

E. LACK OF TRANSPARENCY AT IPCC POINTS TO A RESULT-ORIENTED PROCESS

Despite the broad and sweeping implications of the Administrator's Endangerment Finding, EPA has shown little regard for more than a perfunctory level of transparency and public disclosure. By electing to outsource the agency's scientific assessment into the causal relationship between greenhouse gases and the earth's temperature, the Administrator also dramatically limited the public's access to information about her decision-making process and the information supporting her decision.

For example, Volume I of EPA's Response to Public Comments about the Endangerment Finding contains a response to a commenter who complained about the unavailability of raw data, computer models, and other information that was presumably used to reach the conclusion that man-made greenhouse gases affect the Earth's temperature. In response, EPA simply claimed that core scientific information need not be included in the record because "the Administrator is reasonably relying on major assessments by the USGCRP, IPCC, and NRC as the *primary scientific and technical basis for her endangerment decision.*"¹⁵⁶

If EPA's ability to be fully transparent about the information that forms the basis of its Endangerment Finding rests on its own lack of access to that information, then little confidence can be had (1) that EPA was truly grounded in its decision and (2) that the Administrator's decision was truly her own.

EPA gains nothing by passing the transparency buck to the entities upon which it relied for scientific information because those entities have been the antithesis of transparent. Even a cursory review of the IPCC contributors' record on this front quickly reveals not only a total disregard for open government—but worse, affirmative disdain for transparency and utter contempt for citizens who exercise their right to obtain public information.

Emails disclosed since the conclusion of the comment period reveal that contributors actually cited their IPCC involvement as a purported method of *circumventing* freedom of information laws—including the United States Freedom of Information Act ("FOIA"). In an email to NASA Climatologist Gavin Schmidt, Dr. Jones explained that he and others had agreed on a plan that they believed would render the open records laws inapplicable to their information: "The FOI line we're all using is this. IPCC is exempt from any countries FOI – the skeptics have been told this. Even though we...possibly hold relevant info, the IPCC is not part of our remit (mission statement, aims etc) therefore we don't have an obligation to pass it on."¹⁵⁷

¹⁵⁶ *Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments*, Volume I, Response 1-62.

¹⁵⁷ Email from Phil Jones to Gavin Schmidt, August 20, 2008, available at <http://www.eastangliaemails.com/emails.php?eid=914&filename=1219239172.txt> (last visited Feb. 16, 2010).

Unlike the United States, where the Freedom of Information Act was enacted in 1966¹⁵⁸, Britain did not enact its Act until 2000. Notwithstanding the fact that CRU is publicly funded by the British taxpayers, the emails reveal a certain amount of surprise—which was quickly overtaken by disdain—that the law would apply to CRU scientists.

An email to former CRU Chief Tom Wigley indicates Dr. Jones initially hoped that university officials and potential requestors might be unaware of his country's open records law: "I wouldn't tell anybody about the FOI Act in Britain. I don't think [the university] really knows what's involved. . . I think it is supposed to mainly apply to issues of personal information - references for jobs etc."¹⁵⁹ The following month, in an email to Pennsylvania State University's Michael Mann, Dr. Jones expressed a willingness to simply—and illegally—delete information rather than comply with the law and disclose it: "*If they ever hear there is a Freedom of Information Act now in the UK, I think I'll delete the file rather than send to anyone.*"¹⁶⁰

Later, as Dr. Jones explained in an email to Ben Santer of the Lawrence Livermore National Library in California, university officials initially attempted to enforce the law but Dr. Jones convinced them otherwise: "When the FOI requests began here, the FOI person said we had to abide by the requests. It took a couple of half hour sessions - one at a screen, to convince them otherwise showing them what [Steve McIntyre's ClimateAudit] was all about. Once they became aware of the types of people we were dealing with, everyone at UEA (in the registry and in the Environmental Sciences school—the head of school and a few others) became very supportive."¹⁶¹ In other words, because Dr. Jones did not like the individual requesting public information, he simply worked to thwart that requestor's access to it. But, merely denying access was not enough—in the same email Dr. Jones later boasted that he destroyed information in order to avoid the possibility of having to produce it: "If he pays 10 pounds (which he hasn't yet) I am supposed to go through my emails and he can get anything I've written about him. About 2 months ago I deleted loads of emails, so have very little - if anything at all."¹⁶²

The following email exchange between Dr. Jones, CRU colleague Tim Osborn, CRU Deputy Chief Keith Briffa, and Caspar Amman of the National Center for Atmospheric Research in Colorado is illustrative of the scientists' general (dis)regard for transparency. In the first exchange, Amman receives a forwarded email from an individual complaining about his inability to obtain information about the scientists' work on the IPCC report:

¹⁵⁸ Freedom of Information Act (1966), Public Law 89-554, 80 Stat. 383

¹⁵⁹ Email from Phil Jones to Tom Wigley, January 21, 2005, *available at* <http://www.eastangliaemails.com/emails.php?page=1&pp=25&kw=foi> (last visited Feb. 16, 2010).

¹⁶⁰ Email from Phil Jones to Michael E. Mann, February 2, 2005 (emphasis added), *available at* <http://www.eastangliaemails.com/emails.php?eid=490&filename=1107454306.txt> (last visited Feb. 16, 2010).

¹⁶¹ Email from Phil Jones to Ben Santer and Tom Wigley, December 3, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=940&filename=1228330629.txt> (last visited Feb. 16, 2010).

¹⁶² *Id.*

“I have read correspondence on web about your letter to the in relation [sic] to expert comments on IPCC chapter 6 sent directly by you to Keith Briffa, sent outside the formal review process. The refusal to give these documents tends to discredit you and the IPCC in the eyes of the public.”¹⁶³

Next, Ammann sends the complaint email to Dr. Jones, Briffa, and Osborn. Dr. Jones is the first to respond with a short email that says:

“It doesn't discredit IPCC!”¹⁶⁴

Osborn responds by recommending that Ammann simply ignore the email.

“I'd ignore this guy's request anyway. If we aren't consistent in keeping our discussions out of the public domain, then it might be argued that none of them can be kept private. Apparently, consistency of our actions is important”¹⁶⁵

At no time in the exchange did any of them suggest what state or federal laws might have governed how the request needed to be treated. Professor Briffa weighed in last with a response that undoubtedly conveyed the group's respect for transparency in government:

“I have been of the opinion right from the start of these FOI requests, that our private, inter-collegial discussion is just that—PRIVATE. Your communication with individual colleagues was on the same basis as that for any other person and it discredits the IPCC process not one iota not to reveal the details. On the contrary, submitting to these "demands" undermines the wider scientific expectation of personal confidentiality. It is for this reason, and not because we have or have not got anything to hide, that I believe none of us should submit to these 'requests'.”¹⁶⁶

In another exchange, Dr. Jones again responded with flippant disregard for open government:

“You can delete this attachment if you want. Keep this quiet also, but this is the person who is putting in FOI requests for all emails Keith and Tim have written and received re Ch 6 of AR4. We think we've

¹⁶³ Email from Bryan Lynch to Caspar Amman, June 21, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

¹⁶⁴ Email from Phil Jones to Caspar Amman, June 23, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

¹⁶⁵ Email from Osborn to Keith Briffa, Phil Jones, and Caspare Amman, June 23, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

¹⁶⁶ Email from Keith Briffa to Tim Osborn, Phil Jones, and Caspare Amman, June 23, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

found a way around this...This message will self destruct in 10 seconds!”¹⁶⁷

And just as Briffa and Osborn recommended that Ammann ignore the open records request again without contemplating what the law might have been in Colorado or the greater United States—Dr. Jones similarly urged a colleague in Australia to disregard requests for information: “Had an email from David Jones of BMRC, Melbourne. He said they are ignoring anybody who has dealings with [ClimateAudit], as there are threads on it about Australian sites.”¹⁶⁸

NASA’s Gavin Schmidt took the climate scientists’ disdain for citizens who file open records requests to a whole new level. In an email to the Lawrence Livermore Laboratory’s Ben Santer, Schmidt complains that global warming skeptics who use open records laws to obtain climatologists data are “like Somali pirates.”¹⁶⁹ It is ironic that Schmidt compared the records requestors to law-breaking pirates—because it was actually those who were depriving others of their right to access public information who may have been violating the law.

On January 22, 2010, the British Information Office revealed that the CRU scientists’ criminally violated Freedom of Information Act. Britain’s Deputy Commissioner of Information indicated that the CRU scientists violated the nation’s open government laws: “requests under the Freedoms of Information Act were not dealt with as they should have been under the legislation. Section 77 of the Freedom of Information Act makes it an offence for public authorities to act so as to prevent intentionally the disclosure of requested information.”¹⁷⁰

Professor John Beddington, Chief Scientific Advisor to the British Government said, “I don’t think it’s healthy to dismiss proper scepticism. Science grows and improves in the light of criticism. There is a fundamental uncertainty about climate change prediction that can’t be changed.”¹⁷¹

¹⁶⁷ Email from Phil Jones to Michael Mann and Raymond S. Bradley, May 9, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=877&filename=1210341221.txt> (last visited Feb. 16, 2010).

¹⁶⁸ Email from Phil Jones to Tom Wigley and Wei-Chyung Wang, June 19, 2007, *available at* <http://www.eastangliaemails.com/emails.php?page=1&pp=25&kw=foi> (last visited Feb. 16, 2010).

¹⁶⁹ Email from Gavin Schmidt to Ben Santer, December 2, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=939&filename=1228258714.txt> (last visited Feb. 16, 2010).

¹⁷⁰ Email from the Information Commissioner’s Office Press Office to Jonathan Leake, The Times of London, January 22, 2010, *available at* <http://www.docstoc.com/docs/23993708/Climate-Email> (last visited Feb. 16, 2010).

¹⁷¹ Ben Webster, *Science Chief John Beddington Calls for Honesty on Climate Change*, THE TIMES OF LONDON, January 27, 2010, *available at* <http://www.timesonline.co.uk/tol/news/environment/article7003622.ece?&EMC-Bln=99KCH2F> (last visited Feb. 16, 2010).