

Freedom of Information

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How to avoid your own 'climategate' scandal

The "climategate" scandal involving the [University of East Anglia](#) has sent shockwaves through universities, but many academics still do not fully appreciate the full implications of [freedom of information](#) legislation.

The problems at UEA arose when emails allegedly written by some of the world's leading climate scientists were stolen by hackers and published on websites run by climate change sceptics. The story broke just before the Copenhagen conference on climate change and appeared to call into question the validity of some of the leading scientists' claims.

But as well as this, Graham Smith, deputy information commissioner, said the emails between scientists at the UEA's Climatic [Research](#) Unit (CRU) revealed that freedom of information (Fol) requests were "not dealt with as they should have been under the legislation".

For universities and their staff, the situation at UEA is one that fills them with both relief and dread. Relief that it is not their research; not their university. Dread that it could be them next. The phrase "Fol request" is enough now to strike fear into the heart of many an academic.

Where Fol legislation applies - as it generally does in education - it is likely that every piece of correspondence, every email written and every document you have produced could be considered as information that may have to be disclosed in response to an Fol request.

Professor Phil Jones, director of the CRU, admitted when he appeared before the House of Commons science and technology committee last week: "I've obviously written some very awful emails," but insists he had never tried to pervert the scientific process.

There are real risks for organisations that do not have their "house in order" for Fol purposes. I held a seminar recently on these risks. There was real shock and disbelief about the implications and it was clear that university staff and academics still do not fully appreciate that everything they do or write could be subject to Fol requests.

So how do universities and academics ensure that their correspondence does not become the "smoking gun" that turns a simple Fol request into an international scandal?

It is not inconceivable that where a university is working on some research that has a commercial sponsor, pressure could be exerted on researchers to reach a certain conclusion, or to portray the results in a way that would be helpful to the sponsor. Where that is the case, do you really want email correspondence going on record about the way in which the results are portrayed? Careful consideration needs to be given to the tone of any email exchange, so the university's position is clear. The best advice is: think twice before you hit the send button.

Remember, informal email discussions that you have with a close colleague are no longer private and could be disclosed in the future. Will the possibly uninformed reader who asked for the emails be aware of the context in which they were written? Do you really want people to know the nicknames you have given to some of your collaborators?

For sensitive information that you would not want in the public domain, rather than putting it in email or in a document, it may be better to discuss it face-to-face or on the phone.

Careful consideration should also be given to how long emails are saved and when they are deleted. In some fields of work, there will be regulatory reasons for keeping emails (clinical work, for example) but do they all need to be retained and archived? A periodic review should be performed to ensure that, wherever possible and lawful, emails that could be that smoking gun are deleted.

When making handwritten notes or comments on documents, staff need to be aware that those scribbles could enter the public domain in response to a FoI request. Do you really want someone to see your exclamations of "Idiot!!!" or "Rubbish!!!" on a note? Probably not, so take care – and shred your notes once they have served their useful purpose. Imagine your embarrassment when comments about how dodderly your head of department is, or how pompous your vice-chancellor is, or how adorable he or she is, come out in the open.

Another thing to consider is the evolution of a document from first draft to final agreed version. No doubt, along the way there will have been discussions that may mean the final version is very different from the first draft. Is it helpful to retain every draft and set of comments? What message do they give to the uninformed reader with a particular agenda?

Remember, it is both the individual approach of researchers and the overall approach of the institution that need to be addressed. Jones admitted to the Commons committee that he had not dealt with requests for data "in the right way". His detractors accuse him of a reluctance to reveal his data and research, and both Jones and the UEA of a desire to avoid complying with FoI requests.

Jones told the committee: "It was just frustration. I thought the requests were just distractions. It was taking us away from our day jobs ... I am obviously going to be much more careful about my emails in future. I will write every email as if it is for publication."

This is a sound consideration. "Every email I write," says a lawyer colleague of mine, "I write as though next week I could be reading it in the newspaper."

So be careful what you write in email or on paper. And a final note of caution: while it is helpful to amend and delete information periodically, this cannot be done once a related FoI request has been received. Doing so is a criminal offence.

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This article first appeared in the Guardian on 9 March 2010

This Article is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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