

Magnox Inquiry

Information protocol between the Magnox Inquiry and the Nuclear Decommissioning Authority

1. On 27th March 2017 the Secretary of State for Business, Energy and Industrial Strategy announced that there was to be an independent inquiry, led by Steve Holliday, into the award of the Magnox decommissioning contract by the Nuclear Decommissioning Authority (NDA) and its subsequent termination (“the Magnox Inquiry”). The full terms of reference are available on the gov.uk website (see: www.gov.uk/government/speeches/nda-settlement-contract-termination-and-inquiry).

General

2. This protocol sets out how the Magnox Inquiry team will request information from the NDA and how the NDA will respond. It also sets out how that information will be held and used once in the possession of the Inquiry. The approach set out in this protocol will be used (adapted where appropriate) by the Inquiry in relation to information requested from people, teams or organisations other than the NDA.
3. The guiding principle that the Inquiry will apply when dealing with information is the need for the Inquiry to fulfil its duties, in particular to satisfy the terms of reference, while complying with applicable legal requirements. The timescales and procedures set out in this protocol are those that should ordinarily apply but may be departed from where necessary to ensure the proper and efficient running of the Inquiry or in light of experience of the operation of this protocol.
4. The working assumption is that all information requested by the Magnox Inquiry team will be provided by or on behalf of the NDA within 5 working days unless this is not practically possible. Where the information cannot be supplied within 5 working days the NDA shall inform the Magnox Inquiry team within 2 working days of any request when that information will be supplied.

Requests for information

5. Where the Inquiry considers that there is information (however recorded) that it needs to review for the purposes of carrying out its investigation, it will request that information from the NDA Liaison team established for the purposes of liaising with the Inquiry. All requests for information will be made to a member of the NDA Liaison team and every request shall be copied to [redacted].

6. Requests will be made by the Inquiry team in writing. All responses to requests for information will be in writing.
7. The NDA Liaison team is responsible for sourcing all information requested by the Magnox Inquiry team that the NDA, or the NDA's external advisers, hold.

Information not held

8. If the NDA does not hold some or all of the information requested, the NDA liaison team will take one of the following actions:
 - if the information is reasonably accessible to the NDA liaison team, the team will obtain that information for the purposes of supplying it to the Inquiry; or
 - if the information is not reasonably accessible to the NDA team the team will inform the Inquiry within two working days of the request, providing any information it has which may assist the Inquiry to locate the information requested by the Inquiry.

Holding and use of information by the Inquiry

9. The Inquiry will ensure that:
 - all members of the Inquiry team hold at least BPSS security clearance and shall provide such information as is requested by the NDA in order to verify those security clearances;
 - all information supplied to the Inquiry is logged and stored either electronically on password protected .gov.uk IT systems or numbered and stored in security furniture.
10. The Inquiry acknowledges that the supply of information under this protocol that is subject to legal professional privilege in favour of the NDA does not constitute a waiver by NDA of that privilege. The Inquiry will only use such information in a way that is consistent with its privileged status. Where the Inquiry considers it may be appropriate for the Inquiry, having regard to the guiding principle set out in paragraph 3, to use privileged information in a manner which is inconsistent with its privileged status, it will write to the NDA for permission to do so, setting out the use the Inquiry proposes to make of the information which it considers is inconsistent with the information's privileged status. The NDA shall in considering whether to give permission have regard, in particular, to the guiding principle set out in paragraph 3 and the risks associated with that particular information being used in the way proposed by the Inquiry. The NDA will respond to a request for permission within two working days. The Inquiry will not use that legally privileged information

in the manner proposed without permission. In relation to the inclusion of legally privileged information in the Inquiry's interim and final reports, see paragraph 11.

11. The NDA acknowledges that the Inquiry may need to refer to legally privileged information in its interim and final reports. The Inquiry will, before finalising such a report, invite the NDA to comment on how such material is referred to and the Inquiry will have regard to those comments. In carrying out its responsibilities under this paragraph, the Inquiry and NDA will take into account the possibility of the Inquiry making recommendations about redactions to the Secretary of State under paragraph 16.
12. The Inquiry will retain information supplied to it unless, having considered the information, it is of the view it is not necessary for that information to be retained. If satisfied that its purposes are met by the retention of copies rather than original documents, it will return the originals. Any document or item retained by the Inquiry as containing information will be given a unique reference by the Inquiry for the purposes of identifying and tracking the item.
13. The Inquiry will use information for the purposes of carrying out its investigations and preparing its report in a manner which is consistent with the guiding principle set out in paragraph 3. Examples of the ways information may be used include: inviting witnesses to comment on the information and referring to the information in the Inquiry report.
14. The Inquiry will store, process and destroy information in a manner which is consistent with security requirements of HMG Security Policy Framework document and ONR Security Assessment Principles appropriate to its classification and in conformity with its legal obligations, including under the Data Protection Act 1998. If the NDA considers any particular security requirements should apply to the storage and use of that information, for instance because the information relates to issues of national security, it should notify the Inquiry team before or when supplying the information.
15. If the NDA considers that it cannot supply the information requested because of the security requirements applicable to the information (e.g. because it is Sensitive Nuclear Information), in particular because of national security considerations, it will inform the Inquiry within two working days of the request. The NDA and Inquiry will take steps to consider whether the NDA's concerns may be met while ensuring that the Inquiry has the information it needs to carry out its responsibilities.

16. It is expected that the Inquiry's report will be published by the Secretary of State. If appropriate, the Inquiry will make recommendations to the Secretary of State about redacting parts of the report for the purposes of publication.

The Magnox Inquiry