

# The case for more transparency

## Reform please: Outgoing Information and Privacy Commissioner would like to see better access to government data

As Information and Privacy Commissioner Elizabeth Denham prepares to move on to a national posting in the United Kingdom, she's got in mind what the B.C. Liberals could give her in lieu of their tentative offer of a second six-year term here at home.



'I don't want a party. I don't want speeches. I just want lobbying reform,' says B.C. Information and Privacy Commissioner Elizabeth Denham, who will be leaving her post in July.

"I don't want a party. I don't want speeches. I just want lobbying reform," says Denham, who is also the sometimes overlooked provincial registrar of lobbyists.

"My biggest ask is that we change the legislation so what is registered is actual lobbying and not prospective lobbying," she told me during an interview last week on Voice of B.C. on Shaw TV.

"It would make enforcement of the law so much more practical and easier for my office. It would also, I think, help lobbyists because they have to register anyone they might prospectively lobby. It would be more meaningful for the public to be able to see actual lobbying and not prospective lobbying."

That's not the only bit of unfinished business in Denham's bailiwick. After monitoring the performance of the six provincial health authorities, she says B.C. doesn't do enough to guard the privacy of health information.

She favours a stand-alone law governing both public and private health care providers. She also says B.C. should follow other provinces and legislate fines of up to \$50,000 for unauthorized snooping by health care staffers.

"They're supposed to look at health information for their own patients, not look up information on celebrities, not look at their ex-spouse's health information," said the privacy watchdog. "It's a serious problem of trust in the system, and we need higher penalties and enforcement."

Wearing her information commissioner's hat, she's likewise calling for tougher penalties for the deliberate destruction of public records.

Her landmark report from last fall, *Access Denied*, highlighted a series of concerns in that regard. It also led to recent charges against a government staffer for misleading the commissioner about the destruction of records.

"The charges are not about the action of unauthorized destruction of records," explained Denham. "We need that in the Freedom of Information and Protection of Privacy Act. We need an offence provision, and we need the associated penalties."

In the course of the wide-ranging interview, Denham also had some qualified advice for handling privacy issues in the ministry of children and family development. While cabinet minister Stephanie Cadieux refuses to discuss specifics regarding children in care even in cases of suicide, the privacy commissioner maintains there is some legislative leeway for sharing details with the public.

She cited Section 25 of the act, which permits public officials to disclose private information “which is, for any reason, clearly in the public interest,” after first consulting the commissioner and alerting affected third parties.

Not to say that the most private details would necessarily be disclosed. But the option is there for the ministry to explore the option in concert with the privacy commissioner.

“The government can come to us and consult on whether certain parts of a specific case can be revealed .... It is a tension between what the public wants to know and what the government may want or not want to release about a situation,” said the commissioner. “It’s a section of the act that’s significantly underused in these types of scenarios.”

The implication being that government takes shelter in the privacy provisions of the act to protect itself more than out of any concern for the victims and their families.

While Denham continues to scrutinize the provincial government on everything from the duty to assist applicants for information to the duty to document decisions, her office is also in the midst of its first ever access to information audit of the City of Vancouver: a much anticipated report in political terms because it will show whether the Vision Vancouver-governed city council lives up to the higher standards touted by its New Democratic Party allies on the provincial scene.

She expects to deliver the report before her term wraps up July 6, whereupon she hopes to be moving on to the posting in the U.K. (She still faces vetting by a parliamentary committee though the government, which has a majority of the seats, has already nominated her for the post.)

As for her legacy here in B.C., it was exemplary — witness the accolades from both government and Opposition.

New Democratic Party Leader John Horgan: “Some of her reports forced significant change from the B.C. Liberal government, not an easy thing to do.”

B.C. Liberal House Leader Mike de Jong: “Her contributions have helped transform the landscape of information management in this province and put us on a solid foundation to meet the needs and challenges ahead.”

Denham, for her part, didn’t slight the province she regards as both home (“I am a Richmond girl”) and one of the best jurisdictions in the world on the information and privacy beat.

“B.C. has a unique mix of ingredients that make this work really fulfilling — engaged media, engaged political parties, a government that listens, as well as strong advocacy groups. I’m really going to miss B.C.”

The Liberals, as noted above, were prepared to join with the New Democrats in supporting her for a second term. Instead, the two parties face the challenge of finding as worthy a successor.

The government and opposition could also take the hint and translate some of Denham’s unacted-upon recommendations into legislation, thereby delivering a proper tribute to the departing commissioner and easing passage for her successor.