

**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF  
INFORMATION ACT 2000**

**BETWEEN**

**(1) MINISTRY OF DEFENCE (EA/2019/0038)**

**(2) PETER BURT (EA/2019/0041)**

**Appellants**

**-and-**

**(1) THE INFORMATION COMMISSIONER (both appeals)**

**(2) PETER BURT (EA/2019/0038)**

**(3) MINISTRY OF DEFENCE (EA/2019/0041)**

**Respondents**

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**WITNESS STATEMENT 1**

**PETER BURT**

Appellant

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1. I am Peter Burt of 2 Biko Court, Reading, RG1 3JE. This first witness statement of seven gives my qualifications and experience and sets out the background to this case.

***Qualifications and experience***

2. I have a PhD degree in Applied Biology and after graduating I worked for seven years in UK government environmental regulatory bodies. I have been a freelance researcher into the UK's policy on nuclear weapons and on nuclear accidents and safety issues for the past twenty years.
3. From 2004 – 2009 I advised the Nuclear Free Local Authorities (NFLA) network on nuclear

policy issues. In 2010 I advised UK members of the international Mayors for Peace organisation on a strategy for engagement with the Nuclear Non-Proliferation Treaty Review Conference and on liaison with the Foreign and Commonwealth Office on the Review Conference.

4. From 2009 - 2016 I worked for the Nuclear Information Service (an independent non-government research organisation funded by the Joseph Rowntree Charitable Trust) in the roles of Project Director and, more recently, Research Manager.
5. On behalf of Nuclear Information Service I have authored reports on nuclear weapons emergency exercises; nuclear weapons research in British universities; US-UK co-operation on nuclear weapons development; the role of the Atomic Weapons Establishment; and the UK's nuclear weapons accident history.
6. I am currently employed by Drone Wars UK, another non-government research organisation, undertaking work funded by the Open Society Foundations into the use of armed drones in warfare, focusing on the impact of emerging disruptive technologies such as autonomous weapons, artificial intelligence, and information warfare.
7. In March 2019 I was appointed as a member of the Independent Advisory Panel to the Office for Nuclear Regulation's Chief Nuclear Inspector.
8. I consider myself adequately qualified and experienced to give evidence on the regulation of nuclear safety and non-security classified matters relating to the UK's defence nuclear programmes.

## *Background to case*

9. This case relates to two reports which assess the safety of the UK's nuclear weapons and nuclear powered submarine programmes. The reports have been prepared by the Defence Nuclear Safety Regulator (DNSR) and the Defence Safety Authority: internal regulatory bodies located within the Ministry of Defence (MoD) which are responsible for overseeing nuclear safety within MoD.
10. As reports from arms-length regulatory organisations, the two reports provide credible and objective evidence regarding the safety of the MoD's nuclear programme. A recurring long-term theme among public opinion regarding nuclear technology is that nuclear weapons and power plants may not always be safe and that a nuclear accident could pose significant risks.
11. The documents in question are:
  - the annual assurance report for 2015-16 prepared by the Defence Nuclear Safety Regulator, and
  - the section of the annual assurance report for 2015-16 prepared by the Defence Safety Authority which relates to nuclear safety.
12. Since 2005 the Ministry of Defence (MoD) has published the following annual reports on the status of MoD nuclear safety from its internal nuclear safety regulator<sup>1</sup>:
  - The Annual Assurance report of the Defence Nuclear Safety Board for the year 2005.
  - The Annual Assurance reports of the Defence Nuclear Environment and Safety Board for the years 2006 – 2010.
  - The Annual Reports of the Defence Nuclear Safety Regulator (DNSR) for the years 2011,

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<sup>1</sup> Since 2011 this has been the Defence Nuclear Safety Regulator, and prior to this the reports of the predecessor bodies to DNSR were published. DNSR is now part of the Defence Safety Authority, a broader body responsible for all aspects of military safety within MoD.

2012, 2013-2014, and 2014-15.

- The Annual Report of the Defence Safety Authority for the year 2014-2015.

13. Although annual reports from MoD's internal nuclear safety regulator were routinely published on the department's website, MoD did not publish the report for the year 2015-16 and subsequently refused to release a copy of the report in response to requests for information which I submitted<sup>2</sup>.

14. The reports relating to the years 2005 to 2014-15 have been removed from the MoD website, but I have retained copies of them. They form an annual assessment of the safety of the UK's nuclear weapons and naval nuclear propulsion programmes. With the exception of the Annual Report of the Defence Safety Authority, each report includes in various formats:

- an assessment of the assurance performance of the Ministry of Defence's nuclear programme, which in most cases includes an assessment rating;
- a brief commentary on issues facing the naval nuclear propulsion programme and the nuclear weapons programme;
- a discussion in more detail of the individual issues and risks which the MoD's nuclear programme faces, with a rating showing whether performance in addressing each issue has improved, remained static, or deteriorated (this section forms the bulk of the report).
- a brief discussion of regulatory activity undertaken over the report period;
- a summary of regulatory priorities for the next year.

15. I consider it most unlikely that the DNSR annual assurance report for 2015-16 departs dramatically in format or content from these previously published reports.

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<sup>2</sup> MoD request references FOI2017/09189 (Defence Nuclear Safety Regulatory Report) and FOI2017/10382 (Defence Safety Authority Report).

16. The annual report of the Defence Safety Authority for 2014-15 assesses safety across the whole range of military operations run by the MoD (aviation, maritime, land, fire, ordnance, and nuclear). The section of this report relating to nuclear safety is merely a short summary taken from the DNSR annual report for the same year. The subsequent narrative in this and my other witness statements refers to the more specific DNSR report, rather than the DSA report summary, but all arguments and evidence relate to both documents.
17. In response to my request for information, the MoD sought to withhold the DNSR and DSA reports for 2015-16 on the basis that the following exemptions under the Freedom of Information Act 2000 were engaged:
- Section 36(2)(b)(i) and 36(2)(c) (effective conduct of public affairs);
  - Section 24(1) (national security);
  - Section 26(1) (defence);
  - Section 27(1) (international relations).
18. Following a request for a Decision Notice<sup>3</sup> the Information Commissioner concluded that the exemptions under section 36(2)(b)(i) and 36(2)(c) were not engaged; that the section 24(1) exemption was engaged and the public interest favoured maintaining this exemption “by a relatively narrow margin”<sup>4</sup>; and that for a small portion of information which MOD had only sought to withhold on the basis of section 36 and 27(1), the section 27(1) exemption was not engaged.
19. Both the Ministry of Defence and myself appealed against the Information Commissioner's decision to the First Tier Tribunal.

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<sup>3</sup> Information Commissioner's Office Decision Notice FS50754705, 20 December 2018.

<sup>4</sup> Paragraph 58, Decision Notice FS50754705.

20. In its Grounds of Appeal to the Information Commissioner's decision notice, MoD states that it “accepts the ICO's analysis of s.36 and does not seek to rely on that exemption”. Instead of claiming that the s.36 exemption applies, MoD “now seeks to rely on the exemptions under ss.21, 24, 26 and 27 as reasons why it would be contrary to the public interest to disclose the disputed information”<sup>5</sup> At the time of writing no information has been provided as to which exemptions apply to which sections of the documents.

21. My view is that the public interest favours release in full of the information that has been requested.

22. It is submitted that the MoD's appeal should be rejected on the following grounds:

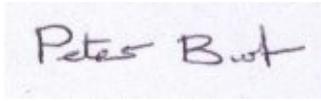
- No justification has been given for the change at this relatively late stage in the appeal process in the exemptions which MoD intends to rely on in its Grounds of Appeal.
- There is intrinsic benefit in ensuring that the regulation of nuclear safety is conducted in an open and transparent manner.
- There is considerable public and Parliamentary interest in the safety of the MoD's nuclear programme.
- In the current security environment, there is a need for accurate information to counter malicious narratives relating to UK military operations.
- No specific case has been made as to how the release of information might harm national security or defence interests, or how it might contribute to generating a 'mosaic' of information which might be harmful to the UK's security interests.
- It is in the UK's interests to set high standards of transparency in nuclear matters in order to discharge its international obligations and set a good example to other states.

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5 Paragraph 3, Ministry of Defence Grounds of Appeal, 8 February 2019.

23. Subsequent witness statements give detailed evidence to support each of these arguments.

Signed:

A rectangular box containing a handwritten signature in black ink that reads "Peter Burt".

Peter Burt

Date: 30 September 2019