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White House Must Give Think Tank Climate Docs

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(CN) - The White House Office of Science and Technology Policy must give a libertarian think tank five pages of a draft letter and unredacted emails relating to a "polar vortex" video posted on its website, a federal judge ruled.

On January 8, 2014, the White House hosted a two-minute video in which Dr. John Holdren, director of the White House Office of Science and Technology Policy, stated that global warming is a likely cause of the weather phenomenon known as the "polar vortex."

The same day, the office's senior communications advisor, Becky Fried, posted a blog article making similar claims.

Discovered in 1952, the polar vortex is a large cyclone roughly 620 miles in diameter that hovers in the atmosphere over the North and South Poles year-round. They weaken in summer and strengthen in winter due to differences in temperature between the equator and the poles.

The strength of the polar vortices affect the speed of circulation in the Atlantic Ocean and the rate at which it delivers heat and energy to the rest of the world's oceans, which can dramatically alter climates across the planet.

Several studies suggest that weak polar vortices can cause severe cold weather in the Northern Hemisphere and, in tandem with the jet stream, can cause reduced sea ice in the Arctic, a decline in snow cover, and other weather anomalies.

But the studies purporting the polar vortices' impact on climate change are based on short-term observations over roughly 13 years. Critics of climate science contend that since it takes decades to distinguish climate trends from natural climate variability, the studies' conclusions are relatively uncertain.

The Competitive Enterprise Institute, a nonprofit that opposes government regulation and promotes entrepreneurship, petitioned the office to either "correct" Holdren's and Fried's statements or remove the video and blog post.

The office refused, stating that the video and blog were not a "comprehensive review" of the phenomenon but Holdren's and Fried's personal and expert opinions based on the "balance of evidence," and that posting an expert opinion is within the guidelines of the Information Quality Act.

In response, the institute submitted a Freedom of Information Act request in mid-June 2014, asking for documents it believes will show whether Holdren's and Fried's opinions are the official position of the office itself concerning global climate change and the polar vortices, and all documents related to the video's production.

The office sent 11 redacted pages of emails but held back 47 pages of the draft letter, claiming they fell under the FOIA's deliberative process privilege and are thus exempt from requests made under the Act.

The institute sued the office in Oct. 2014, claiming it had improperly withheld the draft letter, including five pages with remarks from Dr. Jennifer Francis of Rutgers University, a consultant outside the Executive Branch. It also challenged the redaction of the emails.

U.S. District Judge Amit Mehta issued a mixed-bag ruling Wednesday, granting in part and denying in part both parties' motions for summary judgment.

The FOIA's deliberative process privilege shields documents relating to an agency's process in determining its policies and laws. To qualify for this privilege, a document must predate an agency's decision to adopt a policy and be reflective of the consultation process.

Here, the 47 pages of the draft letter qualify for this privilege and were properly withheld, Mehta ruled.

"The drafts were plainly predecisional - they preceded in time the final version of the OSTP letter. And they were deliberative - they reflect the opinions, reactions, and comments of OSTP employees to the OSTP letter. ... Court-ordered disclosure of the 47 pages unquestionably would have a chilling effect on the free exchange of ideas and viewpoints that the deliberative process privilege is meant to encourage and protect," the judge wrote.

Arguments that the privilege does not apply because the draft relates to a video containing someone's alleged "personal opinion" rather than an agency policy fall flat because the pages relate to the office's legal position on whether it properly followed Information Quality Act guidelines in refusing to correct information in the video.

Though the office acknowledges that Holdren's and Fried's views are personal opinion, "the *process* by which the agency arrived at that legal conclusion is protected," the ruling states. (Emphasis in original.)

Mehta acknowledged that the office could have given more information about which staff members participated in the draft process and how, but concluded that the information given about the seven people who reviewed the drafts is "sufficient."

Nor was the office required to segregate factual information from deliberative portions, as doing so would reveal editorial judgments that could be seen by comparing an earlier version of the letter to the final version, according to the ruling.

However, the five pages that Holdren shared with Dr. Francis do not qualify for exclusion under the deliberative process privilege because she is not an agency employee, and as the originator and most well-known proponent of the theory that global warming is leading to colder winters, her opinion was not simply that of an uninterested third party, Mehta ruled.

The judge found it odd that Holdren invited Dr. Francis to consult on the office's legal response to a request to change information on its website, which has nothing to do with her expertise in climatology.

Since Dr. Francis's professional reputation was at stake in the office's decision whether to endorse her theory or change its stance as per the institute's request, the five pages she commented on must be handed over to the institute, the court ruled.

Mehta also found that the office could not demonstrate how the redacted material in the 11 pages it gave to the institute fall under the deliberative process privilege.

"If the video was an expression of Dr. Holdren's personal opinion, then it follows that internal communications about the video cannot be part of a process of formulating agency policy. The court's review of the emails confirms that conclusion," he wrote, ordering the office to produce the 11 pages in full except for the portions properly redacted.

However, he shut down the institute's discovery request to find out whether other drafts were shared outside the Executive Branch, calling the institute's argument speculative.

The institute's general counsel Sam Kazman praised the ruling.

"The notorious Polar Vortex video started off as a seemingly official White House climate flick. When we and others questioned its accuracy, the video suddenly turned into John Holdren's 'personal opinion.' The court's ruling may help unravel just how that magical transformation occurred. And in the meantime, we've thankfully been spared any sequels to this film," Kazman told Courthouse News in

an email.

The White House did not immediately return email comment requests sent Thursday morning. 

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