



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2014/0115

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50527006
Dated: 10 April 2014

Appellant: David Holland

Respondent: The Information Commissioner

Heard on the papers: Field House

Date of Hearing: 29 September 2014

Before

Chris Hughes

Judge

and

Michael Hake and Steve Shaw

Tribunal Members

Date of Decision: 25 October 2014

Date of Promulgation: 29 October 2014

Subject matter:

Freedom of Information Act 2000

Environmental Information Regulations 2004

Charter of Fundamental Rights of the European Union 2000

REASONS FOR DECISION

1. Professor Peter Wadhams of the Department of Applied Mathematics and Theoretical Physics in the University of Cambridge is a review editor for the Inter-Governmental Panel on Climate Change (IPCC). The IPCC was established in 1988 under the auspices of the relevant UN bodies to assess the information relevant to the risk of anthropogenic climate change. This is an unpaid, honorary position which he has obtained through the nomination of Her Majesty's Government to the IPCC and the selection by the IPCC of that nomination. The IPCC periodically publishes reviews of the latest research in the field "assessment reviews" to aid understanding of the issue. The fifth review "AR5" was at the time of the request in preparation.
2. On 12 November 2013 Mr Holland made a FOIA request of the University of Cambridge identifying Professor Wadhams and seeking copies of any "AR5" Review Editors Reports held by the University, instructions held relating to the preparation and submission of the reports, relating to the retention, disclosure or deletion of copies of the reports, information as to any UK government departments which had received copies of the reports and "In the event that you refuse to disclose any of the Review Editors Reports that you do hold, please provide any information that you hold indicating that the Review Editors Reports will be published..."
3. On 10 December the University responded stating that the information was neither held by the University under FOIA nor in its possession under EIR. Mr Holland challenged this and on review the University clarified its position. By an e-mailed letter of 9 January 2014 the University quoted guidance from the Information Commissioner with respect to both FOIA and EIR. This stated that a public authority neither held nor had information in its possession if the information was not held for its own purposes. The reply stated (bundle page 48-9):-

"The Information Compliance Officer made proper enquiry of Prof Wadhams, who stated that the work undertaken for the IPCC had been undertaken by him personally on a voluntary basis and that he considered the AR5 WGI Review Editors Reports ("the Reports") to be confidential to the IPCC Secretariat. This work does not form part of his University duties; consequently even if the information sought were held within the university, it is not held to any extent of its own purposes. Prof Wadhams

statement is confirmed by the IPCC website which states that "thousands of scientists from all over the world contribute to the work of the IPCC on a voluntary basis"...

It is not suggested that such contributions are made by or on behalf of the institutions in which such scientists are based. Based on this, I conclude that the information requested in your question 1 is not in the University's possession under the EIR because it is not being held to any extent of the purposes of the University of Cambridge and therefore that the Information Compliance Officer was correct to refuse this part of your request.

....

Based on this, and for the same reasons as my decision in respect of question 1, I conclude that the information requested in your questions 2 and 3 is not held by the University under the FOIA because it is not being held to an extent the purposes of the University of Cambridge and therefore that the Information Compliance Officer was correct to refuse these parts of your request.

As the University has not held the Reports, it would perhaps be more correct to say in answer to question 4 that the University has not forwarded the reports to any UK government departments....

4. Mr Holland complained to the ICO who investigated and on 10 April 2014 issued his decision. He considered Mr Holland's argument that Professor Wadhams was listed by the IPCC as affiliated to the University and that if the Editors Reports were created or received by the University then they were held regardless of the individual's employment status; however the ICO concluded that the reports were not held by the University and that any work undertaken by Professor Wadhams was undertaken independently of the University. Accordingly for both the purposes of EIR and FOIA the information was not held by the University of Cambridge.

The appeal to the Tribunal

5. In his appeal Mr Holland argued that ICO was wrong its interpretation of the meaning of the word "held", he argued that the University had not carried out a proper investigation, and that Professor Wadhams was not acting in a private capacity but as an employee at the University. The University paid his salary, and "*the work that he*

undertook was a public purpose as a nominee of the British government and it is a core area of interest of the University". The IPCC website listed him as a Professor at Cambridge and he would have applied as a Professor and not as a private individual. He argued that the Professor's long-standing association with the IPCC was evidence to the information requested was held for the University's purposes. Furthermore his webpage on the University website showed both a long association with the University and also a long-standing interest in climate change and the IPCC. In subsequent submissions he has disputed the validity of the ICO guidance on whether information is "held", he has drawn attention to his attempts to obtain details from the Department of Energy and Climate Change (DECC) of the Professor's email and postal addresses used in correspondence with them about his expenses for this work (he confirmed after the hearing that DECC had notified him that the University address was used in connection with IPCC issues), he also drew attention to the importance of transparency and to the provisions of the Aarhus Convention on Access to Environmental Information.

6. In resisting the appeal the ICO reaffirmed the reasoning in his decision notice as to the interpretation of Regulation 3(2) EIR – determining when information is held by a public authority, that this interpretation was consistent with Article 5(1)(a) of the Aarhus Convention. He contended that information produced by a member of the staff of the University would not be held by University if it was done in a private capacity even if done on the University's premises and information systems (bundle page 26 para 30). The fact that the Professor was employed and paid by the University did not mean that he was acting as an employee of the University when he discharged his functions for the IPCC. The fact that work was carried out for a public purpose did not mean it was carried out for the University. The Professor's application to the IPCC was as an individual, the connection with a University helped to establish his credentials and given the nature of the work any individual would be likely to be linked to a University.
7. The questions for the Tribunal are first were whether parts of the information was "held" under Regulation 3(2) EIR (it may be noted that EIR implements the European Directive adopted by the EU as part of its compliance with the Aarhus Convention):-
"For the purposes of these Regulations, environmental information is held by a public authority if the information-

(a) Is in the authority's possession and has been produced or received by the authority; or

(b) Is held by another person on behalf of the authority”

and secondly whether information was held under S1 FOIA.

8. There was a considerable amount of material before the Tribunal demonstrating Professor Wadhams' significant contribution to the science of the Arctic regions in particular to the understanding of the physics of sea ice. There was also information about Cambridge University Press's publication of material on behalf of IPCC. It is unsurprising that such a distinguished academic should have a role with the IPCC; nor is it surprising that IPCC should arrange publications with a leading academic publisher. However the position is that Professor Wadhams' role with IPCC came about because Her Majesty's Government nominated him to this Inter-Governmental body. While he is a University of Cambridge academic, Cambridge did not nominate him or require him to carry out this role. It is the sort of role which Cambridge would expect its senior academic staff to undertake, but it cannot require them to do so, any more than it can require IPCC to accept its staff. Professor Wadhams chose to carry out this highly important work; however it was his autonomous choice. It is the sort of choice which academics make.
9. Indeed this sort of arrangement goes beyond academics. The situation of Professor Wadham is not unique. In our experience it is not unusual for senior professionals of good standing within public authorities or large commercial organisations to take part in working groups set up by Government Departments or to be nominated to public bodies on an independent professional basis similar to the one described to us in this case.
10. Moreover there is a key underlying principle which is reflected in the relationship between Professor Wadhams and the University - the need to protect academic freedom. The importance of academic freedom as a matter of public policy has been reflected in UK statute and is also contained in the Charter of Fundamental Rights of the European Union 2000 to which the UK is a party. This provides at Article 14 – Freedom of the Arts and Sciences:- “The arts and scientific research shall be free of constraint. Academic freedom shall be respected.” It is important to understand that this both applies **to** Universities - Governments should not “constrain” Universities;

but also **within** Universities – Universities should recognise the autonomy of academics as they pursue their academic interests.

11. In the light of the evidence it is clear that the University neither held the requested information under FOIA –any information relevant to the request was held by Professor Wadhams: nor was it produced or received by the University under EIR or held for it by Professor Wadhams. The information was received, held or produced by Professor Wadhams as a private individual on behalf of IPCC; the precise location at which Professor Wadhams carried out this role and the specific computer, library, desk and e-mail address he used for the role is immaterial.
12. There were submissions as to the public interest in disclosure of the information. It seems to the Tribunal that the public interest in disclosure is very limited. The IPCC is in essence an exercise in academic evaluation of the peer – reviewed papers published on issues relevant to climate change. Professor Wadhams role in this was contributing to the rigour of the process to ensure that the publications of IPCC were of the highest standard. The point of the IPCC is to publish its summary of the findings of thousands of research papers and it does so after a process of exemplary rigour and transparency of process. The public benefit of the publication of the environmental information will therefore flow from the work of publication by the IPCC, not from the publication of drafts and working documents. On the other side of the balance the interference with academic freedom which the disclosure of this material would represent is considerable, in addition to the breach of the duty of confidence owed to the IPCC and the fact that the material is a contribution to work in the course of completion. If the material was held, there would be no justification in releasing it.
13. The Tribunal is therefore satisfied that the ICO’s decision is correct in law and accordingly dismisses the appeal.
14. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 25 October 2014