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DISCLOSURE OF UNIVERSITY RECORDS

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1.0 Purpose

This policy notifies University faculty and administrative staff having custody of records of their responsibilities in releasing University records or information. It incorporates the requirements of the Virginia Freedom of Information Act (VA Code §§2.1-340 - 2.1-346.1), The Virginia Privacy Protection Act of 1976 (VA Code §§2.1-377 - 2.1-386), and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232 (g), and regulations promulgated thereto at 34 C.F.R. § 99).

See also:

Policy XV.D.1, "Protecting Privacy Rights of Students."

Note: For Procedures For Disclosure, see section 2.4.

2.0 Policy [\[Top\]](#)

2.1 Records Subject to Public Access

Except as otherwise specifically provided by law, all official records shall be open for

inspection and copying by any Virginia citizen during the regular office hours of the custodian of the records.

Records of the position, classification, official salary, or rate of pay and records of allowances or reimbursements for expenses paid to any University or other public officer, official, or employee are subject to public access, except that records of the official salaries or rates of pay of University or other public employees earning less than \$10,000 per year shall not be subject to public access.

Also see Exceptions.

2.2 Individual Access

An individual shall be allowed access to certain types of records of which he/she is the subject. These records include:

"Scholastic Records"

Also see Exceptions.

Note: A parent or guardian may have access to the scholastic records of a dependent student, as defined in 152 of the Internal Revenue Code of 1954. The subject student need not be a Virginia citizen to obtain this access.

Also see "Enforcement" section below.

Personnel records, including tests or examinations used to evaluate an employee or an employment seeker's qualifications or aptitude for employment, retention, or promotion. Also see "Exceptions" below.

Medical and Mental Health Records.

Records including "personal information." The data subject may inspect the personal information, the information sources, and the names of recipients not having regular access, their organization, and reason for access.

2.3 Exceptions

The following records are subject to access as noted.

	Subject Person Access?	Public Access?
Records of the official salaries or rates of pay of University or other public employees earning less than \$10,000 per year.	Yes	no

Concerning "scholastic" records, financial records of a parent or guardian, or records maintained by individual University personnel, if such records are in the maker's sole possession and not available to any other person except a substitute. Also see "Enforcement" section below.	No	No
concerning medical and mental health records, mental health records are not available when the subject person's treating physician has included in the records a written statement that access to those mental health records would be injurious to the subject person's physical or mental health, or well-being. Access to medical and mental records shall be available to the subject person's physician of choice.	Yes, except where excluded	No
Concerning personnel records, confidential letters of recommendation concerning admission, employment, performance, promotion, or retention.	No	No
Confidential letters and statements of recommendation placed in student's records: Prior to January 1, 1975, if such letters or statement were given or retained with a documented assurance of confidentiality.	No	No
Confidential letters and statements of recommendation placed in student's records: On or after January 1, 1975, if the student waived his/her right to inspect and review the letters and statements of recommendation.	No, if right to inspect was waived	No
Library records which can be used to identify both the individual who has borrowed material from a library and the material borrowed.	Yes	No

Note: It is permissible to disclose records showing which materials have been borrowed, if such records do not disclose the borrower's name.

Tests or examinations used, administered, or prepared for evaluating:	Subject Person Access?	Public Access?
A student or student's performance,	Yes	No
An employee or employment seeker's qualifications or aptitude for employment, retention, or promotion.	Yes	No

Qualifications for any certificate or license, issued by the University.	Yes	Yes
Memoranda, correspondence, evidence, and complaints related to criminal investigations; reports submitted to State, local, or <u>University Police in confidence.</u>	Yes	No

Note: This information should be:

- Maintained apart from other records,
- Maintained solely for law enforcement purposes,
- Only disclosed to law enforcement officials at the University.

	Subject Person Access?	Public Access?
"Personal Information" from statistical reports or research without revealing trade secrets, methodology, etc., and with the guarantee the personal information will not be used in any way to prejudice judgments about any data subject.	Yes	Yes, given conditions and guarantees
"Personal Information", unless the subject of the information has given written authorization for the release of the information. Such notice may be given on the forms on which the subject person disclosed the personal information.	Yes	Yes, if released
Data, records, or information of a proprietary nature (non-financial, non-administrative) gathered for or from medical, scientific, technical, or scholarly study or research, regardless of sponsorship, if not publicly released, published, copyrighted, or patented.	Yes	Yes, if released
Computer programs, acquired from a vendor for processing University data, which may be in official University records.	N/A	No
Financial statements not publicly released but used in financing industrial developments.	N/A	No

Lists of registered owners of University bonds.	No	No
Memoranda, working papers, and correspondence <u>held</u> or requested by the Office of the University President.	Yes	No
Memoranda, legal opinions, working papers, and records recorded in or compiled exclusively for executive or closed meetings of the Board of Visitors lawfully held.	Yes	No
Memoranda, working papers, and records compiled specifically for use in litigation.	Yes	No

2.4 Procedures for Disclosure

NOTE: THE OFFICE OF UNIVERSITY RELATIONS IS THE CENTRAL CONTACT POINT TO WHICH ALL REQUESTS FOR UNIVERSITY RECORDS SHOULD BE FORWARDED.

IMMEDIATELY CONTACT THE OFFICE OF UNIVERSITY RELATIONS WHEN A REQUEST FOR UNIVERSITY RECORDS IS RECEIVED. UNIVERSITY RELATIONS, IN TURN, WILL CONTACT ALL POSSIBLE SOURCES OF THE REQUESTED RECORDS AND ENSURE THE DUE DATES ARE MET.

The President's Office and the Office of University Relations will maintain a list of all University information systems containing personal information, and the locations, descriptions, and officials-in-charge of those records. Upon written request, the public may obtain the list at a reasonable fee to cover reproduction costs.

A requestor shall designate the requested records IN WRITING with reasonable specificity. If the requested records include "personal information," the requestor should also state the intended use of the records and possible consequences to the data subject, if known. Such dated requests need not refer to the Virginia Freedom of Information Act or §2.1-342 of the Code of Virginia.

An initial response to a request for access to records must be made IN WRITING WITHIN FIVE WORK DAYS after receipt of the request by the custodian of the records.

- If a requested record is exempt from disclosure, the University must explain in writing within five work days why the record is exempt specifically referring to the applicable Code section allowing the exemption.
- If determination of availability cannot be made within five work days, the University must so inform the requestor before the five work days have passed, thereby gaining an additional seven work days to determine the materials availability.
- A reasonable charge (not to exceed actual costs) may be imposed for copying, computer, and for search time. The requestor may ask, in advance, for an estimate of such charges. The University can require advance payment of charges, if determinable.

The University can petition the appropriate circuit court for additional time if:

- The request is of such extraordinary volume,
- Satisfying the time requirements herein prevents the University meeting its operational responsibilities, and
- The University has made a reasonable effort to reach agreement with the requestor on producing the records.

Failure to respond to a request constitutes a violation of the Freedom of Information Act and a denial of the request.

The University is not required, but may choose to create, prepare, or summarize a record if one does not already exist.

2.5 Record of Disclosure

Faculty or administrative staff having custody of records shall maintain a list of all persons having regular access and all non-regular requests or releases of "personal information."

The non-regular request list shall identify the requestor and state the purpose of the request or release. No record need be kept for releases to the data subject, to University employees for official requests, or for directory information requests. The request/release list should be maintained for at least three years or until the personal information is purged. The data subject also has access to the access/release list.

2.6 Corrections to Records

Employees or other data subjects, except students (students should refer to Policy XV.D.1, "Protecting Privacy Rights of Students," and the section entitled "Amendment of Education Records"), are provided a means to correct their records by giving written notice to challenge, correct, or explain their "personal information" in question.

Challenges are accepted on questions of accuracy, not questions of judgment. To the extent possible, the challenge should specify the exact type, source, and date of the questioned record. Also required is the reason for and nature of the proposed correction.

On receipt of the challenge, the official will investigate and record the current status of the personal information. If the investigation shows the information to be incomplete, inaccurate, not pertinent, not timely, or unnecessary, the official shall promptly correct the record.

If the investigation does not resolve the dispute, the employee or data subject may file a statement of 200 words or less outlining his/her position.

The official shall supply all previous record recipients with a copy of the statement, and make the statement a part of the official record, to be released in later requests.

Note: Departments should request permission from the University Archivist, Alderman

Library, before records are purged or destroyed.

2.7 Disclosure of Social Security Number

Unless disclosure is required by Federal or State law,

No University activity may require persons to disclose their social security numbers for any purpose or in connection with any activity,

Nor can that University activity refuse, wholly or partially, any service, privilege, or right to those individuals not furnishing that number.

2.8 Enforcement

A single instance of a denial of rights and privileges is sufficient to constitute a violation.

Any person who is denied rights and privileges under this policy may enforce those rights and privileges by petition to the Circuit Court of the City of Richmond, and shall be heard within seven days. Such person shall petition for a writ of mandamus commanding affirmative compliance with the violated provision(s), or for injunctive relief commanding cessation of conduct which violates rights and privileges. The petition must allege circumstances of the denial of rights and privileges with reasonable specificity.

In addition, any person who is denied rights and privileges granted by the Family Education Rights and Privacy Act of 1974, (20 U.S.C. 1232 (g), and regulations promulgated thereto at 34 C.F.R. 99), as explained in this policy, may direct complaints to:

The Student and Family Educational Rights and Privacy Office
Department of Education, Room 3021 FOB6
400 Maryland Ave., S.W.
Washington, DC 20202

The Office will then conduct an investigation, recommending a hearing if it sees fit.

2.9 Sanctions

If the Virginia court finds a denial of rights has occurred, it may award petitioner costs and reasonable attorney's fees, to be paid by the University.

If the Virginia court finds the petitioner's case is clearly inadequate, it may award costs and reasonable attorney's fees to the University, to be paid by the petitioner.

If the Virginia court finds a violation was willfully and knowingly made, it shall impose upon the person involved in his/her individual capacity a civil penalty of not less than \$25 nor more than \$500, even if a writ of mandamus or injunctive relief is not awarded.

If the Department of Health and Human Services finds a denial of rights has occurred, it

shall notify the University of specific steps to be taken to bring the University into compliance.

If, after a hearing, the Secretary of Health and Human Services finds compliance cannot be secured by voluntary means, he/she shall deny Federal funds to the University.

3.0 Definitions [Top]

Official Records

All written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports, or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of the University or any employee or officer of the University in the transaction of University business.

Citizen

Any citizen of the Commonwealth of Virginia, or any representative of newspapers or magazines with circulations in Virginia or of radio and television stations broadcasting in or into Virginia.

Scholastic Records

All records, documents, files, and other materials containing information about an identifiable student or students, whether or not the student is a Virginia citizen.

Personal Information

All information that describes, locates, or indexes anything about an individual including:

- Addresses
- Ancestry
- Credit History
- Criminal and/or Employment Record
- Education
- Financial Transactions
- Medical History
- Political Ideology
- Religion
- Social Security Number

Any record that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs or things done by or to such individual.

Any record of an individual's presence, registration, or membership in an organization or activity, or admission to an institution.

Note: The University is only authorized to collect personal information explicitly authorized.

Also see [Exceptions](#)

4.0 References [\[Top\]](#)

5.0 Approvals and Revisions [\[Top\]](#)

Maintained by [University Comptroller](#)

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Mann Affidavit Exhibit 2



August 5, 2011

Paul J. Forch, General Counsel
Office of General Counsel
University of Virginia
P.O. Box 400224
Charlottesville, VA 22904-4224

Dear Mr. Forch:

I contact you to express some serious concerns regarding actions that U.Va. lawyers are currently planning to take in the near future in response to a demand by Mr. Chris Horner (representing a group called the "American Tradition Institute" or "ATI") for thousands of my personal emails exchanged with dozens of other scientists around the country and the world over a more than five year period while I was a faculty member at U.Va.

In late May, I was pleased to learn from an editorial in the *Washington Post* ["Harassing climate-change researchers", May 29, 2011] that President Teresa A. Sullivan had promised to use "all available exemptions" to shield my personal correspondences with fellow scientists from release, and that, as indicated by a university spokesperson, U.Va. recognized that most of my personal emails were indeed exempt under a statute of the State public records law that "excludes from disclosure unpublished proprietary information produced or collected by faculty in the conduct of, or as a result of, study or research on scientific or scholarly issues."

You might imagine my dismay, however, to learn more recently that U.Va. lawyers, despite these public assurances, in fact intend within a matter of weeks to turn over all of the records, *including those judged to be exempt*, to Mr. Horner and ATI. Mr. Horner works for an industry-funded group known as the "Competitive Enterprise Institute" that has been engaged in attacks against climate scientists, including me and several of the scientists targeted in its freedom of information request, for well over a decade. As noted in the *Washington Post* editorial, "ATI's motives are clear enough. The group's Web site boasts about its challenges to environmental regulations across the country. Christopher Horner, its director of litigation, wrote a book called 'Red Hot Lies: How Global Warming Alarmists Use Threats, Fraud and Deception to Keep You Misinformed'...and declares that Mr. Mann's U-Va. e-mails contain material similar to that which inspired the trumped-up "Climategate" scandal, in which warming skeptics misrepresented lines from e-mails stored at a British climate science center".

University lawyers may not be aware that Mr. Horner has been involved in previous smear campaigns against climate scientists based on leaked confidential materials (see "Inhofe, Horner, McIntyre and Watts fabricate another phony "despicable smear" against Michael Mann" by Dr. Joe Romm of the Center for American Progress;
<http://thinkprogress.org/romm/2011/03/09/207662/inhofe-watts-horner-mcintyre-michael-mann-email/>) and several of Horner's colleagues at the Competitive Enterprise Institute launched two radio ads in May 2010 that used out-of-context quotes from stolen emails to smear many of the scientists, including me,

whose correspondence Mr. Horner is demanding under his freedom of information request. (http://freedomaction.org/index.php?option=com_content&id=112).

Disclosure of these emails under the current agreement made by U.Va lawyers does not protect my privacy or the privacy of the other scientists involved because it allows ATI to read all of the exempt material and to share the substance of the material if not the physical documents themselves with anyone it chooses without my knowledge or the knowledge of the University, or the court (I have attached the protective order with the problematic provisions highlighted).

This procedure eviscerates privacy and academic freedom and is directly contrary to the standard and customary practice of not disclosing the exempt material but only an index or log summarizing and explaining the specific basis for withholding. I believe this agreement in fact violates the very provisions of the VFOIA law that U.Va. has stated it will uphold, which were designed to provide an unfettered zone of privacy for the creative and deliberative process.

I am told that the proper protocol for protecting this privacy interest is for the university to create a log identifying and summarizing the records being withheld and to subject the summarized emails to an in camera review by the court if necessary [See *Bland v. Virginia State University*, 272 Va. 198, 202, 630 S.E.2d 525, 527 (2006) (noting that the proper protocol in cases privacy-based exemptions to VFOIA is for the court to conduct an in camera inspection of the records)]. Given the privacy interests at stake here, the charged political atmosphere that heightens the risk of improper disclosure, and the clear purpose of the "research material" and "working papers" exemptions, the university's intention to produce all of my emails is troubling and indefensible.

The *Washington Post*, in their editorial, voiced grave concerns over the precedent that would be set by allowing Horner and ATI indiscriminate access to my private email correspondences with dozens of scientists over many years: "Going after Mr. Mann only discourages the sort of scientific inquiry that, over time, sorts out fact from speculation, good science from bad. Academics must feel comfortable sharing research, disagreeing with colleagues and proposing conclusions — not all of which will be correct — without fear that those who dislike their findings will conduct invasive fishing expeditions in search of a pretext to discredit them. That give-and-take should be unhindered by how popular a professor's ideas are or whose ideological convictions might be hurt".

On May 27th of 2010, the University of Virginia filed papers in court challenging a nearly identical demand to that by ATI, in the form of a Civil Investigative Demand (CID) from Virginia Attorney General Kenneth Cuccinelli. The University's statement of justification was both compelling, and eloquent, invoking the name of the University's founder, Thomas Jefferson (and, incidentally, one of the first to collect climate observations in America) in the defense of academic freedom. They stressed Jeffersonian principles of the "illimitable freedom of the human mind" and suggested that Cuccinelli's actions "threaten these bedrock principles." Yet, through the agreement that University lawyers have made to turn over these very same materials, these bedrock principles are now very much threatened.

The U.Va. faculty senate recognized that danger, voicing the concern ("Position Statement on FOIA Request for Dr. Michael Mann's Research Records University of Virginia Faculty Senate Executive Council May 23, 2011"): "Now, instead of the danger of overzealous and abusive prosecution, we face the more sweeping danger of excessive and unwarranted intrusion. Fortunately, the VFOIA statute explicitly recognizes the value of academic freedom and exempts state universities from having to turn over 'data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education ... in the conduct of or as a result of research on medical, scientific, technical or scholarly issues.' The Senate is firmly opposed to the release of documents that fall under this exception, as many of the requested documents evidently do." I can also assure you that my email exchanges with other scientists have never been publicly released or published and were intended by me and those with whom I corresponded to remain private and confidential.

Releasing materials that are exempt under VFOIA to ATI and Horner threatens not only my academic freedom and privacy, but that of literally dozens of scientists in the U.S. and around the world who had every reason to believe that the confidential nature of their frank and open correspondences, discussions, challenges, inquiries, and musings, carried out through private emails, would be respected. Allowing the indiscriminate release of these materials will cause damage to reputations and harm principles of academic freedom.

It is my hope that U.Va. will remain true to the ideals of Mr. Jefferson and not engage in an action which not only threatens open scientific inquiry in the Commonwealth of Virginia, but indeed threatens scientists around the country and the world who rely upon the privacy of their professional correspondences with each other in furthering their scientific investigations. Doing so would represent a threat not only to academic freedom, but to the progress of science.

It is my hope and expectation that the University will go back to the court and seek an agreement that protects the not only my academic freedom and privacy, but that of academics and scientists everywhere. Anything less would do a grave disservice to the legacy of Thomas Jefferson.

Sincerely,

A handwritten signature in cursive script that reads "Michael E. Mann".

Michael E. Mann
Professor
Director, Earth System Science Center (ESSC)

Cc: President Teresa Sullivan
Associate General Counsel Richard C. Kast
Faculty Senate Elect, George Cohen
Peter J. Fontaine, Esquire, Cozen O'Connor

Mann Affidavit Exhibit 3



U.Va. is all in on Climategate cover-up

By: Christopher C. Horner | OpEd Contributor | 08/28/11 8:05 PM

The University of Virginia has joined a list of institutions claiming that there has been an actual inquiry into and "exoneration" of scientists exposed by the November 2009 Climategate leak.

At the same time, however, the university's actions make a mockery of the idea.

U.Va.'s Aug. 23 release under court order of 3,827 pages of emails, records which the university previously denied existed, was its second since the American Tradition Institute sought judicial assistance in bringing the school into compliance with the Virginia Freedom of Information Act.

The school has spent approximately \$500,000 to date keeping these records from the taxpayer, who paid for their production to begin with.

The university once again labored to avoid releasing correspondence directly addressing the now discredited climate-change "hockey stick" graph purporting to show a record of sharply rising atmospheric temperatures allegedly caused by human activities that produce carbon.

The hockey stick was produced while former assistant research professor Michael Mann worked at U.Va.

About 150 of the Climategate emails were sent to or from Mann at U.Va. and were central to the scandal, which exposed the now-disavowed temperature record, the hockey stick graph and related activities by scientists seeking to keep dissenting work from publication. The emails showed scientists circling the wagons to protect their claims, funding and careers.

As with other related Mann correspondence using a U.Va. address with third parties of which we are aware, each of these 150 or so Climategate emails is covered by our VFOIA request. Not one of them made it into U.Va.'s releases.

The university acknowledges withholding more than 3,000 more pages, which should include such records. This likely represents about five times the original number of U.Va. emails revealed in Climategate.

Even before ATI was able to review these emails, Mann described the release to Science Magazine, indicating a collaborative effort with U.Va. in what amounts to hiding from the taxpayer efforts to derail exposure of the hockey stick.

We certainly appreciate that he is worried. But no argument exists that these records belong to Mann. Further, the VFOIA protects the taxpayers' interests first and only secondarily those of the university. Not protected are the actions of former faculty, which once revealed created a dense cloud of suspicion over their work.

These records are inarguably the property of U.Va. and therefore, barring a legitimate exemption under VFOIA, of Virginia taxpayers.

A useful example of complying with the Virginia Freedom of Information Act is George Mason University's prompt turnover to the media of correspondence from professor Edward Wegman.

In one of life's coincidences, these involved Wegman's work exposing the dubious methods involved in creating the hockey stick.

Climategate emails sent or received by Mann's U.Va. email address include certain now-notorious, often nasty missives, many of which are highly questionable from a legal or ethics perspective, and most reflecting wagon-circling by alarmists discussing how to defeat substantive challenge and even requests for transparency involving an already published paper.

It is reasonable to surmise that these are among the 9,000 pages U.Va. finally identified as responsive to ATI. If so,

each of them is being withheld on the remarkable claim that they are "data, records or information of a proprietary nature produced or collected by or for faculty ... in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues." Really.

Excerpts of apparently scholarly research of commercial intent and value presumably include such Climategate gems as this:

"I can't see either of these papers being in the next IPCC report. Kevin and I will keep them out somehow -- even if we have to redefine what the peer-review literature is!"

Or another gleefully noting the death of a skeptic who had dared correspond with them.

This is the sort of top secret "proprietary" email that U.Va. will risk fortune, reputation and sanction to keep from releasing. A U.Va. official informed us on no less than three occasions that the school was, in effect, ignoring the law's mandate to interpret exemptions narrowly. Clearly he wasn't kidding.

But will the court will find this funny?

U.Va. prides itself on its honor code. Yet instead of acting forthrightly like its fellow ward of the taxpayer, George Mason University, U.Va. exacerbates the scandal and the increasingly warranted public distrust of Big Science, particularly "climate" science, an edifice built upon hundreds of millions of taxpayer dollars annually and dedicated to keeping that gravy train rolling.

This matters for reasons beyond basic principles such as the taxpayers' right to know how their resources are being used. The hockey stick and its ilk are cited as the basis for fundamentally restructuring our economy.

This cannot be attended by such trifling by a public institution with its transparency obligations under the law. That U.Va. has chosen to persist in a campaign diminishing its stature and credibility changes nothing under that law. The taxpayers have rights, and we are exercising them.

Christopher C. Horner is director of litigation for the American Tradition Institute's Environmental Law Center, which is suing the University of Virginia.

URL: <http://washingtonexaminer.com/opinion/op-eds/2011/08/uva-all-climategate-cover>

Mann Affidavit Exhibit 4

Court Orders University of Virginia to Produce Documents of Dr. Michael Mann

shareshare

FOR IMMEDIATE RELEASE

Wednesday, May 25, 2011

Contacts:

Christopher Horner, chris.horner@atinstitute.org

Paul Chesser, paul.chesser@atinstitute.org



MANASSAS, Va.—On Tuesday, more than four months after the American Tradition Institute's Environmental Law Center requested emails and other files from a specifically identified University of Virginia back-up computer, the University was hauled into court and made to stand and agree to comply with the Commonwealth's Freedom of Information Act (FOIA).

See all court documents, press releases, media coverage of ATI's case against UVA

Under Virginia's FOIA, ATI and co-petitioner Delegate Bob Marshall (R-Manassas) asked UVA to disgorge the emails and files that Virginia's Attorney General also sought under other authority. The emails are specific communications sent and received by Dr. Michael Mann during his tenure at UVA in which he corresponded with, or discussed other, leading voices that represent the climate alarmist perspective. Seminal among them include discussions about his now infamous and discredited 1,000-year temperature reconstruction known as the "hockey stick." There also already appears — from records ATI has received — to be additional information of the kind released in the "Climategate" emails that originated at the Climatic Research Unit at East Anglia University.

Under FOIA the University was required to produce the documents within five days of its receipt of payment for "accessing, duplicating, supplying or searching" for the documents. Alternatively they could have entered into an agreement with ATI on when they would supply the documents, or they could have gone to court to ask for more time. They did none of the above. Instead they promised to provide some of the documents "shortly" on April 6; then specifically on May 6, 2011; and always stated they would get to the others later on. They did none of this either, so ATI went to court to compel production and compliance with the law.

ATI finally received the first approximately 20 percent of the 9,000 pages of documents that UVA says are responsive to ATI's request and that it possesses, only after ATI filed its petition, and two working days before the judicial hearing. Most of what ATI received in this seemingly hurried production, which was more focused on showing volume than content, were ads for Halloween costumes, public news releases from lay and scientific journals, and a few emails that were printed in computer code so as to be unintelligible in that form. Despite this product of (according to the University) 75 hours of review and more than four months, the University stopped work on producing anything further. Nevertheless some substance made it through UVA's filter, which ATI will discuss after we review the withheld records.

The failure of UVA to honor its own commitments or to follow the law forced ATI to petition the court for relief. ATI filed its petition on May 16th, and the Court heard the matter Tuesday.

It took a petition to force UVA to agree to produce the documents that by statute they should already have produced. The day before the court hearing, UVA finally agreed to a date when they must produce all the documents they believe are not protected from disclosure. The court entered an order that forces UVA to honor that agreement and to produce the documents in easy-to-read electronic form so that ATI can make them available to all who wish to review the work of this highly controversial former Virginia employee. They must produce those documents by August 22nd.

In addition ATI has won the right to look at all the documents beginning no later than September 21, including those the University refuses to make public. The court issued a protective order that allows ATI's attorneys, David Schnare and Christopher Horner, to see them all so that they can challenge any further UVA refusals to supply what the public paid for. The records constitute a history of the "hockey stick" and the activities of Michael Mann, who also during the relevant time served on, e.g., the UN's IPCC, all of which have been the subject of intense scrutiny.

"By the end of this year, ATI and UVA will obtain judicial review of the University's obligation to fulfill the public's right to know how taxpayer-funded employees use the taxpayer's resources," said Mr. Horner,

director of litigation at ATI's Environmental Law Center. "The court will determine whether this can be hidden behind the ivy covered walls of our public colleges and universities under a non-existent FOIA exemption of 'academic freedom,' which Virginia's legislature has never recognized."

ATI also put a final issue before the court. Under the Virginia FOIA, UVA is not allowed to impose fees on ATI to recoup the general costs of creating or maintaining records, or of transacting the general business of the University. The University has already admitted that it must obey several laws in fulfillment of its duty to protect some of its records, such as medical files and student information. This is part of the business of the University, just as any governmental body must protect its sensitive records. UVA, however, demanded that ATI pay \$8,500 to offset UVA's costs of doing precisely this regular business, which must be performed when releasing any information, under any authority. ATI argued, and existing case law indicates, this is simply not allowed. The University disagreed, and the court will issue its opinion on that matter on June 15th.

"ATI pursues important public issues," said Dr. Schnare, director of ATI's Environmental Law Center. "This case is about whether the government can put up a pay wall to frustrate the public's right to transparency. If it can, the public can't hold government employees to the high standards of conduct they should meet."

See Prince William County (Va.) Court's Order to Produce Documents in ATI Environmental Law Center's Freedom of Information Act case against the University of Virginia ([PDF](#)).

See Prince William County (Va.) Court's Order on Protection of Documents in ATI Environmental Law Center's Freedom of Information Act case against the University of Virginia ([PDF](#)).

For an interview with American Tradition Institute senior director of litigation Christopher Horner, email chris.horner@atinstitute.org or call (202)670-2680.

Mann Affidavit Exhibit 5

Statement of the Board of Directors of the American Association for the Advancement of Science Regarding Personal Attacks on Climate Scientists

Approved by the AAAS Board of Directors
28 June 2011

We are deeply concerned by the extent and nature of personal attacks on climate scientists. Reports of harassment, death threats, and legal challenges have created a hostile environment that inhibits the free exchange of scientific findings and ideas and makes it difficult for factual information and scientific analyses to reach policymakers and the public. This both impedes the progress of science and interferes with the application of science to the solution of global problems. AAAS vigorously opposes attacks on researchers that question their personal and professional integrity or threaten their safety based on displeasure with their scientific conclusions. The progress of science and protection of its integrity depend on both full transparency about the details of scientific methodology and the freedom to follow the pursuit of knowledge. The sharing of research data is vastly different from unreasonable, excessive Freedom of Information Act requests for personal

information and voluminous data that are then used to harass and intimidate scientists. The latter serve only as a distraction and make no constructive contribution to the public discourse.

Scientists and policymakers may disagree over the scientific conclusions on climate change and other policy-relevant topics. But the scientific community has proven and well-established methods for resolving disagreements about research results. Science advances through a self-correcting system in which research results are shared and critically evaluated by peers and experiments are repeated when necessary. Disagreements about the interpretation of data, the methodology, and findings are part of daily scientific discourse. Scientists should not be subjected to fraud investigations or harassment simply for providing scientific results that are controversial. Most scientific disagreements are unrelated to any

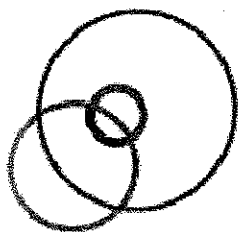
kind of fraud and are considered a legitimate and normal part of the scientific process. The scientific community takes seriously its responsibility for policing research misconduct, and extensive procedures exist to protect the rigor of the scientific method and to ensure the credibility of the research enterprise.

While we fully understand that policymakers must integrate the best available scientific data with other factors when developing policies, we think it would be unfortunate if policymakers became the arbiters of scientific information and circumvented the peer-review process. Moreover, we are concerned that establishing a practice of aggressive inquiry into the professional histories of scientists whose findings may bear on policy in ways that some find unpalatable could well have a chilling effect on the willingness of scientists to conduct research that intersects with policy-relevant scientific questions.



ADVANCING SCIENCE, SERVING SOCIETY

Mann Affidavit Exhibit 6



**LAMONT-DOHERTY
EARTH OBSERVATORY**

THE EARTH INSTITUTE AT COLUMBIA UNIVERSITY

30 August 2011

To: Dr. Teresa Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

Dear Dr. Sullivan,

I am writing due to my great concern regarding the ongoing attempts of the American Tradition Institute (ATI) to obtain access to the personal email letters between Dr. Michael E. Mann and other climate scientists, including myself.

My research over the past three decades includes the use of tree-ring reconstructions for the past millennium to infer past temperature trends and the magnitude of recent anthropogenic impacts on climate. I am a paleoclimatologist and Associate Director at the Lamont-Doherty Earth Observatory, part of Columbia University in New York.

These are personal emails that are not relevant to valid scientific concerns, and will likely be taken out of context. Please reconsider your decision to allow the ATI access to these personal emails.

Thank you very much for your consideration.

Rosanne D'Arrigo,

Senior Research Scientist, TRL-LDEO
Associate Director, Biology and Paleo-Environment Division, LDEO
Tree-Ring Laboratory, Lamont-Doherty Earth Observatory
Palisades, NY 10964



Lawrence Livermore National Laboratory

Dr. Benjamin D. Santer

Program for Climate Model Diagnosis and Intercomparison

PCMDI, Lawrence Livermore National Laboratory

P.O. Box 808, Mail Stop L-103

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August 14, 2011

Dr. Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

Dear Dr. Sullivan,

I am extremely concerned by the ongoing efforts of the American Tradition Institute (ATI) to obtain access to personal email correspondence between Professor Mann and over 30 other climate scientists. I am one of those "other climate scientists", and so have direct personal interest in this issue.

Let me briefly introduce myself. I am a climate scientist at Lawrence Livermore National Laboratory in California. I have devoted my entire scientific career to the study of the nature and causes of climate change. In the mid-1990s, I was Convening Lead Author of Chapter 8 ("Detection of Climate Change and Attribution of Causes") of the Second Assessment Report of the Intergovernmental Panel on Climate Change (IPCC). After several years of evaluating the then-available scientific evidence, and after rigorous peer and Government reviews, Chapter 8 concluded that "the balance of evidence suggests a discernible human influence on global climate".

Subsequent to publication of the Second Assessment Report (SAR) in 1996, I spent several years defending the science behind the "discernible human influence" finding – and the process by which this finding had been reached. I also had to respond to public challenges to my integrity and the credibility of my own scientific research. Such challenges have continued to this date.

In 2001, the IPCC published its Third Assessment Report (TAR). The research conducted by Professor Mike Mann and his colleagues was prominently featured in the TAR. Professor Mann's work showed that the warming of Earth's surface during the second half of the 20th century was highly unusual in the context of our best scientific understanding of temperature fluctuations over



the last millennium. This was a key scientific advance relative to the IPCC Second Assessment Report.

Since 2001, Professor Mann has encountered the same challenges I experienced after publication of the IPCC's SAR. The "playbook" is all-too familiar.¹ It begins with attempts to attack the science. If the science is unshakable, the next step is to attack the integrity of the scientific messengers. The motives and integrity of the messengers are questioned. The final step in the "playbook" is overt intimidation. Political pressure is applied. Legal harassment begins. An entire community receives the clear and chilling message: "You could be next."

Professor Mann's research has been subjected to extraordinary scientific scrutiny. His findings are robust. Over a dozen research groups around the world have independently replicated the principal features of the Mann *et al.* "hockey stick" – the reconstruction of hemispheric- and global-scale temperature variations over the last 1-2 millennia. In 2006, after a thorough review of the scientific underpinning of the "hockey stick", the U.S. National Academy of Sciences confirmed that "...the Northern Hemisphere was warmer during the last few decades of the twentieth century than during any comparable period over the preceding millennium."²

The ATI's request to access Professor Mann's personal email correspondence is not based on any legitimate scientific concerns. As noted above, the quality and credibility of Professor Mann's research has already been affirmed by the highest scientific authority in the nation – the U.S. National Academy of Sciences.

Professor Mann has spent most of his career trying to advance our scientific understanding of the nature and causes of climate change. The ATI has no interest in advancing scientific understanding. They seek to sift through potentially thousands of emails, searching for any information that might be taken out of context. In the aftermath of "Climategate", we have seen many examples of how innocent phrases can be removed from their contextual framework, and are then publicly portrayed as examples of suspect behavior. We know how this playbook works.

In summary, Professor Mann's only "transgression" is that he has performed cutting-edge research in the public and national interest. His research has given scientists and policymakers an invaluable long-term context for the late-20th century changes in Earth's surface temperature. Mike Mann has shown great courage and resilience under extreme pressure. I am proud to call him a colleague and a friend.

¹This calculated strategy was recently described by Naomi Oreskes and Erik Conway in "*Merchants of Doubt*", a book which was nominated for the 2010 Los Angeles Times Book Prize in the "Science and Technology" category.

²National Research Council, 2006: *Surface Temperature Reconstructions for the Last 2,000 Years*. National Academies Press, Washington D.C., 196 pp.

I respectfully urge you to reconsider your decision to allow the ATI access to Professor Mann's email correspondence with scientific colleagues. I do not believe this decision is consistent with the University of Virginia's illustrious history as a strong proponent of academic freedom.

Sincerely yours,

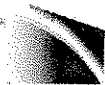
Dr. Ben Santer

Member, U.S. National Academy of Sciences

Fellow, American Geophysical Union

Distinguished Scientist, U.S. Dept. of Energy Office of Biological and Environmental Research

John D. and Catherine T. MacArthur Fellow



NCAR

National Center for Atmospheric Research
Climate and Global Dynamics Division
Climate Analysis Section

Kevin E. Trenberth

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August 28, 2011

Dr. Teresa A. Sullivan, President
 University of Virginia
 Madison Hall
 P.O. Box 400224
 Charlottesville, VA 22904

Dear Dr. Sullivan,

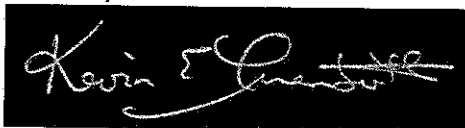
Along with other scientists, I am very concerned by the ongoing efforts of the American Tradition Institute (ATI) to obtain access to personal email correspondence between Professor Mann and over 30 other climate scientists. As one of those "other climate scientists", I have a direct personal interest in this issue.

I am a distinguished senior scientist at NCAR. I have been extensively involved into climate research; I have been prominent in the scientific assessments of the Intergovernmental Panel on Climate Change (IPCC), and a leader of the World Climate Research Programme. I currently chair the GEWEX (Global Energy and Water Cycle Experiment) Scientific Steering Group, for example. You can find a lot more about my work and credentials on my web site, listed above. I have coauthored a couple of articles with Dr. Mann. I was a Coordinating Lead Author of Chapter 3 of the last IPCC WG I report with Professor Phil. Jones from the Climatic Research Unit of the University of East Anglia. It was Jones' email that was hacked under what is sometimes derogatorily called "climategate" in which Dr. Mann and my emails were also featured. The story of how one of my emails went viral and was distorted is given at <http://www.cgd.ucar.edu/cas/Trenberth/statement.html>.

The moral is that even innocent emails can be taken out of context and distorted. This has also happened with Dr. Mann in an even more pronounced way – not because he did anything wrong but simply because he did high profile and important research, that has implications for political actions. Several investigations have cleared Dr. Mann in spite of intense scrutiny.

I respectfully urge you to reconsider your decision to allow the ATI access to Professor Mann's email correspondence with me and other scientific colleagues. I do not believe this decision is consistent with the University of Virginia's very distinguished history as a strong proponent of academic freedom.

Sincerely



Kevin E Trenberth

Fellow American Association Advancement of Science,
 Fellow American Geophysical Union
 Fellow American Meteorological Society
 Honorary. Fellow Royal Society New Zealand.

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Prof. Raymond S. Bradley

**DEPARTMENT OF
GEOSCIENCES**

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August 28th, 2011

Dr. Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

Dear President Sullivan,

I am writing to express my deep concerns about the request of the American Tradition Institute (ATI) to obtain personal email correspondence between Professor Michael Mann and other climate scientists. As I have worked with Mike Mann for many years, following his postdoc research here at the University of Massachusetts, no doubt many of these emails include correspondence to and from me. I do not know what the legal basis is for their request, but I certainly do not give my permission for the release of any email correspondence that involves me. I consider this a breach of confidentiality and an attack on academic freedom. I should note that this request is not unique. Similar efforts have been made by other politically-motivated organisations, to (*inter alia*) the University of Massachusetts and the University of Arizona. These requests were resisted. Given that this strategy of dredging through email for anything that might be taken out of context and used for political purposes could develop into a much larger problem, with enormous implications for all aspects of academic freedom, I urge you to forcefully reject the ATI request. I feel sure that the legal counsels of my institution and those of other Universities would stand together with the University of Virginia in opposing these intrusive requests.

I am sure that you are aware of the on-going harassment of climate scientists (most prominently Mike Mann) by a large number of individuals and organisations such as the ATI. This is part of a larger campaign to confuse the public about the important issues of climate change, and intimidate climate scientists who have been at the cutting edge of this research. Mike Mann is one of those who has been singled out for particular abuse. I have recently documented this deliberate strategy in my book, "**Global Warming and Political Intimidation**" (University of Massachusetts Press, 2011). The ATI request follows the same playbook that was applied to Ben Santer, Phil Jones and other leading climatologists.

I end my book by quoting from the argument made by your University when it filed a response to the suit brought by Virginia Attorney-General Cuccinelli—another example of political intimidation. In rejecting his request you stated,

“Academic freedom is essential to the mission of our Nation’s institutions of higher learning and a core First Amendment concern. As Thomas Jefferson intended, the University of Virginia has a long and proud tradition of embracing the “illimitable freedom of the human mind” by fully endorsing and supporting faculty research and scholarly pursuits. Our Nation also has a long and proud tradition of limited government framed by enumerated powers, which Jefferson ardently believed was necessary for a civil society to endure.....Unfettered debate and the expression of conflicting ideas without fear of reprisal are the cornerstones of academic freedom; they consequently are carefully guarded First Amendment concerns.”

Indeed, ***“the unfettered debate and the expression of conflicting ideas without fear of reprisal are the cornerstones of academic freedom”***. The ATI request is an assault on these values and I urge you to reject their request and stand firm in defense of the free exchange of ideas without the fear of harassment such as this.

Sincerely,

A black and white image of a handwritten signature, "Ray Bradley", in cursive script, enclosed within a black rectangular border.

Raymond S. Bradley
Distinguished Professor
Director, Climate System Research Center