

## Public Administration and Constitutional Affairs Committee

### Oral evidence: [The Cabinet Office Freedom of Information Clearing House, HC 505](#)

Thursday 25 November 2021

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Rachel Hopkins; Mr David Jones; John McDonnell; Tom Randall; Lloyd Russell-Moyle; Karin Smyth.

Questions 61-138

#### Witnesses

**I:** Elizabeth Denham CBE, Information Commissioner, Information Commissioner's Office, and Andrew White, Head of FOI Complaints and Appeals, Information Commissioner's Office.

Written evidence from witnesses:

– [The Information Commissioner's Office](#)

#### Examination of witnesses

Witnesses: Elizabeth Denham CBE and Andrew White.

Q61 **Chair:** Good afternoon and welcome to this meeting of the Public Administration and Constitutional Affairs Committee. This afternoon the Committee is continuing to take evidence in our Cabinet Office Freedom of Information Clearing House inquiry. We will be hearing evidence from Elizabeth Denham, the Information Commissioner, and Andrew White, the head of FOI complaints and appeals at the Information Commissioner's Office. Ms Denham and Mr White, good afternoon and welcome. I wonder if you could introduce yourselves for the record.

**Elizabeth Denham:** Thank you, Chair. I am Elizabeth Denham, Information Commissioner for the UK.

**Andrew White:** My name is Andrew White, head of casework and appeals for FOI at the Information Commissioner's Office.

Q62 **Chair:** Thank you very much. Ms Denham, how would you characterise



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your role in relation to the Freedom of Information Act? Do you see it as championing freedom of information best practice or, more narrowly, enforcing the Freedom of Information Act?

**Elizabeth Denham:** I see my role as promoting best practice, as well as enforcing the law. The challenge is that our resources limit our ability to act in some cases, but I see my role, according to the legislation, as both enforcer and promoter of best practice.

Q63 **Chair:** Do you think that role has changed over time, not just in your tenure, but more broadly?

**Elizabeth Denham:** I think it has. When I was working in similar roles in Canada, I would look at the UK law and think that it was a leading set of standards, because the law provides for mostly free and universal access to information held by Government, limited exemptions and a public interest test. There are strong elements of the law. The challenges have come in the last 15 years, in that the law has not been kept up to date to respond to how Government is delivered and to the expectations of citizens.

Q64 **Chair:** As you approach the end of your tenure in your role as commissioner, what is your assessment of the freedom of information landscape and the Government's attitude towards it?

**Elizabeth Denham:** I leave on Tuesday. My role is over in a few days. I have been thinking back over the past five years and thinking about how the Government have dealt with freedom of information and the expectations of citizens. I have been thinking deeply about that.

I have been ambitious—as ambitious as I could be—about the importance of transparency. I think people care more about transparency and access to information than they ever have. We have seen that in the last 20 months, throughout the pandemic. I guess I leave with a sense of the need for urgent reform in the legislation, as well as new powers and more resources for our office to be able to tackle the challenges that we have.

Q65 **Chair:** Noting that call for reform of powers and resources, and holding those thoughts in mind, do you think the FOI system and how it operates in general is fit for purpose?

**Elizabeth Denham:** The reality of the delivery of Government services involves so much of the private sector now. The scope of the Act does not adequately cover private sector businesses that are delivering public services. I think that is a huge challenge. I have seen statistics that say up to 30% of public services are delivered under private sector contracts, but those bodies are not subject to the law.

I was also concerned to see that the new ARIA science and technology public body is going to be excluded from the Freedom of Information Act. I am concerned when new public bodies are created that are not subject to the same transparency requirements as other public bodies.

Q66 **Chair:** During your tenure, has Government-wide FOI compliance



improved or deteriorated?

**Elizabeth Denham:** I will tell you that there has been a huge increase in access to information requests and complaints that have come in to public bodies or to the ICO for us to adjudicate. There is more interest from individuals who want to know things such as, "Let's see the safety reports of my council housing," or, "I want to find out about the details of my child's school." At the local level it is working fairly well but when it comes to some of the more complex or politically sensitive requests the timeliness has deteriorated, and the general openness and responses have also deteriorated over this time.

Q67 **Chair:** Is that a reflection of any practical reasons, such as the pandemic, or a change in attitude?

**Elizabeth Denham:** I think when Ministers are advocating for public bodies to be exempted from the Act, that tone from the top is not a respectful tone about the importance of freedom of information. I am passionate about freedom of information. It is a tool that is used not just by political researchers or journalists, but by citizens to get information about their local school or their local council; it is a part of democracy. Our law has fallen behind; the resources that my office has are 40% less than what we had in 2010, and at the same time our requests have increased by one third. We have used every creative move we can think of but without more powers and more resources the oversight of the Act is not fit for purpose.

Q68 **Chair:** Can I just ask briefly about your organisation's institutional relationship with Government, particularly the Cabinet Office? Does the Cabinet Office contribute to your funding in any way?

**Elizabeth Denham:** No. We are funded through grant in aid, and the grant in aid comes through DCMS as our sponsor Department.

**Chair:** Thank you very much.

Q69 **Mr Jones:** There are just one or two points I wanted to pursue. You mentioned that Ministers are advocating for public bodies to be exempt from the Act, and you have already told us about ARIA. Are there any other bodies that you have in mind?

**Elizabeth Denham:** I think there is a new arrangement for our Environment Agency, where the suggestion from Ministers is to create a separate regime for that agency. Again, there is a concern that the Ministers and the Government of the day are not walking the talk when it comes to the importance of freedom of information.

Q70 **Mr Jones:** Have you seen an increase in FOI requests from journalists over the five years you have been there?

**Elizabeth Denham:** Can you answer that, Andrew?

**Andrew White:** We would have to come back specifically on that point, but it does not feel—anecdotally, from our casework—that there is any



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increase per se. There is always a steady level of interest from journalists in the workings of Government.

Q71 **Mr Jones:** What sort of percentage of FOI requests are attributable to journalists?

**Andrew White:** Of the complaints we see?

**Mr Jones:** Yes.

**Andrew White:** It varies by sector. We have teams focused primarily on central Government teams, for instance, where 30% to 40% might be from journalists at a given point in time. In other sectors, which may be more concerned with local community areas, that would drop down to 5% to 10%.

Q72 **Mr Jones:** But in certain sectors they account for a considerable proportion of the requests and complaints?

**Andrew White:** They can do, absolutely.

**Elizabeth Denham:** If I can add to that, one in 1,000 citizens in the UK will file a Freedom of Information Act request, but journalists are standing in their shoes. It is through journalists that the public can understand or get to know why decisions are being made on their behalf. Journalists, public interest researchers and advocacy groups are important requesters.

Q73 **Mr Jones:** But they also have a commercial interest, don't they?

**Elizabeth Denham:** They have a commercial interest, but I think that protecting the Act for free and fair journalism is an important element.

Q74 **Chair:** On that theme, do you have a rough estimate of the numbers of freedom of information requests from Members of Parliament?

**Elizabeth Denham:** Can we write with that?

**Andrew White:** We could come back with that, certainly.

**Chair:** That would be helpful. Thank you.

Q75 **Ronnie Cowan:** Did I catch you right? Did you say that the Government are setting up a new environmental agency that will be free from the Freedom of Information Act?

**Elizabeth Denham:** I can write with the details, but my understanding is that the new environmental agency will be subject to some new rules and not to the EIR or FOIA.

Q76 **Ronnie Cowan:** Will you write to us to give me the details of that?

**Elizabeth Denham:** I can.

Q77 **Ronnie Cowan:** Thanks very much. Some of our previous witnesses, notably journalists, academics and Whitehall experts, have told us that they have struggled to provide a detailed description of the Clearing House. It seems to be, from my perspective, a ghost body that does



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something. We are not very sure who is in it, how many people are in it and what they actually do. Can either or both of you throw some light on that for me?

**Elizabeth Denham:** I can say that the Cabinet Office has said in writing to us, and I think to this Committee, that it runs the Clearing House for, it says, an administrative purpose to streamline the same requests that are sent to multiple Government Departments. They have a co-ordination role and an administrative role, as well as giving advice to Departments on complex requests. That is what the Cabinet Office has said. I understand through our casework and through journalists and other public interest researchers that they believe the Clearing House is a discriminatory process that adds delay to freedom of information requests. The problem is that we do not know. We do not have the evidence.

On the back of the Jenna Corderoy investigation and case, we looked at issues about the Clearing House. We looked at the allegations and we offered to the Cabinet Office to carry out an audit. We wanted to follow through the process of a request to understand the criteria with which Government Departments are referring cases to the Clearing House. We wanted to really get under the bonnet and see how it all works. The Cabinet Office declined our offer of a voluntary audit, and we do not have compulsory audit powers as we do in the data protection side of our mandate. I think the Cabinet Office missed an opportunity there, because we would have gone in and provided evidence of the way that it operates, in a way that would be helpful to ease some of the concerns and the opaqueness. It has just increased suspicion of the Clearing House, as opposed to allowing us in the doors as a regulator, for us to reveal to the public how it operates, because it could be entirely legitimate. We just do not know.

Q78 **Ronnie Cowan:** Do you have anything to add, Andrew?

**Andrew White:** The commissioner has summed it up perfectly.

Q79 **Ronnie Cowan:** My line from that is: if there is nothing to hide, why not let us through the door? You would have thought, in an open democracy, that that information would be available. It is particularly ironic that we are talking about freedom of information here.

**Elizabeth Denham:** I think there needs to be transparency about the transparency process.

Q80 **Ronnie Cowan:** This is the crux of the matter. Do you think that the function of the Clearing House, in theory or in practice, fits with the spirit of the Freedom of Information Act?

**Elizabeth Denham:** There is nothing in the chapter and verse of the law that undermines co-ordination or good administration, but is the Clearing House reflecting the spirit of the law, which means an applicant-blind process, and that no matter who you are, or where you are from, your request is dealt with in the same way, and there is no bias or discrimination or extra layers of review that add delays to the process?



Q81 **Ronnie Cowan:** It is interesting that you mention the applicant-blind principle. In previous evidence to the Committee, some journalists believed that it is not applicant-blind, and that staff are told that an inquiry has come from a journalist, and therefore treat it differently.

**Elizabeth Denham:** The applicant-blind principle in the FOI Act means that, whether you are a journalist, an ordinary citizen, an academic or a businessperson, your request is processed fairly and equally. However, as I say, if you are identified—"This is a journalist's request", "This is a political researcher's request"—and if there is a different way of dealing with your request, such as a less timely one, or one that produces a different result, that is not an applicant-blind process. It is a bit of a grey area. Andrew, do you have anything to add about the legal requirements versus the spirit?

**Andrew White:** The basis of understanding the mechanics of the Clearing House is exactly the premise on which we invited the audit. We are left with the same questions that you promote as to just what it means. We would like to clear the speculation that exists. Silence will always be filled by speculation, so by bringing some analysis to the process and procedure, we are looking to bring clarity to expectations. We are not starting from a position of speculation as to what it may or may not be. We want an evidence-based finding as to what that scenario might produce, to confirm the application of the principles as we are promoting here. At the same time, that very interaction highlighted a weakness in the Act, with its lack of mandatory powers for an audit, compared with the Scottish Act; there is an obvious discrepancy between the two. We can strengthen that by bringing the analysis of an independent regulator to build trust in that process, which potentially seems to be eroding, and establish processes going forward.

**Elizabeth Denham:** I was surprised when I came to the UK from Canada that there was no compulsory audit power for the commissioner. The last file I worked on in British Columbia before I arrived here was a fulsome FOI audit of the city of Vancouver, which faced the same accusations by journalists that there was not an applicant-blind process and that somehow journalists were being targeted in a way that was unfair. That audit process brought up good practice, and I think the public benefited from an independent regulator going there and having a look. We have also done a voluntary audit of the civil service in Northern Ireland. We have done a fulsome audit about record keeping and freedom of information, because the civil service in Northern Ireland let us in. I think they could tell you as well that that was not a punitive process by the regulator but led to an evidence-based set of recommendations.

On Tuesday, I will release an audit of the Test and Trace programme from a data protection perspective. It is the same thing. We looked at what was happening with Test and Trace. There are lots of allegations about how that programme is operating. We were able to find recommendations, DHSC has accepted those recommendations and we can move forward. I am frustrated and disappointed that the Cabinet Office turned down our offer.



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Q82 **Mr Jones:** Ms Denham, do you think the Clearing House makes a necessary or helpful contribution to the processing of FOI requests by the Government?

**Elizabeth Denham:** I wish I could answer that question, but we simply do not know, because the actual operations of the Clearing House are opaque to our office. Certainly, we have seen allegations and concerns from applicants in our casework, and obviously I have seen some of the cases that have gone to the tribunal. However, we have not had a systematic, fulsome review of the way that the Clearing House operates. I just think people will continue to be suspicious until an independent agency can have a look.

Q83 **Mr Jones:** Do you see any reason why the Government should not release information about the size of the Clearing House and the way it operates?

**Elizabeth Denham:** No, and you will see from the Jenna Corderoy case that the Cabinet Office did publish, in March this year, some details about the criteria for referring cases, so we have had a little bit of a peek into the operation of the Clearing House; but that came as a result of our investigation, our order, our decision notice and the tribunal case, so again, the Cabinet Office was pushed to release some of that information.

Q84 **Mr Jones:** Do you know what the criteria are for referring a request to the Clearing House?

**Elizabeth Denham:** They published some of those referral criteria in March. I will let Andrew come in, but I know that one of the criteria was cases of political sensitivity and complexity, so, as you might understand, national security matters and those kinds of cases would be referred to the Cabinet Office. Andrew, do you know some of the other criteria that were published?

**Andrew White:** Those were the headlines, really. They were fairly vague criteria that one might appreciate were required for the administration and co-ordination of grouped requests. There is an understandable need to co-ordinate those.

Q85 **Mr Jones:** So-called round robins?

**Andrew White:** Yes, absolutely. As was mentioned, these are matters of political sensitivity, high-profile matters, matters of national security—big-ticket items that would warrant further collaboration, third-party engagement and co-ordination, maybe cross-departmentally, in order to produce a response.

Q86 **Mr Jones:** You do not know all the criteria that are applied.

**Andrew White:** We have seen the published criteria as per, and part of the point of the audit was to establish that they were indeed being followed along those lines.

Q87 **Mr Jones:** Do you think that those criteria are too wide, or are they reasonably necessary?



**Andrew White:** I do not really think it is for us to say without testing them. Without the ability to see them in practice, it is impossible to offer a judgment.

**Elizabeth Denham:** We are an evidence-based regulator, so we would want to look at how this actually operates. As far back as 2011, the Cabinet Office was publishing quarterly the number of cases referred to them. There was more transparency about the operation of the Clearing House. That stopped in 2011, after which those statistics were not published. It would be helpful if there was more transparency in the process for us all.

Q88 **Mr Jones:** To what extent do referrals to the Clearing House add to the delay in processing FOI requests?

**Elizabeth Denham:** That is an excellent question. There is a whole list of questions that we would ask in an audit, and that is one of them, because to determine whether the principle of “applicant-blind” is properly applied, we would have to see whether certain categories of requesters were being discriminated against, in terms of timeliness. The Scottish Information Commissioner did an audit and review of similar issues in Scotland, and he found that there were improvements to be made, and that applicants were being classified. That is similar to what I found in the city of Vancouver when I did an audit in 2016.

The existence of clearing houses and some kind of co-ordination mechanism in governments is not unusual, but the question is whether the way that they treat applicants is fair and respects the principles in the Act. That is really the question that we would be looking at. We would have to look in detail at how those requests were dealt with.

Q89 **Mr Jones:** Is it possible for you to say whether delays are justified without carrying out the audit that you want to carry out?

**Elizabeth Denham:** No. We look at whether delays are justified all the time in our casework, but the question is whether the Clearing House—and perhaps some extra layers of review and clearance—results in delays, and whether those delays are unfair.

Q90 **Mr Jones:** You mentioned your experience in Canada; some academic analysis suggests that the introduction of a similar clearing house function there led to a deterioration in transparency. Without your audit, are you able to say whether there is a deterioration in transparency here?

**Elizabeth Denham:** My audit was in the province of British Columbia. I think that the investigation or review that you are referring to was at the federal level—it was not my audit.

Q91 **Mr Jones:** I understand that, but that was the analysis. That was the result. Could it be said that the existence of the Clearing House in this country also adds to a lack of transparency.

**Elizabeth Denham:** It is not for me to say without really looking under the bonnet and at the detail.



Q92 **Mr Jones:** So you really need your audit?

**Elizabeth Denham:** I really want to look at the detail. I think that is the way that regulators work. There are allegations and concern—I understand that. However, we really need to look at the operation of it.

Q93 **John McDonnell:** I think you have explained why you wanted to look under the bonnet—I can accept that. I am particularly interested in the lack of information about how any test had been made on the application of the criteria, for example. During our last evidence session, Martin Rosenbaum, the BBC's former lead specialist on FOI, argued that you and your office should crack down harder on the Cabinet Office by, for example, using an enforcement notice. What is your view on the usefulness of that mechanism—particularly in this case?

**Elizabeth Denham:** Again, if we are not able to go in, because we do not have compulsory audit powers to look at it, then how could we use an enforcement notice? Our decision notices are an order, appealable to the tribunal and then up through the court system; I think our decision notices are enforcement notices to a certain extent. I think what Mr Rosenbaum was probably suggesting was, when we saw behaviour that appeared to be systemic and needed to be changed, we could use an enforcement notice to go in and crack down on delays—or whatever it is.

We have done audits; I have just described the one in Northern Ireland. We have done an audit of the Met Police, where we looked at time delays. We have also issued one enforcement notice to central Government.

**Andrew White:** To the DFPNI in Northern Ireland.

**Elizabeth Denham:** Yes. We have used enforcement notices in the past. However, remember that our funding has been cut by 40% since 2010. For us to take enforcement action we have to have the resources—the legal resources—to be ready for litigation. It is not a light decision to take. I think that if we had more resources, we would be able to do more. We certainly use enforcement notices and information notices in our data protection work, but that is well funded by registration fees—it is not grant in aid.

**Andrew White:** I also wish to make a distinction about how one defines enforcement action. The Commissioner makes a point to say that our decision notices, while they spring from individual complaints, address specific matters that may have arisen from, or contributed to, a circumstance of delay, and draw attention to those that way. I think our activity should be considered in the round as drawing attention to poor performance where we spot it.

We have an enforcement role—albeit with a different hat. I have got roughly 65 people at my disposal within my department, 60 of whom are involved in casework. I do not have the capacity to take that broader step and use powers that we do not have at our disposal to investigate the enforcement notice criteria you might be considering. I do not want to think of enforcement as being distinct from our complaints' outcomes. We



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do use our decision notices to draw attention to behaviour that we would like to see corrected where possible, but we do not always have the mechanism or resource to focus on the next step that we would like to take forward.

Q94 **John McDonnell:** In this instance you did not have the opportunity to take enforcement action because you did not know what was going on.

**Andrew White:** That is the point. We cannot just turn up on your doorstep and investigate, because we get turned away.

**Elizabeth Denham:** Which does not happen on the data protection side of our mandate, because we are actively using our compulsory audit powers; and they are really important.

Q95 **John McDonnell:** I think you have made a strong point about the lack of legislative cover. To continue, the evidence that you submitted to the Committee drew on the 2019 deep dive, and you undertook that into the Cabinet Office and its FOI case handling. Can you explain what triggered that review, and what enforcement notices you considered in response to that?

**Andrew White:** Our casework statistics are a rich source of information for ourselves, in order to examine the landscape in which we operate, and a quick trawl through our own website to filter through Cabinet Office decision notices would identify a plethora of decision notices noting delays in responses and the need to respond within the 20-working-day time. So when that became apparent in around 2019, we felt it necessary just to make these initial inquiries to understand the full depth of delays in place.

We recognise that the Cabinet Office have an enormous number of complaints. They deal with some of the most complex, sensitive material that Government may have to deal with, and there are particularly interested and motivated requesters making those requests, so they come from a position of knowledge, so they will be complicated to start with. We need to acknowledge that. Again, using the evidence-based scenario, we would not want to rush in with a preconditioned argument. We would look to understand what that mechanism is, what is leading to those delays and what the full depth is.

We see the tip of the iceberg. When complaints come to us they have already gone through the process, and they have to be quite motivated to bring the matter to us. So it is entirely likely that we need to see the fuller picture. So it is a process of engagement, to draw some statistical analysis of what the picture was, in order to invite further debate about potential outcomes.

Q96 **John McDonnell:** Going back to the Cabinet Office's attitude itself, what did you learn about their motivation for their refusal of the audit? What do you think their concerns were?

**Elizabeth Denham:** From the deep dive?

**John McDonnell:** Yes. And also just the resistance to overall audit.



**Elizabeth Denham:** I have to say, though, that in the last 12 months our relationship with the Cabinet Office has improved; we documented that in our written evidence to the Committee. There is a new FOI team there and we are very pleased with the relationship that we have right now. Their recovery plan is in place and they are starting to do better with delays and responses. Certainly, it is a less frosty relationship with my office. That is why I was quite surprised when our offer to conduct an audit was turned down, because I do think the officials in the Department saw the benefits and the opportunity of the audit. So I want to acknowledge that the relationship is better; it is a lot less frosty, and we are seeing the evidence of a recovery plan to turn around the timeliness.

Q97 **John McDonnell:** Where did the resistance come from?

**Andrew White:** I would not describe it as resistance. There was an ongoing discussion at the time when we presented the initial statistics coming through—

**John McDonnell:** Where did the less than co-operative response come from?

**Andrew White:** Well, it was interrupted somewhat by the pandemic. That particular discussion rather presented something of a roadblock, as you may appreciate, and we were allowed to pick the pieces up with the current discussion on the back of the round-robin case, which kind of reignited some of the previous issues and enabled us to reconsider some of those previous discussions. I would not describe the 2019 interactions as adversarial; they were very collaborative in terms of us inquiring of the situation, statistics were provided, and that was leading to a further discussion of where we might go.

We were able to reflect on some learnings, even on that point, to demonstrate where greater engagement with the requester in the internal review process could help: just to elaborate on some of the rationale and the thinking that might be in place—because, as I say, we are talking about some really quite complex issues at times. Just to give notice that those factors had been taken into account—some of the broader aspects, some learnings of both sides—can help defuse some of the tensions that might develop when presented with a stonewall note, or just the perception of being pushed into the long grass by using the mechanism to delay a response. That early engagement has proved fruitful for all parties in the past, and we are seeing that now, as the Commissioner referred to. That increased engagement with us is as true with the requesters in the first place as well. It just develops a more fruitful relationship.

Q98 **John McDonnell:** So they are now going to undertake their own internal investigation.

**Andrew White:** That is a separate point. I am talking about the actual consideration of any request that might come through. The internal review, which I think you may be referring to, is the alternative to the audit. That is a separate matter.



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Q99 **John McDonnell:** They are launching their own internal review into the Clearing House and the FOI arrangements overall.

**Andrew White:** So I believe.

Q100 **John McDonnell:** Will you have an early sight of the Cabinet Office's report, and will you have an opportunity to feed into any recommendations on that?

**Elizabeth Denham:** They have not said.

**Andrew White:** We do not know. We have not been invited so far, but we have not seen the terms of reference either.

Q101 **John McDonnell:** I want to talk about their credibility, then. To be credible, what areas would you expect the internal review to look at?

**Andrew White:** We would be using the basis of our own audit criteria in order to produce some credible evidence for an outcome-based scenario. In truth, we would be looking for something similar to that, using those criteria—following the life of a complaint, and explaining the processes that are associated with the referral process. What happens at each stage? To use the same phrasing as last time, we use a deep dive on each stage of that process of categorisations.

Q102 **John McDonnell:** From what you know, limited though it is, of their operations so far, what sorts of changes would you expect them to commit to?

**Andrew White:** I think it is very early to say. Without knowing what is in place at the moment, it would be foolhardy to speculate on that.

**Elizabeth Denham:** I think we know, though, some of the round-robin process. We know quite a bit about the round-robin process, because that came out of the case that was going to go to the tribunal before the Cabinet Office decided that they would release the information. But remember that we looked at that from a data protection perspective. The circulation of people's names and professions is also a data protection issue, and we have more insight and more powers when it comes to looking at data protection breaches than we do for FOI. I really think that it is time for Parliament to think about whether FOI now needs to be fit for purpose for a digital age. It needs to be re-examined.

Q103 **John McDonnell:** That might be something that, as a Committee, we might want to make recommendations on. But what I am concerned about is the credibility of the internal review. I am just asking for your opinion for the record. Will the public gain the same level of assurance from the Cabinet Office's internal review, compared with an independent review conducted by yourselves or any other?

**Elizabeth Denham:** It is a missed opportunity for the public to get some confidence and assurance that these issues have been looked at independently, properly and thoroughly. We are accountable to Parliament, so we can be asked questions about our work. But I think it is a missed opportunity and, unfortunately, the public have not seen the



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terms of reference for the internal review. We do not know what the plans are for publishing such an internal review. Unfortunately, these actions might increase the suspicion of the Clearing House, when it could be “not much to see here”. This is an administrative co-ordination role—that is understandable—but it just feels like they had an opportunity to invite us to have a non-adversarial role, to have a good look and a deep dive.

Q104 **John McDonnell:** How much confidence will you have in an internal review like this?

**Elizabeth Denham:** I have an open mind, so I would look at that. But again, it is not all about me and my office. It is about the public and whether the public will have confidence in a Government Department marking their own homework.

Q105 **Mr Jones:** Briefly, Commissioner, you described your relationship with the Cabinet Office until about 12 months ago as “frosty”. Was that frostiness displayed by Ministers, or by officials?

**Elizabeth Denham:** I think my staff had a harder time actually engaging with officials on casework. I think Andrew might be able to give more information about that. It was also very difficult for me to get meetings with Ministers. That started to change.

We also published a report—you may remember—in 2018, called “Outsourcing Oversight?”. That was a report that my office wrote to Parliament, suggesting that the law needs to be reformed to capture private sector businesses conducting public business. At the time, I think the Cabinet Office was dismissive of the report’s recommendations in Parliament.

Q106 **Mr Jones:** You said you had difficulty getting meetings with Ministers. Did you have any meetings with Ministers?

**Elizabeth Denham:** I think my last meeting with a Cabinet Office Minister might have been with Chloe Smith. I’d have to look back in my diary, but that’s got to be in 2018.

Q107 **Mr Jones:** Could you possibly let us have a list of the meetings you’ve had with Ministers over the five years of your tenure?

**Elizabeth Denham:** Yes. I can say that I have had many, many meetings with Ministers in other Departments.

**Mr Jones:** If you could let us have that information, it would be very helpful.

**Elizabeth Denham:** Yes.

Q108 **Lloyd Russell-Moyle:** Overall, do you think the Cabinet Office processes FOIs in a reasonable way, compared with what you see in other Departments?

**Elizabeth Denham:** For the requests that come to Cabinet Office themselves—I am not talking about the Clearing House, but the Cabinet



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Office's own record on processing freedom of information requests—they do see some of the most challenging and potentially politically charged requests. It is central Government, so we take that context into consideration when we look at the Cabinet Office's process. However, as I have said, and as we said in our written evidence, we have seen improvements in the timeliness and in the engagement with our office by the Cabinet Office over the last 12 months. Is that fair?

**Andrew White:** That is fair, yes. I think the room for improvement that we identified, which was referenced previously, was in the provision of fuller rationale as to why a decision may have been reached, and we were struggling previously to get engagement. It was evident, once the engagement was there, that there was no suggestion that the Act was not fully understood. There were very often good arguments as to why a position may be adopted. It was just about trying to extract those in order to confirm those conclusions for our own satisfaction.

Q109 **Lloyd Russell-Moyle:** Noting that things have got better at the Cabinet Office, is that a similar pattern across other Governments—that you struggled to engage with Government Departments?

**Elizabeth Denham:** Northern Ireland's practices have improved and changed after our audit, but in terms of some of the larger Government Departments—the Department of Health and Social Care, the MoD—can you speak to that, Andrew?

**Andrew White:** I think it is fair to say that all of the larger Ministries of State have their problems in different areas. We don't—

Q110 **Lloyd Russell-Moyle:** Is this a pattern across Government, or is it that every one just has some very unique challenges? Can we make an extrapolation or not?

**Elizabeth Denham:** The Cabinet Office has unique problems and receives sensitive requests, so we can understand that. Also, in the last 20 months, many FOI staff members were called to front-line work, so you can see that during the pandemic, Government Departments' delays increased.

We understood that and we published our expectations during the pandemic; we understood that there would be some delays. But now, when the emergency is over, we expect to see recovery plans for the backlog of files that Departments have.

Q111 **Lloyd Russell-Moyle:** So you're seeing that backlog in the Cabinet Office and, I assume, in other Departments, but is the Cabinet Office improving quicker than other Departments, or is that just a general trajectory—that everyone is now improving?

**Andrew White:** That is how I would categorise it. I don't see one Department standing out from another as being any more truculent or—

Q112 **Lloyd Russell-Moyle:** Cabinet Office has particular problems. It started off badly, compared with other Departments; it got worse in the pandemic, as all Departments did; it is now returning back to what it



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was, while all the Departments are increasing—so it is still significantly worse than the other Departments, because of its challenges.

**Chair:** Aren't those challenges because of its co-ordinating role, or from misdirected purview? That is what we are trying to get to.

**Andrew White:** I think that is a good point. We should be careful to dissociate the Clearing House itself from the Cabinet Office. It is a separate administrative function; it is not an authority in itself. Each public authority is ultimately responsible for its own performance, whether or not the Clearing House is engaged. If the question is, is the Clearing House adding to serious delays or pressure, we cannot answer that, because we do not have insight into that process. I would refer you to my previous answer.

Q113 **Lloyd Russell-Moyle:** Apart from the Cabinet Office allowing you in to do an audit of the Clearing House and its own internal work, are there still things that you would identify that it needs to do to meet best practice?

**Elizabeth Denham:** In terms of its own work?

**Lloyd Russell-Moyle:** Yes.

**Elizabeth Denham:** Yes, and some of the fixes I would call almost quick fixes, as opposed to reviewing the entire law and whether it is fit for purpose. Just as Lord Burns and his committee recommended in 2016, if there were statutory time limits on internal reviews of requests, that would assist everybody. Right now, the way the law works—responding within 20 working days, then there can be a further extension and then an internal review by the Department of its response with no time limit—there are significant issues about timeliness, and information delayed is information denied. That is especially true for civil society and journalists, because investigating a story and getting the information six months or a year later means that the law is not fit for purpose.

Q114 **Rachel Hopkins:** I will start with a question, but I have a funny feeling that I will get a similar answer. In light of the written and oral evidence we have received as a Committee, which suggests that the Cabinet Office may be stonewalling FOI applicants by just drawing out its responses to requests, have you seen evidence of that and, if so, how widespread is it across Government?

**Elizabeth Denham:** As I just said, there is no statutory time limit on internal reviews. That means that we do not have the ability to act, so applicants might feel that they are being stonewalled, but there is no backstop. If a Department or any public body wants to take six months to do an internal review, we have nothing to say about that. I think that that is one of the significant issues in the Act that could be addressed, and many reviews have identified that as a fix. It has been there on the shelf, ready to go, and I think that would address many of the issues that we are talking about today.

**Andrew White:** I also encourage applicants who face this situation—as we have done with a number of them—to draw attention to it early, to us,



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so that we are able to intervene in whatever way we can. I fully understand the frustration that many applicants go through when left waiting and waiting, but when it comes to us after six months, it is already at the end of that frustration curve. Matters could be brought to us within four or five weeks, for instance, just to put an early marker in the sand, and we can follow up where we can.

The issue of stonewalling also includes accusations of the process being abused—not just pushing it off and not answering, but just pushing it off to us as a regulator and using this tribunal as a further backstop. We have also made recommendations about reconsidering the appeals process, and developing the Scottish model. The full-merits review at the tribunal stage really introduces a whole new procedural resetting of the clock. The public authority is in a position to introduce a whole new raft or set of arguments—you are back to the beginning. If we are in a position of actually resetting the Information Commissioner's office as the point of last resort, it gives real credence to the outcomes. If you get it wrong here and you lose this argument, there is an outcome. The decision notice can only be appealed on a point of law. It would encourage a much stronger range of arguments being presented to us, but I think also at the front end try and encourage mediation and understanding in that initial engagement to prevent an escalation. It saves time and money throughout if we can eliminate those hurdles going forward.

**Q115 Rachel Hopkins:** I am just going to explore the Scottish legislation a bit more. The lack of response within the statutory time limit is interpreted as a rejection that can be appealed through procedures. Do you think that sort of system should operate across the UK Government?

**Andrew White:** I think there are pros and cons to that. Inevitably, when one is dealing with particularly sensitive material or high profile or incendiary material, it would be irresponsible just to say, "There is no response. Now release." In those situations where we have come across a non-response, we are still honour-bound to follow up with some kind of inquiry to understand the information that is held and take account of the potential public interest in what that position might be, but that is where the interaction is problematic because we have a standing start. We have nothing to work with from a refusal notice or the internal review. It does not play well if there has been no engagement up to that point, but I still think we have an obligation to consider the facts relevant to the information requested. As a matter of regulatory integrity, it would be irresponsible, potentially, to put sensitive material at risk.

**Elizabeth Denham:** There are other jurisdictions that deal with deemed refusals. That is really what you are speaking of. There are other processes to deal with deemed refusals in a fair way. We can write to you about those, but I think the weakness in the UK law that we have right now is that there just is no time limit. The level of frustration in delays, again, I don't think is helpful to anyone. It just encourages a workaround of the law.

**Q116 Rachel Hopkins:** We have touched on some of this, but we also received



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evidence about case handling in a non-purpose and non-applicant-blind manner. Have you come across examples of that happening elsewhere in government, be it at national or local level?

**Elizabeth Denham:** On a local level? Do you want to speak to that, Andrew?

**Andrew White:** Yes. You make an important reference there. FOI is more than Westminster. It affects local communities, local people, individual interests and their wellbeing. Yes, there are elements of public life, particularly in some of the smaller councils that one might see, where inevitably personalities know each other, and that can colour the judgments and outcomes that one might see in a particular exchange that might escalate into a dispute.

**Elizabeth Denham:** If you think of a parish council and some of these organisations where people absolutely know each other, how could you be applicant blind?

**Andrew White:** It is a widespread phenomenon that we constantly work to overcome within our own engagement. It is a thread through casework where there is a need to explain the realities of what each side is entitled to, or not, in the first place.

Q117 **Rachel Hopkins:** One of the other questions that has been put to us is about the allegations that special advisers, who are political appointees, are vetting freedom of information responses and advising on whether something should proceed, or whether to release certain information or not. Do you think it is appropriate that political advisers are advising on something that is or should be a statutory process?

**Elizabeth Denham:** It is the head of the public body—in Westminster, the permanent secretary—that is ultimately responsible for that. I do think some of the allegations and concerns that applicants have about the Clearing House is that somehow there is political interference in the processing and decision making about the release of information. That goes to the heart of some of the concerns. That is why it would be extremely useful for us to do an independent audit of that. It would also be really useful to have Ministers as well as senior officials walk the talk about the importance of freedom of information and how it is a solid statutory pillar for the engagement of citizens. It is not a little bureaucratic tick-box exercise. It is absolutely fundamental. I cannot imagine our world without FOI and all the revelations and the engagement that we have had through the use of FOI. There are stories in the press every week about the fact that FOI requests have revealed issues around Windrush, stop and search and police procedurals. There is so much that we have learned through the freedom of information process, and we just need to make it fit for purpose.

Q118 **Karin Smyth:** I think we have covered quite a lot of this, but I want to clarify it in one space. On reforming the ICO to get better outcomes more generally, we talked about your recent discussions about the Institute of Government and cutbacks in the budget. Could you say a little bit about



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whether you have sufficient recourses and capabilities to fulfil those duties? Everyone wants more money, but can you talk about the expectations and the resources in this discussion?

**Elizabeth Denham:** I think any Government agency that is doing casework would feel that we would benefit from more resources. Again, we had £5.5 million in our budget for FOI work in 2010. We now have £3.75 million, with rapidly rising caseloads. It has gone up 30% and continues to rise. I think our office is at a tipping point right now. We had 6,500 cases last year—

**Andrew White:** We are on track for 6,500 this year.

**Elizabeth Denham:** Sorry; we are on track for 6,500 this year. We have 65 staff, so you can imagine that caseload. Remember, when the cases come to us at the ICO, the easy ones have been resolved because if they don't come to us, they don't come as a complaint. So, it is challenging work for the staff. We have limited resources.

I have submitted a request to DCMS for a small increase in our budget. We don't know the result of that yet, but we have to take account of budgets around all Government agencies, and we know they have been cut back.

Q119 **Karin Smyth:** Is that estimate separable from looking at fit for purpose in the digital age?

**Elizabeth Denham:** Separable from?

Q120 **Karin Smyth:** You talked earlier about not taking cognisance of the digital age and legislation being so old now. Is that extra pressure and an extra level of demand?

**Elizabeth Denham:** It is extra pressure. The expectation of people is for instant information, isn't it? We are all used to getting our information instantly. This is a statutory process where it is 20 working days, it couldn't be extended, internal reviews, so you can see how this is not—this legislation was drafted in 2000, which is more than 20 years ago. It has been in effect for 15 years and there have been very few changes to it. I would say there are some quick fixes that have already been recommended by the Burns commission, by our report and by other bodies that have looked at this. Then I would suggest that there needs to be a root-and-branch review of the legislation and the question of whether it is fit for purpose.

I have spoken about the concerns that we have about the use of private communication channels for Government decision making. What is the public record and how do you preserve the public record during this time of Twitter and end-to-end encrypted messaging systems? So, there are broader questions about what we are trying to achieve here and how we can make it happen, but there are some quick fixes.

Q121 **Karin Smyth:** But you have done the quick fixes.



**Elizabeth Denham:** We haven't done the quick legal fixes, which are things like the compulsory audit powers, the suggestion about statutory time limits for internal reviews, the scope of the Act and ensuring that new public bodies that are created are subject to the Act. Those things don't take a massive review.

Q122 **Karin Smyth:** If those were done, could you then align necessary resources to meet those particular additional clarifications about how to get that level to work? We are talking about the fundamentals, aren't we?

**Elizabeth Denham:** Exactly, but we could do more best practice work. As Andrew said, 60 of the 65 staff are working on casework, so that is very few resources to do guidance, training, and all those good things that we would like to do.

Q123 **Karin Smyth:** One of our earlier witnesses talked about the backlog, just to give you a chance to talk about that again. The backlog in itself does prevent pressure on the Government, doesn't it? Would you agree?

**Andrew White:** It doesn't help, without question, and it is a disappointing situation to find ourselves in. However, as the commissioner referenced, it represents a tipping point, after having done more with less for over a decade. The elastic only stretches so far, and I think the urgency the commissioner draws attention to is becoming ever greater. The suite of skills and outcomes about legislation, resource and culture need to coalesce in order to generate that ability to change the landscape we are working in, but absolutely, yes, I do not take any pride at all in the fact that our queues have gone up over the last 18 months.

The pandemic represented a difficult point for us. I am enormously proud of the people I work with, who put in the effort; as I say, with up to 10% year-on-year increases in case load, they were delivering the output. They were matching that with no additional help—in fact, with less help. We could demonstrate a track record of success in keeping up, but it felt like we were always catching up, or playing catch-up. Twenty months ago, of course, the world caved in. We got reset—got knocked back six months. We have got back to a position now of pre-pandemic output, but that is trailing the input, because cases continue to come through the door at significant levels, so we are just catching back up. We are just not finding the capacity to see that overlap and get back to that level.

Q124 **Karin Smyth:** If you have 60 out of 65 on that—

**Andrew White:** That is full-time equivalents, yes.

**Karin Smyth:** How do you manage the review of the backlog? How is that being triaged?

**Andrew White:** Triaged is an excellent word. That is exactly what we are doing—looking at where matters can be brought to an early resolution. We referenced matters being brought to our attention if there is no response within 20 working days. We can identify those early. There is no point waiting six months on a non-response case, so as that comes through the door, we try to deliver that outcome as quickly as possible. It is a question



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of prioritising both need and context, essentially, as and when we can, and developing and putting in place, with ever more speed, the practice and provision of precedent cases, in order to try to draw attention to a mediated outcome, rather than our having to go through to a decision notice every time.

Those are just—to use an overused sporting phrase—marginal gains. In every area of work we look at, we are trying to increase our capacity a little bit more, but it is building on a decade of doing so. It feels as if we are always close to that point at which we can take a breather and do some of the wider work we want to do—some of the engagement work, some of the teaching skills, wider guidance, greater engagement, and enforcement work. When can we do that? Inevitably, the focus is on what people, quite rightly, expect from a public sector service: they want an outcome. They want their service delivered appropriately, and I want to deliver it.

Q125 **Karin Smyth:** Presumably, everyone is very interested in understanding better the effects of the pandemic, and what went on and how decisions were made. You alluded to the private conversations and how we keep track of what was really going on. Are you able to separate out that 18-month period and triage that, so that we know in as close a time as possible what went on during the pandemic, or is that the backlog as well? I guess what I am trying to say is that some of that information needs to be more immediately released to people, so that we have a very clear idea before any public inquiry starts.

**Elizabeth Denham:** Yes, and we triage that and focus on the public interest as much as possible to get that information out. I am thinking of the case where there was an FOI request for the testing of—what was it, Operation Cygnus?

**Karin Smyth:** Operation Cygnus.

**Andrew White:** Yes, Operation Cygnus reports and preparedness.

**Elizabeth Denham:** That was really important. It was a matter of public debate. This had been the testing and trial in 2016. We knew that that was a case that we really needed to opine on, and that we needed to get our decision notice out, and we did, but there are also cases that are really important to individuals, like information that is needed for a custody dispute, or something related to somebody's health. Decisions had to be made about that. It's not a straightforward thing, where we would triage the big issues in the public's mind; there are also individuals who have an urgent need to get information from the system. It's not straightforward.

I echo what Andrew has said: I am incredibly proud of the team at the ICO and the creativity with which they have done their job when, year after year, we have had more to do with less. However, I will be telling my successor that there are urgent issues here, and the system can't stretch any more to enable us to really do our work.

Q126 **Karin Smyth:** One suggestion is to split the remit between privacy and



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FOI—just to split the bodies. What is your view about that?

**Elizabeth Denham:** I have worked in both regimes: at federal level in Canada, where those functions are separated, and at provincial level, where they are together. Obviously, in the UK, with the exception of Scotland, where FOI is a devolved matter, we have FOI and data protection in one body, and I would say that those two rights—the right to privacy and the right to access information—are two sides of the same coin, so I think that’s really helpful. If you think about privacy and data protection as an exception to access, it’s great to actually have those considerations in the same body. I do think it works.

Splitting off FOI from data protection may make people think, “Well, that will ease the ICO, because they have too much to do,” but then you would be setting up another body, with all the administrative work that you would have to do to get it going. We have a great team. I think FOI and data protection, again, belong together, because they have to adjudicate on freedom of expression as well as privacy.

Q127 **Karin Smyth:** In terms of staff and their training and experience, do the twain meet? Operationally, how are people managed through that?

**Andrew White:** There is quite a distinct ring-fencing mechanism for the delivery of the FOI service within the ICO. We are not allowed access, if you like, to the DP money, but there is a remarkable synergy on knowledge, and as I think you alluded to, I am very fortunate with my staff, in that the average length of service is much longer than in the rest of the organisation, because it’s an interesting area of work. It’s testing; it’s challenging. It provides a focus for a number of skills. The synergies, of which there are many, in terms of being a joint organisation—it’s just a sharing of the knowledge, a sharing of the experience, a collaboration of some of the knowledge required to crack some difficult casework problems.

For example, bringing in GDPR over recent years allowed us to be at the front of some of that thinking and knowledge, because FOI has an engagement with data protection directly through an exemption, so we have to be aware of that thinking, because we are just as likely to shape some of the way in which the courts consider data protection through FOI as we are through data protection distinctly. There is an overlap in that application, if not the actual delivery of the function through the service.

Q128 **Karin Smyth:** We talked a little about this earlier, but I will raise it again, just so that it’s clear for our record—the requesting of consent from the audited body to conduct the FOI audit. Our understanding is that when you requested to audit the Clearing House, that was ultimately refused by the Cabinet Office. The question is really: how frequently have you requested to undertake audits, and is a refusal usual?

**Elizabeth Denham:** Again, because of our resource limitations, it is not something that we offer up on a regular basis. We would suggest an audit where we see evidence of systemic issues that need to be examined, and we would use some of our scarce resources to do that. I gave the



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examples of Northern Ireland and the Metropolitan police, which welcomed our audit to assist it with its process improvement. I think that the only two audits that we have been refused would be the BBC and the Cabinet Office Clearing House.

Q129 **Karin Smyth:** The Scottish Information Commissioner has made a similar intervention on the Scottish Government's handling. Do you think that your office's lack of comparable ability to do that weaken your ability under the Act?

**Elizabeth Denham:** I think it does. Again, looking north to Scotland, we see some of the more modern powers in statute there. I think that the Scottish Freedom of Information Act was passed about two years after the UK's Act. There are compulsory audits there. The Scottish Information Commissioner's intervention is a very good report, looking at some of the same issues about applicant-blind processes and whether or not a clearing house-type function was consistent with the spirit of the law.

**Karin Smyth:** Thank you.

Q130 **John McDonnell:** Why did the BBC—the institution that was established to provide information to the world—turn you down?

**Elizabeth Denham:** I think I will have to go back and look at the records on that one.

Q131 **Chair:** There would be a certain irony if journalists from the BBC were requesting of the Cabinet Office something that their organisation wasn't prepared to do, so I'd be grateful for your clarification.

**Elizabeth Denham:** I have several clarifications to make, so we will write.

**Chair:** I am very grateful to you for that.

Q132 **Tom Randall:** We touched on culture a little earlier, but one of our witnesses—Dr Ben Worthy—said that the enthusiasm, or lack of enthusiasm, of senior politicians for transparency and openness has a huge influence on how others regard those things. In your experience, to what extent have different Ministers and individuals at the top of Government led to different approaches to FOI in their Department?

**Elizabeth Denham:** It is so important that a Minister and senior officials walk the walk when it comes to transparency. Their behaviour—whether they are creating permanent records; whether they staff and resource the FOI team properly; whether they take recommendations from the FOI staff in their Department—is really important, as you can imagine. Tone from the top matters. I use the example of Ministers in BEIS, who suggested that the Advanced Research and Invention Agency, the new public body, be exempt from freedom of information. That is really harmful, because that sends a message about transparency and its importance to everyone who works in that Department. I think that is a serious issue. Ministers and those at the top of public bodies have a huge influence on whether their staff embrace the spirit of transparency in their work.



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Q133 **Tom Randall:** Of course, the Freedom of Information Act was a landmark piece of legislation when it came out. It has clear procedures in it. If there is such a possibility of a wide operational implementation of it, do you think the system can be deemed to be robust enough, when it can vary so much depending on personalities within Government?

**Elizabeth Denham:** It can vary. We were talking about Ministers, but let's think about local public bodies, police forces, universities and schools that are subject to the Act. They will be influenced by the heads of the organisation when it comes to whether staff are given proper training, whether FOI has the resources, etc. There is a difference in the administration of the Act, but that's why it is so important for our office to be well-resourced—so that we can advocate for and show the way in best practice. Obviously, in our adjudicative work we will make decisions that are consistent across all public bodies.

Q134 **Tom Randall:** On that point, what would you say is the best practice that should be displayed regarding FOI policy and the approach to it by officials and political leaders in government?

**Elizabeth Denham:** I think they should encourage the disclosure of information in their values and in what they espouse around the table. I think they should espouse those values of the importance of public access to information and the preservation of documents and records of decision making. All these things are really important. I think it goes to the values of the organisation.

Q135 **Tom Randall:** Do you think the Cabinet Office embodies those values?

**Elizabeth Denham:** I have seen senior officials in the Cabinet Office who do espouse those values, and I have also seen Ministers who I think do not exhibit or espouse those values, so it has been different.

Q136 **Tom Randall:** That is noteworthy in a Department that has overall responsibility for FOI policy; that is quite striking. Have you used your office to drive better FOI practice across Government? Has there been any pushback, not only in the Cabinet Office, but more broadly?

**Elizabeth Denham:** I have met colleagues on Wednesday mornings at cross-Whitehall meetings of the permanent secretaries to speak about the importance of documenting decisions and the importance of freedom of information. We have participated in sessions and conferences put on by the Institute for Government, which were all about the importance of transparency and openness.

I think we have done some work; I would like to do more. My ambition is to move that transparency agenda forward, and FOI is one part of that transparency agenda.

Q137 **Tom Randall:** What more could Parliament and Select Committees in particular do to promote best practice and hold Government to account in this area?



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**Elizabeth Denham:** This inquiry is very positive, because it is hard for me get access to information and freedom of information on the agenda of parliamentary Committees. I think this my 30th time appearing before a parliamentary Committee, and most appearances have been about data protection, so I am very happy to be participating in and sharing our experience with this group.

Thinking back to discussions about the Grenfell inquiry, we talked about access to information there. I know we put out articles and advice to housing associations about the importance of making their fire safety records and so on public, so we have done that.

I think Parliament could do more. They could ask more of Government Departments about their freedom of information records—what is the record of their timeliness, their response rate and their percentage of disclosure of requests? There could be proactive disclosure, as well, of information that is in the public interest. Andrew, is there anything else you think Parliament could do?

**Andrew White:** I think just maintaining a challenge, and allowing space for review of where the Act needs to be updated. The commissioner drew your attention to when the Act was first drafted. It was seen as a model piece of legislation, but that is now set in stone. It has not changed with the times. The ability to incorporate the last 15 to 20 years of changing circumstances since that time would help us all. It is not about us regulating; it is about transparency generally. It is about engendering trust across the board.

The Commissioner referenced 30 visits to Parliament; this will be the first FOI one. I think that perhaps tells you more, on a statistical basis, about where priorities have been.

Q138 **Chair:** On that note, Ms Denham, I note that your term of office ends next week, and that, of those 30 visits to Parliament, this is the first concerned uniquely with FOI. In addition to all the valuable evidence you have given us, do you have any final thoughts on the primary challenges facing your successor in supporting and strengthening the freedom of information system in this country?

**Elizabeth Denham:** The first issue he really needs to tackle is the resourcing of our office. As I said, we are at a tipping point; the elastic band has stretched as far as it can, and now I think we are contributing to some of the misery that applicants are feeling. Resources for our office is one, for sure, and those relatively quick fixes that have already been recommended by independent panels such as the Burns commission, such as compulsory audit powers and statutory time limits on internal reviews.

Reviewing the scope of the Act may be a bigger challenge, but we have already collected a lot of evidence on the need for any private sector business that has a contract that means that they are standing in the shoes of a public body and delivering those same service—over a threshold of £5 million, let's say—to be subject to the Act. The Burns



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commission also addressed that. Those are really important issues. I would say that in the future, this country needs modernisation of the Act across the board. Maybe that is something this Committee could talk about. Of course, that would take a deeper dive into legislation around the world and where the best practices are. There are all kinds of international norms and measurements out there of who has the best FOI law, and UK law is slipping behind.

**Chair:** May I thank you both for your time today? I look forward to receiving anything in writing early next week.

**Elizabeth Denham:** Something I can get together before Tuesday.

**Chair:** Absolutely. Signing that letter may well be one of your last duties in your role. Given that, Ms Denham, thank you on behalf of the Committee for your public service over the years as well. Thank you both.