



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

**Appeal No: EA/2014/0170**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FER0521520**

**Dated: 19 June 2014**

**Appellant: David Holland**

**First Respondent: The Information Commissioner**

**Second Respondent: The Meteorological Office (an agency of the Department for Business Innovation and Skills)**

**Heard at: St Katharine's House, Northampton**

**Date of Hearing: 17 April 2015**

**Before**

**Chris Hughes**

**Judge**

**and**

**Jean Nelson, Andrew Whetnall**

**Tribunal Members**

**Representation**

**Appellant: in person**

**Respondent: not represented**

**Second Respondent: Mr. George Peretz Q.C. (instructed by Mr. Simon Bell)**

**Date of Decision: 1 May 2015**

**Environmental Information Regulations 2004**

## **DECISION**

**The appeal is dismissed.**

## **REASONS FOR DECISION**

### Introduction

1. This is an appeal by the Appellant in these proceedings (“Mr Holland”) against the decision notice issued by the First Respondent (the Information Commissioner, the “ICO”) on 19 June 2014. On 31 July 2013 Mr Holland wrote to the Meteorological Office (an agency of the Second Respondent, Department for Business, Innovation and Skills- the Department is therefore public authority in this case, for convenience the “Met Office”), requesting information related to the Intergovernmental Panel on Climate Change (“IPCC”).
2. The IPCC was set up in 1988 by the World Meteorological Association and the United Nations Environment Programme to assess the scientific, technical and socio-economic information relevant to understanding the risk of human-induced climate change. It works by consolidating the state of scientific understanding of global climate change. It has published five assessment reports (AR1-AR5) periodically from 1990 to 2014. The assessment reports are prepared after a complex process by separate working groups each covering a distinct area of issues related to climate change.
3. The reports have considerable weight in the development of global and national policies on climate change and are widely cited. The key individuals who prepare the reports as authors, editors etc are selected by the IPCC from a list of nominations received from governments and other participating organisations and others identified as having special expertise. Their work for the IPCC is unpaid.
4. In July 2013 the fifth assessment report was anticipated shortly. Mr Holland’s request for information related to preparatory material for the fourth assessment report:-

*“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”*

5. The Met Office, having considered the request under the Environmental Information Regulations (“EIR”), declined to comply with the request relying on exceptions in regulation 12(5)(a) and (f) and concluding that the balance of public interest lay in upholding the exception.
6. Mr Holland appealed against this decision to the ICO. The ICO considered the application of 12(5)(a) which permits a public authority to refuse to disclose information to the extent that its disclosure would adversely affect “international relations, defence, national security or public safety”. He placed weight on letters sent on behalf of the co-chairs of IPCC WG1 requesting that the information should not be disclosed and on the argument of the Met Office (DN paragraph 15):

*“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.”*

7. He concluded that the exception would be engaged if disclosure makes international relations more difficult and stated (DN paragraph 17, 18):-

*“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.*

....

*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 [first and second order drafts]. 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 had 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.”*

8. In considering the public interest in disclosure the ICO pointed to arguments that:-
  - There was a value in a well-informed understanding and debate on climate change
  - Release of the ZOD would provide greater openness in allowing the assessment of the work of WG1 at an immature stage
  - ZOD information would help to promote the democratic accountability of the published drafts and final report and further inform the debate on climate change
  
9. In favour of maintaining the exception he noted:
  - The importance of maintaining trust and confidence in the conduct of international relations and the adverse effect on the UK's ability to protect its interests if it did not respect such confidences
  - Specific harm to the reputation of the Met Office if it agreed to divulge information agreed to be confidential
  - Further specific harm if IPCC were reluctant to use UK scientists which would result in an undermining of the ability of UK universities to undertake cutting edge research.
  
10. The ICO then considered the balance, partly by reference to a previous decision of this tribunal with respect to a similar request for the ZOD of WG1 for AR5. He concluded that there was clear understanding among the scientists involved that ZODs were confidential. He found that disclosure would make working relations of scientists more difficult. He gave particular weight to arguments about maintaining the confidence of other states and international organisations. While the Commissioner found that there were strong interests in disclosure these had been met to some extent by the process of publishing first and second order drafts and the final report. There was already a degree in transparency in the system. He found that there was no validated evidence that IPCC was ignoring important evidence or acting improperly. Having taken into account the presumption in favour of

disclosure he found that the balance of public interest lay in not disclosing the information.

11. In his appeal Mr Holland argued that there was a general international commitment to transparency and openness in these matters enshrined in UN resolutions, the Aarhus convention and statements by and about IPCC. He argued that the public stance of the UK government was in favour of access to information. He argued that IPCC scientists must have known of the policy about openness and therefore could not have considered the materials confidential. He alleged illegitimate conduct and conspiracy by scientists and that the claimed of confidentiality had been “cooked up” recently (notice of appeal paragraph 19). He quoted detailed extracts of communications from the co-chairs of IPCC WG1 describing them as “fabricated” and “posturing threats”. He argued that a decision of the 33rd session of IPCC relating to confidentiality was illegitimate.
12. In lengthy written submissions he repeated these points. He argued that as the information requested related to “emissions” there was no legal power to withhold the information requested. He argued that the decision of the 33<sup>rd</sup> session on confidentiality did not apply after the publication of the report. He argued that there was no indication that a majority of members of WG1 supported the approach to confidentiality being put forward. In oral argument he emphasised that the EU in making the Environment Information Regulations was bound by the Aarhus Convention. He submitted that the IPCC could have no unwritten agreements on confidentiality. He argued that the IPCC arrangement was that drafts were confidential until the adoption of the report and then all drafts were to be publicly available.

#### Dr Stott's evidence

13. Dr Peter Stott has been employed by the Met Office since 1996 in increasingly senior posts related to climate change. Among his substantial contributions to climate science have been his roles as a lead author for WG1 of AR4 and also Coordinating Lead Author for WG1 on AR5. He detailed the working arrangements prevailing within IPCC and in particular WG1 and explained the working practices adopted in WG1.

14. In each of the five Assessment Reports groups of scientists had assembled the latest published scientific research relevant to climate change and produced a synthesis summarising the research. At the start of each cycle of work of IPCC a group of authors, expert in the relevant field, was convened. The task was to take the very brief scoping document produced by the Governments and the IPCC Secretariat to set the area of work of the group and within that scope develop a comprehensive and robust review of the state of the science in that area. Many of the authors would be new to IPCC and also new to the role they were now discharging of producing an assessment for IPCC which was policy relevant but not policy prescriptive. The conclusions of the assessment reports on different issues were reported in calibrated language with “very strong” meaning that the scientific evidence on a point was unequivocal and “very likely” indicating a 90% confidence in the specific conclusion. This use of language was not the same as the writing of a review article which the authors would be familiar with and needed to be learned.
15. Different working groups adopted different initial arrangements. The first step WG1 took was to produce a ZOD which functioned in part as a training exercise as new members of the group learned the approach and developed working relationships for authors from across the international community coming from many different cultures. It was understood to be a confidential process and it was produced on the basis that the draft would be labelled “do not cite, quote or distribute”. It gave members of the WG the opportunity to formulate ill-thought out ideas and test them out within the restrictive circle of the WG and the very small number of external experts who were asked to comment at this stage. It reflected the normal processes of science where an informal brainstorming discussion would enable researchers to test possible ideas with colleagues to see which ideas merited further examination and development and which could be discarded. After that stage the FOD would be produced and subjected to the full rigorous and transparent processes of the IPCC.
16. He emphasised that the IPCC stands and falls on its final product and the traceability and challenge built into the process supported the robustness of the AR. He could see no value in access to the initial unformulated thoughts of 2004.
17. He confirmed that concerns over the unauthorised release of information relating to the previous report had led to change in working practice, reducing the amount of information provided to authors on “memory sticks”.

18. He confirmed that while there might be some variation of views as to the precise bounds of confidentiality among the members of the working groups the expectation of confidentiality was widely shared and the co-chairs of the WG were entitled to express the views they had. He distinguished between the unauthorised publication of AR5 ZODs in America, which had not been done as a result of a decision of the US authorities and had been done by unknown persons. The only action available to IPCC had been to ensure the removal from the host website. He was not aware of any EU government releasing confidential IPCC material under the Aarhus Convention. If the material was disclosed there was a risk that *“the IPCC could well decide that it would be too great a risk to the integrity of the assessment process to have UK scientists as co-chairs of future reports...”*.
19. The Tribunal was satisfied that Dr Stott gave fair and considered evidence. He was an impressive and reliable witness.

#### The questions for the Tribunal

20. The issues the tribunal has to resolve are whether disclosure of the requested information would adversely affect relations between the IPCC and the UK and if so would the public interest in maintaining the exception outweigh the public interest in disclosure.
21. Although Mr Holland strenuously denied it, the EIR and the Aarhus Convention from which they derive make explicit provision for the possibility of the withholding of environmental information where harm to international relations would result. The greater disclosure requirements in the case of emissions are not relevant to this exception.
22. Mr Holland has argued that there was no rule of confidentiality and no expectation of confidentiality. He argued that the decision contained in “The Report of the 33rd session of the IPCC held at Abu Dhabi 10-13 May 2011” was invalid or did not restrict the disclosure of the ZODs. At page 16 paragraph 8 the IPCC noted the importance of the issues related to confidentiality stating:
- “The Panel noted that issues related to confidentiality of draft reports is important and that clear guidance is needed on what the rules for the confidentiality of draft reports during drafting and review..”*

23. It then set out the rules:-

*“. The Panel decided that the drafts of IPCC Reports and Technical papers which have been submitted for formal expert and/or government review, the expert and government review comments, and the author responses to those comments will be made available on the IPCC website as soon as possible after the acceptance by the Panel and the finalization of the report.*

*IPCC considers its draft reports, prior to acceptance, to be –predecisional, provided in confidence to reviewers, and not for public distribution, quotation or citation”*

24. The tribunal is satisfied that the decision is clear. The first paragraph provides for the publication of drafts *which have been submitted for formal expert and/or government review*. That clearly encompasses such things as FODs for which there is a clear and detailed process for review. It does not cover a ZOD for which there is no formal expert or government review. The second paragraph explains the rationale for not publishing the draft reports – they have not been accepted, are pre-decisional and are not for public distribution quotation and citation. The rationale for not disclosing formal drafts until the end of the process is clear, the same arguments apply with even greater force to informal drafts – for which there is no intention to publish expressed.

25. The views expressed by co-chairs of the WG1 (bundle pages 325-328) are clearly within the normal range of duties of working group chairs to ensure that the business of their working groups are carried out effectively in accordance with the procedures of the IPCC.

26. Although Mr Holland has advanced the argument that the views of the co-chairs are not those of the IPCC and therefore “international relations” are not at issue, that position is clearly not sustainable in the light of the articulation of the IPCC position at Abu Dhabi. The tribunal is satisfied that the impact on WG1 – a body created by IPCC to carry on its work is an issue of significance and disclosure is a matter of international relations between the UK and IPCC and its constituent parts.

27. Furthermore the evidence of Dr Stott was clear and convincing, the disclosure of the material by the Met Office would harm relations. This is further confirmed by the letter from the secretariat to WG1 (page 325):



*“It is the previously stated position of the current Co-Chairs of WG1 that the 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.*

28. There is clear and convincing evidence that disclosure would harm international relations and the tribunal is satisfied that the exception is engaged.
29. In weighing the competing public interests in disclosure and non-disclosure the tribunal considered that the claims of Mr Holland were over-stated. Although he attempted to argue for misconduct he was unable to produce any coherent evidence or argument for it, like the ICO (DN paragraph 32) the tribunal has seen no evidence that the IPCC is in any way failing in its responsibilities. At paragraph 21 of his DN the ICO set out the arguments for disclosure. In the actual context of the request the tribunal considered them profoundly over-valued.
30. In oral argument Mr Holland stated that he was “not concerned about the science it’s the conclusions drawn from the science”. In the light of this it was perhaps surprising that he cast doubt on Aarhenius original work on the absorption of infra-red radiation by atmospheric carbon dioxide (carried out in 1896) stating that he had discovered by reading an article on google that Aarhenius’s methodology could not have worked: “It is common knowledge in scientific circles ... crystal was not effective”. He appeared unaware of subsequent developments in physics relevant to Aarhenius’s research into the behaviour of gases. He argued that climate science was akin to Archimedean cosmology. In his view the models developed in the field were wrong “because we don’t understand the range of variations without anything changing”. He could not see how it was possible to have an objective assessment without the full details of the ZOD and the names of those who had seen it. He believed that there had been misconduct at UEA Climate Research Unit – he felt that this was “unanswerable”. He explicitly discounted the two scientific reviews of the work of the Climate Research Unit of the University of East Anglia which found that there had not been scientific misconduct and remained of the view that there was misconduct.

31. The IPCC process is a large collaborative exercise at gathering together the latest scientific evidence on climate change and drawing robust conclusions from it. The point of the IPCC is to publish information – not to store it in secret. It carries out its processes rigorously with a very wide degree of participation and the publication of the key documents which set out the advice, challenge and review that it has received during a drafting process last several years. Furthermore since it is based on the evolving body of scientific knowledge all its conclusions in one report are subject to the challenge of the further research published in the period leading to the next report. All its conclusions are therefore, like all good science, subject to revision in the light of better evidence and more robust modelling of the data. The academic processes underpinning the IPCC assessment reports therefore provide the scrutiny to test the validity and robustness of the conclusions. When the ZODs were requested in 2013 they were at least 7 years old. Not only were they superseded by the successive drafts of AR4 leading to the published AR4 itself; but AR4 was about to be superseded by AR5 containing an analysis of all the work published subsequent to AR4. Science had moved forward during that time, the ZODs were by the time they were requested rough out of date drafts of no value in informing anyone of what the state of climate science is in 2013.
32. The IPCC process itself is therefore designed to promote a well-informed understanding and debate. The process promotes understanding and is transparent. The publication of the ZODs is a distraction with no value in promoting public understanding. In his oral submissions Mr Holland seemed to accept that: “there is nothing in the information...I don’t expect to get anything...I don’t think there’ll be a lot.” However, he continued “I insist there is a public interest”.
33. In contrast to this the consequences of publishing the ZODs are real and significant. It would undoubtedly detract from the trust with which the Met Office and UK scientists are viewed as able to work effectively within the norms of the scientific culture reflected by the IPCC statements which reflect good practice. Although in scientific terms they are of no substance, their publication would make the building of trust relationships between new colleagues of many different cultures more difficult and obstruct the effective working of WG1 by obstructing the initial free-flow of ideas necessary to building the relationships.

Conclusion and remedy

34. The tribunal is satisfied that there is no error in law in the ICO's decision notice. He has correctly weighed the balance of public interest. This appeal is entirely without merit and is dismissed.

35. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 1 May 2015