

APPELLANT

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

Appeal No. EA/2010/0056

BETWEEN:-

ROB EDWARDS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

MINISTRY OF DEFENCE

Additional Party

1st Witness Statement of

JOHN H LARGE

in the Interest of the Appellant

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1 **Qualifications and Experience**

2 I am John H Large of the Gatehouse, 1 Repository Road, Ha Ha Road, London SE18 4BQ.

3 I am a Consulting Engineer, Chartered Engineer, Fellow of the Institution of Mechanical Engineers, Member of the Nuclear Institute, Graduate Member of the Institution Civil Engineers, and a Fellow of the Royal Society of Arts.

4 My career commenced and developed in academia and research in the nuclear area for about 20 years, thereafter I established the Consulting Engineers Large & Associates, specialising in analysis, design and nuclear applications.

5 During the course of my academic and professional careers, I have been involved in aspects of fundamental and applied research, with the development and analysis of a number of

technically demanding nuclear projects, including aspects of nuclear fuel reprocessing, nuclear power generation and marine propulsion, and nuclear weapons.

6 In **APPENDIX A** I have set down examples of my past and recent experience with nuclear and, particularly, military nuclear projects involving the MoD.

7 Similarly, in **APPENDIX B** I have listed those publicly available papers, reports and publications of mine that relate to military activities and/or the MoD specifically.

8 In particular, I refer to my involvement with the nuclear reactor propulsion plant repairs to HMS *Tireless* in Gibraltar, and the salvage of the Russian Federation Northern Fleet nuclear powered submarine *Kursk*. During both of these projects, I had direct involvement with the Naval Nuclear Regulatory Panel (NNRP) that later became the Defence Nuclear Safety Regulator (DNSR) that features in this Appeal.

9 During the course of my work, not that infrequently, I resort to the *Freedom of Information Act 2000* (FoI) and/or the *Environmental Information Regulations 2004* (EIR) to seek information that is not freely accessible within the public domain.

10 Most of the FoI requests that I have made in the past have not been trying to prise out of Public Authorities confidential, secret or similarly safeguarded data and information, but generally these requests have been seeking information that has, for a variety of reasons (usually oversight), not been placed in the public domain.

11 I have made a number of FoI requests with the MoD, most recently relating to the berthing of an operational nuclear powered submarine at the Southampton Eastern Docks and the emergency plans laid for this⁶⁶ – I shall refer to these and other FoI dealings later in my witness statement.

12 I am sufficiently experienced and knowledgeable in the topics relating to this Appeal to give this witness statement.

13 **Instructions:**

14 On 16 June 2010, the Appellant, Rob Edwards, asked me¹ to provide a Witness Statement in support of this Appeal.

1 Letter of Instruction, 16 June 2010 from Rob Edwards - <http://www.largeassociates.com/3189%20Rob%20Edwards/Rob%20Edwards%20-%2016%20June%20Letter%20of%20Instruction.eml>

15 I agreed to do so pro bono.

16 I should state here that I regard the role, purpose and function of journalists (such as the Appellant) and, generally, the media to be an integral and essential part of our democracy. Moreover, I consider that the much hackneyed idiom *'Freedom of the Press'* demands, so far as is reasonably practicable, *freedom of access* to information and that any restraint on this freedom should be minimal and not within the absolute control of any one self-interested party.

17 In this and other respects, excessive and over-zealous withholding of information from the public domain does not serve, to my belief, the public interest and is to the detriment of our democracy.

18 That said, the firm views that I hold in this regard have not prejudiced the facts and opinions given in my Witness Statement which I present as follows:

19 **Basis of the Appeal**

20 I understand that the basis of this Appeal is that the Appellant challenges the Respondent's (the Information Commissioner - IC) decision² in agreeing with Ministry of Defence (MoD – the Additional Party) standpoint³ not to disclose (save a few exceptions by the IC)⁴ the greater part of the information⁵ originally requested by the Appellant under qualified exemption of Section 36(2)(b)(i) of the FoI Act.

2 The Respondent's ruling is set out in the Information Commissioner's Office (ICO) *Decision Notice FS50194621*, Freedom of Information Act 2000 (S50), Information Commissioner's Office, 4 February 2010 - http://www.largeassociates.com/3189%20Rob%20Edwards/Decision%20notice%2005_02_2010%20f1238501.pdf

3 The MoD reiterates this decision in para 13 of the letter to the Appellant from Katie de Bourcier MOD D/DG Info/3/18/1 12-12-2006-075324-002 25 February 2008, viz ". . . DE&S's letter of 11 May 2007 explained that all the information within three of the documents ("*Draft DNSC report AWE*", "*Quarterly report for DNSR-NWR Q3 2006*", and ". . . DNSR Inspection of DLO Nuclear Weapon Convoy Road Movement of Nuclear Weapons 'MO4051' and Associated COPI: Interim Report, Defence Nuclear Safety Board Annual Report") and most of the information within the other two ("*Indian Footprint 06 report*" and "*NWR 2005 annual report*") was being withheld in reliance on the exemption at section 36(2)(b) of the Act. Section 36(2)(b)(i) of the Act provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure under the Act would, or would be likely to, inhibit the free and frank provision of advice. This exemption explicitly recognizes the role free and frank advice plays in effective government." - <http://www.largeassociates.com/3189%20Rob%20Edwards/Katie%20MoD%20-%20Edwards%20Rev%20Final%20-%20U.pdf>

4 A few exceptions to the original S36 exemptions are given in the Table of page 22 of the ICO's Decision Notice FS50194621 although there appears to be errors of referring to certain (non-existent) pages of Report 2) (Indian Footprint) and Report 4) (DLO Convoy) eg page 8 should be page 3.

5 That was subject of the Appellant's original FoI request for copies of 1) 20060921 draft DNSC report AWE, 2) Indian Footprint 06 report, 3) 060804-Quarterly report for DNSR-NWR Q3 2006, 4) DNSR Inspection of DLO Nuclear Weapon Convoy Road Movement of Nuclear Weapons 'MO4051' and Associated COPI: Interim Report, 5) Defence Nuclear Safety Board Annual Report, and 6) NWR 2005 annual report.

21 My understanding is that S36 generally applies to information that might prejudice effective
conduct of public affairs and that subsection (2) applies to information that

22 *“. . . is exempt information if, in the reasonable opinion of a qualified
person, disclosure . . . “*

23 under subsection (b)(i) specifically
relates in substance to

24 *“. . . would, or would be likely to, **inhibit the free and frank provision of
advice.**”*

my truncation . . . and added *emphasis*

25 In this matter, the practicable application of the S36(2)(b)(i) qualified exemption is clearly
defined by the [MoD letter](#) to the Appellant of 11 May 2007.⁶

26 This is that the MoD engaged S36(2)(b)(i) exclusively to the regulatory activities of the
Defence Nuclear Safety Regulator (DNSR) and, by implication, to the overseeing Defence
Nuclear Safety Committee (DNSC). In summarising the outcome of its test of public
interest, the MoD opines that it is [page 2, para 5 MoD 6]⁷

27 *“. . . important that regulators have no inhibition in identifying areas of
concerns and robustly express views, without feeling pressure into diluting
an assessment for public consumption. To release the information would
compromise these activities by inhibiting frankness . . . and prejudice the
effective conduct of public affairs. . . .”*

my truncation . . .

28 **Information Commissioner’s Assessment and Decision**

29 In §31⁷ of the Decision Notice (DN), the Respondent undertook to, amongst other things,
consider whether the opinion of the qualified person (here the Minister of State for the
Armed Forces) was reasonable in substance in deciding that the S36(2)(b)(i) qualified
exemption would apply because disclosure *would be likely*⁸ to invoke the prejudice.

30 The Respondent has expressed satisfaction that i) the decision of the qualified person to
have the information withheld from the Appellant was ‘*reasonable in substance*’ (§37 DN)
and that ii) the submission upon which the qualified person based the decision for non-

6 Letter DE&S, D/DGS&E/BSG/80/20/30/1, 11 May 2007 -
<http://www.largeassociates.com/3189%20Rob%20Edwards/MoD%20Letter%2011%20May%202007.pdf>

7 Paragraph references to the Respondent’s Decision Notice are given in the form eg (§31 DN), similarly, referred text page
and paragraph of footnote cited documents are given respectively eg [page 2, para 5 MoD 6].

8 The ‘*would be likely*’ criterion applied by the Commissioner is the lesser test of S36(2)(b) in that ‘*would, or would be
likely to, inhibit . . . the free and frank provision of advice*’.

disclosure was a *'full submission'* (§38 DN), thereby enabling the Respondent to iii) accept the *'reasonableness'* of the qualified person's opinion (§45 DN).

31 In doing so, the Respondent's reasoning coincides with that of the MoD (my para 27 – §27 JL previously) in that (§45 DN):

32 *"... The Commissioner agrees that it is in the public interest that regulators should not be inhibited from providing free and frank advice especially in an area as sensitive and important as nuclear safety. The Commissioner accepts that it is in the public interest that regulators responsible for issues surrounding nuclear safety are able to make robust criticism and recommendations regarding matters of considerable public interest free from the 'chilling effect' of having those discussions made public. . . "*

33 Thus enabling the Respondent to arrive at the conclusion and decision that (§48 DN):

34 *"... the Commissioner has concluded that the **extent and severity** of the prejudice that would be caused to the ability of regulatory bodies to give free and frank advice is a more compelling concern.⁹ Consequently the Commissioner has decided that for the majority of information withheld under section 36(2)(b)(i) the public interest in maintaining the exemption outweighs the public interest in disclosure. "*

my added *emphasis*

35 In this way, the Respondent agrees with the MoD that that disclosure would lead to regulators being (§44 DN):

36 *"... inhibited from identifying areas of concern and robustly expressing objective criticism of the arrangements for fear of a **public outcry** before they have had an opportunity to be addressed."*

my added *emphasis*

37 **Validity of the Commissioner's Decision on Exemption S36(2)(b)(i)**

38 In the previous section (§§20 to 27 JL) I set out my understanding S36(2)(b)(i) although, that said, I do not claim to be an expert on the application of this qualified exemption.

39 If my interpretation of S36(2)(b)(i) is correct, the Appellant's opportunity to challenge the Respondent's decision is, essentially, confined to judging the correctness of the

9 With this assessment of the *'extent and severity of the prejudice'* it seems to me that the Respondent has gone beyond that determined by a previous Tribunal finding (*Guardian Newspapers & Brooke v Information Commissioner & BBC [EA/2006/0011 & EA/2006/0013]*) that the Information Commissioner's opinion is restricted to focusing on the likelihood of that prejudice occurring, rather than making an assessment as to the extent and severity of the prejudice - I refer to this further in §§129 to 130 JL.

Respondent's assessment that the opinion of the qualified person (that it was in the public interest) not to disclose the *disputed information* was

40 i) *reasonable in substance*

41 and reasonably arrived at on the basis of

42 ii) *sound information*

43 being submitted by the public authority (MoD) to the
qualified person.

44 Of course, the difficulty for me is that I am denied access not just to the *disputed information* but also to whatever *sound information* was submitted to the qualified person, together with any note that recorded the reasons for the qualified person's opinion. Even so, I am able identify a number of concerns and doubts about the validity of the Respondent's decision (§48 DN).

45 In summary these are:

46 a) that the Respondent has introduced considerable confusion about what specific qualified exemptions (§28 DN) apply to each of the documents originally requested by the Appellant – put simply, the MoD says one thing in that certain exemptions have been engaged, whereas (after the fact) the Respondent contradicts this by stating that other exemptions apply and were applied, although no reason is given by the Respondent for this conflict;

47 b) that, not surprisingly to my mind, the Respondent's experience and understanding are insufficient even to 'review' the 'withheld information' (ie the *disputed information* - §37 DN) necessary to arrive at an informed and valued judgment about the balance of public interest in the complex areas of nuclear activity identified by the Appellant's requests - obviously, it is vital that the Respondent in judging the applicability of the redactions has a sound grasp of this military technology and its complex management and regulatory routines in order to correctly identify those comments, views, etc., of the regulator that should not be disclosed for fear of provoking 'a public outcry' (§44 DN) and be subject to the 'chilling effect' of public scrutiny (§45 DN);
and

48 c) that in reaching its decision the Respondent seems to have given no regard to the inconsistency of the MoD's engagement of S36 – I shall provide examples in which the MoD has not chosen to engage S36, or has not deemed the information disclosed worthy of such exemption, for FoI requests in the same topic areas as those made by the Appellant and which are subject of this Tribunal.

49 Underlying a), b) and c) foregoing is the quandary that FoI requests relating to information of a restricted, highly technical and/or complex nature, which is certainly the case here, could heavily rely upon the technical expertise of those not wanting to disclose, in this case the MoD generally and the DNSR regulators specifically.

50 Any arbitration and remedy about the non-disclosure of the disputed information, that is the ways and means by which the Information Commissioner goes about arriving at the Decision Notice, if completed alone in the absence of specialist advice, runs risk of being undertaken in an environment of ignorance. On the other hand, if the Commissioner seeks advice on the content of the disputed information because of the claimed sensitive nature of the information this is likely to be restricted to 'those in the know', here the MoD's nuclear regulators, then the Commissioner's decision might be subject to, at the best, bias or, at the worst, a stratagem of subterfuge.

51 I shall now explore and demonstrate my doubts and concerns on the topics raised in the summaries above in further detail:

52 **A) EXEMPTIONS – CONFLICTING DEFINITIONS OF MOD AND RESPONDENT**

53 Reading through the redacted version of the documents originally requested by the Appellant raises a serious anomaly between the MoD and the Respondent. This anomaly relates to how various and different FoI qualified exemptions have been applied to the documents provided to the Appellant.

54 Under the heading '**Exemptions**', the Respondent states that '*for reports 1 - 4 the description is taken from the public authority's (MoD) response to the complainant (now Appellant) dated 11 May 2007*' (§28 DN), thereafter the Respondent summarises which qualified exemptions had (or should have) been engaged (§§28.1, 2, 3, 4 & 6 DN), thereafter stating that the MoD has applied S36(2)(b)(i) to redact information from three of the remaining five reports (§30 DN).

55 The 11 May 2007 letter,⁶ relied upon by the Respondent, is the MoD's response to the Appellant's original request setting down, in accord with S17(3) of the FoI Act, the qualified exemptions engaged following the appropriate public interest test. This MoD letter gives a brief description of each document (ie the documents being considered here) and summarises the reason(s) why the specific qualified exemption of the FoI Act is being considered (to withhold the *Disputed Information*).

56 There is also a second letter³ of 25 February, 2008 from the MoD to the Appellant that confirms that S36(2)(b)(i) has been engaged [para 8, 13, 14, 15 & 16 MoD 3] for *all* of the information in 3 of the reports and for *most* of the information in the 2 remaining reports [para 13 MoD 3].

57 The anomaly is that although there is accord with the descriptions of the five reports, the two summaries clearly conflict – a direct comparison between the summaries is given in the following tabulation:

TABLE 1 – EXEMPTIONS ENGAGED BY MOD-RESPONDENT [ξ63] [ξ65] [ξ68] [ξ82]

DOCUMENT/REPORT TITLE	MOD S17(3) SUMMARY – SEE 11 MAY 2007 LETTER ⁶	RESPONDENT'S DN SUMMARY – §28 ²
1) 2006921 draft DNSC report AWE	. . .S36(2)b Prejudice to the effective conduct of public affairs	Information in this report has been redacted under section 26(1) and section 27(1)
2) Indian Footprint 06 Report	As with document 1), all of the report was considered . . to fall with S36(2)b . .	Information in this report has largely been redacted under section 36(2)(b)(i) although section 26(1) and section 27(1) have also been applied in places
3) 060804-Quarterly report for DNSR-NWR Q3 2006	As with document 1), all of the report was considered . . to fall with S36(2)b . .	A small amount of information has been redacted under section 27(1)
4) DNSR Inspection of DLO Nuclear Weapon Convoy Road Movement of Nuclear Weapons M04051 and associates COPI, interim report	A Public Interest Test was conducted in respect of S24 (National Security) for some information in the main body of the report . . . as with document 1), all of the report was considered . . to fall with S36(2)I {sic} . .	Information has largely been redacted under section 36(2)(b)(i) but section 24(1) has also been applied in places
6) NWR 2005 Annual Report	As with document 1), all of the report, with exceptions of Paragraphs 1 and 2, was considered . . to fall with S36(2)b . . Public Interest Tests were also conducted with respect to some limited information contained within the report as to S27(International Relations) and S24(National Security) . . as the whole document, other than paragraphs one and two are being withheld under S36(2)b I am not giving details of those Tests.	Information has largely been redacted under section 36(2)(b)(i) although a small amount of information has been redacted under section 27(1)

my truncation . . and added *emphasis*

- 58 There is no explanation whatsoever in the Decision Notice as to why these significant changes have been applied by the Respondent.
- 59 Moreover, in making these changes it is not clear that the Respondent's reading and interpretation of the text sections qualifying for any specific qualified exemption is correct.
- 60 For example, for the fourth item of the Appellant's request (DNSR Inspection of Nuclear Weapon Road Convoy), the Respondent considers that *'Information has largely been redacted under section 36(2)(b)(i) but section 24(1) has also been applied in places'* (§28.4 DN – my *emphasis*).
- 61 However from my reading of the redacted document, I would judge most of the redactions possibly apply to descriptive narrative text¹⁰ relating to National Security as exempted by S24(1) and not to the *'free and frank provision of advice'* of the qualified exemption of S36(2)(b)(i).
- 62 To demonstrate this I have compiled **TABLE 2** of APPENDIX C sourcing the redactions of, as an example, item 4) of the Appellants original request (DNSR-Inspection of DLO Nuclear Weapon Convoy Road Movement) on a line-by-line basis. Even though I have to admit to relying upon 'educated guesswork' for its compilation, my rough-and-ready selection shows that of the total redactions rendered to this report more than half were probably made under the National Security exemption S24(1) and not, as stated by the Respondent, that the information had been *'largely redacted under section 36(2)(b)(i)'* (§28.4 ND – my *emphasis*).
- 63 **In conclusion of Section A:** I have to admit to a measure of bewilderment by the changes highlighted in **TABLE 1**, particularly since there is no explanation whatsoever in the Decision Notice of why the Respondent saw fit to adopt a different standpoint on which of the qualified exemptions were applicable and applied to the documents provided to the Appellant.

10 My *'descriptive narrative text'* corresponds with the Respondent's *'factual observations'* (§49 DN).

64 Simply, the Respondent's description of which and how the qualified exemptions were engaged is after the fact¹¹ because the MoD had already undertaken the public interest tests in accord with its own interpretation of the FoI Act.

65 My reading of the Respondent's statement is that "*The public {sic} authority has applied section 36(2)(b)(i) to redact information from 3 of the 5 remaining reports.*" (§30 DN) is incorrect if, that is, the MoD statements of the middle column of **TABLE 1** were adhered to when making the redactions.

66 Indeed, the MoD had two separate opportunities^{3,6} to advise the Appellant which qualified exemptions were being and had been engaged (ξ55 JL) and, on each occasion it clearly stated that S36(2)(b)(i) applied to *all* or *most* of the content of the five documents requested.

67 If, on one hand, the Respondent is assumed to be the superior authority on the application of the FoI Act, then the MoD response to the Appellant's original request was flawed, so the Appellant's original request should be reconsidered afresh,

68 but if, on the other hand, the Respondent's changes of **TABLE 1** are incorrect then I suggest that this, alone, renders the Respondent's Decision Notice invalid.

69 The large disparity of **TABLE 2** suggests to me that, either:

- 70 i) the Respondent acted on unreliable information and advice from MoD officials;¹²
- 71 ii) and/or that the Respondent misunderstood or did not sufficiently understand the un-redacted (ie the disputed information) presented by the MoD officials.

72 The clarification required here embraces:

- 73 a) with respect to i) above (ξ70 JL), was the Respondent led astray (ie bamboozled) by the MoD officials' claim¹³ that the redactions were made to maintain an environment for the continuance of '*frank and free provision of advice*'; and/or

11 The Respondent persists in this stance that it is correct on which exemptions applied after the fact with its statement of paragraphs 7 and 8 that not all of the disputed information is within the scope of the Appellant's Rule 5 request to have the disputed information revealed to me – see Respondent's Response to the Appellant's Application for Direction on Disclosure of Disputed Information to Witness, EA/2010/0056, 13 August 2010.

12 It is possible that the MoD may have may have changed the exemptions on which it sought to rely during the Information Commissioner's investigation but, of course, if it did so then the Appellant should have been informed of any such change and, indeed, the MoD would have to revisit the whole area of Public Interest testing the new basis of the redactions struck throughout the Appellant's original request.

13 The Respondent clearly relies upon the Public Authority (ie the same MoD officials responsible for 'weeding' the documents provided in response to the Appellant's original request) to indicate what has and what has not been redacted

74 b) for ii) above, was the Respondent unable to see through the MoD's real intent, with its scattergun approach to redaction, to render each of the documents supplied to the Appellant generally unreadable; and

75 c) has all of this, a) and b) together, overridden the underlying presumption of the FoI Act that all information falling within the scope of a request is to be released unless it is specifically covered by an exemption?

76 In other words, as difficult as it is to determine exactly those text sections¹⁴ in which S36(2)(b)(i) had been actually engaged (because I only have access to redacted versions of the documents), I have gained the strong impression that S36(2)(b)(i) has been in places applied to descriptive narrative rather than only to text that relates to the *'frank and free provision of advice'*.

77 In this regard, the Appellant is challenging the Respondent's endorsement of the engagement of S36(2)(b)(i) to information that is disputed (ie the narrative text) so, it follows, the Respondent's assumption of paragraph 24 of the Response to the Appeal¹⁵ (§24 RA) is invalid. Similarly, the basis and limited scope of the Appellant's appeal, as proposed by the Respondent's response to the Appellant's Rule 5 application is incorrect (§7 RR5).

78 In fact, the Respondent acknowledges that an amount of narrative content was incorrectly redacted via engagement of S36(2)(b)(i) (§49 DN):

79 *“ . . . The Commissioner has found that some comments redacted from the reports are more factual observations rather than an assessment of criticism of the activity, process or organisation being reviewed, or else they are more general conclusions or summaries.”*

my truncation . .

80 In compliance with this, following publication of the Respondent's Decision Notice and the Schedule of Information (page 20 DN) listing the factual content (§49 DN), the MoD

via S36, as confirmed by §28 DN *“For reports 1 – 4 the description is taken from the public authority's response to the complainant date 11 May 2007”*

14 Until a few years ago the MoD placed a marker giving the specific qualified exemption engaged against each item of text redacted – an example of this is given in the FoI request of the former Green Party MSP Mark Russell and now placed in the public domain by Nukewatch, *D NM&NARG Safety Statement for the Modification of the Nuclear Weapon Convoy Task to Continuous Running Including Running in the Hours of Darkness, D/NM/88/1/1, 16 December 2994 - <http://www.largeassociates.com/3189%20Rob%20Edwards/Continuous%20Running%20Safety%20Statement.pdf>*

15 Rob Edwards -and- The Information Commissioner, Response by the Information Commissioner, EA/2010/0056

provided the Appellant with a single page¹⁶ of five items of recovered text of somewhat anodyne content.

81 I am also troubled by the MoD's broad brush application of S36(2)(b)(i) as if it were a class-based exemption, that is by redacting all or the majority of the information within a single document that relates to any aspect of the regulatory process because it presupposes that the information will result in some harm.

82 Even though the Respondent clearly recognises S36 as a prejudice-based exemption, the MoD's broad-brush redaction practice via engagement of S36 is tacitly accepted. For example, see **TABLE 1** containing the MoD statement that

83 *“ . . .all of the report was considered . . . to fall with S36(2)b . . . ”.*
my added *emphasis*

84 The implication here is that, by this means, the MoD struck out long sections of text without any apparent account for how the content of a particular piece of text falls into the context of other pieces of text or relates to the document as a whole and, particularly, ignoring detailed consideration of whether disclosure of each meaningful string of text '*would, or would be likely to, prejudice*' the regulator's role.

85 In other words, it is not possible to determine if particular pieces of text will or are likely to have the prejudicial effect (ie disclosure would inhibit free expression) until the whole document has been scrutinised and only then when it, and its related activities (be these a submarine incident exercise, the transportation of nuclear weapons, etc), are properly understood. Obviously, the Respondent needed to have a reasonably high level of understanding of the documents and related activities of each to sanction the MoD's approach to withholding such a large amount of information under S36(2)(b)(i) or, indeed, under any other of the qualified exemptions of the FoI Act.

86 As I considered earlier (ξ80 JL), the Respondent seemed satisfied in weeding out just a few sentences as not qualifying for redaction under S36(2)(b)(i), suggesting to me that the Respondent did not adequately understand the subject matter of the disputed information.

87 This leads me into my second concern about the Respondent's grasp and understanding of the complex nuclear topics that were the subject of the Appellant's original request.

16 Annex to D/CIO/3/18/1/206, 23 February 2010.

88 **B) RESPONDENT'S EXPERIENCE AND UNDERSTANDING IN MATTERS NUCLEAR**

89 The Appellant's original request asked for six separate items,⁵ each of which involved the DNSR in a different area of military nuclear technology, or with the management of the outcome of a nuclear process, and/or the response to any untoward incident involving nuclear substances, etc., and, of course, each of these very different facets of the broad spectrum of military nuclear activity would require a different approach to its safe nuclear design or outcome, etc., there would be different standards, limits and conditions, codes of practice, etc., applied by the regulator to ensure that each particular nuclear system activity and/or event addressed by the Appellant's request was prescribed, reliable, environmentally acceptable and safe.

90 In the Decision Notice the Respondent explains the process adopted to investigate the Appellant's complaint (§§14 to 19 DN) from which, I assume, the Information Commissioner's Office (ICO) took it upon itself to evaluate the '*un-redacted information*' (§17 DN) and the '*submission placed before the qualified person*' (§18 DN).

91 I am surprised that the ICO did not, apparently, engage an independent consultant to advise on the highly technical systems and activities encompassed by the Appellant's request. The apparent failure of the Respondent to receive independent guidance, could have compromised the Respondent's grasp and understanding of the documents and, particularly, the undisclosed sections thereof. In the absence of independent advice, it is not clear to what extent the Respondent relied upon the very same MoD officials^{17,18} who had prepared the original submission to the qualified person and, if so, whether this was sound and unaligned advice.

92 I very much doubt that the Respondent had sufficient understanding of the broad range of nuclear technology and its complex regulatory framework included within the *disputed information* to meaningfully evaluate the '*un-redacted information*'¹⁹ unaided. For example:

17 In my experience with FoI enquiries to the MoD, the information officer invariably forwards the request to a '*subject specialist*' who sets about determining what can and cannot be released. In the highly specialised area of nuclear regulation and when the enquiry is focussed on nuclear safety, it seems to be commonly the case that the regulator involved is also the subject specialist, thus introducing an element of a conflict of interest that derives, perhaps, from the individual involved maintaining a self-interest.

18 The Respondent's Decision Notice does not detail the further input afforded to the MoD although a sense of the potential influence is given in para 21 of a later Decision Notice also relating to the engagement of S36(2)(b)(i) – FS50132961, 30 March 2010 - http://www.largeassociates.com/3189%20Rob%20Edwards/fs_50132961.pdf

19 The MoD supplied the Appellant with the heavily redacted information as a single, collated document bundle - <http://www.largeassociates.com/3189%20Rob%20Edwards/MoD%20Document%20Bundle.pdf>

93 1) DNSC AWE Report:²⁰

94 The first item of request relates to DNSR's reporting to its overseeing committee DNSC²¹ on matters relating to the Atomic Weapons Establishment (AWE) at its two UK plants at Aldermaston and Burghfield, and to a sub-critical fissile material experiment²² undertaken by the AWE at the United States Nevada Test site.

95 The DNSR input to DNSC is broad ranging including a pre-commissioning safety report (PCmSR); co-ordination with the civil nuclear regulator, the Nuclear Installations Inspectorate (NII); the response to the first stage of a probabilistic risk study (PRS) in lifting equipment (cranes, hoists etc); on decommissioning existing facilities; the disassembly of nuclear warheads, and so on and so forth.

96 Understanding DNSR's approach and implementation for this one report alone, would have required the Commissioner (Respondent) to grasp a very complex and broad range of the technologies, practices and safeguards etc., including at least a working familiarity with the MoD's own Safety and Environmental Protection (S&EP) Joint Service Publications (JSP) N^o 375 (Health & Safety), 538 Nuclear Weapon Programme, 471 Nuclear Accident Response, 390 Laser Safety, 482 Explosive Regulations; 498 Accident Control and so on.

97 And, of course, in assessing and regulating this broad range of activities, hazards and risks at the AWE sites, DNSR would have take into account a number of statutory Acts and regulations, such as the *Radioactive Substances Act 1960*,²³ the *Ionising Radiations Regulations 1999*, the *Radiation (Emergency Preparedness & Public Information) Regulations 2004*, etc. which continue to apply at military, etc., sites.

20 According to the Respondent since S36(2)(b)(i) was not applied to this report, contrary to what the MoD informed the Appellant – see Table 1 (ξ**Error! Reference source not found.** JL) – this particular document is not within the subject of this Tribunal. Even if the Respondent's view on this is accepted by the Tribunal the DNSR AWE Report illustrates the point that I am forwarding in this section of my witness statement.

21 It seems as if the Respondent does not fully understand the position of DNSR in the MoD hierarchy and reporting structures (§20 DN) being incorrect in stating that the “. . . regulator is accountable to the Chairman of the Defence Nuclear Environment and Safety Board which in turn reports to the Defence Environment and Safety Board. . . “. Actually, DNSR also reports to the Director Safety and Engineering (DS & E) for the purpose of day-to-day management, resourcing, and human resources, etc., following through the organisational structure of <http://www.largeassociates.com/3189%20Rob%20Edwards/D%20S&E%20Org%20Chart.pdf> and as defined in the DNSR letter of appointment of 6 November 2009 - http://www.largeassociates.com/3189%20Rob%20Edwards/DNSR_LOD.pdf

22 *Kratatau* – this joint US-UK experiment would have been, most certainly, subject to the auspices of the 1958 *Mutual Defence Agreement* (MDA) struck between the United States and the United Kingdom which contributes to the joint stewardship (ie maintenance of safety of the nuclear arsenal) and nuclear warhead certification efforts – because of the sensitivity and ambiguity about the permissibility of sub-critical tests under the terms of the 1996 *Comprehensive Test Ban Treaty* access to any further details to *Kratatau* and the similar trials undertaken earlier in 2002 to an otherwise disinterested party such as the Information Commissioner would be very unlikely indeed.

23 Now the Environmental Permitting Regulations (England and Wales) 2010 (SI 675).

- 98 These AWE facilities are managed by civilian contractors who are subject to the *Nuclear Installations Act 1965*, so it is necessary for DNSR to liaise and coordinate its regulatory activities with the civilian nuclear regulator the NII.²⁴ At these and other locations where, although management is contracted out to civilian organisations, certain activities remain under control of the MoD so letters of agreement have to be struck by DNSR with the civil regulator.^{25,26}
- 99 Working in close liaison with the civil nuclear regulator at the Aldermaston and Burghfield sites, the MoD regulator has to give cognisance to the regulatory approach adopted by NII, this being underpinned “*Active challenge should be part of decision making throughout the organisation*”.²⁷
- 100 So, on one hand, the MoD regulator is prepared to become involved in a nuclear regulatory process that encourages ‘*active challenge*’ and by virtue of this much more openness but, on the other, I consider the MoD regulator reverts back to a secretive, non-consultative and opaque disposition where there is no joint involvement (and oversight) of the civil regulator.
- 101 An example of this is chameleon-like change to suit the circumstances is given by the DNSR reporting to the NII of its own technical assessment of the severities on in-berth incidents involving i) nuclear powered submarines and, separately, ii) nuclear weapons embarked on a submarine at berth or on the Coulport ship lift.²⁸
- 102 Previously (ξ85 JL) I noted the necessity for the Respondent to understand the content of those individual parts of text of a document under public interest test scrutiny, in context of the whole document and the activities to which it referred.

24 When nuclear activities and tests take MoD nuclear activities abroad, such as the *Kratatau* experiments, DNSR has to fit in with the United States nuclear regulatory regime.

25 For example, HMNB Clyde that is used by nuclear powered submarines for berthing and repairs, although managed by a civilian contractor, the MoD retains control over the disposal of radioactive waste but is not subject to the same regulations as wholly civil sites so, for this activity Letters of Agreement with MoD and the Scottish Environment Protection Agency (SEPA) are agreed and in force.

26 With the exception of visiting forces, military or so-called non-licensed sites under the NIA are subject to the Health and Safety at Work Etc Act 1974 (HASAWA) and all the regulations derived from it. There is no crown exemption from the requirements of the HASAWA. That being the case, HSE Inspectors are statutorily required to enforce the relevant statutory provisions at these sites, a duty that by law cannot be abrogated to others. In recognising the role exercised by DNSR at these sites through Authorisation Conditions, NII practice in the exercise of its enforcement duties is to concentrate on a relatively low level of compliance inspection, complemented with joint NII/DNSR reactive work as required and effective NII/DNSR information exchange.

27 *Safety Assessment Principles for Nuclear Facilities (SAPs)*, HSE, 2006 Edition. MS3 para 65 page 13

28 Report and appendices of the DNSR to the NII relating to *Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPiR) – Technical assessment of 2008 Submissions by Defence Operators*, DNSR/3/3/3/1, 6 October 2008 - <http://www.largeassociates.com/3185%20SOTONSAFE/NII%20REPPiR%20-%20Technical%20Assesment%20of%202008%20Submissions%20by%20Defence%20Operators.pdf> – see also originating Large & Associates’s original FoI request M3186-A8, Item 3 - <http://www.largeassociates.com/3185%20SOTONSAFE/M3185-A8.pdf>

103 I considered this to be challenging indeed.

104 In this instance, when considering the jointly regulated AWE sites and activities, the Respondent also needed to understand how the MoD regulator worked in conjunction with its civilian counterpart, how the civil statute applied (ie the *Nuclear Installations Act 1965*, etc) and, indeed, if there was any inconsistency in how MoD regulators expressed their views within this actively challenged and open regulatory environment (see example of ξ101 JL).

105 There is nothing in the Respondent's Decision Notice to suggest that any differentiation applied between an activity that was jointly regulated (such as the Appellant's request relating to the AWE sites - ξ93 JL) and one that was solely regulated by the MoD (such as the nuclear weapons convoys - ξ120 JL).

106 Later in my witness statement I shall give examples of this inconsistency but here the point I make is that, to my understanding, specifically S36(2)(b)(i) and generally the FoI Act do not provide for such a degree of flexibility of approach.

107 Now I consider those parts of the Appellant's request for which the MoD regulator acted alone.

108 2) Indian Footprint 2006:

109 The second of the Appellant's requested items relates to the DNSR assessment of the adequacy of the emergency planning arrangements in place should a radiological incident (ie an untoward radiation release) arise from a nuclear powered and possibly nuclear armed submarine²⁹ at an operational or Z-berth.

110 However, Indian Footprint 2006 exercised the emergency response to a hypothetical incident involving the submarine propulsion nuclear reactor and not any embarked nuclear weapons.

111 This is because one of the objectives of the exercise was to demonstrate the '*Distribution of PITs*' (potassium iodate tablets) [page 3, para 1, item i MoD 19] which is the prophylactic

29 The Royal Navy operates two types of submarine boats: the SSN or Hunter Killer classes *Swiftsure*, *Trafalgar* and *Astute* which are nuclear powered but not nuclear but conventionally armed, and the SSBN *Vanguard* class which nuclear powered and armed with conventional torpedoes, etc., and with 16 Trident D5 missiles carrying a total complement of up to 48 nuclear warheads although each of the 4 Royal Navy SSBN boats have a capacity to deploy and deliver 160 nuclear weapons and/or other nuclear devices in total. Most likely, by the time of the Tribunal Hearing the last of the *Swiftsure* boats, HMS *Sceptre*, will have been retired.

countermeasure adopted to mitigate the human uptake of the reactor fuel fission product Iodine-131. Since for all nuclear weapon accident scenarios, DNSR considers fission within the weapon fissile pit, and the associated production of I-131, to be an 'incredible' event, so much so that I-131 prophylaxis is not included in the response for a nuclear weapons incident.³⁰

112 However, the very first sentence of the Decision Notice serves to illustrate at least one aspect of the Respondent's lack of understanding of the disputed information because the Decision Notice states (§Summary DN)

113 *"The complainant made a request to the ministry of Defence for several reports relating to the **safety of nuclear weapons.**"*

my added *emphasis*

114 Whereas, the Indian Footprint exercise clearly relates only to an incident involving the nuclear power plant (the reactor) of a nuclear powered submarine and not to one or more of the nuclear weapons embarked on the SSBN class of nuclear powered submarines operated by the Royal Navy.

115 Now, moving on:

116 Indian Footprint relates specifically to an 'alongside' submarine berth in Diego Garcia, although the processes involved for DNSR would be virtually identical to validating a nuclear Z-berth located in the United Kingdom.³¹

117 Like the DNSC AWE Report (ξ93 JL), the Indian Footprint exercise report is overly laden with jargon and acronyms, so much so that it requires a considerable level of specialist foreknowledge and familiarity with the subject to reliably understand and interpret it.

118 It also requires knowledge of how a radioactive release scenario could rapidly develop in the nuclear propulsion plant of a submarine; being able to model just how radioactivity would emit from and disperse downwind from the stricken submarine at berth; the effects of radiation dose receipt and the complex limitation system that applies to the whole body dose

30 *A Radiological Probabilistic Risk Assessment of the Faslane Shiplift for Vanguard Class Submarines with Strategic Weapon System Embarked*, Issue 3, AWE Systems Engineering, November 2000

31 Generally, refer to the a information audit trial for the nuclear submarine Z-Berth at Southampton at <http://www.largeassociates.com/cz3185.htm> and, specifically, by comparison with the virtually un-redacted DNSR report of the virtually identical Z Berth exercise at Southampton – Foxwater 09 - <http://www.largeassociates.com/3185%20SOTONSAFE/20100319-DNSR%20Foxwater%2009%20Assessment-Redacted-FINAL-U.pdf>

equivalent and, separately considered, individual organs; and how those emergency services personnel might best respond to mitigate the radiological consequences.

119 Even though the report ‘*has largely been redacted under section 36(2)(b)(i) although section 26(1) and section 27(1) have also been applied in places*’ (§28.2 DN) if, once again, I apply my previous rough-and-ready analysis to the redactions, even without knowing which sections of redacted text relate to the S26(1) and S27(1) exemptions (and not S36), it is obvious to me from the context and positioning of the individual redactions in the flow of the text, that the greater number of redactions relate to a descriptive narrative and not to ‘*robust criticisms and recommendations*’ (§45 DN) that are the subject of the S36 exemption.

120 3) DNSR Inspection – DLO Nuclear Weapon Road Convoy Movement MO 4051

121 The fourth requested item is an interim report relating to a DNSR inspection and assessment of the arrangements for the logistical road movement of nuclear weapons between the manufacturing and refurbishment plants at Aldermaston and Burghfield (Berkshire) and the Royal Naval Armament Depot (RNAD) Coulport (Scotland).

122 In the past I have researched and reported on the hazards and risks of these regular movements⁶⁷ and, indeed, details of past and projected convoy movements (dates, routes, vehicles and escorts, etc) are available in the public domain from a group of nuclear weapons spotters,³² and on the on-line encyclopaedia Wikipedia.³³

123 The un-redacted sections of the DNSR inspection report are jargon, acronym and abbreviation laden – eg DLO NWM/NARG, COPI, MCALO, MDPGA, CSV, NM-TL, MDP, SEG, TRF, TRO, TR, AWE(B), MO40 – none of which have any explanation whatsoever.^{34,35} I surmise that the report complete and un-redacted (as seen by the Respondent) would have contained even more jargon and acronyms.

32 Nukewatch UK - <http://www.nukewatch.org.uk/> - Nukewatch would probably want to point out that they do not publish information on *projected* convoy movements and will only disclose a convoy movement once the journey has been completed.

33 Wikipedia – Defence Nuclear Material Transport Operations - http://en.wikipedia.org/wiki/Defence_Nuclear_Material_Transport_Operations

34 Indeed, many of these acronyms and abbreviations are not included in the 373 page list *MOD Acronyms and Abbreviations*, http://www.mod.uk/NR/rdonlyres/3705AC9A-3259-4478-AC2C-A54C3D338612/0/acronyms_and_abbreviations_dec08.pdf.

35 M3189-MoD6 of 30 July 2010 – this request to the MoD sets out the acronyms and abbreviations used not included in the MoD’s own *Acronyms and Abbreviations* (footnote 34 above) - I reckon about 50 unexplained acronyms and abbreviations are included in the un-redacted section of the copy documentation supplied to the Appellant by the MoD - <http://www.largeassociates.com/3189%20Rob%20Edwards/M3189-MoD6.pdf> – MoD’s reply dated 25 August 2010 gives

124 The point I making here is that this report, and its like, are styled in a sort of military
*'jabberwocky'*³⁶ that makes little or no sense to the unfamiliar reader.

125 In this regard, I consider the Respondent to be an unfamiliar reader.

126 4) DNSR-NWR Q3 2006³⁷ & 6)³⁸ Nuclear Weapons Regulator 2005 Annual Report

127 I can deal with two these items together so far as individually and collectively the reports
place an even broader demand on the understanding of the Respondent to differentiate
between regulatory matters involving DNSR in *'free and frank provision of advice'* and the
descriptive narrative of these complex nuclear systems and activities.

128 **In conclusion of Section B:** Obviously, I have to concede to the difficulty of arriving at
firm conclusions from documents that have been so heavily redacted, but my interpretation
of the documents supplied to the Appellant and similar virtually redaction-free documents
that I have received from the MoD via FoI requests (see §135 JL), strongly suggests to me
that the Respondent may not have understood the documents sufficiently to be able to
differentiate between text relating to narrative and that giving forth a *'free and frank'* view
of the regulator.

129 Whereas I accept that the engagement of S36(2)(b)(i) is qualified (ie depends upon) the
reasonableness of the opinion of the qualified person (here the Minister for the Armed
Forces), thus excluding the Respondent (and this Tribunal) from forming an independent
view, this exclusion caveat does not apply to the Respondent's assessment of the severity,
extent, etc., of the likely *'inhibition or prejudice'* when weighing the balance of the public
interest test.

130 In this respect I doubt that the Respondent was able to consider *' . . carefully the information
that had been withheld from disclosure'* (§26 RA – my **emphasis**) and, on this basis alone, I
very much doubt that the Respondent was in a position to arrive at an informed judgment
that *' . . the majority of information withheld under section 36(2)(b)(i) the public interest . .
outweighs . . disclosure.'* (§48, 31 & 32, 37 DN).

explanation and definition to those acronyms, etc not listed in the official MoD Acronyms and Abbreviations (Footnote 34 above) – there is no suggestion that the Respondent sought from the MoD a similar explanation .

36 Lewis Carroll, nonsense verse poem *'Jabberwocky'* c1872

37 See footnote 20 at §93 JL.

38 The fifth item of the Appellant's original request was provided complete being a covering letter sent out by DNSR – being provided in a completely un-redacted form it is not subject of this Appeal.

131 It would be useful, I suggest, that the Respondent provide, to all parties involved in this Tribunal, the qualification and experience in nuclear safety issues, etc., of the person or persons at the Information Commissioner's Office who reviewed the disputed information; who they consulted for advice on the matter; and which sources of information they drew and relied upon (§17 DN).

132 **C) RESPONDENT'S FAILURE TO TAKE ACCOUNT OF THE MoD'S INCONSISTENCY**

133 Now, I shall examine the inconsistency of the MoD's approach to the engagement of the qualified exemptions from requesting party to party and, from this comparison, the overly severe redaction of text and other information from the documents specifically requested by the Appellant.

134 I question why the Respondent was not aware of this inconsistency and I ask if the Respondent had been, would this have resulted in a significantly different outcome of the Decision Notice?

135 **Comparing Indian Footprint & Foxwater Exercises:** Earlier in this Witness Statement (§§108 to 119 JL) I referred to the second document requested by the Appellant, this being the DNSR assessment of the Indian Footprint exercise carried out in 2006.

136 To reiterate, Indian Footprint involved the response to a hypothetical incident involving a Royal Navy nuclear powered submarine berthed at an operational or 'Z-Berth' located in Diego Garcia.

137 I should explain that Z-Berths are operational berths set aside from the homeport berths such as, in the UK, at the major Royal Navy facilities at Devonport and Faslane. There are about 20 or so Z-Berths worldwide of which 17 or so are in the UK one of which is located in the Southampton Eastern Dock.³⁹

138 For those Z-berths located in UK civilian facilities, such as in the Eastern Docks of Southampton, the local authority (in this case Southampton City Council) is required to lay down in advance and practice every three years pre-prepared emergency arrangements in

39 Parliamentary Question and Written Answer of 14 November 2000, Column 575W or see http://www.nuclearinfo.org/view/.X_and_Z_births/a1772 - the MoD no longer uses the term 'Z Berths' and all submarine berths away from HMNB Devonport and HMNB Clyde are referred to as 'operational berths'.

contingency for a radiological incident occurring whilst the nuclear powered submarine is at the berth.⁴⁰

139 For the Z-Berth at Southampton, recently I advised a local group SCANS⁴¹ and, for this, I made a number of FoI to the various parties involved, including the MoD.⁴²

140 Like the emergency exercise Indian Footprint for the Z-berth in Diego Garcia, the Z-berth at Southampton is also required to conduct emergency exercises to test the emergency response arrangements but, unlike Diego Garcia, being in the United Kingdom the Southampton emergency exercise has to be compliant with the *Radiation (Emergency Planning and Public Information) Regulations 2004* (REPPIR) requirements and overseen by the HSE NII division.

141 The equivalent emergency exercise to the Diego Garcia Indian Footprint at Southampton was *Foxwater 09* undertaken in 2009.

142 Both berths at Southampton and Diego Garcia would be prepared to receive the same classes of Royal Navy nuclear powered submarine and would be rehearsed for the same types and severities of incident involving the nuclear reactor propulsion plant.

143 In other words, apart from the about two to three year time lapse, the exercise response would be virtually identical at Diego Garcia and Southampton within the immediate evacuation and countermeasure zones, other than that Southampton exercise could be expected to (hypothetically) involve a large number of ordinary members of the public.

144 I requested and received a copy of the Exercise Foxwater 09 Assessment report⁴³ from the MoD Defence Equipment and Support (DE&S).⁴⁴

145 The Foxwater assessment report was accompanied by a letter from DE&S⁴⁵ with an explanation of the public interest tests applied with respect to the Foxwater assessment report, including [page 1, para 2,3 MoD 45]:

40 As required by the Radiation (Emergency Preparedness and Public Information) Regulations, 2001 (REPPIR).

41 SCANS - Solent Coalition Against Nuclear Ships.

42 A full record of all of the FoI requests and responses is available at <http://www.largeassociates.com/cz3185.htm>

43 Exercise Foxwater 09, 14 January 2009 – Assessment, DNSR 23 January 2009 – DE&S (Defence Equipment and Support - <http://www.largeassociates.com/3185%20SOTONSAFE/20100319-DNSR%20Foxwater%2009%20Assessment-Redacted-FINAL-U.pdf> - the 19 page Foxwater 09 Exercise Instruction, also provided via a FoI request, sets out the exercise details - <http://www.largeassociates.com/3185%20SOTONSAFE/MoD%20DESSEC%20Foxwater%20-%20M3185-A45.pdf>

44 My understanding is that DNRS, although considered somewhat separate, is within the responsibilities of *Director General Safety and Engineering* (DGS&E) which, itself, sits within DE&S's *Chief of Corporate Services* pillar.

146 “ . . . You will be aware from my letter of 23 February that we hold one document that relates to each of your requests, and have been considering whether qualified exemption s.36 of the FOI Act should be applied to both of these documents. Specifically, this is s.36(2)(b)(i) of the FOI Act, which states that information is exempt if its disclosure would, or would be likely to, inhibit the free and frank provision of advice.

*As you are aware, this is subject to a public interest test to determine whether the greater public interest lies in withholding or disclosing the information. A decision has now been reached on both your requests, and I can confirm that it has been decided that the **public interest lies in disclosing** the relevant information.”*

my added *emphasis*

147 So, although subject to engagement of S36(2)(b)(i), I was supplied with the equivalent Indian Footprint Diego Garcia assessment report for the Foxwater exercise at Southampton but, unlike the Appellant’s copy of the Indian Footprint assessment, my copy of Foxwater contained no redactions other than minimal obliteration of personal data (names etc under S40).

148 Even so, my Foxwater copy includes what might be termed some very ‘frank provision of advice’ from the DNSR regulator.

149 For example, referring to, first, the accompanying letter and then the main report of the Foxwater assessment [throughout MoD 43]:^{my added explanatory footnotes and highlighting throughout}

150 para 3 **DNSR Accompanying Letter**

*“ . . . However, some areas for improvement were identified, including in particular the need for **improved arrangements** for personnel accounting which has also been reported at HMNB Portsmouth. **Other issues concern** the management control of the operator’s emergency plan and the intervention management arrangements. . . “*

151 s2 App A **Exercise Planning and Management**

*“ . . . The radiological consequences of the release⁴⁶ appeared to be **somewhat greater than intended**, which is an **increasingly sensitive** area given the reduced accident consequences currently under assessment. This aspect of the planning process should **be further validated** as necessary. . . “*

45 DE&S, letter to Large & Associates, Ref 101131-004 & 143852-002 19 March 2010 - <http://www.largeassociates.com/3185%20SOTONSAFE/20100319-MoD%20DES%20final%2020%20%2003%2010.pdf>

46 Refers to a ‘radioactive’ release.

152 s3 App A **Document Arrangements**

*“ . . there was an apparent additional change in Permit-to-Enter process⁴⁷ and documentation immediately prior to the exercise and the provenance of the documentation actually used **was unclear**. . “*

153 s4 App A **Alerting**

*“ . . However, contrary to the documented intentions no alert was received by the Monitoring Controller and a separate DISTAFF alert had to be injected in order to initiate this aspect of the response. Although not undermining the arrangements as these had been separately validated, **failure of the exercise alerting had the potential to jeopardise successful demonstration** of other aims and objectives and care should be taken to ensure this is addressed for future exercises. . ”*

154 s5 App A **Exclusion Zone Evacuation & EZRC Operation**

*“ . . **Two separate problems** were noted which together resulted in a submarine evacuee remaining unaccounted for some two hours. First, the accounting was conducted on completion of EZRC processing rather than on first arrival, which both introduced a delay and served to disconnect (in time) the numbers at EZRC from the number evacuating. Second, EZRC were aware of a mismatch in numbers and forwarded this to the ICC but **neither body focussed sufficiently** on the issue to **recognise its significance** until around 2 hours after the individual went missing. This largely repeats a Finding from Exercise Golden Fox 07 (F/GF07/01b) and from the Southampton 06 exercise.*

*F/NRPA_V_090001/2: EZRC procedures **need to be reviewed** in conjunction with ICC procedures to ensure that any missing person from the Exclusion Zone is identified at as early a stage as possible and appropriate action instigated.”*

155 s8 App A **Operation of the ICC**

*“ . . a. There were a series of **misunderstandings** concerning the evacuation of an early casualty from the submarine (at Category 1) which led to an ambulance being held back to await the casualty’s arrival rather than being deployed forward to collect him.*

b. Subsequent deployment of the ambulance coincided with declaration of Category 2) leading to withdrawal of the ambulance by

47 This is the means of controlling the restricted zones, that is stopping individuals who might be radioactively contaminated from entering or leaving the control zones, whichever appropriate.

ICC almost on the point of collection. While strictly in accordance with the ambulance control documented arrangements, in reality there was no significant additional hazard associated with collecting the casualty at that point, and proactive MOD input describing the **actual situation and hazard** could potentially have expedited his recovery and treatment.

c. As identified above, there was a missing person for a prolonged period, in part due to **insufficient effective focus** within the ICC on accounting for evacuees (although it is accepted that there was a degree of error and misinformation that clouded the issue).”

156 s10 App A **Intervention Management**

“ . . The intervention stateboard was updated periodically but was **frequently not kept up-to-date**. While in the main demonstrating strict procedural compliance, the output in terms of the eventual deployment of an intervention team was **in each case significantly delayed**. A number of factors contributed to this: the documented process **is itself long-winded**, briefings to the teams were **generally laboured** and there were **repeated interruptions to and distractions of those conducting the briefings**, not least by repeated communications with the ICC. Accordingly, **further attention should be given** to optimising the overall intervention management process.

157 s11 App A *The existence of a missing person came to light at a time when a second intervention was being planned to seal the hatch. Although the person had already been missing for some two hours and additional intervention teams were available for exercise, it was well over a further hour before a search and recovery team was deployed. While the relative priority of the two interventions is arguable, it was **not clear that the need for such prioritisation was recognised within the ICC.**”*

158 s12 App A **Exclusion Zone Evacuation & EZRC Operation**

“ . . However, their briefing was **generally uninspired and in particular directed only gamma shine monitoring to be carried out – airborne contamination monitoring also should be undertaken** even at Category 1 in order to provide positive confirmation of no release.”

159 s15 App A **Operation & Tactical Command . .**

“ . . **A little more forward-thinking** (e.g. on the weather forecast and the technical prognosis) would have been helpful but in the main clear advice was given on both technical and HP issues. However, this was at times provided in such a way as to indicate that decisions may be made at Tactical which should arguably have been referred to

Strategic. Undoubtedly the nonparticipation of Strategic on this occasion meant that some of the advice normally received from higher levels of command was absent. .”

160 Setting aside the serious regulatory and safety issues that these highlighted exchanges identify, my point here is that even though all of the Foxwater 09 documents were subject to S36(2)(b)(i) [page 1, para 2 MoD 45] and being a DNSR assessment of a virtually identical exercise at Diego Garcia, these failed to attract the blanket redaction applied to the Indian Footprint 06 report of the Appellant’s original request, also authored by DNSR. The extracts of text that I have identified and highlighted for Foxwater 09 would have, in my opinion, been redacted if the same criteria S36(2)(b)(i) adopted for the Appellant’s requests had been applied to Foxwater with equal harshness.

161 The second document referred to in the DE&S accompanying letter⁴⁵ relates to a DNSR review of the Z-Berth (nuclear) Safety Statements.⁴⁸ As with the Foxwater assessment report, there are no S36(2)(b)(i) redactions other than minimal obliteration of personal data (names) under S40, yet this report includes what might also be termed very ‘frank provision of advice’ from the DNSR regulator.

162 For example [throughout MoD 48]:^{my added explanatory footnotes and highlighting throughout}

163 para 4 **DNSR Accompanying Letter**

“. . . On the basis of the documentation received, DNSR considers that the Berth Safety Statements as submitted fulfil the REPPiR requirements but do not fully provide the level of safety substantiation expected. However, DNSR does not consider it appropriate to challenge the extant regulatory consent to use the UK Operational Berths; instead NRPA/CSSE/Navy Command⁴⁹ should look to develop the BSS⁵⁰ structure and content through the delivery of the current Operational berths Forward Action Plan which will be monitored through the Operational Berths Level 3 RIF. It is a regulatory expectation that the 2011 REPPiR Submissions will be supported by a significantly improved BSS.”

164 s1 App A **General Comments**

“. . . Thus although the documents generally conclude that no

48 *Operational Berth Safety Statements* – DNSR Review, DNSR/20/17 29 July 2008 – this applies to all Royal Navy Z-berths in the UK and overseas - <http://www.largeassociates.com/3185%20SOTONSAFE/20100319-Operational%20Berth%20Safety%20Statements-%20DNSR%20Redacted-FINAL-U.pdf>

49 Naval Command are responsible for operating the submarines and hence for the Z-Berths – note that ‘Z Berths’ are also referred to as ‘Operational Berths’.

50 BSS – Berth Safety Statement.

hazard has been identified which challenges the conclusion of the NRP HIRE⁵¹ it is not clear that the analysis presented can sustain such a conclusion. Similarly, no case is made that risks are ALARP.⁵² A review of the structure and content is required in order to satisfy requirements.

On particular points:

- a. There are difficulties in the descriptions of the control of commercial shipping as presented for Portsmouth, Southampton and B4. This should be addressed through the HAZID⁵³ for future submissions.
- b. While Portland visits are deconflicted with cruise liner visits (and use of the prison ship) this is not the case at Southampton despite worst case demographic comparator values apparently exceeding Devonport values (Table D1 case Ferry 4). (Such deconfliction is suggested at para D19 but no outcome is identified.)
- c. There are inconsistencies in the presentation of Conditions and Limits in the different reports (differing amounts of detail on plant conditions, inconsistent reference to use by SSBNs, additional differences between the information in the classified and unclassified RoAs⁵⁴ (Portland in particular)). DNSR accepts that, in time the delivery of the Shut Down Safety Case should provide a clear and consistent set of plant conditions and limits along with any specific conditions and limits demanded for support activities. DNSR expects to see these implemented as appropriate to the scope of activity at the berth as and when they become available.
- d. While reference is made to the emergency arrangements, no reference is made to tests (exercises) of these arrangements in accordance with REPPIR requirements. In a number of cases no test had been carried out for many years at least at the time of submission (Loch Goil, B4). In particular DNSR wishes to understand the high level testing philosophy and who is responsible for arranging the tests. This is particularly important where berths make claims against tests in other locations (eg Southampton and Portsmouth, HMNB Clyde and Loch Goil.”

51 HIRE – Hazard Identification and Risk Evaluation

52 ALARP - As Low As Reasonably Practicable

53 HAZID – Hazard Identification and Analysis

54 RoAs – Report of Assessment

- 165 s4 App A “. . . Meteorological data is generally **similarly outdated and unsystematic** (see for example Loch Ewe Annex B). Referencing is frequently not clear. Although much detailed data is provided (as was required previously) the conclusions thereof are **generally not apparent**. It may be appropriate to assess meteorological hazards as part of the HAZID process so as to inform both safe operation and contingency planning and provide more targeted information.”
- 166 s5 App A “. . . Mapping is frequently **not adequate** to provide an appreciation of the surrounding area. Of particular interest are any geographic features that **may impact upon safety management** but will not show up on a very local map (eg travelling time to Loch Ewe, single road access to Portland).”
- 167 s6 App A “. . . There are **numerous editorial errors** and **other shortfalls**. For example:
- a. There are **frequent mis-matches** between the detailed population data presented in the Annexes (Annexes A and D) and the summary data in the main body. . .
 - b. There are frequent references to Figures, Tables and references **which have not been included** – see for example Portsmouth §14, A18, D15-D18. The latter exclusions result in the **omission of demographic comparator** data for Devonport in this case.
 - c. For the southern OBs⁵⁵ (Portland, Portsmouth and Southampton), Annex B to the RoA (referring to T-class) mis-states the frequency for Accident 63 as **5E-6⁵⁶**, ie a factor of 10 too high compared with the data in Addendum 1 to the plant HIRE. (**With consequences to 1400m, this would be significant if accurate.**)⁵⁷
 - d. The RoAs repeatedly refer to the **Reference Accident** having a probability of occurrence **of less than 1E-5**, which is **not consistent** with the plant HIRE (~1E-5 or not greater than 1E-5). Further, the unclassified RoAs for Portland and Southampton which are intended to be made publicly available refer to the **Reference Accident having a probability of 1E-6**.⁵⁶ This is also stated in the classified RoA for Portland but not for Southampton.”

55 ‘OBs’ – Operational or Z berths.

56 1E-5 = 0.00001 or a predicted frequency of one in one hundred thousand, 1E-6 or a probability of one in one million – these incident related (ie Accident 63) are correctly expressed in terms of per reactor year of operation and, if dispersion and deposition of the released radioactive plume are included then a number of probability factors would be introduced, so that the incident radiological outcome would be expressed in terms of severity of consequences at different probability fractiles (ie usually bands of *Average, Expected* and *99th*), hence the reference to the consequences becoming significant out to 100 meters.

57 In other words, the incident was predicted to occur at 10x more frequently than that hitherto predicted and, if it did occur, then the radiological consequences would have been ‘*intolerably*’ significant at 1,400m distance – at Southampton, for example, this level of emitted (not released) radiation or shine would require the immediate evacuation of the 800 to 1,200 persons at the National Oceanographic Centre about 800m from the submarine operational berth in Eastern Docks.

- 168 s9 App A “..The discussion of fire hazards in particular at Southampton and Portsmouth is *trivial and unsourced* (Annex F). The conclusions presented in the Safety Statements for Southampton and Portsmouth are particularly weak.”
- 169 This DNSR review communicated to Navy Command, the MoD branch responsible for submarine operations, is highly critical and scathing at times but, nevertheless, it remains largely un-redacted even though a public interest test was undertaken for S36(2)(b)(i).
- 170 Again, if S36(2)(b)(i) had been applied to this review with the same harshness engaged to the Appellant’s requests then I would have expected a similar level of redaction for the MoD’s reasoning for preserving the frank and free provision of advice of the regulator from public scrutiny.
- 171 Before leaving the highlighted text of Foxwater 09, I reflect back to my assessment (ξ71 JL) doubting the level of the Respondent’s understanding of the un-redacted text of Indian Footprint exercise. To recap (ξ130 JL), it was necessary for the Respondent to view the un-redacted documents in order to arrive at the informed judgment that ‘. . the majority of information withheld under section 36(2)(b)(i) the public interest . . outweighs . . disclosure.’ (§48 DN).
- 172 Included in those documents would have been the un-redacted Diego Garcia ‘Z-berth’ Indian Footprint assessment which, itself, would have most probably included reference to the Berth Safety Statement (BSS) similar to the later Foxwater version considered above (ξ163 JL). The earlier BSS would have likely to have been much the same and probably included a similar level of ‘jabberwocky’ as that highlighted in the later version of the BSS (above - ξ163 JL).
- 173 Once again, my point here is whether the Respondent was sufficiently versed in military nuclear matters to reliably interpret, for example, the text under items *c*) and *d*) of *s6 App A* (ξ167 JL) referring to very serious errors and confusion over the probabilistic risk assessments for the undefined *Accident 63* and *Reference Accident*?
- 174 **In conclusion of Section C:** I can see no reason why the contents of the Indian Footprint and the Foxwater DNSR documents should markedly differ – both relate to an assessment of the emergency planning provisions put in place to counter an incident involving the nuclear propulsion (reactor) plant of a Royal Navy submarine,

175 and

176 both Indian Footprint and Foxwater documents must have been subject to much the same public interest test under S36(2)(b)(i).

177 So, it follows, I can see no reason why it is in the public interest **not** to disclose the full report, Indian Footprint, to the Appellant, whereas it **is** in the public interest to disclose the full report, Foxwater, to me.

178 To my knowledge there has been no change or modification to the FoI Act in the period between the Appellant's original request and my later FoI request for the Foxwater assessment report and review – a period spanning between 2007 and 2009.

179 Similarly, I know of no public statement of the MoD over this period that signals a change in its policy towards transparency and accountability, so far as the release of information to the public pertains.

180 Therefore, the only difference that I can identify is that the Appellant is an established journalist with a record of publishing in the area of military nuclear safety, etc., whereas I am not. If so, it seems to me that the overly harsh regime of redaction applied to the Appellant's requests derived for reason that, as a journalist, he would provide the conduit to pass the information to the broader public, whereas I could not.

181 I know of no provision in the Freedom of Information Act 2000 that permits such differentiation between requesting individuals. Accordingly, in view of the severity of the redactions applied, the Respondent should have sought to identify all possible reasons for this, including that it must have been known by the MoD that the Appellant was journalist and, by virtue of this, the Appellant's request could have been singled out for harsh treatment.

182 This I consider the Respondent failed to do.

183 Now, briefly, I examine three other documents provided to three separate individuals (none of whom is a journalist) that relate to DNSR's regulation and the MoD's (and Respondent's agreement of) differential treatment of the Appellant's requests. Comparing each of these documents with the equivalent document in the Appellant's requested items clearly illustrates that the Appellant's request were dealt with differently (more harshly in the detail and extent of redaction).

- 184 The first of these documents is a review for DNSR undertaken by DNSR's own consultants SERCO that was originally requested by John Ainslie to the NII - I shall refer to this document as the Ainslie document.⁵⁸
- 185 The Ainslie document is a review of changes made in the submarine risk and hazard assessment ordered by CNNRP (now DNSR) via a Safety Improvement Notice. In effect, it is a critique of the operational berth assessment prior to the Foxwater 09 exercise and, in this respect, it complements the Foxwater 09 exercise assessment (ξξ147 to 173 JL).
- 186 The Ainslie document has been subject to redaction under exemptions S24, S26 and S38 but not S36 and, specifically, S36(2)(b)(i) leaving the free and frank views of the proxy DNSR regulator (SERCO) un-redacted and intact throughout the document [para 7, 8, 14, 22, 23, 24, 26, 28, 31, 35 & 37 NII 58].
- 187 The Ainslie document, although issued by the NII would have been referred to DNSR under a mandatory requirement stipulated by written agreement between the NII and DNSR (ξ98 JL). Thus DNSR had the opportunity to ask the NII to apply S36(2)(b)(i) if it believed that disclosure would have inhibited the frank and free views of the proxy regulator.
- 188 However, DNSR did not do so resulting in a document in which, unlike the requests of the Appellant, the frank and free views of the proxy regulator were released into the public domain.
- 189 The Ainslie document demonstrates, I believe, a fundamental difference in the approaches of the DNSR and HSE (NII) regulatory systems. This is because, unlike DNSR, the NII regulatory approach goes beyond the tenet that disclosure would or would be likely to inhibit free and frank provision of advice, for the reason that it considers and applies transparency to be a key facet underpinning good and effective regulation.⁵⁹
- 190 The Ainslie example shows that the HSE continues to subscribe to this transparent approach even when considering and responding to requests that venture into the DNSR's military-nuclear regulatory domain.

58 *RSD Review of the Submarine Programme REPPiR 2008 Submission*, SERCO HS9190/100/1D241189/1, 6 September 2008 - <http://www.largeassociates.com/3189%20Rob%20Edwards/SERCO%20REPPiR%202008%20Submission.pdf>

59 This is emphasised in the government's own view of regulation with the Department for Business Innovation and Skills own Better Regulation Executive laying out five principles for better regulation - <http://www.bis.gov.uk/bre>. Transparency is first on the list of principles underpinning good regulation. The five principles have been adopted by the Environment Agency and HSE in their respective roles of regulating the civil (and parts of the military) nuclear industry and, in other fields, by most independent government regulators – see *Striking the Right Balance*, BRE Annual Review 2009, HMG 2009 - <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/10-578-striking-the-right-balance-bre-annual-review-2009.pdf>

- 191 There is another document released into the public domain originally requested by a completely unconnected party Ms Juliet McBride – I shall refer to this document as the McBride document.⁶⁰
- 192 The McBride document stipulates the contract conditions applied to AWE for the provision of road convoy services for the movement of nuclear weapons to and fro between the AWE Berkshire factories and RNAD Coulport. The contract conditions set out by the McBride document provide a very detailed insight of the type of vehicles, equipment and other paraphernalia, procedures and security, etc., required for the road transportation of nuclear weapons - AWE took on responsibility for the road convoys at about the time of the McBride document in 2002, or thereabouts, and has operated the contract since then.
- 193 For brevity I shall not examine this comparison in detail here, other than to note that like the Indian Footprint-Foxwater-Ainslie comparison made earlier (ξξ135 to 173 & 184 to 188 JL), the McBride document compares to the DLO Nuclear Weapons Road Convoy DNSR Inspection (ξξ120 to 125 JL).
- 194 In doing so, it provides much of the basis of the convoy details that have been redacted from the DNSR inspection report and, moreover, the 135 page McBride document provides very much more detailed information than the MoD Police *'Talkthrough'* article referred to and relied upon by the Respondent (§21 DN).
- 195 With the wealth of information provided in the McBride document, I find the Respondent's arguments for retaining the redactions in the DNSR convoy inspection report somewhat disingenuous. This is because much of the argument for non-disclosure (§§56, 58, 61, 62, 63 & 64 DN) clearly relates to the engagement of the National Security exemption S24(1) to the Appellant's request for the Convoy DNSR Inspection report, there being nothing specifically arguing the case for the engagement of S36(2)(b)(i), even though the Respondent states that information in this document has been largely redacted under S36(2)(b)(i) (§28.4 DN).
- 196 In fact, the section of the Respondent's Decision Notice (§§29 to 51 DN) considering S36(2)(b)(i) makes no direct reference to nuclear weapon convoys other than that, generally,

60 MoD-AWE Annex 23 *NW Road Convoy Contract: Provision of Specialist Assistance & Maintenance to the Nuclear Weapons Road Convoy*, MoD-AWE March 2002, pages 73 to 135 – <http://www.largeassociates.com/3189%20Rob%20Edwards/Annex%2023%20NW%20Road%20Convoy%20Specs.pdf> – for redactions of text under S24 National Security and S43(2) Commercial Confidence see Letter to Juliet McBride, 19 August 2010, Ref No 101937-002, DE & S - <http://www.largeassociates.com/3189%20Rob%20Edwards/McBride%20AWEcontracts%2019810.pdf>

all of the Appellant's requested documents were “. . . *still very recent* . . .” and “. . . *disclosure of recent free and frank advice . . . is likely to have a significant inhibitory effect.*” (§46 DN – my truncation . . . and added *emphasis*).

197 However, in terms of changes to equipment, timetables, protective/security routines, etc., for the convoy nothing significantly changed⁶¹ between the March 2002 date of the McBride document⁶⁰ and the DNSR convoy inspection document of May 2006. In other words, since little has changed the Respondent's dependency on the recentness of the information is somewhat irrelevant.

198 Comparison of the McBride and DNSR inspection documents shows that the MoD's inconsistency in being prepared, on one hand, to release a greater detail of information to some individuals, here Ms Juliet McBride, but, on the other hand, very much less disclosure of much the same information to another individual, such as the Appellant.

199 In this respect, my conclusions for Indian Footprint-Foxwater inconsistency apply (ξξ174 to 182 JL).

200 The McBride document comparison also suggests, because its greater detail enables a better 'reading between the lines' of the DNSR convoy inspection report, the inability of the Respondent to differentiate between matters of national security and the inhibition of the regulator's views which, once again, suggests a lack of understanding of the subject matter.

201 In this respect, my conclusions on the Respondent's lack of understanding apply (ξξ128 to 130 JL).

202 It is also worthwhile in highlighting this inconsistency to refer to a third document DNM&NARG Safety Statement for the nuclear weapon convoy continuous running that I previously referred to (ξ76 JL). Again for brevity, this document provides much more detail and the views of the regulator being disclosed to the Member of the Scottish Parliament (MSP) – particularly see [para 13, 14e, 14j, 20 & 21 MoD 14] - than that judged acceptable for disclosure to the Appellant by the Respondent.

61 In fact the most recent major change in convoy operation has been the switch to Continuous Running with the convoy not stopping overnight and being operated by separate Port and Starboard crews was established in 2002, and general classes of vehicles and equipment, etc have also not changed significantly over the period since 2002 to 2006, the year of the DNSR inspection report.

203 **CONCLUDING OBSERVATIONS**

204 **The Qualified Person's Opinion:** Now I return to my interpretation of the Appellant's challenge of the Respondent's judgment that the opinion of the qualified person not to disclose the *disputed information* was *reasonable in substance* and *reasonably arrived at* on the basis of *sound information* (§§38 to 43 JL).

205 It is not at all clear to me how the Respondent could have arrived at a meaningful understanding, at least to the detail and extent required for the Decision Notice, in order to reach the judgment of the correctness and reasonableness of the qualified person's opinion not to disclose the disputed information.

206 **Substance and Reasonableness of the Opinion:** Indeed, the Respondent provides very little analysis and explanation of how the qualified person went about reaching an opinion and, particularly, there is no meaningful assessment of the reasonableness and substance of that opinion.

207 The substance of the opinion seems to be lost by the Respondent's attention being drawn to and focussed on the incorrect timing of the engagement of the S36 exemption (§32 DN), and by the likelihood of the occurrence of the prejudice (§§34 to 36 DN). Without any detailed explanation the Respondent finally arrives at a view on the substance from the '*. . sensitive nature of the information . . .*' and that it was '*. . intended for a small audience within the public authority and government . . .*' (§37 DN – my truncation . .).

208 It is not at all clear to me how the i) *sensitive nature* and ii) *small audience* of the disputed information each or in combination justify the engagement of S36(2)(b)(i) since i) could and quite properly should have been considered under National Security S24(1), and ii) is, surely, a matter of conjecture.

209 Similarly, how the Respondent arrived at the view that iii) *reasonableness* of the opinion was justified is not at all explained other than that '*. . the qualified person gave his opinion after taking into account only relevant factors . . .*' (§38 DN – my truncation . .) but there is no indication as to what the '*relevant factors*' might have been.

210 Since the Respondent has been so vague in spelling out how i), ii) and iii) foregoing were arrived at in the Decision Notice, the Respondent should have made available to all parties of this Tribunal at least a copy of the Confidential Annex to the Decision Notice given if,

that is, it contained a better explanation of the Respondent's reasoning in endorsing the non-disclosure opinion of the qualified person.

211 **Regulatory Inconsistency:** Previously, I ventured to suggest that the Respondent failed to take account of the inconsistency in the application of S36(2)(b)(i) by the MoD and the civil counterpart HSE in disclosure of the views of their respective regulators (DNSR and NII).

212 Three inconsistencies were present:

213 The first, as shown by the Ainslie document, was that in responding to much the same request and subject matter, unlike the MoD, the NII did not engage S36(2)(b)(i) when considering the disclosure of the DNSR regulator's views.

214 Second, as shown by the MoD's response to my Foxwater, separately, to McBride's convoy details and the MSP's request for the convoy nuclear safety statement (ξ202 JL), was that the MoD itself responded quite differently to each request, sometimes engaging S36(2)(b)(i) sometimes not, and where it did the redaction were relatively mild compared to the harsh redaction regime applied to the Appellant's request.

215 Third, the approach of the MoD to non-disclosure of the advice and opinion of its DNSR regulator is entirely at odds with the government's own view on and recommendations for better regulation⁵⁹ (ξξ190 to 191 JL) that has been adopted by HSE, the Environment Agency (EA), and other government regulators.

216 The Respondent gives no cognisance to these three inconsistencies in arriving at the Decision Notice: that the MoD's approach to maintaining non-disclosure of its regulator's views is entirely at odds with the principle of transparency considered to be a prerequisite of good regulation, as set out by government, and as universally adopted by DNSR's peer regulators, the NII (HSE) and EA.

217 If, as it seems to me, the principle of transparency is an essential component enabling the presumption in the FoI Act that all information will be released unless it is specifically covered by an exemption (ξ75 JL), then the Respondent should have been doubly aware that the MoD's over-zealous application of S36(2)(b)(i) could have excluded the Appellant from the benefits of the presumption.

218 As I have previously noted, there is no facility in the FoI Act to manage the processing of requests and/or consider the individuals making requests differently, with favour or bias and, similarly, I assume that different public authorities must comply with the FoI Act uniformly.

219 The examples that I have given (Foxwater, Ainslie, McBride and the MSP) illustrate double standards within the MoD itself and in comparison with other regulators. The Respondent should have been aware of and given a view on these double standards when assessing the opinion of the qualified person in this matter.

220 **Matters of Fact & Understanding:** As I have demonstrated, the Respondent reveals a fundamental lack of understanding in the very first paragraph of the Decision Notice (ξξ112 to 114 JL) by confusing a naval propulsion nuclear reactor with a nuclear weapon; there was and remains confusion on the part of the Respondent to which qualified exemptions apply to the disputed information (ξTABLE 1 JL); that the heavily redacted documents (of the bundle provided to the Appellant by the MoD) contained about 50 quite baffling acronyms and abbreviations for which there is no explanation available in the public domain (ξξ123 to 125 and Footnotes 34 & 35 JL), and I would expect even more undefined acronyms etc., to be within the un-redacted version (disputed information) for which, apparently, the Respondent sought no explanation of from the MoD; that Respondent glossed over the class-based or broad-brush approach to redaction by the MoD; that it is likely, as shown by the McBride document comparison, that the Respondent had difficulty in differentiating between matters of national security and regulatory frankness (ξξ191 to 198 JL); and where equivalent un-redacted information has been made available that is typical and representative of the Indian Footprint document provided to the Appellant (ie Foxwater - ξξ135 to 173 JL), the topics referred to are so complex and/or poorly presented (ξ173 JL) to render the text complete jabberwocky to all but the most informed reader, which the Respondent was not.

221 My point here is how could the Respondent have proceeded to the Decision Notice judgment that the qualified person's opinion was both objectively reasonable in substance and reasonably arrived at, when the Respondent himself was most unlikely to have adequately understood the subject and topic matters of the disputed information?

222 In these respects I invite members of the Tribunal Panel to read through the disputed information to determine if they each understand sufficiently the detail, context and content, and the nuclear activities referred to (ξ130 JL) – sufficient, that is, to arrive at the same

strength of judgment as the Respondent that the balance of the public interest test engaged for S36(2)(b)(i) was for non-disclosure.

223 Furthermore, I consider that the process of arriving at the opinion (by the qualified person) was flawed (so it was unreasonable) because the public authority officials preparing the submission are likely to have been unduly influenced by knowledge that the Appellant was journalist (ξ181 JL).

224 **Unsubstantiated Aspects of the Respondent's Judgment:** Finally, I wish to consider two aspects of the factors that the Respondent has examined in determining the public interest test for the S36(2)(b)(i) qualified exemption.

225 **Chilling Effect:** The first is that disclosure will somehow inhibit the free and frank provision of advice by the regulator but, that said, I know of no firm evidence that such inhibition or 'chilling' will actually take place as a result of disclosure (either in the specific or general case). If, as it seems to me, disclosure will not impose any real inhibition on free and frank discussion, then the public interest in the exemption should not usually outweigh the general interest for disclosure.

226 To reiterate: my understanding is that S36 requires the '*prejudice to the effective conduct of public affairs*' to be established '*in the reasonable opinion of a qualified person*'.

227 Other than reporting that the qualified person's decision to withhold the disputed information was '*reasonable in substance*' (§37 DN), there is nothing in the Respondent's analysis to suggest that the qualified person's reasoning was held to account over this apparent lack of evidence on disclosure *versus* the chilling effect. Moreover, in reasoning for the endorsement of the MoD's decision to withhold the disputed information itself relied upon this so called *chilling effect*, the Respondent should have explored the open literature for any such evidence and noted the results of this literature search - the only evidence I can find⁶² suggests the converse, that is that greater freedom of information, and not less, would lead to a reduction of the chilling effect [para 76 LWG 62].

62 The term '*chilling effect*' seems to have reached prominence in the UK with the proposals by the Justice Secretary (then Jack Straw) when referring to the 'no-win-no-fee' threat to free speech commented in December 2009 "*Our libel laws are having a chilling effect*", thereafter establishing the Libel Working Group that reported with its first and final report of March 2010 on *Libel Tourism*. The findings of the Working Group are almost exclusively concerned with mainstream journalism but touch upon the potential costs to small academic journals and non-governmental organisations (NGOs), the latter grouping noting in the Working Party's report that ". . .there is a need to rebalance the law towards free expression and that appropriate statutory provision would increase the confidence of publishers, leading to a reduction in the chill effect" - <http://www.justice.gov.uk/publications/docs/libel-working-group-report.pdf>.

228 Put another way, the qualified person's reliance on a hypothetical *chilling effect* is neither *objectively* or *overridingly reasonable in substance* sufficient, that is, to offset the flawed process of arriving at the opinion (ξ223 JL) – the Respondent should have identified and accounted for these shortcomings in the Decision Notice.

229 I should note here that when examined in detail the '*chilling effect*' argument for non-disclosure does not stand up to scrutiny, because:

230 a) Staff working for the regulator will know that very little of the advice they provide will be the subject of a FoI request and, moreover, that the balance of probability is that their advice will remain private;

231 b) there is inevitably a considerable delay between the regulator expressing a view internally to the time of a possible request being lodged for disclosure under the FoI, which tends to be years rather than months later; and

232 c) during this time period the situation will almost certainly have changed with, hopefully, the problems at issue being acknowledged and rectified, so much so that no public concern will arise and, hence, no '*chilling effect*'.

233 Of course, if the problems of ξ232c) have not been resolved, this in itself adds to the public interest in and justification for releasing the information. Also, since this exemption (S36) needs to be determined by public interest test, the so-called '*chilling effect*' has to be balanced against other factors such as the public's right to know about the risks and shortfalls in environmental and nuclear safety management that might arise from any or all of the 'problems' remaining extant.

234 ***Fear of Public Outcry:*** Second, my attention was drawn to the Respondent's agreement with the MoD (§44 DN) that the MoD's regulator would be inhibited from expressing frank and free views ". . .for fear of a public outcry . . .".

235 Again, my previous conclusion on objectivity applies (ξ228 JL), because I know of no evidence upholding this claim and I am surprised that the Respondent not only endorsed but also reiterated it in the absence of any verifiable substantiation. In this respect, the Respondent's acceptance of the reasonableness of the qualified person's opinion and the weighting given to it (§43 DN) are both unsubstantiated and incorrect.


236 Put another way, it is not reasonable to merely fancy that there might be a *public outcry* because such supposition must be supported by evidence, which if available from beyond the public domain (ie I know of nothing publicly available) then the Respondent should make this evidence available to all parties of this Appeal Tribunal.

237 Indeed, so far as the regulator's free and frank expression would trigger a *public outcry*, my experience is quite to the contrary.

238 Most recently, the full internet publication⁶³ of all of the Foxwater 09 documents obtained under the FoI, extracts of which given in (ξξ150 to 159 JL), listing details of shortfalls in the submarine Z-Berth emergency planning that remained to be addressed by the MoD regulator did not trigger any '*public outcry*' whatsoever.

239 I consider it unacceptable that in our democracy such flimsy and fanciful reasoning, here the '*chilling effect*' and '*fear of public outcry*', can be deployed to bring to a standstill the disclosure of information that is clearly in the public interest, in all senses of this phrase.

240 I state here that I confirm that I have made clear which facts and matters referred to in this Witness Statement that are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.



JOHN H LARGE

**LARGE & ASSOCIATES
CONSULTING ENGINEERS**

I ST ISSUE	REVISION N ^O	APPROVED	CURRENT ISSUE DATE
10 AUGUST 2010	R3189-A4-22-1814		31 AUGUST 2010

63 All of the FoI requests and responses undertaken for SCANS have been openly published on the Large & Associates web site at <http://www.largeassociates.com/cz3185.htm>

EXPERIENCE IN TOPICS THAT GENERALLY RELATE TO THIS TRIBUNAL HEARING

Briefly: from the mid 1960s I was engaged as a Research Fellow working on defence related systems in the United States, thereafter from the early 1970s through to the late 1980s I was employed as a full-time member of the academic research staff on behalf of the United Kingdom Atomic Energy Authority (UKAEA) and other government agencies undertaking postgraduate research in the nuclear area and, subsequently, I joined the academic teaching staff at Brunel University. In the mid-1990s I transferred from the University to the firm of Consulting Engineers Large & Associates, that I had established on a part-time basis earlier and which provides specialist analysis and advice in nuclear related activities, including the development, deployment, transportation and storage of nuclear warheads and weapons systems.

As Academic Tutor at Brunel University I was assigned and tutored a number of Ministry of Defence (MoD) undergraduate students, I recall supervising at least two MoD sponsored postgraduate student research programmes, and during the 1990s Large & Associates provided professional training (enabling membership entry into a chartering professional institution) for a number of then recently graduated MoD employees.

Further information and a bibliography of reports and the published work of Large & Associates may be accessed at <http://www.largeassociates.com>.

Here I set down examples of my past and recent experience with nuclear weaponry, submarine nuclear propulsion plant, emergency planning and radiation dose exposure, particularly:

a) Emergency Response to Nuclear Incidents:

- i) From 1986 through to the early 1990s I was retained by the National Fire Brigades Union (FBU) to advise on the expected and tolerable levels of radiation exposure to firefighters attending emergency incidents at nuclear facilities, such as nuclear power plants, and in transportation accidents involving nuclear materials including nuclear warheads.⁶⁴ On behalf of the FBU I negotiated directly with HM Home Office and secured the National Agreement on Emergency Incident

⁶⁴ Large J H, Matthews D, *Emergency Response Planning for a Nuclear Weapons Accident, Emergency Planning '91 International Conference*, Lancaster University, 8 to 11 September 1991 proc, Int Conf, 8 Sep 1991, 04]

Dose Levels – this nationally agreed dose limitation system applies to all male and female firefighters attending incidents involving radioactivity and/or nuclear materials.

- ii) Throughout 2009 to date, I have been advising a local interest group, the Solent Coalition Against Nuclear Ships (SCANS), on the emergency planning arrangements laid in contingency for a nuclear incident at the nuclear submarine berth in Southampton Eastern Docks. This project has involved the seeking and collation of information from the various parties involved, including operational divisions of the Ministry of Defence, such as Navy Command and Defence Equipment & Support that includes the Defence Nuclear Safety Regulator (DNSR).^{65,66}

b) Nuclear Weaponry:

- i) In 1990, I published a comprehensive report⁶⁷ addressing the risks and hazards involved in the transportation of nuclear weapons through urban areas in the United Kingdom – the National Steering Committee of Nuclear Free Local Authorities commissioned this work. Of interest here, is that preparing for and compiling this report was undertaken a decade before the introduction of the Freedom of Information Act 2000, thus enabling a comparison of how far information access has moved on as particularly applied to the Ministry of Defence.
- ii) In 1992 I joined the Rubin-Novgorod Working Group of the then Soviet Union charged to investigate and make recommendations relating to the physical state and potential dispersion of the fissile material cores (plutonium and uranium) of the two nuclear weapon torpedo rounds lost with the sinking of the *Mike* Class

65 For a general review of this project see *Off-Site Emergency Planning Measures relating to the Berthing of Royal Navy Nuclear Powered Submarines and Southampton*, R3185-A2, November 2009 - <http://www.largeassociates.com/3185%20SOTONSAFE/R3185-A5.pdf>

66 For a complete audit trail of the FoI requests and responses relating to this project see <http://www.largeassociates.com/3185%20SOTONSAFE/R3185-A5.pdf>

67 *Transportation of Nuclear Weapons Through Urban Areas in the United Kingdom*, Abstract & Summary, LA RL1785-A 1991 reissued in March 2008 - <http://www.largeassociates.com/1875%20Nuclear%20Weapon%20Transportation/RL1875-Ch1%20Abst-Summary.pdf>

nuclear powered submarine *Komsomolets* (K-278) lost in the Barents Sea in 1989.^{68,69}

- iii) I advised in the matter of two British Nuclear Test veterans,⁷⁰ preparing evidence for and attending the European Court of Justice in Strasbourg in 1997 and, more recently, I provided evidence in the matter of *A B & Others –and- the Ministry of Defence* in the matter relating to the radiation exposure of one thousand or more services personnel present at the UK nuclear weapon atmospheric tests.⁷¹
- iv) In the mid-1990s I confidentially advised a UK gas supplier on the radiological condition and stability of the underground nuclear test caverns adapted for the storage of gas drawn from the West Kazakhstan gas fields – the utility was then in negotiation to bulk purchase gas supplies from Kazakhstan.

c) Naval Nuclear Propulsion Programme:

- i) During the mid-1990s Large & Associates acted as the retained consultants to Plymouth City Council with regard to nuclear developments in the Devonport Royal Dockyard, advising the Council on matters relating to nuclear safety, the further decommissioning of nuclear powered submarines then laying up in the Dockyard basins and, amongst other things, the MoD proposal to construct and operate a radioactive waste store within the Dockyard.
- ii) In 1995 I was retained by the Rochester City Council to negotiate on behalf of 1,200 or so Chatham Naval Dockyard employees who had been involved in the refit and refuelling programme for the Royal Navy flotilla of nuclear powered submarines – the Royal Dockyard had ceased nuclear operations in the mid-1980s but, and as the years progressed, there was increasing concern in the ageing ex-employee group on the incidence cancers possibly linked to occupational radiation exposure. My role included examination and analysis of the MoD radiation

68 Large J H, *Accident Hazards on Nuclear-Powered Surface Ships - Fire and Sinkings -Radiological Consequences*, Symp Env and Safety Aspects of Maritime operations in the Arctic, on board Soviet Icebreaker Vajgatsj, Norway, 4 September 1990 - RL1945

69 Large J H, *Hazards of Nuclear-Powered Vessels, Fires and Sinkings, Radiological Consequences* - Atomic Energy on Sea Safety and Ecology, International Scientific Seminar of the USSR NS, Murmansk, USSR, 24-28 September 1990

70 Messrs McGinley and Egan, *Case of McGinley and Egan v United Kingdom* (10/1997/794/995-996)

71 *A B & Others -and- The Ministry of Defence, Preliminary Evidence of John H Large*, 20 November 2008 - Royal Courts of Justice Preliminary Hearing 19 January 2009 - <http://www.largeassociates.com/3169%20Nuclear%20Test%20Veterans/R3169-A3.pdf>

records, the systems under which these had been collected and collated, and in conjunction with the MoD the establishment of a counselling service.⁷²

- iii) In 2000, I was appointed by the Government of Gibraltar to represent its interests, particularly in assessing the radiological hazards, throughout the year-long docking of HMS *Tireless* (a nuclear powered submarine) at Gibraltar for essential repairs to the nuclear reactor primary circuit. For this, I was tasked to negotiate directly with the Ministry of Defence and its naval nuclear regulator (CNNRP) subsequently transformed into the Defence Nuclear Safety Regulator (DNSR).⁷³
- iv) Throughout 2001 I was charged with the task of establishing and heading up a team of experts to assess the nuclear related risks and hazards likely to encountered and which had then to be overcome during the salvage of the Russian Federation Northern Fleet nuclear powered and armed submarine *Kursk* (K-141) which was lost with all hands in August 2000. My involvement, which was agreed with and part-funded by the Russian Federation authorities, involved assessment of the reactor and weaponry hazards throughout the salvage operations of 2001. As part of my team of experts, a member of the then CNNRP (now DNSR) was seconded to Large & Associates, with this serving RN Commander being fully involved in the risk assessments and visiting the Russian Federation along with other members of the team to determine a set of limits and conditions to ensure nuclear safety throughout the salvage operations – at other times throughout the salvage programme, other specialists from CNNRP became involved in the *Kursk* salvage.⁷⁴

d) Radioactive Contamination:

- i) In 2003, I was commissioned by Greenpeace International to direct the radiological and investigative aspects of a campaign relating to the deteriorating radiological situation at and around the Tuwaitha Nuclear Centre in Iraq. At that time, in the period following the occupation of Iraq by allied forces, considerable

72 Large & Associates, *Radiation Dose Receipt of Chatham Royal Dockyard Employees*, Rochester City Council, RL2083-A1, June 1995

73 *Forensic Assessments of the Nuclear Propulsion Plants of the Submarines HMS Tireless and RF Northern Fleet Kursk*, Forensic Investigation of Power Plant Failures, Seminar, IMechE, London, March 2005 - <http://www.largeassociates.com/TirelessKurskForensic.pdf>

74 *The Recovery of the Russian Federation Nuclear Powered Submarine Kursk*, Society of Naval Architects and Marine Engineers, World Maritime Technology Conference, Int Conf, Sans Francisco, October 2003 - <http://www.largeassociates.com/kurskpaper.pdf>

concern was mounting about the contamination of civilians from leakages and looting of the site. My work involved preparing the Greenpeace campaign team in radiological protection measures, establishing working limits of exposure and dose uptake for all individuals involved and, then for the campaign itself, analysis of video footage, collected dusts and other materials, and urine samples from a cross section of the local population and, during the campaign in Iraq negotiating with the United States Army and the independent US Defense Nuclear Facilities Safety Board (DNFSB) the body then charged with radiological safety oversight.⁷⁵

75 Large J H, Video and Other Material and Data Acquired by Greenpeace International at and Around the Iraq Tuwaita Nuclear Centre site during 2003, Greenpeace International. December 2006 - <http://www.largeassociates.com/3099%20Iraq%20Sampling/r3099-a2.pdf>

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<i>Sinking of the USSR MIKE Class Submarine Boat, 7 April 1989, Greenpeace International</i>	
<i>Briefing Paper: Decommissioning of Nuclear Submarines and the House of Commons Defence Committee 7th Report 1988/89, Plymouth City Council, August 1989</i>	
<i>The Hazards of Transporting Nuclear Weapons Through Urban Areas, commissioned by the National Steering Committee of Nuclear Free Zone Local Authorities, January, 1990</i>	
<i>Occupational Radiation Dose Exposure of United States Nuclear Powered Submarine Fleet Personnel, Report to Greenpeace US, April 1990</i>	
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<i>Powered Vessels, Fires and Sinkings, Radiological Consequences Atomic Energy on Sea Safety and Ecology, International Scientific Seminar of the USSR NS, Murmansk, USSR, 28 September 1990</i>	
<i>Reactor System Defects in Royal Navy Nuclear Powered Submarines, Cause and Strategic Deployment Aspects, Greenpeace UK, December 1990</i>	
<i>Decommissioning Nuclear Power Stations and Nuclear Powered Submarines, 7th International Standing Conference on Low Level Radiation and Health, Bristol City Council, 22-23 June 1991 [Large J H, proc, Int Conf Low Level Rad & Health, 22 Jun 1991, OS]</i>	
<i>Emergency Response Planning for a Nuclear Weapons Accident, Emergency Planning '91 International Conference, Lancaster University, 8 to 11 September 1991 [Large J H & Matthews O (FBU), proc, Int Conf, 8 Sep 1991, 04]</i>	
<i>Nuclear Activities Associated with the USSR Nuclear Powered Navy, Greenpeace International Seminar, Violent Peace Deadly Legacy, 23-24 September 1991, Moscow, 1991 [Large J H, proc, Sea, Greenpeace Int, 23 Sept 1991, 04]</i>	
<i>Decommissioning of Nuclear Powered Submarines, Decommissioning of Nuclear Facilities, IBC Conference, London February, 1993</i>	
<i>Dispersal of Radioactive Materials from the Komsomolets Submarine, RL2052-A, August 1993</i>	
<i>A Programme of Sustainable Management for the SSN Komsomolets on the Sea Bed of the Barents Sea, Int Sym, results of the 1993 Expedition to SSN Komsomolets, St Petersburg, January 1994</i>	
<i>Atomic Weapons Establishment Aldermaston Radioactive Wastes, Discharges, Commissioning and Safety Policy, Evidence to the AWE Community Public Inquiry, Reading Borough Council, March 1994</i>	
<i>Dual Capable Nuclear Technology, RL2084 A, 1995</i>	http://archive.greenpeace.org/comms/nukes/nukes.html
<i>Conversion of the Military Nuclear Complexes the Decommissioning of the Russian Navy Northern Fleet, IBC Conf, London January 1995.</i>	
<i>Case of McGinley and Egan v United Kingdom (10/1997/794/995-996) European Court of Justice, Strasbourg 1997</i>	
<i>Assessment of the DevPubSafe Emergency Plan relating to the Berthing and Refitting of Nuclear Powered Submarines at Devonport Dockyard, Mr K</i>	

Tucker, Barnes Barnet Primary School, Plymouth, May 2000	
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<i>Review of the Emergency Planning Measures Relating to the Berthing Royal Navy Nuclear Powered Submarines at the Clyde Bases</i> , Petitions Committee of the Scottish Parliament, Scottish Nuclear Free Authorities, April 2001	
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<i>The Hazard and Risk Assessment relating the Nuclear Safety Case for the Salvage of The Russian Federation Nuclear Powered Submarine Kursk</i> , Russian Federation/Mammoet Smit, 2nd Report October 2001	
<i>The Recovery of the Kursk</i> , presentation to the British Society of Nuclear Engineers, Harwell, November, 2001	
<i>The Recovery of the Kursk</i> , presentation at the Institution of Mechanical Engineers, Brunel University September, 2001	
<i>Review of the Emergency Planning Measures Relating to the Berthing of Royal Navy Nuclear Powered Submarines at Devonport, Plymouth</i> , Plymouth Guild Hall, 2 July 2002	
<i>Nuclear and Weapons Dimensions of the Recovery of the Kursk</i> , IBC International Conference of Decommissioning Nuclear Facilities, London, November 2002	
Review Special: <i>The Kursk</i> , The Engineer, v291, N 7615 8 NOVEMBER 2002	
<i>Vulnerabilities of Nuclear Plants to Terrorism</i> , Large J H & Schneider M, Oxford Research Group Seminar, Rhodes House, Oxford, December 2002	
<i>The Proposed Royal Navy Z Berth at Southampton and REPPiR</i> , Southampton City Council, Seminar 19 March 2003	
<i>The Recovery of the Russian Federation Nuclear Powered Submarine Kursk</i> , Society of Naval Architects and Marine Engineers, World Maritime Technology Conference, Int Conf, Sans Francisco, October 2003	http://www.largeassociates.com/kurskpaper.pdf
<i>The Potential for a Nuclear Accident from Reactor Defect Experienced by HMS Tireless when off Sicily in May 2000</i> , Seminar, Gela Local Authority, Gela Sicily, December 2004	
<i>Forensic Assessments of the Nuclear Propulsion Plants of the Submarines HMS Tireless and RF Northern Fleet Kursk</i> , Forensic Investigation of Power Plant Failures, Seminar, IMechE, London, March 2005	http://www.largeassociates.com/TirelessKurskForensic.pdf
<i>The Actual and Potential Development of Nuclear Weapons Technology in the Area of North East Asia (Korean Peninsular and Japan)</i> , Seminar to the Parliamentary Assembly, Republic of Korea, 28 April 2005	http://www.largeassociates.com/R3126-A1-%20final.pdf
<i>Risks and Hazards in Recovering the Nuclear Powered Submarine Kursk</i> , Warships Naval Submarines 8, Royal Institution of Naval Architects, Conf, London, 23-24 June 2005	HTTP://WWW.LARGEASSOCIATES.COM/KURSKRINA.PDF
<i>Regina v Ms Juliet McBride, A Matter of Alleged Trespass at AWE Aldermaston</i> , Newbury Magistrates Court, June 2006 June 2006	http://www.largeassociates.com/3071%20McBride/R3071-Aldermaston-1.pdf and http://www.largeassociates.com/3071%20McBride/R3071-Aldermaston-2.pdf
<i>Potential Development of Nuclear Weapons Technology in Iran</i> , Illustrated	http://www.largeassociates.com/3

Lecture, Emirates Center of Strategic Studies and Research, Abu Dhabi, 13 December 2006	158%20ECSSR/R3158-final.pdf
<i>Regina v Ms Juliet MacBride, The Matter of Alleged Trespass at Aldermaston</i> , May 2007, Bindmans Solicitors, March 2008	http://www.largeassociates.com/3166%20%20MacBride/R3166-AWE-%20webFINAL.pdf
<i>Transportation of Nuclear Weapons through Urban Areas in the United Kingdom</i> , C1 Abstract & Summary, November 1990 Reissued March 2008	http://www.largeassociates.com/1875%20Nuclear%20Weapon%20Transportation/RL1875-h1%20AbstractSummary.pdf
<i>Regina v Ms Juliet MacBride, The Matter of Alleged Trespass at Aldermaston</i> , May 2007 2nd Evidence, Bindmans Solicitors, August 2008	http://www.largeassociates.com/3166%20%20MacBride/R3166-AWE2nd%20Evidence.pdf
<i>Lessons from the Nuclear Countries: Civilian Nuclear Power vs Weaponisation Programmes</i> , ECSSR 14th Annual Energy Conference, Abu Dhabi, 24-26 November 2008	http://www.largeassociates.com/3158%20ECSSR/ECSSR%20%20Large%20J%20H%2026%20Nov%202008.pdf
A B & Others and The Ministry of Defence, <i>Preliminary Evidence of John H Large</i> , 20 November 2008 Royal Courts of Justice Preliminary Hearing 19 January 2009	http://www.largeassociates.com/3169%20Nuclear%20Test%20Veterans/R3169-A3.pdf
<i>Brief Review of the SotonSafe Off Site Emergency Plan (REPPiR) relating to the Berthing of Nuclear Power Submarines at Southampton Docks</i> , November 2009	http://www.largeassociates.com/3185%20SOTONSAFE/R3185-A5.pdf

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TABLE OF SUGGESTED SOURCES OF THE LINE BY LINE REDACTIONS OF THE

IV) DNSR INSPECTION – DLO NUCLEAR WEAPON ROAD CONVOY MOVEMENT MO 4051

TABLE 2 - DISPARITIES BETWEEN MOD-RESPONDENT

PAGE	PARA	S36(2)(b)(i)	S24(1) ETC
1	banner		Δ
1	1		Δ
1	1.1		Δ
2	1.3		Δ
2	5		Δ
2	6.1		Δ
3	7	possibly	
3	8	possibly	
3	8		Δ
3	9	possibly	
3	10	possibly	
3	11	possibly	
3	13	possibly	
3	14	possibly	
3	15	possibly	
3	16		Δ
5	1		Δ
5	2		Δ
5	2.1		Δ
5	2.2		Δ
5	2.3		Δ
5	2.3.1		Δ
5	2.3.2		Δ
5	4		Δ
5	5		ΔΔΔ
5	TRO 0043	possibly	
5	6		Δ
5	7		Δ
6	8		Δ
6	10		Δ
6	11		Δ
6	TRO 0043	possibly	
7	13		Δ
7	16		Δ
7	17		Δ
7	TRO 00	possibly	
7	20		Δ
7	21		Δ
7	TRF 0105	possibly	
7	21.1	possibly	
7	21.2	possibly	
7	21.3	possibly	
7	21.4	possibly	
7	22	possibly	
7	Task Control	possibly	
7	23		Δ
8	24		Δ
8	25		Δ
8	26		Δ
8	27	possibly	
8	TRO 0045	possibly	
9	1	possibly	
10	TRF 0104	possibly	
10	TRF 0105	possibly	
11	TRF 0043	possibly	
11	TRF 0044	possibly	
11	TRF 0044	possibly	
	TOTALS	26 possibilities	33 Δ

Δ - most possibly relating to National Security

LIST OF DOCUMENTS TO BE ATTACHED TO THE WITNESS STATEMENT OF JOHN LARGE

LIST N°	TITLE	JHL PARA REF	URL ADDRESS
	Instructions from Rob Edwards	14	http://www.largeassociates.com/3189%20Rob%20Edwards/Rob%20Edwards%20-%2016%20June%20Letter%20of%20Instruction.eml
	Decision Notice FS50194621	20	http://www.largeassociates.com/3189%20Rob%20Edwards/Decision%20notice%2005_02_2010%20[123850].pdf
	Documents provided to the Appellant by MoD in response to original FoI request: 1) 20060921 draft DNSC report AWE, 2) Indian Footprint 06 report, 3) 060804-Quarterly report for DNSR-NWR Q3 2006, 4) DNSR Inspection of DLO Nuclear Weapon Convoy Road Movement of Nuclear Weapons ‘MO4051’ and Associated COPI: Interim Report, 5) Defence Nuclear Safety Board Annual Report, and 6) NWR 2005 Annual Report	20	http://www.largeassociates.com/3189%20Rob%20Edwards/MoD%20Document%20Bundle.pdf
	letter to Appellant from Katie de Bourcier MOD D/DG Info/3/18/1 12-12-2006-075324-002 25 February 2008	F’note 3	http://www.largeassociates.com/3189%20Rob%20Edwards/Katie%20MoD%20-%20Edwards%20Rev%20Final%20-%20U.pdf
	Letter DE&S, D/DGS&E/BSG/80/20/30/1, 11 May 2007	25	http://www.largeassociates.com/3189%20Rob%20Edwards/MoD%20Letter%2011%20May%202007.pdf
	D NM&NARG Safety Statement for the Modification of the Nuclear Weapon Convoy Task to Continuous Running Including Running in the Hours of Darkness, D/NM/88/1/1, 16 December 2994	76	http://www.largeassociates.com/3189%20Rob%20Edwards/Continuous%20Running%20Safety%20Statement.pdf
	DS&E Organisational Chart	94	http://www.largeassociates.com/3189%20Rob%20Edwards/D%20S&E%20Org%20Chart.pdf
	DNSR Letter of Appointment	94	http://www.largeassociates.com/3189%20Rob%20Edwards/DNSR_LOD.pdf
	Annex to D/CIO/3/18/1/206, 23 February 2010	80	Appellant to provide
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	Report and appendices of the DNSR to the NII relating to Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPiR) – Technical assessment of 2008 Submissions by Defence Operators, DNSR/3/3/3/1, 6 October 2008 See also originating Large & Associates’s original FoI request M3186-A8, Item 3	101	http://www.largeassociates.com/3185%20SOTONSAFE/NII%20REPPiR%20-%20Technical%20Assesment%20of%202008%20Submissions%20by%20Defence%20Operators.pdf http://www.largeassociates.com/3185%20SOTONSAFE/M3185-A8.pdf
	A Radiological Probabilistic Risk Assessment of the Faslane Ship lift for Vanguard Class Submarines with Strategic Weapon System Embarked, Issue 3, AWE Systems Engineering, November 2000	110	A full and un-redacted copy of this document should be available from the MoD, CIO, Level 2, Zone N
	DNSR Foxwater 09 – Exercise Assessment report, 14 January 2009	116	http://www.largeassociates.com/3185%20SOTONSAFE/20100319-DNSR%20Foxwater%2009%20Assessment-Redacted-FINAL-U.pdf
	Nukewatch UK		http://www.nukewatch.org.uk/
	Wikipedia – Defence Nuclear Material Transport Operations	122	http://en.wikipedia.org/wiki/Defence_Nuclear_Material_Transport_Operations
	MOD Acronyms and Abbreviations	123	http://www.mod.uk/NR/rdonlyres/3705AC9A-3259-4478-AC2C-A54C3D338612/0/acronyms_and_abbreviations_dec08.pdf
	Large & Associates M3189-MoD6 of 30 July 2010 MoD Response and Explanation of 25 August 2010	123	http://www.largeassociates.com/3189%20Rob%20Edwards/M3189-MoD6.pdf http://www.largeassociates.com/3189%20Rob%20Edwards/M3189-MoD6.pdf

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<i>Operational Berth Safety Statements</i> – DNSR Review, DNSR/20/17 29 July 2008	161	http://www.largeassociates.com/3185%20SOTONSAFE/20100319-Operational%20Berth%20Safety%20Statements-%20DNSR%20Redacted-FINAL-U.pdf
RSD Review of the Submarine Programme REPPiR 2008 Submission, SERCO HS9190/100/1D241189/1, 6 September 2008	184	http://www.largeassociates.com/3189%20Rob%20Edwards/SERCO%20RE PPIR%202008%20Submission.pdf
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1 st Report of the Libel Working Group, Libel Tourism, March 2010	227	http://www.justice.gov.uk/publications/docs/libel-working-group-report.pdf