

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 19 June 2014

**Public Authority:** The Met Office  
**Address:** FitzRoy Road  
Exeter  
Devon  
EX1 3PD

N.B: The Information Commissioner notes that the Met Office is not a public authority in its own right but is an executive agency of the Department for Business, Innovation and Skills (DBIS). Therefore, the public authority in this case is DBIS. However, for the purposes of this decision notice the Met Office is referred to as if it were the public authority

### **Decision (including any steps ordered)**

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1. The complainant made an information request to the Met Office for copies of the Zero Order drafts of the 2007 4<sup>th</sup> Assessment Report of the Intergovernmental Panel on Climate Change. The Met Office refused the request under the exceptions in regulation 12(5)(a) (Adversely affect international relations) and regulation 12(5)(f) (Adversely affect interests of information provider) of the EIR.
2. The Commissioner's decision is that the regulation 12(5)(a) exception was correctly applied and the public interest in maintaining the exception outweighs the public interest in disclosure. 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.
5. The Information Commissioner has previously considered a complaint involving a request for the Zero Order Drafts of the IPCC 5<sup>th</sup> Assessment Report. This decision was appealed to the Information Tribunal in *Holland v Information Commissioner*.<sup>1</sup> The Tribunal decision was referred to by the complainant in his request to the Met Office and his complaint to the Commissioner.

## Request and response

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6. On 31 July 2013 the complainant made a request for information to the Met Office which read as follows:

*"Please supply me with electronic copies of all the 'Zero Order Drafts' also referred to as the ZODs, of the 2007 Fourth Assessment Report of the Intergovernmental Panel on Climate change, or IPCC AR4 for short, held by the Met Office."*

7. The Met Office initially responded to the request on 28 August 2013 when it explained that the request was being considered under the EIR but that the information was believed to fall within the exceptions in regulations 12(3) and 13, regulation 12(5)(a), and regulation 12(5)(f).

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<sup>1</sup> David Holland v Information Commissioner [EA/2012/0193]

However, it said that it needed further time to consider the public interest test and so would need to extend the 20 working day deadline to respond to the request.

8. The Met Office provided a substantive response on 25 September 2013. It now said that it believed that the requested information was covered by the exceptions in regulation 12(5)(a) and regulation 12(5)(f) and that it had concluded that the public interest in maintaining the exceptions outweighed the public interest in disclosure.
9. The complainant subsequently asked the Met Office to carry out an internal review and it presented its findings on 13 November 2013. The review upheld the decision to refuse the request under the regulation 12(5)(a) and 12(5)(f) exceptions.

### **Scope of the case**

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10. On 21 November 2013 the complainant contacted the Commissioner to complain about the Met Office's refusal of his request.

### **Reasons for decision**

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11. The withheld information in this case constitutes ZODs of 4 chapters included in the AR4 report. The ZODs are the earliest stage in the production of a chapter of the reports and are internal documents not intended for publication. They are followed by the more formal drafts, the First Order Draft (FOD) and Second Order Draft (SOD) which in contrast are made available to self-declared experts for review and which are also published after publication of the final report. The information has been withheld under the regulation 12(5)(a) and regulation 12(5)(f) exceptions. The Commissioner has first considered the application of regulation 12(5)(a).

### **Regulation 12(5)(a) – International relations, defence, national security, public safety**

12. 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. In this case the Met Office has applied the exemption on the basis that

disclosure would adversely affect the UK's international relations with the IPCC.

13. In deciding whether regulation 12(5)(a) is engaged the first thing to consider is whether the exception can be applied to protect relations with the IPCC. On this point the Commissioner would point out that whilst international relations clearly describes relations between different states, it is not restricted to relations directly between the UK and another state. In the politically complex world, states often pursue their interests through membership of international organisations. Therefore the exception can also be applied to protect the UK's relationships with these organisations, which are an important means of defending and promoting the UK's political, economic and other interests. The Commissioner is satisfied that the IPCC is an international organisation to which regulation 12(5)(a) can be applied.
14. The Met Office's position is that disclosure would adversely affect the UK's international relations with the IPCC because it (the IPCC) objects to the information being released which it considers to be confidential. In the view of the Met Office disclosure would risk it and other UK based experts being excluded from any further participation in the IPCC process. This would prejudice the UK's reputation and standing in the international scientific community. It explained that following concern over the release of confidential documents there has been a trend by the IPCC to restrict the material to which authors are given access.
15. The Commissioner has been provided with copies of 3 letters sent on behalf of the co-chairs of the IPCC WG1 where it sets out its concerns that the requested information should not be disclosed. It is noted that the IPCC is very strongly of the view that the information should be withheld and that disclosure would damage the relationship with the UK. In particular in a letter to the Met Office dated 12 September 2013 it stated that:

*"disclosure of such documents would erode trust in the UK as a partner in an international process. It could prejudice the UK's ability to engage in free and frank discussion in future through its experts at this crucial and early stage of assessment development".*

16. When considering how international relations may be adversely affected the Commissioner is guided by the decision of the Information Tribunal in *Campaign against the Arms Trade v Information Commissioner* where it made the following observations:

*"However, we would make clear that in our judgment prejudice can be real and of substance if it makes relations more difficult or calls for*

*particular diplomatic response to contain or limit damage which would not otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage. For example, in our view there would or could be prejudice to the interests of the UK abroad or the promotion of those interests if the consequence of disclosure was to expose those interests to the risk of an adverse reaction from the KSA or to make them vulnerable to such a reaction, notwithstanding that the precise reaction of the KSA would not be predictable either as a matter of probability or certainty. The prejudice would lie in the exposure and vulnerability to that risk.”<sup>2</sup>*

17. Therefore, the exception can be engaged if disclosure merely makes international relations more difficult. In this case, having considered the IPCC's opposition to disclosure the Commissioner accepts that there would be a broad effect on the UK's international relations with the IPCC if the information was released against its wishes.
18. The Commissioner does not accept that disclosure would lead to the Met Office or other UK based experts being excluded altogether from contributing to the IPCC process especially given the expertise UK based scientists and institutions would be able to bring. That said, the Commissioner is aware that the contributors to the WG1 AR4 report understood that the ZODs were confidential (the Commissioner will return to this point below) and therefore in this context the Commissioner accepts that there would be some reputational damage to the UK as a key contributor to the international debate on climate change if the information was disclosed. The ZOD's are the earliest stage in the production of an assessment report where scientists can explore ideas and are free to make mistakes. They are internal documents and much less formal than the later versions of the reports, the FOD's and SOD's. In the Commissioner's view it is likely that disclosure of this would be seen as a breach of trust by the IPCC and scientists contributing to the work of the WG1 from other countries. For these reasons the Commissioner has decided that the disclosure would adversely affect the UK's international relations with the IPCC and therefore the regulation 12(5)(a) exception is engaged.
19. As noted above, the complainant has referred to a recent Tribunal decision which considered the disclosure of a ZOD in relation to the WG1

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<sup>2</sup> Campaign Against the Arms Trade v Information Commissioner & Ministry of Defence, [EA/2006/0040], para. 81.

AR5 report which at that point had yet to be published. Whilst the Tribunal found that the information was correctly withheld at the time of the request, it had indicated, although it made no formal findings, that it would have ordered disclosure of the ZOD if the request had been made after the publication of the final report. The Commissioner has considered the findings of the Tribunal in more detail in relation to the public interest test and would simply say at this point that there is nothing in the findings of the Tribunal that would lead him to conclude that the exception is not engaged.

### **Public interest test**

20. The Commissioner has now gone on to consider the public interest test, balancing the public interest in maintaining the exception against the public interest in disclosure.

### **Public interest arguments in favour of disclosure**

21. The Met Office acknowledged the following arguments which it said favoured disclosure.
  - Climate change assessment is of significant public interest, in particular, the work of the IPCC. It is important to ensure that this work is subject to an appropriate level of public scrutiny. The public interest is not limited to those in the international scientific community with a particular interest in the subject of climate change. There is widespread public concern on the subject of climate change. It is in the public interest that there should be a well informed understanding and debate on a subject of potentially very significant implications for the future of the planet.
  - Release of the ZOD information would provide greater openness and transparency to the public so that they might understand, discuss and assess the work of the IPCC WG I AR4 at the immature, pre-first draft stage of their assessment.
  - Release of the ZOD information would help to promote the democratic accountability of the published drafts and final report and this would add to and further inform the debate on climate change.
22. The complainant referred to the fact that the Tribunal had earlier indicated that a ZOD of the AR5 report should be disclosed after publication of the final report. The relevant section of the decision is:

*"The position would likely be different if disclosure was sought after the publication of the final report. We note that the Commissioner likewise took into account the timing of the request and the specific impact disclosure would have while the IPCC fifth assessment process was on-going (paragraph 27 of the Decision Notice). The evidence is that after the final report is published, all drafts, except for the ZODs are made available to the public. We note that IPCC's own policy documents do not distinguish between ZODs and other drafts and there appears to be no clear policy nor a clear rationale for why the ZODs are not published at that time. Certainly, once the final report is published, any concerns about misuse of the ZODs or the information being taken out of context, falls away, as does, in our view, the concern about scientists new to the assessment report process having a safe space in which to develop their views without being held to account for views that are still in progress. At the point at which the assessment report is published, the FODs and SODs become available to the public and they are able to assess the robustness of the final report. Publication of the ZODS at the same time would have the effect, therefore, of promoting the public interest considerations in favour of disclosure as identified above, without compromising, to any significant extent, the concerns about disclosure relied on by the respondent."<sup>3</sup>*

### **Public interest arguments in favour of maintaining the exception**

23. The Met Office advanced the following arguments for maintaining the exemption:
- The effective conduct of international relations depends upon maintaining trust and confidence between states and international organisations. This relationship enables the free and frank exchange of information and views on the understanding that it will be treated in confidence. If the UK does not respect such confidences, its ability to protect and promote UK interests through international relations will be adversely affected.
  - A specific harm arising from release would be the damage caused to the Met Office's reputation as a key contributor to the international debate on climate change if it divulged information that had universally been agreed as confidential. The danger is that the Met

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<sup>3</sup> *Holland*, para. 79.

Office would be excluded from any further participation in the IPCC process, thus prejudicing the UK's standing in the international scientific community. Following concern over the release of confidential documents, there has been a trend by the IPCC to restrict the material to which authors are given access.

- Further specific harms arising from release are that if the IPCC is reluctant to use UK scientists in international research processes this adversely affect the development of cutting-edge international scientific dialogue in the UK. If UK experts were denied the opportunity to participate in international projects of this nature, they might choose to seek employment in universities and research institutions outside the UK. This would undermine the UK's ability to undertake science and participate in international scientific research projects such as IPCC.

### **Balance of the public interest arguments**

24. The Commissioner has now considered the findings of the Tribunal in the *Holland v Information Commissioner* case where it indicated that it would have ordered release of the ZOD of the AR5 report if the final report had been published at the time of the request. As a result of this the complainant maintains that there should be no reason for withholding the ZOD of the AR4 report given that this report was published in 2007, several years prior to the request.
25. The first thing to say is that the Commissioner is not bound by the findings of the First Tier Tribunal. In any event, the Commissioner also notes that in that case the Tribunal made no formal findings about whether the information should be disclosed, it only offered an indication of what its position might be were the request to have been received after the publication of the final report.
26. Moreover, the Commissioner is aware that the Tribunal's findings about the policy of the IPCC on the disclosure of ZOD's would appear to be based on a misapprehension. The IPCC WG1 in its replies to the Met Office have disputed the Tribunal's statement that the "IPCC's own policy documents do not distinguish between ZODs and other drafts and there appears to be no clear policy nor a clear rationale for why the ZODs are not published at that time". It confirmed that in fact the ZOD is not mentioned in the IPCC Procedures because they are informal documents developed by the WGs, not required by the IPCC Procedures, unlike all the other drafts (First, Second, Final). It explained that the type of ZOD and the method of its review are a matter for each WG but these are embryonic working documents that are incomplete and not intended for public disclosure.



27. Therefore the IPCC WG1 has said that there is no written record of an IPCC position on the confidentiality of the ZOD now, from the time of the AR4 or previously. The written statement in the IPCC Procedures about the confidentiality of drafts refers only to those drafts that undergo formal review (First, Second, Final) and not the ZOD's which are informal documents.
28. In the Commissioner's view there was a clear understanding that ZOD's would not be disclosed and this is confirmed by the fact that when the Met Office began searching for the requested information a number of scientists expressed concern about disclosing the ZOD's which they considered to be confidential. It would appear that there is an unwritten principle of confidence in relation to the ZOD's and an understanding that they are not intended for public disclosure.
29. The Commissioner does not accept the Tribunal's suggestion that because there is no longer a need for a safe space and because there should be no concerns about misuse of the ZOD's, once the final report has been published, the public interest favours disclosure. This ignores the reaction of the IPCC. The question here surely is not what effect disclosure would have on the development of the report or the possible misinterpretation of its findings but what the effects of disclosure would be on the relationship with the IPCC. In finding that the exception is engaged the Commissioner must accept that there would be a negative reaction from the IPCC to disclosure and this would at least make working relationships with UK climate science experts more difficult. The impact on the working relationship would have been greater if the documents were disclosed whilst the process was live, but there was still clearly a significant impact from disclosing after the process was complete and relatively recent. The Commissioner would accept the level of impact might decline over time but he finds that there would still have been a significant impact at the time of the request. At the time of the request the 2007 report was the latest report available<sup>4</sup>. In the Commissioner's view there is a strong public interest in avoiding damaging the UK's relationship in this way.
30. There is also an inherent public interest in protecting the confidences of other states and international organisations. The disclosure of information provided by another state in confidence would give the impression that the UK government could no longer be trusted with

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<sup>4</sup> [http://www.ipcc.ch/publications\\_and\\_data/publications\\_and\\_data.shtml](http://www.ipcc.ch/publications_and_data/publications_and_data.shtml) IPCC reports

confidential information. In this sense the effect of disclosure extends beyond just the UK's relationship with the IPCC because this could affect our relations with the international community more generally. Therefore the Commissioner has given the arguments regarding the importance of maintaining trust and confidence between states and international organisations particular weight.

31. On the other hand the Commissioner is of the view that there is a strong public interest in disclosure but finds that this has been met to a certain extent by the publication of the FOD's, SOD's and final report and the fact that the process allows for interested parties to contribute to the process (anyone can declare themselves an expert and review the FOD's and SOD's). There is already a degree of transparency in the system but the Commissioner accepts that disclosure of this particular information would serve the public interest in the sense that it would contribute to better public understanding of the IPCC's findings and how the views contained in the final AR4 report were arrived at.
32. The Commissioner is aware that the issue of climate change and climate science is one of great public interest and that in recent years concerns have been expressed about the integrity of some of the climate science. That said, the Commissioner must also take into account the fact that previous studies and investigations into climate science have broadly upheld the key facets of the science and the Commissioner has not seen any validated evidence to suggest that the IPCC is ignoring important evidence or otherwise acting in such a way that it would cast doubt on its findings. Had this been the case then there public interest in disclosure would be stronger.
33. The Commissioner is mindful of the presumption in favour of disclosure and accepts that there are strong arguments on each side. However, on balance he has found that in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosure.

## **Other exemptions**

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34. The Commissioner is satisfied that the information should be withheld on the basis of regulation 12(5)(a). Therefore the Commissioner has not gone on to consider the other exception relied on by the Met Office, namely regulation 12(5)(f) (adversely affect interests of information provider).

## Right of appeal

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35. 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)

36. 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.
37. 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 .....**

**Steve Wood**  
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