

**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

COMMANDER ROBERT FORSYTH

Witness for Mr Burt

1. I am Commander Robert Forsyth RN (retired) of Deddington, Oxfordshire. I was born in 1939 and joined the Royal Navy in 1957, where I specialised in the Submarine Service. I served in five submarines during my career, passed the Commanding Officer's Qualifying Course, and commanded both conventional and nuclear-powered submarines. I was the Executive Officer (second in command) of the Polaris nuclear ballistic missile-armed submarine HMS Repulse (Starboard crew) from 1972-74.
2. On completion of active submarine service I served on the Naval Staff in the Ministry of Defence (MoD) before taking voluntary retirement in 1981. I subsequently worked in industry

completing a second career with eleven years as Marketing Director of Westland Group plc followed by five years as an aerospace industry consultant.

3. I have been asked by Mr Peter Burt to provide my opinion to the Information Tribunal on the importance of open, transparent, and independent reports on defence nuclear projects.
4. I understand that this case before the Information Tribunal will determine whether the annual assurance report for 2015-16 prepared by the Defence Nuclear Safety Regulator (DNSR), and the section of the annual assurance report for 2015-16 prepared by the Defence Safety Authority (DSA) which relates to nuclear safety should be released to the public under the terms of the Freedom of Information Act 2000.
5. Mr Burt has provided me with copies of the following documents:
 - 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 for the years 2011, 2012, 2013-2014, and 2014-15.
 - The Annual Report of the Defence Safety Authority for the year 2014-2015.
6. I understand that these have been published in previous years on the Ministry of Defence website, although they are no longer available to download from the website. I have assumed

that the as yet unpublished DNSR annual assurance report for 2015-16 is similar in format and content from these previously published reports.

Comments on the reports

7. **The Defence Safety Authority report**, in so far as it relates to nuclear matters, merely includes summary text drawn from the DNSR annual report for the same period outlining the assurance assessment for the defence nuclear programme, presented alongside information relating to other areas of military safety (aviation, maritime, land, fire, and ordnance).
8. **The Defence Nuclear Safety Regulator reports** provide a general commentary on the status of nuclear safety across the Ministry of Defence. They do not go into any detail about technical matters and nor do they provide any specific information about nuclear operations, nor provide any details about deployments or movement patterns from which it might be possible to make deductions about nuclear operations. The reports do mention specific sites, but in relation to general topics. In a very few places information has been redacted from the occasional sentence – presumably to remove security-sensitive detail.
9. The reports give an overview of broad themes relating to the defence nuclear programme such as retention of personnel, organisational capability, and the programme to replace nuclear infrastructure. In my opinion they contain nothing that would be of material assistance to an adversary seeking to obstruct the UK's military nuclear programme. In terms of gaining an

understanding of the programme, they merely give a high level insight into a complex nuclear programme.

10. The format of the reports identifies key issues facing the MoD's nuclear programme to be identified and progress in resolving these issues to be tracked over several years. In some cases the reports are critical of the MoD, as one would expect from a regulator, but in such cases they indicate the remedial measures which are being taken to address problems. Publication of the DNSR annual assurance reports shows that MoD has been willing to allow scrutiny of its safety performance and is prepared to discuss the issues with outside experts and media.

Effect of withdrawing publication of the reports.

11. The reports provide credible evidence regarding the MoD's awareness of the need to monitor safety of the defence nuclear programme. Cessation of their publication after 2014-15 could imply that the Ministry of Defence is no longer willing to accept scrutiny or critique of its nuclear safety because it wishes to hide specific incidents; thereby arousing suspicion of deliberate concealment as opposed to providing re-assurance that the incidents that inevitably arise are being properly managed.
12. I understand that the Ministry of Defence has claimed that to continue to publish the DNSR reports "would impact national security" and that "we cannot accept any compromise of our capabilities in the current security climate," nor "publish information that could be exploited by potential adversaries". In my opinion this is a short sighted view which makes it far easier for the UK's adversaries to propagate misinformation about the UK's nuclear programme, both

here and among foreign audiences. It also makes it harder for the UK public to understand the nuclear operations that are undertaken in their name and trust that these operations are conducted with the high level of precision and care that they warrant.

13. Public opinion rightly regards nuclear programmes as potentially dangerous and an accident would pose significant risks. Major nuclear catastrophes such as the accidents at Three Mile Island, Chernobyl, and Fukushima have re-inforced this view. It is not unreasonable that evidence should be available to the public from an independent source to demonstrate the standard of the MoD's nuclear safety performance, and indeed, it is in MoD's own interests to be able to show that its programme is safely run.
14. In the current age people are becoming increasingly sceptical of information from government sources. Qualitative reports from independent sources such as arms-length regulators is important in ensuring trust in nuclear programmes. The DNSR annual assurance reports show clearly that nuclear safety is seen as important; that the regulator is prepared to take a firm line where necessary; and that assurance procedures are the subject of continuous improvement. It is in the Royal Navy's interests for the public to understand this.
15. From the perspective of a former nuclear submarine officer, publication of an independent assessment of Ministry of Defence nuclear safety is as much in the interests of the personnel who deal with nuclear systems on a day-to-day basis, whether directly involved as nuclear technicians or just crew members, as it is with the general public. They too need re-assurance of measures being taken to monitor and manage incidents that they know occur.

16. It is therefore surprising and disappointing to learn that MoD no longer plans to publish DNSR annual assurance reports. Publication of defence nuclear safety reports demonstrates a degree of openness and transparency from MoD about the effectiveness of its internal nuclear regulation.
17. MoD appears to be suggesting that the security climate has changed and that the DNSR report will no longer be published in response to this. On the basis of my reading of the daily and specialist press I do not believe that the UK is facing an imminent threat from any potential aggressor, notably Russia. The Government has stated publicly that Trident has been at several days' notice to fire with missiles untargeted for over 20 years now. No reasons appear to have been given as to why MoD therefore thinks the international security situation now justifies withholding the DNSR annual report from publication. No explanation has been given as to how national security may have been compromised by ten years of prior publication.
18. As a result, many will conclude, rightly or wrongly, that MoD is hiding something by refusing to publish the report – possibly a verdict by the regulator that nuclear safety performance is inadequate. This undermines confidence in the competence of both the MoD, as managers of the programme, and the DNSR as its regulator.

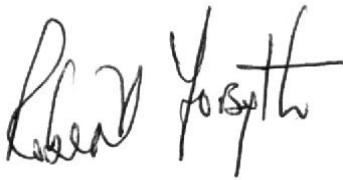
Summary of my opinion

19. The measures implemented by MoD in withholding publication of the DNSR annual assurance report for 2015-16 and subsequently would seem disproportionate to any security risks in

doing so and, far from damaging national security, failure to publish the report will contribute to a lack of public confidence in MoD nuclear safety.

20. The MoD should return to what was hitherto considered to be good practice in transparency and recommence routine publication of such reports.

Signed:

A handwritten signature in black ink, appearing to read 'Robert Forsyth'. The signature is written in a cursive, slightly stylized font.

Robert Forsyth
Commander RN (Retired)

Date: 16 September 2019