



House of Commons
Culture, Media and Sport
Committee

Appointment of the Information Commissioner

Second Report of Session 2015–16



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*Report, together with formal minutes
relating to the report*

*Ordered by the House of Commons to be printed
27 April 2016*

The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Culture, Media and Sport and its associated public bodies.

Current membership

[Jesse Norman MP](#) (*Conservative, Hereford and South Herefordshire*) (Chair)

[Nigel Adams MP](#) (*Conservative, Selby and Ainsty*)

[Andrew Bingham MP](#) (*Conservative, High Peak*)

[Damian Collins MP](#) (*Conservative, Folkestone and Hythe*)

[Julie Elliott MP](#) (*Labour, Sunderland Central*)

[Paul Farrelly MP](#) (*Labour, Newcastle-under-Lyme*)

[Nigel Huddleston MP](#) (*Conservative, Mid Worcestershire*)

[Ian C. Lucas MP](#) (*Labour, Wrexham*)

[Jason McCartney MP](#) (*Conservative, Colne Valley*)

[Christian Matheson MP](#) (*Labour, City of Chester*)

[John Nicolson MP](#) (*Scottish National Party, East Dunbartonshire*)

The following Member was also a member of the Committee during the Parliament:

[Steve Rotheram MP](#) (*Labour, Liverpool, Walton*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/cmscom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Katy Reid (Second Clerk), Kevin Candy (Inquiry Manager), Johnnet Hamilton, (Inquiry Manager), Hannah Wentworth (Senior Committee Assistant), Keely Bishop (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

Contacts

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Introduction

1. The July 2007 Green Paper, *The Governance of Britain*, proposed that, where Parliament has a particularly strong interest in a public post, the relevant select committee should hold a pre-appointment hearing for the government's preferred candidate. It stated that the hearing should cover issues such as "the candidate's suitability for the role, his or her key priorities, and the process used in selection".¹

2. Since 17 September 2015, one of the posts within the remit of the Culture, Media and Sport Committee has been that of Information Commissioner (it was previously the responsibility of our sister committee, the Justice Committee). In February 2011, the then Justice Minister announced to the House that, as part of the wider measures to strengthen the independence of the office of the Information Commissioner, the Government would accept the Justice Committee's conclusion from its pre-appointment hearing. This was on the grounds that:

"The Information Commissioner plays a vital role in promoting transparency and protecting the rights of individuals in relation to their personal data. The Government are fully committed to an independent Commissioner and the critical role he plays as a champion and protector of information rights.

"The Commissioner is already entirely independent in the decisions he takes to enforce the legislation he regulates. However, the provisions to be included in the (Protection of Freedoms) Bill will further enhance his day-to-day corporate and administrative independence. The Commissioner will no longer need to seek the consent of the Justice Secretary on issues relating to staff appointments, charging for certain services, or before issuing certain statutory codes of practice under the Data Protection Act. Changes will also be made to the terms of the Commissioner's appointment and tenure to increase transparency and protect against any potential undue influence.

"Taken together, these steps—to be underpinned by a revised framework document outlining the day-to-day relationship between Government and the Information Commissioner—will result in a real and tangible enhancement to his independence".²

As a result, unlike other pre-appointment hearings, we have been given an "effective" veto over this appointment.

3. Christopher Graham has been Information Commissioner since June 2009, when he was appointed on a five year term, extended for a further two years. Under the Protection of Freedoms Act 2012 he cannot be reappointed. The successful candidate to replace him will take over in summer 2016 and will serve a term of five years. In November 2015 we were informed that the process for appointing a successor was about to start.

¹ Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007

² OR, 6 February 2011, col 87WS: Ministerial Statement

Recruitment process

4. The Information Commissioner role was advertised in December 2015. Gatenby Sanderson were appointed headhunters to assist with the recruitment. A selection panel³ was appointed in accordance with the Commissioner for Public Appointments Code 2012. Twenty seven applications were received by the deadline, six applicants of which were from women. The selection panel met on 28 January 2016 and considered each application. With the approval of Ministers, the panel agreed that, given the number of international candidates, they would ask the headhunters to carry out the longlisting interviews by telephone. Six candidates were identified for the

- Their ability to transfer their experience to the UK context (for international candidates)
- Their experience of dealing with big issues before Parliament and the press
- Their public communication skills
- The scale of their operational leadership experience
- Identifying challenges and changes in the future
- Their motives for applying, and consideration of the practicalities of transferring to Wilmslow
- Their business awareness and experience
- The impact of regulation and proportionality.

These interviews identified four candidates who were asked to attend an in-depth face-to-face interview on 29 February. Subsequently, two of these candidates met relevant Ministers and the Public Appointments Assessor, and on 22 March 2016 the DCMS announced that the Government's preferred candidate was Elizabeth Denham.

The Information Commissioner's Office

5. The Information Commissioner's Office (ICO) is the independent body set up to uphold information rights in the UK. It oversees and enforces the Freedom of Information Act 2000 (FoI) and the Data Protection Act 1998 (DPA), and a number of regulations governing the release and use of information.⁴

6. The Freedom of Information Act 2000 provides public access to information held by public authorities. Under the Act public authorities are obliged to publish certain information about their activities; and members of the public are entitled to request information from public authorities. The Act covers any recorded information⁵ that is held

3 Consisting of Ian Watmore, ICO Non-Executive Director; Sarah Healey, Director General at DCMS; Sue Gray, Director General of Ethics and Propriety at the Cabinet Office; Rosie Varley, Public Appointments Assessor and panel chair; and Rob Sumroy, Head of Technology and Outsourcing practices at Slaughter and May as the independent panel member.

4 Environmental Information Regulations, INSPIRE Regulations, Re-use of Public Sector Information Regulations and associated codes of practice.

5 Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Public authorities include Government departments, local authorities, the NHS, state schools and police forces. However, the Act does not cover every organisation that receives public money, for example, some charities that receive grants and certain private sector bodies that perform public functions.

7. Where public authorities repeatedly or seriously fail to meet the requirements of the legislation, or conform to the associated codes of practice, the ICO can take the following action:

- conduct assessments to check organisations are complying with the Act;
- serve information notices requiring organisations to provide the ICO with specified information within a certain time period;
- issue undertakings committing an authority to a particular course of action to improve its compliance;
- serve enforcement notices where there has been a breach of the Freedom of Information Act or Re-use of Public Sector Information Regulations, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
- issue recommendations specifying steps the organisation should take to comply;
- issue decision notices detailing the outcome of the ICO's investigation to publically highlight particular issues with an organisation's handling of a specific request;
- prosecute those who commit criminal offences under the Act; and
- report to Parliament on freedom of information issues of concern.

8. The Data Protection Act 1998 governs the processing of personal data by all organisations and includes an obligation for those organisations to take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data (principle 7). Any organisation that processes personal information is required to register with the ICO as a 'data controller', unless they are exempt; failure to do so is a criminal offence. There are more than 400,000 registered data controllers. The ICO publishes the names and addresses of data controllers, as well as a description of how they use the data they hold, and it has the power to investigate the processing of personal data by a data controller.

9. The ICO has a number of options for changing the behaviour of organisations and individuals that collect, use and keep personal information,⁶ including criminal prosecution, non-criminal enforcement and audit. Offences do not carry custodial sentences and there are no powers of arrest. The main options available to the ICO are to:

- serve information notices requiring organisations to provide the ICO with specified information within a certain time period;

6 ICO, Taking action – data protection

- issue undertakings committing an organisation to a particular course of action in order to improve its compliance;
- serve enforcement notices and ‘stop now’ orders where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
- conduct consensual assessments (audits) to check that organisations are complying;
- serve assessment notices to conduct compulsory audits to assess whether organisations’ processing of personal data follows good practice;
- issue monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches of the Data Protection Act occurring on or after 6 April 2010;
- prosecute those who commit criminal offences under section 55 of the Act (relating to obtaining the disclosure of personal information without the consent of the data controller, and offering or selling personal information obtained illegally); and
- report to Parliament on issues of concern.

The role of the Information Commissioner

10. The DCMS “role specification” states that the Information Commissioner is responsible for:

- Fulfilling the statutory responsibilities of the Information Commissioner;
- Providing leadership and strategic direction to the Information Commissioner’s Office;
- Building and maintaining excellent relationships with key stakeholders including Ministers, Parliament, the media, public interest groups, business and international equivalents;
- Contributing to debates on the development of policy, nationally and internationally, on data protection and freedom of information issues; and
- Acting as Accounting Officer for the Information Commissioner’s Office.

11. In advertising the post, the Department said that the successful candidate would be required to demonstrate:

- A track record of credible and strategic leadership and management, ideally within a statutory framework; a track record of successfully delivering organisational change; and ability to work with others at all levels, within and outside the ICO, to deliver results.
- Strong commercial and business acumen, including an understanding of the impact of a changing regulatory environment on business; strong financial and performance management skills, including the ability to deliver value for money and achieve operational excellence; an understanding of the legal and regulatory framework in which the Information Commissioner’s Office operates.

- Evidence of the ability to collaborate with, and effectively influence, customers and stakeholders including business and international counterparts and government; confidence in public speaking and as a media spokesperson; engagement with/ understanding of modern information technology with an emphasis on developments in social media and other areas that impact on the privacy of individuals.
- Evidence of the ability to be independent and impartial; excellent judgement, including the ability to identify, evaluate, and manage risk and to build mitigating strategies.
- The ability to make difficult decisions under pressure and where necessary defend these against internal and external challenge; and flexibility, adaptability and resilience under pressure.

The advertisement also stated that the role would ideally be filled by someone with an understanding of EU legislation and institutions; and an understanding of Whitehall and the wider public sector.

The preferred candidate: Elizabeth Denham

12. Elizabeth Denham has held senior leadership positions in the field of information rights in Canada over the last 12 years. Since 2010 she has been the Commissioner at the Office of the Information and Privacy Commissioner for British Columbia, Canada, where she is responsible for enforcing the Canadian Freedom of Information and Protection of Privacy Act (FIPPA), the Personal Information Protection Act (PIPA), and the Lobbyists Registration Act (LRA). Previously (2007–10) she was the Assistant Privacy Commissioner of Canada in Ottawa; having been a Director at the Office of the Information and Privacy Commissioner of Alberta (2003–7). Elizabeth Denham's full CV, as submitted during the appointment process, is given in Annex One.

The Committee's view on the suitability of the candidate

13. Ms Denham gave oral evidence to us on 27 April. We questioned her on the following topics:

- A comparison of the British and Canadian FoI and data protection regimes
- Her understanding of the EU Framework underpinning UK data protection law
- Whether and how the powers of the UK ICO might be extended in relation to FoI
- The application of FoI to all forms of communication, including social media, whenever any government information was under consideration
- Whether FoI should apply to non-Government entities delivering public services
- The application of the commercial confidentiality exemption from FoI to government contracts
- Issues of victims' access to information highlighted by the Hillsborough inquiry
- The responsibility that company directors should have for cyber security

- Tackling nuisance calls
- The implications of amending the Regulation of Investigatory Powers Act to extend data retention
- Press Regulation: Lessons to be learned from Operation Motorman and the Leveson inquiry
- The ICO's relations with Parliament
- The management challenge of moving from a relatively small state system to a national regulator
- Funding of the ICO
- The challenge of relocating to the UK

14. On the basis of the evidence presented, we approve Elizabeth Denham's appointment as Information Commissioner. We wish Elizabeth Denham well in her new post and look forward to working with her in the future.

Annex One: Elizabeth Denham's CV

Experienced: Twenty years of experience in data protection/privacy and access to information – worked as a senior privacy regulator for 12 years in three different jurisdictions.

Knowledgeable: Thorough understanding of the related law, legal principles and decisions.

Collaborative: Able to balance and find common ground among multiple stakeholder views while upholding the values of privacy and openness.

Proactive & Innovative: Proactive approach to monitoring and enforcement of access/privacy laws.

Leading with Vision: Currently responsible for executive management of 40 professional staff for two independent offices of the legislature.

Clear Communicator: Clear and persuasive speaker (including presentations to parliamentary and legislative committees), balanced, accurate and fair in frequent media interviews.

CURRENT RESPONSIBILITIES

Commissioner **2010-present**

Office of the Information and Privacy Commissioner for British Columbia

Registrar

Office of the Registrar of Lobbyists

- Appointed in May 2010 for a six-year term as Information and Privacy Commissioner and Registrar of Lobbyists for British Columbia. An independent officer of the Legislature, primarily responsible for enforcing the *Freedom of Information and Protection of Privacy Act* (FIPPA), the Personal Information Protection Act (PIPA), and the *Lobbyists Registration Act* (LRA).
- Leads enforcement of FIPPA, PIPA and the LRA, including issuing quasi-judicial decisions, levying administrative monetary penalties, making findings of fact and law in investigations, mediating disputes, investigating public interest issues, and development of policy papers and compliance guidance for organizations and public bodies. Many of these involve complex investigations of a highly sensitive and technical nature requiring a thorough understanding of the law, legal principles, decisions and practice in the interpretation, implementation and enforcement of information access and privacy legislation across Canada and abroad. For example, issued decisions on the use of GPS in the workplace, use of facial recognition software by the public sector, and use of automated license plate recognition by law enforcement agencies.
- Provides leadership and executive direction to 40 professional and administrative staff including adjudicators, investigators, policy analysts, technical and support staff. Promotes contemporary human resource practices and responsible use of limited financial resources.

- Adopts a proactive approach to monitoring and enforcement of privacy and freedom of information laws. Established a policy and technology team to conduct systemic investigations and monitor the latest developments in privacy and access, identifying areas where future work is needed. Established an external advisory board to ensure links with academic, business and other stakeholders.
- Established a professional working relationship with, and meet regularly with senior provincial officials, elected members and provincial Cabinet Ministers on a variety of access and privacy issues.
- Respected advisor to government on legislative reform and policy initiatives, including substantial collaborative work with government on the 2011 amendments to BC's public sector privacy law; in 2012; initiated research and broad consultative work on law reform for the lobbying regulatory regime.
- Active spokesperson for information and privacy rights in a variety of forums including frequent speaking engagements in Europe, Asia, BC and Canada and am regularly interviewed by television, radio and print media.
- Spokesperson for information regulation on the national and international level. Recognized for work across Canada, Europe, Asia and the US. Engaged in national and international forums including the Global Privacy Enforcement Network, Executive member of the Asia Pacific Privacy Authorities, International Data Protection Commissioners' Conference working group.

EXPERIENCE

Assistant Privacy Commissioner of Canada

2007–2010

Office of the Privacy Commissioner of Canada (OPC) Ottawa

- Appointed in 2007 as the Assistant Privacy Commissioner of Canada; a Governor-in-Council appointment with primary responsibility for enforcing the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, the federal privacy law that applies to private sector commercial activities
- Led enforcement of *PIPEDA*, including making findings of fact and law in complaint investigations, and development of policy papers and compliance guidance for organizations. Many of these were complex investigations of a technical nature requiring a thorough understanding of the law, legal principles, decisions and practice in the interpretation, implementation and enforcement of information access and privacy legislation across Canada. For example, led the Facebook investigation in 2008–9; resulting in a ruling that affected 350 million Facebook users worldwide.
- Provided senior management of and executive direction to approximately 60 professional and administrative staff including the OPC's investigations, research and communications branches.

- Represented the Privacy Commissioner of Canada in national and international forums, including meetings of the federal, provincial and territorial commissioners, International Conference of Data Protection Commissioners, and international enforcement initiatives.
- Provided advice and testimony to House of Commons and Senate committees on the privacy implications of proposed legislation, government programs and private sector initiatives.
- Provided strategic and policy leadership and analysis on emerging information management, privacy and technology issues in Canada and abroad.
- Built strong working relationships with national industry associations, business leaders, civil society groups, government officials, consumer associations, and academia.
- Responsible for OPC's regional presence in BC, the Prairie and Atlantic provinces, and Ontario.

Director, Private Sector

2003–2007

Office of the Information & Privacy Commissioner of Alberta (OIPC)

- As a member of the executive team, provided strategic, management and operational advice to the Alberta Commissioner on all aspects of the OIPC's operations in Alberta.
- Responsible for implementation and enforcement of the Province of Alberta's new *Personal Information Protection Act*, Alberta's private sector privacy law, which was developed in conjunction with BC's *Personal Information Protection Act*.
- Hired and provided senior management to a new team of professional investigators responsible for investigating and mediating complaints under the new *Personal Information Protection Act*.
- Developed and implemented new policies and procedures to ensure administrative and procedural fairness in investigations and enforcement of the law.
- Developed recommendations for the Alberta Legislature's *Personal Information Protection Act* legislative review committee, with over 70% of recommendations accepted.
- Personally investigated or mediated over 100 complaint files, many of a high profile nature involving public reports of findings.
- Built strong partnerships with national stakeholder groups and their provincial and regional counterparts, including private sector industry associations, consumer groups, professional regulatory organizations, government agencies and health care bodies.

President 2001–2003**Denham & Associates Information Privacy Policy Consulting**

- Founded and managed a privacy consulting firm.
- Provided privacy consulting services to over 45 public sector, private sector and non-profit organizations, principally in British Columbia, Alberta and Manitoba.
- Retained by the federal government as an expert advisor to 2001 review of the federal *Access to Information Act*.
- Conducted privacy compliance planning and assessments for health authorities, federal and provincial government bodies, professional regulatory bodies, colleges and school boards, oil and gas companies, retail organizations, telecommunications and information technology firms.

Director, Legal and Regulatory Affairs 1999–2001**Calgary Health Region (CHR)**

- Developed and managed CHR's corporate-wide program for legislative and legal services; direct responsibility for internal legal counsel and accountable for legal services by external law firms.
- Responded to complex governance, ethical and patient care issues that involved liaison with multiple stakeholders including patients, CHR's medical, executive and communications' staff, and media.
- Enhanced the patient advocacy program by consolidating and streamlining communication channels resulting in more effective mediation and arbitration services to patients.
- Directed the Information and Privacy program for the CHR during a period of political and operational sensitivity when CHR was inundated with complaints and access to information requests.
- Responsible for the management of 8 staff with an annual expenditure budget of approximately \$1,000,000.
- Coordinated the CHR's response and commentary to media and other stakeholders on proposed legislation and regulation.

Access to Information and Privacy Coordinator 1997–1999**Calgary Health Region (CHR)**

- Developed and implemented CHR's first program for compliance with Alberta's Freedom of Information and Protection of Privacy Act and Health Information Act (Alberta's health information privacy law).

Archives Advisor 1994–1997

Archives Society of Alberta

- Provided advice about archives procedures and practices to organizations and businesses embarking on an archival program.

City Archivist 1989–1994

City of Calgary

- Developed and enhanced City archives program and facilities for the City’s historical and municipal records, including significant outreach programs to the community that resulted in improved access and better response time for citizen requests.
- Designed and implemented a state-of-the-art, environmentally controlled facility and public reference and exhibit area to house the 1988 Olympic Winter Games records and artifacts.

City Archivist 1983–1989

City of Richmond

- Developed new information management and archival program for the City of Richmond.

RELEVANT COMMITTEE / BOARD EXPERIENCE

Director, *Canadian Advisory Board, International Association of Privacy Professionals* 2011 - present

Director, *Pacific Opera Victoria*, 2013 - present

Member, *Research Ethics Board, University of Calgary*, 2000–2004

EDUCATION

Master of Archival and Information Studies, University of British Columbia
- 1984

Bachelor of Arts (History and Political Science), University of British Columbia
- 1981

AWARDS

University of British Columbia Distinguished Alumni award for leadership in the field of access and privacy - 2011

Queen Elizabeth II Diamond Jubilee Medal for public service to British Columbians - 2013

Formal Minutes

Wednesday 27 April 2016

Members present:

Jesse Norman, in the Chair

Damian Collins

Nigel Huddleston

Paul Farrelly

John Nicolson

Draft Report (*Appointment of the Information Commissioner*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 14 read and agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 3 May 2016]

Witness

The following witnesses gave evidence. The transcript can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 27 April 2016

Elizabeth Denham, Government's preferred candidate

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2015–16

First Report	BBC Charter Review	HC 398
First Special Report	Tourism: Government Response to the Committee's Sixth Report of Session 2014–15	HC 382
Second Special Report	Society Lotteries: Government Response to the Committee's Fifth Report of Session 2014–15	HC 415