

**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 6**

**PETER BURT**

Appellant

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1. This witness statement discusses national security and defence considerations, including whether information in the DNSR annual assurance report might credibly contribute to creating a damaging 'mosaic' which could give insights damaging to the UK's security interests.

***Potential for harm to national security interests***

2. The most recent explanation as to why MoD does not intend to publish the DNSR annual assurance report stated: “We have taken the step to not publish the Defence Nuclear Safety Regulator's Annual Assurance Reports as it has been assessed to do so would impact national security ... we cannot accept any compromise of our capabilities in the current security climate”; and: “The Government recognises that there is legitimate interest in nuclear safety, but we would not publish information that could be exploited by potential adversaries,

compromising our national security”<sup>1</sup>. No further detail or explanation as to how national security might be compromised by publishing the report has been provided by MoD either in public statements or open papers to the Information Tribunal.

3. DNSR annual assurance reports previously published since the regulator was formed in 2011 are not labelled with a security classification under the Government Security Classifications Scheme. This suggests that their content is not security sensitive. It is assumed that this remains the case for the 2015 – 16 annual assurance report.
4. The claim that the UK's national security could be put in jeopardy if the requested information was released would appear to exaggerate the case. The UK is not currently facing an imminent threat from any aggressor, and no changes in the national security context have been identified in open papers provided to the Tribunal that might justify withholding information. On the basis of information provided in the previously published DNSR annual assurance reports, the information provided in the report is unlikely to be sufficiently detailed or specific to run any risk of compromising the nuclear weapons programme.
5. It is clearly not the case that all information relating to nuclear weapons is covered by the exemption from release on national security grounds. MoD has released information on matters relating to nuclear weapons on its own volition and in response to numerous Freedom of Information requests.
6. It has also been suggested that release of the information might undermine the capability, credibility or the deterrent effect of the UK's nuclear weapons and thus compromise national

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<sup>1</sup> Defence Nuclear Safety Regulator: Annual Reports. Written question 250491. Asked by Douglas Chapman, 2 May 2019.  
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-05-02/250491>

security.<sup>2</sup> No evidence or argument to support this claim has been provided in open papers, and again, I consider it unlikely that the information in the report is detailed enough to undermine the MoD's nuclear programme.

7. Information held in the two reports might conceivably undermine the credibility of the UK's nuclear weapons if the reports indicate that the MoD is unable to operate its nuclear enterprise safely and reliably. Should this be the case, it would raise extremely significant issues relating to the UK's defence and foreign policy. Given MoD's claim that the nuclear deterrent is a “key component” of our national security strategy, the inability to operate it to the necessary standard would raise doubts as to whether nuclear weapons were indeed able to guarantee national security as intended. This is a crucial issue in public policy and the public and Parliament have a clear right to know whether the UK's nuclear weapons programme is able to deliver the benefits claimed for it, especially given the very large costs of the programme and the existence of alternative strategies for ensuring national security. Guidance from the Information Commissioner's Office on use of the section 24 exemption states that “the public also have a natural concern that the measures in place to safeguard national security are effective” and cites this as a reason for disclosing information.<sup>3</sup>
  
8. Under these circumstances, paradoxically, withholding publication of the DNSR report might be interpreted as undermining the credibility of the UK's nuclear weapons if it is interpreted by an enemy as an indication that the UK is experiencing problems in managing its nuclear programme safely and reliably.

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<sup>2</sup> Paragraph 56, Decision Notice FS50754705.

<sup>3</sup> Paragraph 30, 'Safeguarding national security – (Section 24). Information Commissioner's Office. Page 10.

## *Good practice on defence nuclear safety reporting*

9. The UK government has made a virtue of transparency in other aspects of matters relating to nuclear weapons. For example, at the 2019 Preparatory Committee meeting for the Non-Proliferation Treaty (NPT), the UK told the United Nations that its actions “ demonstrate our commitment to disarmament and to building the confidence and transparency we believe is vital to deliver to our long-term aim of a world without nuclear weapons”<sup>4</sup> (see also witness statement 7). The government considers that it is in the UK's security interests to deliver a world without nuclear weapons.
  
10. The UK's National Report to the 2019 NPT Preparatory Committee included a specific statement about the Defence Nuclear Safety Regulator, which stated that: "The UK has set a benchmark standard for defence nuclear safety regulation and assurance" and that "DNSR is responsible for assuring the nuclear safety of both the UK's Naval Nuclear Propulsion and Nuclear Weapon Programmes, to the exceptionally high standards required by applicable legislation, defence policy and relevant good practice within the nuclear industry”.<sup>5</sup>
  
11. Responding to recent reports by the House of Commons Public Accounts Committee on the MoD's nuclear enterprise, MoD stated that it “remains committed to transparency on the nuclear enterprise”.<sup>6</sup>

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4 United Kingdom Mission to the United Nations: 'NPT Preparatory Committee 2019. Disarmament Statement. United Kingdom of Great Britain and Northern Ireland'. 2 May 2019.  
[http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom19/statements/2May\\_UK.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom19/statements/2May_UK.pdf)

5 United Kingdom Mission to the United Nations: 'National Report Pursuant to Actions 5, 20, and 21 of the Nuclear Non-Proliferation Treaty (NPT) 2010 Review Conference Final Document. Report submitted by the United Kingdom of Great Britain and Northern Ireland'. Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. 25 April 2019. Page 16.  
<http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom19/documents/PC.III7.pdf>

6 HM Treasury: 'Treasury Minutes Progress Report. Government responses to the Committee of Public Accounts on Sessions 2010-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-19'. Paragraph 4.3, p185.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/790445/CCS0319\\_802104-001\\_TM\\_Progress\\_Report\\_March\\_2019\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790445/CCS0319_802104-001_TM_Progress_Report_March_2019_Accessible.pdf)

12. Other nuclear weapon states are willing to publish information on the safety of their nuclear weapons programmes. The United States Defense Nuclear Safety Facilities Board (DNFSB) is responsible for overseeing public health and safety issues at US Department of Energy defence nuclear facilities, and many aspects of its role are similar to those of DNSR. DNFSB's website contains a wide range of detailed reports on the safety of the US nuclear weapons programme,<sup>7</sup> including an annual report to Congress which has much in common with the DNSR annual assurance report.<sup>8</sup>
13. In France, defence nuclear safety is regulated by the Autorité de Sûreté Nucléaire Défense (DNSD - Defence Nuclear Safety Authority), part of the Ministère des Armées (Ministry of the Armed Forces), which describes itself as "une autorité indépendante et transparente" (an independent and transparent authority).<sup>9</sup> DNSD is accountable to the Haut-Comité pour la Transparence et l'Information sur la Sécurité Nucléaire (HCTISN - High Committee for Transparency and Information on Nuclear Security) which, although it does not publish annual reports on defence nuclear safety, organises Information Commissions on defence nuclear sites and publishes their reports.<sup>10</sup>
14. For Russia, Rosatom, the state nuclear corporation that runs the country's nuclear weapons complex, has also published an annual report about its defence nuclear programme which provides limited information on nuclear safety.<sup>11</sup>

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7 'Reports'. Defense Nuclear Facilities Safety Board website. <https://www.dnfsb.gov/documents/reports>

8 Defense Nuclear Facilities Safety Board. '29th Annual Report to Congress'. April 2019. <https://www.dnfsb.gov/sites/default/files/document/17791/2018%20Annual%20Report%20to%20Congress%20%5B2019-100-017%5D.pdf>

9 Autorité de Sûreté Nucléaire Défense website: <https://www.defense.gouv.fr/portail/vous-et-la-defense/securite-nucleaire/surete-nucleaire/l-autorite-de-surete-nucleaire-defense>

10 Haut-Comité pour la transparence et l'information sur la sécurité nucléaire website. [http://www.htisn.fr/index.php3?forcer\\_lang=true&lang=fr](http://www.htisn.fr/index.php3?forcer_lang=true&lang=fr)

11 Rosatom Government Services: 'Reports on the implementation of licensing control activities of organizations on the use of nuclear materials and radioactive substances in the work on the use of atomic energy for defense purposes and on the effectiveness of such control in 2017'. [Russian language]. <https://www.rosatom.ru/upload/iblock/ebf/ebfe897ca944b76ebb59785c426b3385.docx>

15. Each of these nations has felt able to disclose information about the regulation of its defence nuclear safety programme; the United States particularly so. Each of these nations is bound by similar national security constraints to the UK but is willing to show transparency in reporting on its safety record. As a nation which claims to follow “exceptionally high standards” and “relevant good practice” in the regulation of its defence nuclear programme, the UK should do likewise.

### *Application of exemptions under the Freedom of Information Act*

#### **Section 24 exemption**

16. MoD claims that for reasons which cannot be discussed in open session, the section 24 exemption applies to the disputed information. Although DNSR annual assurance reports have been published in the past, MoD in its Grounds of Appeal states that “The MoD has decided, after a review of the current national security situation, that DNSR reports, and the nuclear elements of DSA reports, should no longer be published. The MoD should not be obliged to repeat practices of the past if they are or may become harmful to national security.”<sup>12</sup>

17. No argument or evidence has been presented in open statements to indicate that publication of DNSR annual assurance reports in the past has harmed national security, or if so, how.

18. Neither is any information provided about the review which resulted in the publication of DNSR annual assurance reports being halted, or the background to the review. It is possible to speculate that the review may have been undertaken as a result of the freeze in UK – Russia relations following the attempt to poison Sergei Skripal with a chemical weapon agent in March 2018. The government has taken the position that it should not continue 'business as usual' with

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12 Paragraph 22, Ministry of Defence Grounds of Appeal, 8 February 2019.

Russia after the incident.<sup>13</sup>

19. The fact that some kind of review of security may have taken place does not necessarily imply that the threat to the UK's national security has changed, or that, specifically, there is an increased threat to the MoD's nuclear programme. MoD's policy relating to the release of information has evidently changed in relation to a change in circumstances, but this is not the same as an actual change in the threat to security itself. To accept MoD's position that it is justifiable to withhold the DNSR report from publication on security grounds, the Information Tribunal would need to be satisfied that a) there was a genuine threat to security, b) that a specific threat related to the nuclear programme, c) that publication of material in the DNSR report would credibly contribute to the UK's vulnerability to the threat, and d) withholding the entire report from publication is the only option which would avoid the threat.
20. It is not clear what format the 'review of the current national security situation' took; whether or how the review balanced the interests of security against those of safety and transparency; whether it addressed legal issues relating to the FOI Act and information law; whether or how risks were assessed; whether it considered measures which might mitigate against any external threat and allow information to be released; whether it explicitly considered publication of the DNSR and DSA annual assurance reports, or even how formal it was or by whom it was conducted. All these matters are of relevance to the Tribunal in coming to a conclusion on whether the MoD's review of the security situation justifies the decision to apply the section 24 exemption to material in the documents.
21. MoD argues that the fact that the DNSR's annual assurance reports have been published in the past should not be given significant weight on the basis that the MOD should not be obliged to

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13 Heather Stewart: "Despicable act": May confronts Putin over Salisbury poisoning'. Guardian, 28 June 2019. <https://www.theguardian.com/politics/2019/jun/28/theresa-may-exchanges-cool-handshake-with-vladimir-putin>

repeat practices of the past if they are or may become harmful to national security<sup>14</sup>. However, the MoD has not demonstrated that the security situation in 2015/16 (the period covered by the requested information) had deteriorated significantly over the twelve months from 2014/15, when it was deemed permissible to publish equivalent information. Again, the MoD needs to demonstrate that it has deviated from previous policy on the basis of solid evidence about tangible threats that would have harmful effects and can be used to justify use of an exemption under the FOI Act.

22. MoD has been informed that if it intends to rely on this review as evidence supporting use of the section 24 exemption a copy of any review document should be provided to the Information Tribunal and the author should be available for examination.<sup>15</sup> General assertions about security issues which are not backed by such evidence should not be accepted as evidence.
23. Regardless of the content of the security review, the MoD remains under an obligation to process FOI requests strictly in line with the terms of the Freedom of Information Act, and where the section 24 exemption is claimed, conduct the necessary public interest test. The fact that a review of security may have taken place does not justify a blanket exemption on security grounds to the release of information, or in itself demonstrate that the disputed information should be withheld.
24. The Information Commissioner's Decision Notice stated that “the Commissioner has concluded that by a relatively narrow margin, the public interest favours maintaining the exemption contained at section 24(1)”<sup>16</sup>. This judgment relates only to information which was reviewed by the Information Commissioner at the time the decision notice was issued. It does not relate to information to which it is newly claimed that the exemptions apply, and for which the section 36

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14 Paragraph 22, Response of the Ministry of Defence, 28 March 2019.

15 Paragraph 26, 'Response to Ministry of Defence Appeal', Peter Burt, 29 March 2019.

16 Paragraph 58, Decision Notice FS50754705.

exemption had previously been claimed. For reasons discussed in witness statement 2, it is argued that the case for use of the sections 24 and 26 exemptions is even weaker for the newly claimed material than for the material originally claimed to be covered by the exemptions.

25. In her decision notice<sup>17</sup> the Information Commissioner concluded that the potential harm of releasing the contested information “is arguably a very serious one, namely to the UK’s nuclear deterrent, which in the MOD’s description represents the ‘apex of our force capabilities and national security strategy’”.
26. However, the fact that the UK's nuclear weapons and submarines are at the 'apex' of force capabilities and national security strategy does not mean that they are the only, or an indispensable, means of maintaining national security. The UK's economic and political position, its conventional forces, international allies, and position under the NATO nuclear umbrella play major roles in maintaining national security. It is impossible to say which of many factors is most significant in maintaining the UK's security. The role postulated for the UK's nuclear weapons in defence relates only to the most extreme, and highly unlikely – possibly even hypothetical – threat scenarios. The fact that the information requested relates to the UK's nuclear weapons does not represent a “trump card” which will automatically counter any public interest arguments for its release.
27. In order to demonstrate beyond doubt that the release of information would prejudice national security interests, a public authority is able to seek a signed ministerial certificate to confirm that release of the information would be contrary to national security interests<sup>18</sup>. A ministerial certificate can only be challenged on judicial review grounds and represents very strong evidence that information is sensitive for national security reasons. However, the Ministry of

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<sup>17</sup> Information Commissioner's Office: 'Decision Notice FS50754705, Ministry of Defence and Peter Burt, 20 December 2018'.

<sup>18</sup> Section 25, Freedom of Information Act 2000.

Defence has produced no ministerial certificate to demonstrate that information in the two assurance reports should not be released for national security reasons.

28. A ministerial certificate would act as incontrovertible evidence that use of the section 24 exemption is necessary for the purposes of safeguarding national security. The Ministry's failure to acquire such a certificate casts doubt upon whether the information in the reports is really so sensitive as to compromise national security. Were there to be real risks in releasing the information contained in the reports, the Ministry of Defence would take every step necessary to prevent disclosure, including asking for Ministerial authority to keep it secret.

### **Section 26 exemption**

29. MoD states that disclosure of the contested information would be likely to prejudice defence or the capability, effectiveness or security of relevant forces<sup>19</sup>, and thus the balance of the public interest favours withholding information under section 26 of the Freedom of Information Act. As with the section 24 exemption, MoD considers that it is not possible to explain in open hearings how and why the elements of the disputed information which are not in the public domain engage the exemption.

30. DNSR annual assurance reports published for previous years contain no information which is relevant to the security of armed forces personnel, or which might compromise their security or effectiveness. The previous reports contain no information about specific operations and do not reveal specific details which might compromise military security.

31. The Tribunal should not defer to assertions by the MoD that release of the information would prejudice defence or the armed forces, but should objectively assess whether the evidence

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<sup>19</sup> Paragraph 17, Response of the Ministry of Defence, 28 March 2019.

presented justifies the use of the exemption.

32. Guidance from the Information Commissioner's Office on use of the section 26 exemption<sup>20</sup>

indicates that the following factors would favour disclosure of information in the public interest:

- furthering the understanding and participation in the public debate of issues of the day;
- promoting accountability and transparency by public authorities for decisions they take and the way they spend public money;
- allowing individuals, companies and other bodies to understand decisions made by public authorities which affect their lives; and
- bringing to light information affecting public health and safety.

The last of these factors is particularly relevant, but each of them apply to the current case.

33. It is concluded that the case has not been made that information in the DNSR annual assurance report needs to be withheld to safeguard national security and defence interests and, indeed, there are good reasons why it is in the UK's security interests to publish the report.

*Mosaic effects*

34. The Information Commissioner's Decision Notice noted that MoD had argued that the section 24 exemption was engaged because information contained in the document might contribute to a 'mosaic' and reveal information on the UK's nuclear weapons which “would be of benefit to potential adversaries , damaging the effectiveness of the deterrent and thus prejudicing national security”<sup>21</sup>. The Commissioner accepted these arguments.

35. Information on how this might happen has not been presented in open papers but a confidential

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<sup>20</sup> Information Commissioner's Office: 'Defence (section 26). Paragraph 26. <https://ico.org.uk/media/for-organisations/documents/1181/defence-section-26-foia-guidance.pdf>

<sup>21</sup> Paragraph 40, Decision Notice FS50754705.

annex to the Decision Notice explains the Information Commissioner's reasoning in coming to her decision<sup>22</sup>.

36. The “mosaic theory” is the concept in national security that apparently harmless pieces of information when assembled together could reveal a damaging picture. Note that it remains a 'theory', and that the concept that hostile actors commonly piece together such information to cause demonstrable harm remains empirically unproven by hard evidence. The theory is controversial in Freedom of Information Law because it provides a serious challenge to effective scrutiny of executive claims and has often been based on speculative arguments. Taken to an extreme, mosaic theory could be used to argue that any information relating to national security could be used to create a mosaic and thus should be exempt from release.
37. Much of the following evidence is based on 'The Mosaic Theory, National Security, and the Freedom of Information Act', a peer-reviewed academic paper by David E. Pozen published in the Yale Law Journal<sup>23</sup>. The paper presents a systematic and detailed examination of how the mosaic theory is used in national security and freedom of information law. Although it is based on the views of the US courts in relation to mosaic theory, the paper presents principles which are generally applicable.
38. Pozen contends that in the post 9-11 security climate mosaic claims have sometimes been overstated by government agencies and based on weak and speculative reasoning, but that there is a tendency for courts to take mosaic claims at face value without properly investigating them.
39. He warns that uncertainty often surrounds mosaic claims and that they can be difficult to

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<sup>22</sup> Paragraph 45, Decision Notice FS50754705.

<sup>23</sup> David E. Pozen: 'The Mosaic Theory, National Security, and the Freedom of Information Act'. The Yale Law Journal. December 2005: 115, 3: pp 628 – 679. <https://www.yalelawjournal.org/note/the-mosaic-theory-national-security-and-the-freedom-of-information-act>

evaluate. As their speculative nature means that it is often difficult to falsify or rebut mosaic claims, fears about the potential risks of releasing security information means that courts have assessed mosaic claims with less rigour than they deserve.

40. Pozen argues that although “mosaic theory provides an accurate description of how adversaries may capitalize on information disclosure, courts have – in deference to agencies' perceived superiority at evaluating mosaic threats – applied it in ways that are unfalsifiable and deeply susceptible to abuse and overbreadth; they have created in the mosaic theory a latently subversive basis for withholding information.”<sup>24</sup> As a result, “rather than review mosaic claims with extra deference, as courts have traditionally done, courts ought to review these claims with extra scrutiny and skepticism on account of their susceptibility to misuse.”<sup>25</sup>

41. Pozen also observes that “information can become dangerous only in combination with other information and capabilities, and no clear boundaries can demarcate one “piece” or “item” of information from another.”<sup>26</sup> To this extent “every national security exemption claim is, ultimately, a mosaic claim,”<sup>27</sup> and so “there is no analytic justification, moreover, for holding a professed “mosaic” claim to lower standards of specificity and plausibility than a claim not blessed with the mosaic moniker”.<sup>28</sup>

42. Pozen suggests various measures that tribunals can take to ensure that mosaic claims are properly investigated. Firstly, they can examine the 'support' presented by agencies for mosaic arguments – the quality of the evidence backing up such arguments. Secondly, they should consider the 'specificity' of mosaic claims - the extent to which the claim relates to withholding information in general, or specific parts of documents which may be harmful, and the precise

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24 P632, David E. Pozen, op cit.

25 P664, David E. Pozen, op cit.

26 P664, David E. Pozen, op cit.

27 P665, David E. Pozen, op cit.

28 P668, David E. Pozen, op cit.

harm that would result from disclosure. Finally, they should test the 'plausibility' of claims – the extent to which it is clearly and convincingly shown that harm would occur from release of the information<sup>29</sup>. “As a rule of thumb”, states Pozen, “the more speculative a mosaic claim is and the more independently innocuous information it covers, the more skeptical should be the court's review, given the greater risks of abuse and overbreadth and given agencies' predilection for turning to the mosaic theory when they know their case for withholding it is tenuous.”<sup>30</sup>

43. In the UK, the Information Commissioner has stated that her approach will be “to assess the merits of mosaic arguments in the circumstances of each case and that they should not be dismissed automatically”<sup>31</sup>.

44. In a case involving the Home Office, the Commissioner stated that: “Where mosaic effect arguments are advanced the Commissioner’s view is that these will be more convincing where the public authority is referring to other specific information that is already in the public domain, rather than to information that may be disclosed at an indeterminate future time. However, he does not reject entirely arguments based on disclosures to future information requests, so accepts that this element of the Home Office’s argument in this case is valid, albeit that it carries less weight than if the Home Office had been able to point to specific information that is already available.”<sup>32</sup>

45. Guidance on mosaic arguments in relation to the Environmental Information Regulations<sup>33</sup> states that: “However, general arguments will not carry much weight. It will be necessary to point to specific information already in the public domain, explain why it is likely that they will

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29 P653, David E. Pozen, op cit.

30 P676, David E. Pozen, op cit.

31 Paragraph 14, Information Commissioner's Office Decision Notice FS50616895, 13 June 2016.

32 Paragraph 17, Information Commissioner's Office Decision Notice FS50528131, 28 August 2014.

33 'Information in the public domain: Freedom of Information Act. Environmental Information Regulations' ICO guidance. Paragraphs 64 and 65.  
<https://ico.org.uk/media/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

be combined, and explain how additional prejudice is likely to result from the combination.

“This does not mean that mosaic arguments are only relevant if information is in the public domain. Mosaic arguments may also be relevant in other situations, for example if the requested information can be combined with information known only to a limited group of people, as long as disclosure would mean that prejudice is likely”.

46. To summarise, the Information Tribunal should not accept generic or speculative assertions that mosaics could be made if information is released. The three tests of 'support', 'specificity', and 'plausibility' should be applied when assessing a mosaic claim.

47. In the current case, it is claimed that disclosing the contested information “would be likely to provide or contribute to a “mosaic effect” revealing information on the nuclear deterrent that would be of benefit to potential adversaries, damaging the effectiveness of the deterrent and thus prejudicing national security”. The Tribunal should examine this chain of logic systematically, by:

- Identifying the specific information of concern.
- Considering how a mosaic would be created and identify which other information would be needed to do this.
- Considering whether and how this would tangibly damage the effectiveness of the UK's nuclear deterrent.
- Showing how this would prejudice national security by considering the degree and nature of the harm caused.

48. Pozen also recommends that “Courts should, moreover, consider positive mosaic scenarios as well as negative ones – the public, too can mosaic-make, and thereby respond more intelligently

to threats. If FOIA disclosures inform a community of its critical infrastructure vulnerabilities, for example, its residents may be able to devise better protection schemes and lobby for their implementation”.<sup>34</sup>

49. Such situations contribute to the net public interest in releasing information. On the basis of information included in previous published versions of the DNSR annual assurance report, local community groups or elected representatives could create positive mosaics by considering information from the DNSR report alongside information on nuclear safety given to site stakeholder groups for nuclear sites<sup>35</sup>, particularly civil nuclear sites. Tangible examples of these mosaics could include:

- Pressing site operators to follow DNSR good practice and identify organisational baselines at a civil nuclear site.
- Identifying strategic challenges to management of civil nuclear sites, for example local shortages of nuclear qualified and experienced staff.
- Identifying a need to review nuclear safety cases in a particular area.
- Identifying a need to improve measures for the control of nuclear-related work.

## ***Conclusions***

50. 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.

51. The Tribunal should treat MoD's claims regarding national security with an appropriate degree of scepticism and systematically explore whether and how national security might be harmed if

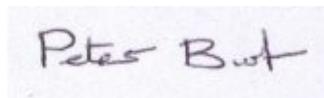
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<sup>34</sup> P677, David E. Pozen, op cit.

<sup>35</sup> Office for Nuclear Regulation: 'Quarterly Local Liaison Committee / Site Stakeholder group reports'.  
<http://www.onr.org.uk/llc/index.htm>

the disputed information is released.

Signed:

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

Peter Burt

Date: 30 September 2019