

**Elizabeth Denham CBE, UK Information Commissioner**  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Dear Elizabeth Denham,

We are writing to you about the Government's approach to data protection and privacy during the COVID-19 pandemic, and also the ICO's approach to ensuring the Government is held to account.

During the crisis, the Government has paid scant regard to both privacy concerns and data protection duties. It has engaged private contractors with problematic reputations to process personal data, as highlighted by Open Democracy and Foxglove.<sup>i</sup> It has built a data store of unproven benefit. It chose to build a contact tracing proximity App that centralised and stored more data than was necessary, without sufficient safeguards, as highlighted by the Human Rights Committee.<sup>ii</sup> On releasing the App for trial, it failed to notify yourselves in advance of its Data Protection Impact Assessment – a fact you highlighted to the Human Rights Committee.<sup>iii</sup>

Most recently, the Government has admitted breaching their data protection obligations by failing to conduct an impact assessment prior to the launch of their Test and Trace programme. They have only acknowledged this failing in the face of a threat of legal action by Open Rights Group.<sup>iv</sup> The Government have highlighted your role at every turn, citing you as an advisor looking at the detail of their work, and using you to justify their actions.<sup>v</sup>

On Monday 20 July, Matt Hancock indicated his disregard for data protection safeguards, saying to Parliament that "I will not be held back by bureaucracy" and claiming, against the stated position of the Government's own legal service, that three DPIAs covered "all of the necessary".<sup>vi</sup>

In this context, Parliamentarians and the public need to be able to rely on the Regulator. However, the Government not only appears unwilling to understand its legal duties, it also seems to lack any sense that it needs your advice, except as a shield against criticism.

Regarding Test and Trace, it is imperative that you take action to establish public confidence – a trusted system is critical to protecting public health. The ICO has powers to compel documents to understand data processing, contractual relations and the like (Information Notices).<sup>vii</sup> The ICO has powers to assess what needs to change (Assessment Notices).<sup>viii</sup> The ICO can demand particular changes are made (Enforcement notices).<sup>ix</sup> Ultimately the ICO has powers to fine Government, if it fails to adhere to the standards which the ICO is responsible for upholding.

ICO action is urgently required for Parliament and the public to have confidence that their data is being treated safely and legally, in the current COVID-19 pandemic and beyond.

Signed,

Apsana Begum MP  
Steven Bonnar MP  
Alan Brown MP  
Daisy Cooper MP  
Sir Edward Davey MP  
Marion Fellows MP  
Patricia Gibson MP

Drew Hendry MP  
Clive Lewis MP  
Caroline Lucas MP  
Kenny MacAskill MP  
John McDonnell MP  
Layla Moran MP  
Grahame Morris MP  
John Nicholson MP  
Sarah Olney MP  
Bell Ribeiro-Addy MP  
Tommy Sheppard MP  
Christopher Stephens MP  
Owen Thompson MP  
Richard Thomson MP  
Philippa Whitford MP

i <https://www.opendemocracy.net/en/opendemocracyuk/it-started-as-1-now-its-1-million-wheres-the-mandate-for-letting-palantir-into-our-nhs/>

ii <https://committees.parliament.uk/publications/1284/documents/11453/default/>

iii <https://committees.parliament.uk/oralevidence/334/html/> and <https://committees.parliament.uk/publications/1037/documents/8502/default/>

iv <https://www.openrightsgroup.org/app/uploads/2020/07/200715-PAP-Response-Letter.pdf>

v For instance, the Government stated to Open Rights group that: “the views and support of the specialist expert regulator, the Information Commissioner, should be sought and engaged with as appropriate (recognising, of course, that the Commissioner retains her independence at all times, including in assessing the need for regulatory action)”

vi <https://hansard.parliament.uk/Commons/2020-07-20/debates/CEB1C545-2E55-4CD7-84D4-5CDC09C5F357/CoronavirusResponse>

vii <https://www.legislation.gov.uk/ukpga/2018/12/part/6/crossheading/information-notices/enacted>

viii <https://www.legislation.gov.uk/ukpga/2018/12/part/6/crossheading/assessment-notices/enacted>

ix <https://www.legislation.gov.uk/ukpga/2018/12/part/6/crossheading/enforcement-notices/enacted>