Department of Energy
& Climate Change
3 Whitehall Place,
London SW1A 2AW

www.decc.gov.uk

Your ref:
Our ref.: **IR 12/1124**

6 November 2012

Dear

RE: Request for internal review – 39 specific documents & emails containing the word 'climategate'

Thank you for your email dated 11 September 2012 which contained the following request related to the response the Department sent to you on 10 September 2012:

"Please could you conduct an internal review into the decision to a) withhold documents and b) redact parts of the documents released. I would be grateful if you could provide narrative and explanation for specific documents and redactions."

I am an Acting Director at DECC with responsibility for the policy area within which your original request fell and, in accordance with Departmental guidelines, your request for an internal review has been referred to me. My task is to consider whether or not your request for information has been considered thoroughly and impartially, within the terms of the Freedom of Information Act.

In the following sections, I have outlined the conclusions reached as a result of the internal review that has been undertaken.

Documents previously withheld

After careful consideration the Department is upholding its decision for eight of the 16 documents that were originally withheld under the exemptions specified in the response letter EIR 12/1124 dated 10 September 2012. In that letter, the exemptions applied to the following documents:

01DEC626, 01DEC627, 01DEC636 (related to cabinet/cabinet committee information); **01DEC631; 01DEC641; 01DEC646; 01DEC650;** and **01DEC651**

were clearly specified and public interest test arguments were provided for those documents.

The Department considers the working assumption, as contained in Ministry of Justice guidance[1], that cabinet/cabinet committee documents should normally be withheld, still applies to the documents **01DEC626, 01DEC627** and **01DEC636,** and they are being withheld under Regulation12(4)(e) – internal communications. I note that any proposal to release material from those documents would need to be referred to the Cabinet Office.

Regarding document **01DEC631**, a powerpoint presentation by a private market research company, I would add that in reaching its decision to withhold it under Regulation 12 (5)(e) and 12(5)(f), the Department also took into account the company's request that the document be withheld. I would note also that much of the content of document **01DEC641**, which is about Saudi Arabia and climate change and continues to be withheld under Regulation 12(5)(a) and 12(4)(e), falls outside the scope of the 'climategate' issue.

Documents **01DEC646** and **01DEC650** continue to be withheld under Regulation 12(4)(e), and **01DEC651** continues to be withheld under Regulation 12(4)(e) and 12(5)(a).

The Department has decided from the internal review that there are, however, insufficient grounds for continuing to withhold the following, restricted-status documents:

01DEC620, 01DEC621, 01DEC629, 01DEC630; 01DEC633, 01DEC638, 01DEC640; and **01DEC642**

Copies of these eight documents (with some personal date redacted under Regulation 12(3)) are therefore provided with this response. It should be noted that:

- **01DEC620** is an email with an attached copy of a submission plus Annex, parts of which have been redacted in accordance with the exception pursuant to EIR 12.4(e) relevant to internal communications. The public interest test argument previously applied to this document still applies to the redacted sections.

[1] See: http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/working-assumptions/foi-assumptions-cabinet .

- **01DEC630** is an email that contained an embargoed copy of the Independent Climate Change E-mails Review that was chaired by Sir Muir Russell and published in July 2010. A copy of this review is available at: http://www.cce-review.org/pdf/FINAL%20REPORT.pdf

- **01DEC633** is an email that included, as an attached document, a copy of Media Monitoring Unit briefing for 29 November 2010. As the briefing document did not contain any reference to 'climategate', it is not included as part of the document that is now released.

- **01DEC638** is an email that contained a copy of the briefing that was released as **01DEC637** in the EIR 12/1124 response.

- **01DEC642** is an email that contained an embargoed copy of the House of Common Science and Technology Select Committee's report on the disclosure of climate data from the Climatic Research Unit at the University of East Anglia. This report is in the public domain and available at: http://www.publications.parliament.uk/pa/cm200910/cmselect/cmsctech/387/387i.pdf

Redaction of parts of released documents

The internal review concluded that the Department was over cautious in redacting certain material from some of the released documents and is accordingly removing some redactions, as detailed below. A full summary of these changes is given in the table at the end of this section.

Firstly, the review identified a couple of redaction errors in documents **01DEC617** and **01DEC619**. In the former, the Department's reference number was incorrectly redacted, while in the other document a short paragraph was redacted when exactly the same paragraph was left unredacted in the released document **01DEC637**. The paragraph in question was:

"*Famously, Prof Richard Lindzen is at odds with the consensus, insisting that doubling CO_2 concentration will lead to only about 1°C of warming but his evidence is almost universally considered weak and his arguments misplaced.*"

Regarding document **01DEC615**, which was a report on a conference on the science and economics of climate change, certain names were redacted on the grounds that they were not listed in the conference's published programme information. However, the individuals whose names were redacted, also their views on climate change, were already known in the public domain. Hence, it was concluded that such redactions were unjustified.

In document **01DEC634** the redaction applied to Professor Phil Jones (in paragraph numbered as 6 in the document) has now been removed. His name was redacted because it might have helped identify a redacted name of a junior official in the same paragraph, who had an expectation of privacy. However, given Professor Jones' name and the 'climategate' email discussed in that paragraph are in the public domain, the Department now considers redaction of his name may have been unjustified.

In document **01DEC648**, an internal email exchange on opinion polls about climate change, the names of members of the senior civil service (SCS), as well as more junior officials, were redacted in the interests of caution. However, the SCS is regarded as 'the public face' of the civil service and their names are normally released unless there are overriding reasons preventing disclosure. The redactions applied to SCS members still working within the Department have therefore been removed, as a result of the internal review.

Four of the released documents (**01DEC643**; **01DEC645**; **01DEC652**; and **01DEC653**) were reply letters from DECC Ministers to MPs who had written to the Department on behalf of individual constituents. In each of these letters the name of the MP was redacted as it was thought it might have helped to identify the constituent if the name was shown. The internal review concluded the Department was unnecessarily over-cautious in applying such redactions, consequently they are now removed.

While the internal review was in progress the Department received a separate FOI request for the redacted material before the name "George Monbiot" in document **01DEC639**, which were speaking notes for a presentation.

The words "the saintly" were originally redacted as they were considered to be the personal view of the speaker, and therefore exempted from disclosure under Regulation 12 (3) of the EIRs relating to personal data. The response letter to EIR 12/1124 included a reference to this effect but the explanation could perhaps have been made clearer.

As the document comprised presentation speaking notes, the decision to redact the words was made on the basis that, in printed form, the comment could have been misconstrued in the absence of the speaker's intonation. However, the Department now considers it was being overcautious and that there would be no breach of data protection principles in removing the redaction.

The table below summarises the redaction changes that have been made, following the internal review, to the set of redacted documents that were released in the EIR 12/1124 response. The first column contains the original document numbering that was used in EIR 12/1124.

DEPARTMENT OF ENERGY & CLIMATE CHANGE

Summary of redaction changes

	Reference	Status
1	01DEC615	*All redactions of names now removed*
2	01DEC616	*No change*
3	01DEC617	*Incorrect redaction of 'our ref.' number now removed*
5	01DEC619	*Incorrect redaction of paragraph now removed*
8	01DEC622	*No change*
9	01DEC623	*No change*
10	01DEC624	*No change*
11	01DEC625	*No change*
18	01DEC632	*No change*
20	01DEC634	*Redaction of Professor Phil Jones now removed*
25	01DEC639	*Redaction of 'the saintly' now removed*
29	01DEC643	*Redaction of MP's name now removed*
30	01DEC644	*No change*
31	01DEC645	*Redaction of MP's name now removed*
33	01DEC647	*No change*
34	01DEC648	*Redaction of SCS names now removed*
35	01DEC649	*No change*
38	01DEC652	*Redaction of MP's name now removed*
39	01DEC653	*Redaction of MP's name now removed*

Copies of the amended documents are enclosed with this letter.

The redactions that are being retained in the documents listed above are in accordance with the information given in the following two paragraphs.

In the documents that have been released personal data concerning certain government officials and some other third party individuals have been redacted in accordance with Regulations 12(3) and 13 of the EIRs and Section 40(2) of the Freedom of Information Act (to the extent that the information requested is not environmental). These EIR regulations and section 40(2) provide an exemption for personal data which then falls to be dealt with under the Data Protection Act (DPA) 1998. Personal data of third parties can only be disclosed in accordance with the data protection principles. In particular, the first data protection principle requires that disclosure must be fair and lawful and must comply with one of the conditions in Schedule 2 of the DPA. We consider that to disclose the names and contact details of certain officials and third party individuals within the released documents would contravene one or more of those data protection principles.

The definition of personal information to which regulation 12(3) & 13 and section 40 applies is wide and can include references to identifiable individuals. Our

view is that the release of certain names and contact details would not be fair and none of the conditions of Schedule 2 are met.

Appeals procedure

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely