

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

ATI

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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](#)).

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