse affect.

74. UEA explained that, where data in relation to a particular weather station is not available on the GHCN website, its practice has been to treat this as if there was an explicit refusal to release. The Commissioner's view is that even though an NMS does not make its data available on the GHCN website, it can not necessarily be assumed that it would necessarily object to the disclosure of that information by UEA.

75. Even where NMSs object to the disclosure of their data, the basis for them doing so may be varied, as may their potential responses if disclosure were to subsequently occur. Some of the bases for their objection to disclosure and potential responses might be sufficient to engage one or more of the exceptions contained in the EIR, some of them may not.

76. The Commissioner notes that the Code of Practice on the EIR states, in relation to the issue of consultations with third parties, that

> *"Where the consent of a number of third parties may be relevant and those parties have a representative organisation that can express views on behalf of those parties the authority may, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the authority may consider that it would be sufficient to consult a representative sample of the third parties in question."* (para 43 page 16)

77. It would therefore have been in line with the Code of Practice for UEA to consult with a representative sample of NMSs whose data was not available through the GHCN website to ascertain their views as the implications of the possible disclosure of their data.

78. The Commissioner accepts that there is a possibility that some of the consequences outlined by UEA might occur from the disclosure of the information. However the threshold to establish that an adverse affect would occur is a high one and it must be shown that it is more probable than not.

79. The Commissioner bases his findings on the following analysis:

i. UEA have supplied detailed evidence about the context in which datasets are supplied and exchanged. The Commissioner acknowledges that the background has been explained in detail and hypothetical scenarios have been provided that build a plausible case about the possibility of an affect. However, a plausible case is not enough. The Commissioner must be convinced that disclosure would affect international relations and that affect must be adverse. The evidence supplied is not convincing enough for the Commissioner to find this threshold is reached

ii. An affect on the relationship between UEA and NMSs is not sufficient to engage the exception - it must be clear that this affect would feed through to an affect of substance in the context of international relations. For example it would be necessary for the UK to have to negotiate and engage in significant communications to remedy any impact for the affect to be of substance.

iii. The results of the consultation detailed in paragraph 58 do not supply any convincing evidence that an adverse affect would occur. The Commissioner would need to be convinced that a significant proportion of the NMSs would react strongly to disclosure. He can accept that some NMSs would not respond and may assume that a non response could be read as an objection and some may have had difficulties in translation but numbers of explicit refusals is very low (0.1%).

iv. The Commissioner notes that many of the NMS in other countries may also be subject to access to information legislation and may receive requests for the data. Many NMS in the European Union may be subject to the same type of legislation as the EIR, which are transposed from *Directive 2003/4/EC on public access to environmental information*. Disclosure under this type of legislation would not be unusual. Many NMS and governments would also be aware of the *Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention), which Directive*

2003/4/EC implements.

v. The Commissioner notes that Resolution 40 (Cg-XII) of the World Metrological Association recognizes "(7) *The right of Governments to choose the manner by, and the extent to, which they make data and products available domestically or for international exchange,"*. But equally the Resolution is an enabling measure for open exchange. The Commissioner considers that he cannot automatically accept that governments would view the disclosure of this particular data as significant interference with that right. No specific evidence has been supplied that this reaction would occur. This resolution would also need to be balanced against other Treaties such as the Aarhus Convention.

vi. A significant amount of the withheld data is often disclosed into the public domain and the sensitivity of the data not in the public domain has not been clearly explained.

vii. UEA have not supplied enough evidence about the 'licence terms' the NMSs use when they supply data to UEA to convince the Commissioner that NMSs would view disclosure as significant contravention. The Commissioner also notes that some assurances are only given verbally.

80. Without further evidence than that available to him at present, the Commissioner is in the position of having to carry out a highly speculative exercise as to the potential affect of disclosure and the likelihood of any affect occurring. He is consequently not satisfied that it is more probable than not that disclosure would adversely affect international relations and that regulation 12(5)(a) is engaged.

(b) Regulation 12(5)(c) – Intellectual property rights

81. Regulation 12(5)(c) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect intellectual property rights.

82. UEA informed the Commissioner that its position was that the intellectual property rights of a number of parties, including the UEA, would be adversely affected by the disclosure of the withheld information. The intellectual property rights in question were, firstly, copyright, and, secondly, database rights under the Copyright and Rights in Databases Regulations 1997.

83. In relation to copyright, UEA explained that under UK law copyright in original written material arises automatically (i.e. without the need to assert any right or obtain protection) on creation of the work in question. This means that as soon as a string of words or a list of figures or diagrams are set down in writing (whether on paper or electronically) copyright immediately subsists in that information. The test for whether copyright subsists in a work is a very low one – all that one has to show is that the work is "original" i.e. that it has not been copied from any other work.

84. UEA argued that, in the present context, this meant that copyright could exist in data such as individual items of data from a weather station. However, copyright would also attach to the compilation or collection of information as well as the information itself. Thus a database would have overarching copyright in the collection.

85. It was suggested by UEA that there would be an infringement of copyright (or an adverse effect on the holder of this intellectual property right) when there had been 'substantial' copying of the work. The owner of that copyright was the person who created that material, save where an employee created the material in the course of their employment, in which case their employer would be the owner of the copyright in question.

86. In relation to database rights, UEA explained that, irrespective of whether copyright subsisted in the information in question, database rights would cover the arrangement of the information. Database rights are a *sui generis* right created by the Copyright and Rights in Databases Regulations 1997. These amend the Copyright Designs and Patents Act 1988 in relation to copyright in collections of data.

87. UEA went on to explain that, under the Regulations, a database is defined as *"a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means"*. Thus, a set of data would be protected by database rights. In such situations copyright would only exist in the database if there had been an element of "personal intellectual creativity". This is a higher standard than the standard of originality set for other copyright works.

88. In the present context, UEA contended that the personal intellectual creativity in the database would arise from the effort put into collating and presenting the data in the database in a format suitable for the research purposes for which the data was to be used. Accordingly, copyright would subsist in the databases comprising the withheld information.

89. In addition to copyright in the database, database rights give a separate right to the maker of the database against extraction or reutilisation of the contents of the database. The maker of the database is the person who takes the initiative and the risk of investing which in the case of UEA research would be the UEA itself (unless paid by a commercial sponsor). This database right recognises the economic importance of collections of digital information in particular. The right applies to databases whether or not their arrangement justifies copyright and whatever the position may be regarding copyright in individual items in its contents.

90. UEA went on to explain that database right only lasts for 15 years from completion of the database or from it becoming available to the public, whichever is later. However further substantial investment in additions, deletions or alterations starts time running afresh. Thus, there would be an infringement of the database right (or an adverse effect on the intellectual property rights of the database right holder) where there was extraction or reutilisation of the contents of the database.

91. UEA's view was that there were at least two owners of intellectual property rights and, potentially, a third owner depending on the local intellectual property laws. The first owner was UEA itself which holds both copyright and database rights in the withheld information. The second owners were the NMSs which provided information to UEA in database form which also hold copyright and database rights in that information.

92. UEA explained that the third (potential) owners were the providers of information to the NMSs. Intellectual property rights exist in compilations of information. This means that not only will the NMSs own copyright in the information they sent to UEA but also in turn, those providing information to the NMSs will also (subject to local law) own intellectual property rights in that data. UEA commented that UK law is well used to recognising this multi-layered aspect of intellectual property rights in a set of material.

93. It was argued by UEA that it was clear from the terms and conditions under which the information was provided to the UEA that the various providers do not allow unrestricted dissemination of the information otherwise such terms and conditions would not be necessary. In either case, data might be used for income generation purposes. This would only be possible if the intellectual property rights in the information were protected. This was further evidenced by the failure of many of the NMSs to give their consent to release of the data.

94. In UEA's view indiscriminate onward disclosure of this information by the UEA (as would be the case if the withheld information were released) would undoubtedly adversely affect the intellectual property rights of the NMSs and in some cases the commercial providers of information to the NMSs.

95. Equally, in its view, the release of the withheld information would adversely affect its own intellectual property rights in the withheld information in that:

(i) it would lose any control over the wider dissemination and use of material in which it had invested considerable time, effort, skill and finances in creating; and

(ii) it would lose any right of commercial exploitation of its databases. Once the information was released, and freely available, extraction and reutilisation of the data could be carried out by any party without further recourse to the UEA.

96. The Commissioner notes UEA's concerns about the impact that disclosure of the withheld information might have on it and the NMSs and other bodies that supplied that information.

97. Defra's "Environmental Information Regulations 2004 detailed guidance" states that

> *"Copyright does not prevent authorities releasing information they hold. However, where such information is subject to copyright, it should be made clear to applicants that the copyright still exists."* (para 7.5.4.1 page 12)

98. The Commissioner is of the view that this exception is not intended to protect intellectual property rights in themselves but is intended to protect the interests of the holders of intellectual property rights. Accordingly, in order to engage the exception, it is necessary to demonstrate that the public authority or other interested parties held intellectual property rights in respect of the withheld information and that those rights would have been adversely affected had the information been disclosed. The Commissioner highlights the Information Tribunal decision in Ofcom (EA/2006/0078), paragraph 47:

> *"The Information Commissioner's case was that he had been right in his Decision Notice to say that infringement of an intellectual property right was not sufficient to trigger the exception. He considered that the expression "adverse effect" required something more in terms of actual harm to commercial or other interests. Ofcom and T-Mobile, on the other hand, argue that the question of*

loss or harm should be taken into account when carrying out the public interest balance required by EIR regulation 2(1)(b), but not at the stage of determining whether the exception has been engaged…

However we believe that, interpreting the exception restrictively requires us to conclude that it was intended that the exception would only apply if the infringement was more than just a purely technical infringement, (which in other circumstances might have led to a court awarding nominal damages, or even exercising its discretion to refuse to grant the injunction that would normally follow a finding of infringement). It must be one that would result in some degree of loss or harm to the right holder. We do not therefore accept that such harm should only be taken into consideration when carrying out the public interest balance"

99. The Commissioner accepts that UEA, the NMSs and other bodies that supplied information are likely to hold intellectual property rights identified by the UEA in the withheld information.

100. In relation to the NMSs and other bodies that supplied information, the Commissioner accepts that there is a possibility that the disclosure of the withheld information might adversely affect their intellectual property rights. However, as he has previously noted, the threshold to establish that an adverse affect would occur is a high one and it must be shown that it is more probable than not. UEA's arguments have presented arguments about infringement to intellectual property rights but no convincing evidence has been supplied about the actual affect on the rights holders e.g. impact of the ability to derive value or exploit their intellectual property or other impacts of the loss of control.

101. The Commissioner is in the position of having to carry out a highly speculative exercise as to the potential impact of disclosure. On the basis of the evidence and arguments supplied by UEA he is not satisfied that it is more probable than not that disclosure would adversely affect the intellectual property rights of the NMSs and other bodies that supplied information.

102. UEA also argued that disclosure would have adversely affected its own intellectual property rights because it would lose control of the wider dissemination of the withheld information and as a result lose any right of commercial exploitation of the databases.

103. However, the Commissioner notes that the request was not for a copy of UEA's current datasets but for the datasets that contained temperature data up to November 2008. The particular datasets that were requested were therefore nearly a year old at the time of the

request. In addition, the data sets only related to a limited part of the world, covering the latitude zones 30°N to 40°S, rather being for datasets held by UEA that covered the whole world.

104. The Commissioner also takes note of the fact that UEA has informed him that 85.5% of the information in the withheld datasets was already available on the GHCN website. In addition, for 11.8% of the data in UEA's database there was comparable but different data on the GHCN website. Only in respect of 2.7% of the data contained in UEA's datasets was there no comparable data on the GHCN website.

105. Given all of the above, it is not clear to the Commissioner how UEA might have planned to commercially exploit the specific information requested and how disclosure might have impacted on any plans that it might have developed or been in the process of developing. He is consequently not satisfied that it is more probable than not that disclosure would adversely affect its intellectual property rights. He has therefore determined that regulation 12(5)(c) is not engaged.

(c) Regulation 12(5)(f) - Interests of information provider

106. Regulation 12(5)(f) provides an exception where disclosure would adversely affect

> *"(f) the interests of the person who provided the information where that person-*
>
> *(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;*
>
> *(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and*
>
> (iii) *has not consented to its disclosure;"*

107. In the Commissioner's view the purpose of the exception is to protect the voluntary supply to public authorities of information that might not otherwise be made available. In such circumstances a public authority may refuse disclosure when it would adversely affect the interests of the information provider. The wording of the exception makes it clear that the adverse affect has to be to the person or organisation providing the information rather than to the public authority that holds the information.

108. In this case the withheld information consists of datasets that were compiled by UEA. The information contained within the datasets was

provided by various organisations. The Commissioner therefore considers that the withheld information consists of information provided to the public authority by those organisations.

109. Before considering the nature of the adverse affect, the Commissioner considered whether the three elements of regulation 12(5)(f) were met. With regard to the first element, UEA explained that the withheld information was an aggregation of datasets owned by NMSs or other organisations and as such there was no legal obligation on those organisations to make this information available to any UK public authority. The Commissioner accepts that the organisations supplying the information to UEA were under no legal obligation to do so.

110. With regard to the second element, UEA argued that it did not have a legal right to the information provided by NMSs. It was apparent from the various licence agreements and their terms and conditions (which sometimes include terms as to payment for the information) that its access to the data was far from automatic. The Commissioner accepts that the withheld information was not supplied in circumstances in which UEA or any other public authority was entitled, apart from under the EIR, to disclose it.

111. In relation to the third element, UEA contended that the fact that consent had not been given to disclosure was apparent, again, from the fact that requests to NMSs for permission to disclose information had been rejected by several of them. The Commissioner accepts that a considerable number of the NMSs that supplied information have not consented to its disclosure.

112. The Commissioner consequently is satisfied that parts (i), (ii) and (iii) of regulation 12(5)(f) are satisfied in relation to some of the NMSs that provided information for the withheld datasets. He went on to consider whether disclosure would have adversely affected the interests of those NMSs.

113. UEA explained that the datasets were the product of considerable investment in terms of equipment and manpower. As such there was a production cost which must be met. Moreover, some NMSs relied on information from private providers. Those private providers might impose commercial charges on the provision of information but even if they did not, they were likely to release information to the NMSs only on conditions as to its further release. For example, Poland explicitly bars use of data for commercial purposes.

114. UEA went on to explain that it had no idea, nor could it legally ask, how any requester would use such data if released, so release may well

violate the terms that Poland imposes. In these circumstances, it argued that it was obvious that disclosure in the UK pursuant to a request under EIR could have severe adverse effects on the NMSs whose information was disclosed:

(i) The NMSs would lose the ability to recoup any commercial return from the dataset. In some cases, this could result in cutbacks which would inevitably cause a degradation in the quality and quantity of information produced;

(ii) Those NMSs that receive information from private providers would be at risk of no longer receiving it. This would also inevitably degrade the quality of the information accessible to the NMSs; and

(iii) The NMSs' reputation as a source of valuable data would be adversely affected.

115. In UEA's view the risks of the above occurring were very real. Indeed, the fact that some NMSs had expressly refused to consent to disclosure supported the claim that considerable value was attached to the data and that its uncontrolled release would be considered harmful to the NMSs' interests.

116. As has been noted in relation to the consideration of the other exceptions, there is very limited evidence available to the Commissioner from prior to, or subsequent to, the Met Office/UEA consultation exercise of the reasons why any of the NMSs might not consent to the disclosure of the information that they supplied to UEA. He is consequently not satisfied that it is more probable than not that disclosure would adversely affect the interests of the information providers and that regulation 12(5)(f) is engaged.

2. The request for a copy of any instructions or stipulations accompanying the sending of the datasets

117. The second part of the complainant's request was for "a copy of any instructions or stipulations accompanying the transmission of data…" to Georgia Tech. UEA explained that any such conditions were verbal and between the parties involved at that time. Consequently, the exception under 12(4)(a) applied to this part of the request as the UEA did not hold any information falling within the scope of the request. The complainant asked the Commissioner to investigate whether UEA had correctly dealt with this part of his request.

118. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

119. UEA informed the Commissioner that datasets A and B were sent to Georgia Tech once on, or a few days after, 15 January 2009. It confirmed that there was a cover email to the data sent but this email had been deleted from his personal computer by the member of staff concerned prior to the receipt of the request and in accordance with his usual practice of managing emails. However the exact date that it was deleted was not known.

120. UEA explained that emails for the CRU were held on personal computers and not held centrally. The personal computer for the relevant member of staff had been searched following the request for information and no cover email relating to the data sent to Georgia Tech was found. It confirmed that there was no overarching UEA-wide retention policy or schedule regarding such information. The member of staff concerned routinely deleted emails on a periodic basis.

121. UEA informed the Commissioner that the datasets themselves did not contain any information relevant to this part of the request. The data sent was communicated via email and any relevant information, had it existed, would have been communicated with the data, either in the cover email or within the data file itself. It stated that it believed that there was no information within the deleted email that would be relevant to the request for "instructions or stipulations accompanying the transmission of data".

122. Based on the information provided by UEA, the Commissioner is satisfied, on the balance of probabilities, that it did not hold any information falling within the scope of the second part of the complainant's request at the time that it was made and that it, therefore, correctly applied regulation 12(4)(a).

Procedural Requirements

123. By failing to disclose the requested information contained in datasets A and B to the complainant within 20 working days of the request, UEA breached regulation 5(1) and 5(2).

The Decision

124. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- it correctly applied regulation 12(4)(a) to the complainant's request for a copy of any instructions or stipulations accompanying the sending of the datasets.

125. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- it incorrectly applied regulation 6 and regulation 12(5)(a), 12(5)(c) and 12(5)(f) to the information contained in datasets A and B; and

- it breached regulation 5(1) and 5(2) by not disclosing the information contained in datasets A and B to the complainant within 20 working days of the request.

Steps Required

126. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- disclose all of the information contained in dataset A and dataset B to the complainant.

127. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

128. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

129. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

130. 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.

131. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 23rd day of June 2011

Signed ……

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1)

"environmental information" has the same meaning as in Article 2(1) of the Directive, 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 elements of the environment referred to in (b) and (c);

Regulation 6 - Form and format of information

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.

Regulation 6(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 not 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 requests; and

(c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(1)

Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(2)

A public authority shall apply a presumption in favour of disclosure.

Regulation 12(3)

To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant's request is received;

(b) the request for information is manifestly unreasonable;

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;

(d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or

(e) the request involves the disclosure of internal communications.

Regulation 12(5)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(a) international relations, defence, national security or public safety;

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

(c) intellectual property rights;

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

(f) the interests of the person who provided the information where that person –

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

Regulation 12 (6)

For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

Regulation 12(7)

For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

Regulation 12(8)

For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

Regulation 12(9)

To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

Regulation 12(10)

For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

Regulation 12(11)

Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.