

**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

WITNESS STATEMENT 8

PETER BURT

Appellant

1. This witness statement has been prepared to cover matters which have arisen in the period immediately before the Information Tribunal hearing on 2-3 December.
2. They relate to the views of senior personnel at the Office of Nuclear Regulation on the case for withholding the Defence Nuclear Safety Regulator, and contested opinions within government about the nature of the 'carve out' which it has been claimed exists within nuclear safety legislation for the Ministry of Defence's nuclear programme. As information on these matters only entered the public domain at the end of the week before the Tribunal hearing, this is the first opportunity I have had to draw the attention of parties to the case to it.

3. On Friday 29 November the Scottish news website 'The Ferret' published an article¹ stating that “The Office for Nuclear Regulation (ONR) has privately told the MoD that it disagrees with the ministry’s decision to stop publishing annual reports on nuclear weapons safety. There is “a difference in approach” between the two government bodies, ONR told The Ferret”.
4. The story is based on a briefing given to ONR's non-government stakeholders at a meeting which took place on 7 November 2019, at which ONR’s chief nuclear inspector, Mark Foy, made clear to those present that he did not agree with the MoD’s move in withholding the DNSR annual assurance report from publication, adding that he had said so to MoD officials.
5. I was present at the meeting and can confirm that the report is accurate, and that the Chief Nuclear Inspector stated that he had told senior Ministry of Defence officials that withholding the report was “not helpful”.
6. In my view, the Chief Nuclear Inspector's views serve as further evidence that there is a strong public interest in publishing the information on nuclear safety that is published in the Defence Nuclear Safety Regulator's annual assurance report.
7. The same meeting was also told that the Office for Nuclear Regulation is seeking legal advice from the Attorney General to clarify arrangements for regulating Ministry of Defence nuclear operations. The review will consider the vires under which the MoD's nuclear programme is regulated, and has been deemed necessary to help resolve different understandings between MoD and ONR over legal definitions and regulatory

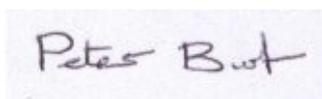
¹ Rob Edwards: 'Ministry of Defence under fire for hiding reports on nuclear safety problems'. The Ferret, 29 November 2019. <https://theferret.scot/ministry-of-defence-dnsr-reports-onr/>

responsibilities. The Attorney General's opinion has been sought as the most senior source of legal advice available to government departments.

8. A copy of the presentation given by ONR personnel which discusses the review of the 'defence vires' for ONR was posted on the ONR website on Wednesday 27 November.²

9. In my view, this demonstrates that there is no accepted understanding or agreement on the nature of the 'carve out' which it is claimed exempts the Ministry of Defence nuclear programme from regulation by the Office for Nuclear Regulation, the statutory regulator for the sector under the terms of the Energy Act 2013.

Signed:

A rectangular area containing a handwritten signature in blue ink that reads "Peter Burt".

Peter Burt

Date: 29 November 2019

² NGO Forum meeting presentations, 7 November 2019. Office for Nuclear Regulation. See slide 50. <http://www.onr.org.uk/documents/2019/onr-ngo-presentation-11-19.pdf>