

Dear Mr Hughes,

**Re: Freedom of Information Application
Peer review of the NIWA Seven Station series.**

I refer to your application under the *Freedom of Information Act 1982 (FOI Act)* received in the Bureau of Meteorology (**the Bureau**) on 21 February 2011.

Timeframe

2. An extension under section 15AA of the FOI Act was requested and you agreed to this extension which allowed the decision making period to be extended to 22 April 2011.
3. Due to the complex nature of this request, on 18 April 2011, a further short extension was sought until 6 May 2011 pursuant to section 15AB from the Office of the Australian Information Commissioner (**OAIC**). The OAIC granted the extension on 5 May 2011.
4. I am authorised to make a decision in relation to your request pursuant to s23 of the FOI Act. My decision and reasons for decision follow.
5. Attached to my decision is a Schedule of Documents (**the Schedule**) that I have identified as relevant to the scope of your request. The Schedule includes my decision on each document and the relevant exemption sections under the FOI Act.

Your request

6. You have requested access to copies of documents concerning the peer review by the Bureau of the "Seven-station" series by the New Zealand National Institute of Water & Atmospheric Research Ltd (**NIWA**), including copies of all correspondence between the Bureau and NIWA and any other organisation in relation to the peer review.
7. The text of your request follows:

[1] The completed Peer Review of the NIWA "Seven-station" series: Temperature Data for Auckland, Wellington, Dunedin, Nelson, Masterton and Lincoln ("Christchurch") as carried out by the Bureau of Meteorology (BoM) referred to in the attached copy letter to Dr David Wratt, Chief Scientist Climate, National Institute of Water & Atmospheric Research Ltd from Neil Plummer, Acting Assistant Director (Climate Information Services), Bureau of Meteorology dated 14/12/2010 - as conveyed to NIWA.

[2] All documentation relating in any way to the Peer Review of the NIWA "Seven-station" series: Temperature Data for Auckland, Wellington, Dunedin, Nelson, Masterton and Lincoln ("Christchurch") carried out by the Bureau of Meteorology (BoM) referred to in the attached copy letter to Dr David Wratt, Chief Scientist Climate, National Institute of Water & Atmospheric Research Ltd from Neil Plummer, Acting Assistant Director (Climate Information Services), Bureau of Meteorology dated 14/12/2010. This should include all correspondence between the BoM and NIWA, communications within the BoM on the NIWA "Peer Review" and communications to and from any outside organization or person, on the subject of the NIWA "Peer Review".

Including but not limited to digital data on BoM network or workstation hard disk drives, digital data on optical CD or DVD media, digital data on memory stick media, faxes, emails, email attachments, reports, papers, documents, letters, memos and texts. Specifically including but not limited to:

[3] The full "...range of supporting evidence provided.." including copies provided by NIWA of published papers and extracts from University theses.

[4] BoM assessments of the NIWA papers for "...scientific error, internal consistency, clarity and scientific logic."

[5] All station reports for the Auckland, Wellington, Dunedin, Nelson, Lincoln ('Christchurch'), Masterton and related or neighbouring sites as provided by NIWA to the Australian Bureau of Meteorology - in IBM compatible digital form.

[6] The data and methodology and any other evidence provided by NIWA to the Bureau of Meteorology relating to the reports including whatever evidence was provided by NIWA supporting the homogeneity corrections applied to the temperature record to create the 'seven station' series.

[7] All independent analyses "...appropriate to the aims of the review.." which were performed by the BoM, or any person or organization contacted by the BoM, whether finally included in the "Peer Review" or discarded.

[8] Include all instances where in the opinion of Dr Plummer or anybody else outside NIWA - "...the evidence provided by NIWA.." does not support the homogeneity corrections that have been applied to the temperature record to create the 'seven station' series.

[9] If not covered above - any evidence provided by NIWA to the Australian Bureau of Meteorology relating to reason or reasons for adjustments to the raw/composite station series.

[10] All documentation containing notes by the BoM or related parties relating to the "...appropriateness of the methods used to undertake the 'seven station' temperature analysis.."

[11] Invoices, statements, bills - from the BoM to NIWA relating to the "Peer Review of the NIWA "Seven-station" series: Temperature Data for Auckland, Wellington, Dunedin, Nelson, Masterton and Lincoln ("Christchurch") by the Bureau of Meteorology.." - and records of payments by NIWA for this "Peer Review".

The peer review process

8. The peer review process is a practice where the work of a scientist is subjected to scrutiny and review by other experts in the same field. Peer reviews are often undertaken by international experts. The purpose of the peer review is for a recognised expert in the field, who generally remains anonymous, to critique and provide feedback in relation to the study and any draft report. The feedback provided in a peer review process is considered to be an exceptionally valuable and important part of the research process. It is a long-established practice in the scientific community that peer reviews are conducted confidentially and on an anonymous basis.

9. The rationale for the maintenance of confidentiality and anonymity is to facilitate free and unfettered feedback to be given to the author of the research study and to robustly test a fellow scientist's proposed hypothesis. The principles and conventions which enable scientists to do this is the understanding that all communications, workings, raw data, test results and working drafts of papers are held in confidence. I consider that it is widely accepted in the scientific community that documents concerning peer reviews are not made public and it is only the final report that is made public. I understand that NIWA has made its final report publicly available.

10. Conducting research, including climate change research, is one of the Bureau's core activities. The Bureau's research is frequently conducted in collaboration with other international research agencies. The peer review process is also a key process in the Bureau's scientific research activities. Taking the time to review the work of others scientists is part and parcel of the discipline of being a scientist. The Bureau also uses the process of peer reviews to conduct testing and auditing of scientific material produced within the Bureau. This includes scientific methodologies, results and publications. A major component of this process is the right to anonymity. The provision of anonymity is essential in fields where leading experts, and the organisations they represent, maintain professional working relationships. Anonymity therefore allows reviews to be conducted in a frank and objective manner. Failure to protect the provision of anonymity will likely result in scientists withdrawing from the peer review process. The peer review process improves the quality of scientific research as it enables ideas and theories to be fully and properly tested before they are made public.

11. You may like to know that there is a range of publicly available material that may be relevant to the information you are seeking. These include a range of published scientific reviews on the topic of observational climate records, and the homogenisation of climate record. For your convenience, I have attached a list of some of those references. The material is available from professional libraries and on the internet including NIWA website which can be found at the following address:
<http://cliflo.niwa.co.nz/>.

My decision

12. A total of 161 documents were identified and I have decided to release 2 documents in full and to exempt in full the remaining documents. I have also decided to refuse access to documents falling within category 11 of your request under s24A of the FOI Act on the basis that documents fitting the description of that category do not exist.

13. The documents broadly can be described as documents received from NIWA as part of its request to the Bureau to conduct the peer review and documents prepared, obtained or edited by officers of the Bureau who conducted the peer review.

Reasons for Decision

14. The reasons for my decision follow.

Documents released full

15. Document number 138 in the attached Schedule is a letter from the Bureau to NIWA dated 14 December 2010 that provides, in general terms, the Bureau's response to the peer review. Document 152 is a duplicate of document 138. Document 138 is publicly available on NIWA's website. I have decided to release documents 138 and 152 in full.

Documents that do not exist

16. There are no invoices or records of payment in relation to the 'Seven-series' peer review as the review was not conducted for a fee. It is a standard scientific convention that such arrangements are largely shared across the entire international science community and not undertaken for a fee.

17. Accordingly, the Bureau does not hold in its possession documents described in category 11 of your request and that part of your request is refused under s24A on the basis that they do not exist. Section 24A of the FOI Act enables an agency to refuse access to documents if all reasonable steps have been taken to find the documents and they do not exist. A copy of s24A is attached with this decision.

Documents exempt in full

18. I have decided that the remaining documents described as exempt in full in the attached Schedule are exempt under sections 33(b), 33(a)(iii) and 47C of the FOI Act. Copies of those sections are provided with this decision.

Section 33(b) - Information provided in confidence by a foreign authority

19. I have considered the circumstances surrounding the request for the peer review in this case and the long standing convention that the process is universally accepted to be undertaken on a confidential basis.

20. Section 33(b) of the FOI Act provides that a document is an exempt document if disclosure of the document would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth.

21. Section 33(b) enables the exemption of documents if can be established that the documents were communicated in confidence at the time they were communicated (*Re Robinson and Department of Foreign Affairs (1986)* 11 ALN 20). It is sufficient that there be a general understanding that communications of a particular nature will be treated in confidence which may be inferred from the circumstances in which the communication occurred, the relationship between the parties and the nature of the information communicated (*Re Maher and Attorney-General's Department (1985)* 7 ALD 731).

22. NIWA was consulted in relation to this request and it has objected to the disclosure of documents concerning the peer review on the basis that they were provided on a confidential basis and that it understood that any material generated during the peer review process would also be kept confidential. I understand that NIWA has kept documents relating to the peer review process confidential and has not made documents available to the public, either under its equivalent FOI Act or by any other means.

23. I have concluded that both NIWA and the Bureau understood that the peer review would be conducted on a confidential basis. I consider that NIWA provided documents to the Bureau on the understanding that the documents would not be disclosed to anyone outside the peer review process, including any third party, and that the Bureau gave an undertaking of confidentiality. Taking into account the circumstances under which the documents were provided, the nature of the documents and the relationship between the parties, I have decided that documents that were provided to the Bureau (an authority of the Commonwealth) by NIWA (an authority of a foreign government) in confidence and that disclosure of those documents would disclose information communicated in confidence.

24. Accordingly, I have decided that the documents are exempt in full under section 33(b) of the FOI Act as described in the attached Schedule.

Section 33(a)(iii) - damage to the international relations of the Commonwealth

25. I have considered whether the disclosure of documents concerning the peer review, including those provided by NIWA to the Bureau in order that the Bureau undertake the peer review and those obtained or generated by the Bureau, would damage the relationship between NIWA, and other international research agencies, and the Bureau.

26. Section 33(a)(iii) of the FOI Act provides that a document is exempt under the FOI Act if disclosure would or could reasonably be expected to cause damage to the international relations of the Commonwealth. Section 33(a)(iii) is satisfied provided it can be established that the good working relations with other overseas governments or authorities would be diminished. The lessening of confidence by a foreign government or authority in the Commonwealth Government would or could reasonably be expected to cause damage to the relationship (*Re Maher and Attorney-General's Department*).

27. Scientific research, including peer reviews, is conducted collaboratively between authors and agencies in the global arena. Good working relationships are essential between international research agencies. If an international agency lost the confidence of another agency, it would be reasonable to expect that the relationship between the agencies would be diminished or damaged.

28. NIWA has advised that disclosure of confidential documents will damage the relationship between NIWA and the Bureau as NIWA will no longer be able to trust that the Bureau will, or can, maintain the confidentiality of NIWA's documents and other documents generated during a confidential peer review process.

29. International collaboration is an essential part of a research agency's ability to conduct research activity and publish papers. Maintaining good working relationships with other research agencies is an essential aspect of the Bureau's functions. To facilitate those international collaborations, an organisation must maintain good relationships with its international research partners. If the relationship of trust and collaboration is damaged, it could result in the reduction of information shared and could cause reluctance to seek participation in research activities in the future. The high standing of the Bureau in the international scientific community is essential to the Bureau's research activities and its development of a wide range of scientific products and services, produced largely for the benefit of the Australian community. In part, the Bureau's reputation is built on a rigorous process of internal review and external review, which includes peer reviews.

30. I consider that it is reasonable to expect that the disclosure of the confidential documents would seriously compromise the good working relations with NIWA. If it became known that the Bureau disclosed documents concerning a confidential peer review process, I would also expect that the standing of the Bureau in the eyes of its other international research agencies and partners would also be diminished. Any deterioration in the Bureau's relationships with NIWA and its other international partners would restrict the ability of the Bureau to undertake research and would impact on the quality of its research activity.

31. Taking into account the views of NIWA and the importance of maintaining good working relationships with NIWA and other international research agencies, I have concluded that release of documents concerning the peer review process would adversely affect the good working relationships between NIWA and the Bureau and could also adversely affect the relationships between the Bureau and other international research agencies.

32. Accordingly, I have decided that the documents are also exempt under section 33(a)(iii) as described in the attached Schedule.

Section 47(C) - deliberative process documents

33. A number of documents form part of the consultation and deliberation of the peer review process prior to any concluded suggestions or recommendations by the Bureau. These include emails between the review team in the Bureau and from the Bureau to NIWA, draft comments, internal Bureau documents and supporting documentation such as data reports, that were used and relied upon to conduct the peer review.. They are not purely factual documents and do not include operational information as defined under section 8A of the FOI Act.

34. Section 47C of the FOI Act provides that a document will be conditionally exempt if its disclosure would disclose deliberative matter in the nature of opinion, advice, consultation or recommendation where it has been prepared or taken place in the course of the Bureau's deliberative functions.

35. The documents are emails, draft reports and other communications with NIWA in relation to the peer review process. The peer review process is a core function of the Bureau. The documents were part of the Bureau consideration of the 'Seven-series' study.

36. I have decided that the documents are deliberative in nature and where created or received as part of the Bureau's functions. I find that these documents are conditionally exempt under section 47C of the FOI Act.

37. Nonetheless, I must give access to the documents unless, in the circumstances, access at this time would, on balance, be contrary to the public interest (s11A(5) of the FOI Act).

38. There is a public interest in documents of the Bureau being made available to the public for the purpose of encouraging public debate and to promote oversight of the Bureau's activities. There is also a public interest in having research documents about climate change available for public scrutiny and review.

39. However, there are a number of public interest considerations that weigh against disclosure. They include the public interest in:

- ensuring free and frank reviews of scientific research by fellow scientists continue to occur so that scientific research can undergo a thorough scrutiny of ideas, methods and scientific theory;
- ensuring that the Bureau is able to protect from disclosure documents that have been provided in confidence;
- maintaining the long established convention of peer reviews being conducted anonymously and confidentiality;
- ensuring the Bureau is able to find appropriate internal and external experts willing to conduct peer reviews on its behalf;
- ensuring that officers of the Bureau continue to participate in the peer review process; and
- ensuring the Bureau is able to maintain its good working relationships with NIWA and other international research agencies.

40. Further if anonymity of the scientist could not be assured, I would expect that scientists, within the Bureau and externally, would be less likely to be willing to undertake peer reviews on behalf of the Bureau. If Bureau scientists withdraw from the peer review process, the Bureau's ability to fully and efficiently conduct research is likely to be jeopardised.

41. I consider that, in the circumstances and taking into account the above, on balance, disclosure of the documents is contrary to the public interest. It is essential that the Bureau is able to maintain its good working relationships with other scientific research organisations, continues to participate in projects and peer reviews with other research agencies in the global arena and continues to maintain its reputation in the global scientific arena.

42. Accordingly, I have decided that the documents are exempt under s47C of the FOI Act as described in the attached Schedule.

Review Rights

43. If you are dissatisfied with this decision, you have certain rights of review available to you.

44. Firstly, under section 54 of the FOI Act, you may apply for an internal review of the decision. Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice; or

- 15 days of you receiving the documents to which you have been granted access.

45. An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

Freedom of Information Officer
Bureau of Meteorology, GPO Box 1289 Melbourne 3001

46. If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

External review by the Australian Information Commissioner

47. Alternatively, under 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

48. The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Information Commissioner's website www.oaic.gov.au.

49. You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commissioner at:

GPO Box 2999
Canberra ACT 2601

Complaints to Ombudsman or Information Commissioner

50. You may complain to either the Commonwealth Ombudsman or the Information Commissioner about action taken by the Bureau of Meteorology in relation to the application. The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)
Email ombudsman@ombudsman.gov.au

Your enquiries to the Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

51. There is no particular form required to make a complaint to the Ombudsman or the Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Bureau of Meteorology as the relevant agency.

Yours sincerely,



Rob Vertessy
Deputy Director, Climate and Water
Bureau of Meteorology

6 May 2011