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Created Jan 5 2011 - 8:05pm

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Today, Virginia taxpayers, a state lawmaker and a public interest law firm are asking the University of Virginia to produce important "global warming" records under that state's Freedom of Information Act. These are records the school no longer denies possessing but nonetheless refuses to release, even to Attorney General Ken Cuccinelli. They address one of the most high-profile claims used to advance massive economic-intervention policies in the name of "global warming."

In response to a previous FOIA request, U.Va. denied these records existed. However, during Cuccinelli's pre-investigation under the Virginia Fraud Against Taxpayers Act ("FATA"), a 2007 law passed unanimously by Virginia's legislature, which clearly covers the work of taxpayer-funded academics, U.Va. stunningly dropped this stance. For this reversal, the taxpayers of Virginia owe Cuccinelli a debt of gratitude.

Still, the school has spent upward of half a million dollars to date fighting Cuccinelli's pursuit, now before the Virginia Supreme Court. However, Virginia's transparency statute FOIA gives the school one week to produce the documents, and offers no exemption for claims U.Va. is using to block Cuccinelli's inquiry.

These e-mails and other documents relate to claims made by Michael Mann to obtain, and claim payment under, certain taxpayer-funded grants. Mann worked at the university's department of environmental sciences when he produced what was hailed at the time as the "smoking gun" affirming the theory of catastrophic man-made global warming.

Despite that lofty honorific, persistent controversy led promoters of this notorious "Hockey Stick" graph (principally, the United Nations' Intergovernmental Panel on Climate Change or IPCC) to stop advancing it as serious work.

Leaked "ClimateGate" e-mails discussing these same controversies prompted Cuccinelli's pre-investigation. Sadly, in order to keep the taxpayers' advocate from examining the evidence, U.Va. has offered a series of twists on a novel defense of "academic freedom."

Now we with the American Tradition Institute's environmental law center have requested these documents under FOIA and will presumably put an end to these tactics of denial followed by delay.

Importantly, also under FOIA in late 2009, the pressure group Greenpeace sought, and was promised, e-mails and other materials of Patrick Michaels, who also formerly worked in the same university department.

While the university proceeded to compile the material for Greenpeace, one of us, Virginia Del. Bob Marshall, R-Prince William, thought to ask for records relating to Michaels' former colleague, Mann. Oddly, the university informed Marshall that such records no longer existed because Mann had left the department.

Michaels has stated that the university, in explaining to him these disparate responses, asserted that some people's records are treated differently than others. Mann's were allegedly destroyed; Michaels' were being packaged for delivery to Greenpeace.

One disparity possibly helping to explain the other was that Mann had been an active participant in the IPCC, obtaining many research grants for his work at U.Va. But Michaels had been a very politically incorrect, high-profile "skeptic" of catastrophist claims such as those represented by the IPCC, and particularly Mann's Hockey Stick.

In court in August, U.Va. opted against robustly defending, as a legal argument, its academic-freedom rationale for refusing to produce the records. Yet even this week, it is asking the Virginia Supreme Court to deny Cuccinelli's request for documents possibly showing whether the dense Hockey Stick smoke indeed indicates fire. This does Virginia taxpayers a disservice.

Other records obtained under FOIA reveal that U.Va. has been paying Washington lawyers several thousand dollars per day to deny the requested transparency. As such, in a separate request, we also seek information about this privately underwritten effort to avoid complying with Cuccinelli's inquiry.

The university has previously demanded taxpayers pay thousands of dollars for a FOIA search for Mann's records, on the grounds that it maintains a broadly dispersed record-keeping system. Therefore, we have specifically directed the school to only search the backup server it claimed to the attorney general's office that it finally located as the likely home of the Mann records. As such, demands for huge search fees should not be an obstacle.

We hope for prompt university compliance with FOIA, although we are prepared to fully protect our appellate rights. As Virginia taxpayers, we also hope to see U.Va. rise to its reputation and reflect the highest fidelity toward its statutory and other obligations.

We can then, finally, determine what it is that so many have gone to such great lengths to keep the public from knowing about that for which the public has paid.

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law center and a Virginia resident; David W. Schnare, Ph.D is a Virginia resident and a federal attorney, Del. Bob Marshall is a Virginia Republican delegate representing Prince William County.

Op Eds

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