

GUILDFORD ARCHIVING PROJECT QUESTIONS AND ANSWERS

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What is the Guildford Archiving Project (GAP)?

The project is a joint undertaking by a consortium of the London School of Hygiene & Tropical Medicine (LSHTM), University of California, San Francisco (UCSF) and Mayo Clinic. It aims to secure and expand public access to a major collection of internal tobacco industry documents from British American Tobacco (BAT), currently held in a depository in Guildford, UK. Given the unique importance of these documents, current difficulties of access, and the scheduled closure of the Depository in 2009, GAP was initiated in 2001 to secure and expand public access to these documents. Funded by a consortium of donors,ⁱ the project has now requested photocopies of the entire collection from BAT. Despite lengthy delays, these photocopies are gradually being received from BAT, then scanned and indexed in preparation for mounting on a public website. The first batch of these documents will be ready for public access from autumn 2004. By achieving this goal, the project will provide the public health community with a critical resource which can help inform the development of more effective tobacco control research and policy activities necessary to tackle the 10 million deaths from tobacco-related diseases predicted worldwide by 2030.

What is the Guildford Depository?

The Guildford Depository, located on an industrial estate on the outskirts of Guildford in the southeast of England, is a collection of an estimated 8 million pages of internal corporate documents from the British American Tobacco Company (BATCo) and its parent, BAT Industries plc. The contents of the collection are diverse, dating from the company's origins in the early 1900s to 1995, and includes day-to-day correspondence, marketing reports, strategic plans and industry research. Internal documents of this kind offer a unique insight into how the tobacco industry operates.

The Depository was established during litigation brought against several tobacco companies by the State of Minnesota and Minnesota Blue Cross Blue Shield. The Minnesota litigation sought to recover health-related costs incurred from tobacco-related diseases. The parties settled in 1998, with the agreement of the Minnesota Consent Judgment, in which BAT agreed to provide public access to the internal documents it produced during the discovery process. The documents were to be made available at the Guildford Depository for ten years. BAT finally opened its doors to the public in February 1999 and will keep them open until February 2009.

BAT claims that it does provide public access to the contents of the Depository. In what ways are the documents not publicly accessible?

As described in Muggli et al.ⁱⁱ, and as experienced in many visits to the Depository by researchers from the London School of Hygiene and Tropical Medicine (LSHTM) and others, the conditions of access are designed to hinder rather than facilitate use of the collection. It is not reasonable, for example, for BAT to track a visitor's searches of the database and to offer extraordinarily limited operating hours of 6 hours per day for public visits. It is particularly unreasonable to take one year or more to provide photocopies of documents requested. Furthermore, BAT has denied numerous requests by visitors for electronic copies despite having, in the company's own words, "big time imaging" capabilities at the Depository.

These conditions of access contrast sharply with the Minnesota Depository (created under the same litigation) which does not carry out extensive surveillance of visitors, is open for 10 hours per day, and can typically process photocopies within 24 hours. The Minnesota Depository is run by an independent third party paralegal firm. By contrast, the Guildford Depository is administered directly by BAT.

Is BAT breaking the terms of the Minnesota settlement through its operating procedures at the Guildford Depository?

This would be something for the Minnesota courts to decide if the Minnesota plaintiffs were to question BAT's actions. The consortium does not have the formal legal standing to take such an action. However, we would ask the question whether the conditions of access reflect the spirit of the Minnesota settlement. Is it reasonable for a company, which now claims a commitment to corporate social responsibility, to covertly monitor the work and daily activities of visitors, apparently rank the files selected by their potential public relations threat to the company, not provide a proper index of the materials, take a year or more to provide copies of documents that are now in the public domain, and to withhold other documents on the basis of opaque and unchallengeable privilege claims?

On these latter two points, it is worth noting that BAT delayed the opening of the Guildford Depository by almost a year beyond the date when the Minnesota Depository opened, apparently to undertake additional review of privileged, trade secret or personal material within the documents. In addition, BAT stated to the House of Commons Health Select Committee in 2000 that a full review of legal privilege had already been conducted.ⁱⁱⁱ Yet additional claims of privilege are continuously being made on documents that researchers request, often in an inconsistent manner (as detailed below). BAT is also taking up to a year or more to deliver documents, claiming this time is needed to conduct legal review for privilege. These claims need to be independently verified to ensure that such claims are indeed justified.

BAT has consistently refused to provide public access to its documents via the internet. Why is this project seeking to do this?

At present, the vast majority of BAT documents are only available on-site in a warehouse on an industrial estate near Guildford, England. Visitors, therefore, must travel to the Depository to search manually through the estimated 8 million page collection using a very rudimentary file index. For people not living near Guildford, and especially those living outside of the UK, this is highly impractical. By scanning, indexing and putting the documents on a publicly accessible website, anyone with access to the internet would be able to carry out research using the documents. This is especially helpful for most public health researchers in the developing world, where BAT interests are concentrated, and for whom coming to the UK would not be possible.

How will the website at the University of California, San Francisco Kalmanovitz Library enable efficient access to the documents?

First, and most importantly, the document website will provide users worldwide with 24-hour access to documents that are currently only available on-site at the Guildford Depository. Second, whereas the Depository is only indexed crudely at the file level, with an average file containing around 200 pages, the consortium are arranging for the contents to be scanned and then indexed at the document level. Website users will thus be able to search via index records (e.g. author, title, recipient, date), thus allowing targeted searches to be conducted for the first time (e.g. correspondence between specific parties during a designated period). Additionally, users will be able search the full text of the documents via OCR (optical

character recognition), enabling discovery of subject-related information beyond that contained in subject records.

What is the timeline for the Guildford Archiving Project?

The website will be available from September 2004 when over one million pages of scanned and indexed documents will be made accessible to users. Given ongoing delays by BAT in the delivery of requested photocopies, it is estimated that the project will be completed by the end of 2006.

Why are internal tobacco industry documents important for the public health community?

The documents are important to help the public health community develop more effective tobacco control policies worldwide. Tobacco-related diseases now kill almost 5 million people each year, a staggering figure that is expected to double by 2030. The key vector of this pandemic is the tobacco industry which for decades claimed no responsibility for the health consequences of its products. We know from documents obtained to date that the industry has been engaged in a range of activities to push the pandemic, many of which are dubious, both morally and possibly legally, including continued marketing to youth, undermining of science and public policy, and complicit smuggling of cigarettes. A better understanding of how the industry has engaged in these activities is essential for the public health community if it is to reduce the 10 million annual deaths worldwide expected by 2030 from tobacco.

Why is the Guildford Depository collection of particular importance?

Among the large transnational tobacco companies, BAT claims to be the most international. It is the market leader in over 50 of the 180 markets in which it operates, has factories in 66 countries, and produced some 792 billion cigarettes in 2003. As part of the clear shift away from traditional markets in richer countries, BAT sells a substantial majority of its cigarettes to the developing world. It is here that the global tobacco pandemic will inflict its heaviest burden in future. By 2030, 70% of all deaths from tobacco-related diseases will occur in poorer countries.

The signing of the Framework Convention on Tobacco Control (FCTC) in 2003, the world's first international health treaty outlining the basic measures countries need to implement comprehensive tobacco control programmes, makes the Guildford collection an essential resource. Participating countries in the FCTC will benefit from a clearer understanding of how the tobacco industry attempts to influence policy and undermine tobacco control measures. This will better enable countries to protect themselves from industry tactics, thus reducing the devastating health and economic impacts of tobacco use.

Furthermore, whether for reasons of corporate culture, or because BAT has operated in a less litigious society than its US competitors, the collection is relatively more candid than other companies' collections. It thus provides a much richer resource for highlighting some of the more questionable practices in which tobacco companies have engaged. The Guildford Depository has already provided evidence of BAT's involvement in smuggling cigarettes, and price fixing. In 2000 BAT's own public relations firm even identified its Guildford Depository as a "skeleton" in the company's closet.ⁱⁱ

Has BAT maintained the documents in a responsible manner?

It is difficult to answer this question given the lack of transparency and accountability in the management of the Depository. There are, however, extremely disturbing indications that the collection has not been maintained or presented to the public in its entirety. During visits by

LSHTM to the Guildford Depository the database indicated 181 fewer files than BAT declared to the Health Select Committee. In January 2000, BAT reported that the Guildford Depository contained 40,784 files but, on our visit on 9 March 2004, the database indicated only 40,603 files. The missing files raise serious questions about the integrity of the collection. Additionally, Muggli et al. describe the inadvertent deletion of the contents of an audio tape housed at the Guildford Depository which proposed that BAT market a “cheap cigarette” to “dirt poor little black farmers” and as detailed below, at least one document housed in the Guildford collection has apparently been physically altered. These issues again highlight the vulnerability of this material.

Is there any evidence that BAT has engaged in document destruction?

The company’s apparent willingness to destroy potentially damaging documents was revealed in 2002 in an Australian legal case^{iv v} and its rationale, as indicated by whistle blowers,^{vi} raises further concerns about the long-term integrity of the collection while maintained by BAT:

It was obvious to everyone 'in the know' what the strategy was. That is, its purpose was to get rid of all the sensitive documents but do so under the guise of an innocent housekeeping arrangement and to ensure that all relevant documents that were not destroyed or removed from the jurisdiction were properly (legally) privileged.^{vii}

The US Department of Justice is taking allegations of document destruction so seriously that in 2004 it deposed Andrew Foyle, a partner at BAT’s legal firm, Lovells, on the company’s policy of “document retention”, based on concerns that BAT has engaged in the illegal destruction of company documents.

Should the House of Commons Health Select Committee reconsider evidence submitted by BAT?

The evidence contained within BAT’s own archive in our view calls for further questioning by the Health Select Committee of evidence given to the Committee regarding the number of documents the company had electronically imaged. In February 2000, BAT Chairman Martin Broughton told the Committee that about 350,000 pages of documents had been scanned, specifically those which had been requested as photocopies by Guildford Depository visitors. He added: “Seven and three quarter million (pages) have not been scanned”^{viii}. Company documents presented by Muggli et al indicate that BAT undertook large scanning projects in 1998 and 1999, budgeting £3.1 million, an exorbitant amount of money to scan such a small subset of documents (equivalent to almost £9.00 per page). A full year prior to the Committee’s inquiry, the company described the establishment of “big time imaging” capabilities at the Guildford Depository.ⁱⁱ The evidence presented by Muggli and colleagues suggests a far greater scanning operation by BAT.

As the documents only cover the period up to 1995, how much do the documents reflect the current practices of BAT?

Many of the documents housed at the Guildford Depository are medium term plans, and thus do cover planned activities by the company to the present time. This makes the collection of contemporary relevance. Furthermore, the Minnesota settlement requires that BAT and the other cigarette manufacturers continue to deposit documents from smoking and health litigation in the US into the Minnesota Depository until at least 2008. In this manner, approximately 750,000 pages of additional BAT documents, the majority dating from 1995 to 2001, were brought to the Minnesota Depository beginning in February 2001 and ending in June 2003. An initial review of these newer documents shows that BAT’s activities have not

changed, and that the same strategies and tactics were still being used in 2001 that were employed during the time periods covered by documents housed at Guildford. Of particular note is the company's efforts to undermine the World Health Organization and the Framework Convention on Tobacco Control, continued sponsorship and advertising directed at youth and emerging markets throughout Asia, and so called 'reduced risk' product design strategies aimed at thwarting regulation. The Guildford Archiving Project is also acquiring all BAT documents housed at the Minnesota Depository and this collection will be added to the public website.

Is there anything that you would want to ask BAT to do at this point?

Yes, there are five requests that we would like to make of BAT:

(1) Provide photocopies of the documents in a reasonable time period - Although we have now ordered photocopies of all the files from the Guildford Depository, the bulk has yet to be delivered. At present, it is taking one year or more from the date an order is placed with BAT to the time of its delivery to us. This is an unreasonable delay and we want this time delay to be dramatically reduced.

(2) Provide a privilege log and independent verification of privilege claims - There are documents and files that BAT are keeping from the public that we want produced. A search conducted in 2004 at the Guildford Depository showed that nearly 10% of the documents that BAT claimed as containing privileged information were inferred to be authored by a BAT solicitor. In some cases, a solicitor's name was not even associated with the document, but only the notation "BAT solicitor" was present. This raises questions as to whether BAT has based a claim of privilege, not upon evidence, but upon its inference of authorship. Importantly, members of the Consortium have requested documents more than once and, on some occasions, the document(s) have been provided and on other times the exact same document(s) have been deemed 'privileged' and thus unavailable for public viewing. This again suggests an imprecise and inconsistent application of privilege claims. BAT does not offer independent verification that the assertion of privilege is being used fairly and, indeed, it was the abuse of privilege during the Minnesota trial that led the Minnesota court to order the tobacco companies to hand over their full collections to the plaintiffs. We want to be provided with a copy of the "privilege log" recording all documents that have been withheld from researchers at the Guildford Depository on such grounds, and agreement by BAT for independent verification that privilege has been appropriately asserted.

(3) Provide an explanation for discrepancy in number of files - There is an unexplained shortfall of around 181 files in the current index of the Guildford Depository. This could represent thousands of missing pages of documents since the Depository opened in February 1999. Where have those files gone? Why are they missing? We urge BAT to deliver the missing files, and if they cannot, to provide detailed information including the file name, date, file owner, and file user, along with an explanation for their disappearance.

(4) Provide an explanation of why a document appears to have been altered - Recent evidence, again from BAT's own records, suggests that a document within the company has been altered. The document, considered to be highly sensitive by BAT's solicitors, discussed the company's marketing to "illiterate low-income 16 year olds" in the Middle East, was changed to the less controversial age of 18 years. When was this document altered? Have any other documents been altered and, if so, what alterations have been made?

(5) Cease surveillance of visitors at the Guildford Depository - We urge BAT to discontinue its intensive surveillance of visitors such as tracking electronic database searches, analysing the research and litigation mindset of visitors, monitoring phone calls made by visitors, and

conducting surveillance of the physical movement of visitors both inside and outside the Depository.

What revelations have documents from the Guildford Depository offered so far about BAT's activities?

Despite the difficulties of public access to the Guildford Depository described above, the limited number of documents secured so far already reveal important insights into BAT's activities worldwide. These activities include apparent complicity in smuggling, anti-competitive practices, continued marketing to children and youth, strategies to influence public policy, and efforts to undermine scientific research.

For details of some of such revelations, please see the accompanying paper "Revelations from the BAT documents Part 1" which will be available from **27 May 2004** on www.lshtm.ac.uk/cgch/tobacco/guildford.htm.

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- iii House of Commons Select Committee on Health, *Second Report. The Tobacco Industry And The Health Risks Of Smoking*, London: HMSO, 2000.
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- vii Birnbauer W. Dirty play by tobacco giant, says insider. *Sydney Morning Herald*, 19 July 2003.
- viii House of Commons Select Committee on Health, *Second Report. The Tobacco Industry And The Health Risks Of Smoking, Volume II, Minutes of Evidence and Appendices* London: HMSO, 2000. Question 1469.

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