

26 October 2023

## Case reference IC-260856-F1P8

### Request

In relation to the GamProtect collaboration, you asked us:

*"This new service is marketed as a way of protection consumers. However the company providing this ultimately is an anti fraud and surveillance outfit aimed at protecting profits. I think it's being used also to circumvent data laws and you are supporting it. I would like to see all relevant information."*

We received your request on 28 September 2023.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

### Our response

We can confirm that we hold information in relation to GamProtect.

For the ICO, this relates to the engagement between our Regulatory Sandbox team, the Gambling Commission ("GC") and the Betting and Gaming Council ("BGC"). The focus was on a Single Customer View ("SCV") product which gambling operators could use to address the issue of problem gambling. "GamProtect" is the resulting SCV product.

We hold relevant information within the following range of documents:

- Internal correspondence
- External correspondence (eg with GC and BGC)
- Reports (eg progress reports)
- Plans

- Data protection documentation (eg Data Protection Impact Assessments)
- Research and evidence

Please find the **attached** copies of information which we can provide to you.

The application form from the GC and the outcome letter with the Terms and Conditions has previously been disclosed in response to a past FOI request, so we consider it suitable to disclose this level of information.

### **Exempt information**

Unfortunately, most of the information we hold is exempt information, so we are either withholding entire documents or redacting information from the documents we are disclosing to you. Please see below for our explanation.

### **FOIA section 21**

Some information is already accessible online. The Regulatory Sandbox Final Report is available on our website here:

<https://ico.org.uk/media/for-organisations/documents/4025856/betting-and-gaming-council-sandbox-report-20230626.pdf>

Because the information is already reasonably accessible to you, technically it is withheld under section 21 of the FOIA.

Section 21 states that we don't need to provide you with a copy of information when you already have access to it.

### **Data Protection Act 2018 – section 132**

Section 132 imposes criminal liability on ICO staff if we disclose information related to an identifiable individual or business which was provided to the ICO for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so, or it has already been made public from another source.

Some information has been withheld because it was provided to us by another individual or business for the purposes of us carrying out our regulatory functions, and we do not have lawful authority to disclose it.

This applies to the correspondence received from the GC and the BGC, and any correspondence or information which references back to information received or obtained from them. We do not have lawful authority to disclose this information.

### **FOIA section 31**

Most of the information we hold is exempt from disclosure under section 31(1)(g) of the FOIA.

This is primarily because it was a complex, detailed regulatory case that required correspondence and records being shared with only a limited set of recipients, and we would need to guarantee some protection over the information we hold for this case to make sure we continue to encourage organisations from engaging with us. We therefore need to rely on this exemption.

Specifically, this exemption applies to information contained in the following types of documentation:

- Internal and external correspondence. This includes emails between ICO staff or with the GC and BGC, where they discuss matters such as plans, reports, intelligence, media monitoring, meetings and technical details. It also includes correspondence containing advice, guidance and opinions between staff.
- Internal business material (eg draft reports).

We can rely on section 31(1)(g) of the FOIA where disclosure:

*"would, or would be likely to, prejudice... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."*

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

*"(a) the purpose of ascertaining whether any person has failed to comply with the law..."*

*(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."*

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

### **Prejudice test**

Disclosure of information, such as correspondence, would be likely to deter organisations from engaging with our Sandbox team in the future, and would also be likely to inhibit our staff from openly recording information for future work.

If there is an expectation that correspondence and detailed documentation will be disclosed, this is likely to deter engagement and make it more difficult for us to obtain and exchange information, advice, guidance and opinions. This makes it harder for us to regulate other organisations.

Likewise, our staff may be deterred from recording and sharing recorded information. This will make future Sandbox cases run less efficiently by forcing staff to use less convenient ways of sharing and gathering details to complete their work. If staff were dissuaded from creating and consulting recorded information, due to apprehension about whether it will be shared in the public domain, it will put us at a regulatory disadvantage.

### **Public interest test**

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are:

- increased transparency about the details of our work with high-profile organisations, in relation to a product that will affect users on high-profile gambling platforms
- increased transparency about the specific nature of the engagement from the GC and BGC
- increased transparency about the views and decisions of the ICO in relation to this work

The factors in withholding the information are:

- the public interest in maintaining organisations' trust and confidence that the ICO's Sandbox engagement will be afforded an appropriate level of confidentiality
- the public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments and information will be made public prematurely or, as appropriate, at all
- the public interest in maintaining the ICO's ability to keep hold of and exchange recorded information, advice, guidance and opinions, in order to complete its work efficiently and effectively
- the public interest in avoiding resource burdens on our business areas as a result of discretionary disclosure

We consider there is a public interest in knowing what the GC and BGC have said to us during this work. Particularly due to the nature of the product which aims to address problem gambling by focussing on customers who are deemed as being at risk with regards to their gambling behaviour.

This is a product which involves high-profile operators that may have to process personal data of a significant range of users on high-profile platforms, so there is a clear argument for having assurance about the details behind any envisaged processing activities, and having assurance that the ICO has made appropriate enquiries and made best use of its resources when looking at this.

However, the ICO's Sandbox work does require some confidentiality for that reason.

It is effectively a channel for organisations to share ideas and products which are likely to be sensitive or particularly significant or far-reaching in scope. This is why the Sandbox process is an aspect of the ICO which particularly requires confident, open engagement from organisations about their ideas and products, so we get a full understanding of the scale and nature of risks involved.

Our Sandbox process is an important checking mechanism which aims to help with making compliant products and services which are safe to deliver or roll out, so we consider there is a strong public interest in allowing our Sandbox team and other relevant teams to record and process information with sufficient

confidentiality. This ensures the whole process runs as efficiently and effectively as possible.

We consider there is a public interest in knowing that we have been significantly involved in GamProtect and having access to the final report which gives an overview of everything, but we do not consider that there is a strong interest in access to the details of all correspondence and corporate documentation which was recorded throughout the process. On the contrary, we think the interest strongly lies in favour of maintaining a safe space for this kind of recorded information.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

## **FOIA section 42**

Some of the information you have requested is subject to legal professional privilege and is exempt from disclosure under section 42 of the FOIA. Section 42(1) of the FOIA states:

*"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."*

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

Litigation privilege covers confidential communications between the client and lawyer made for the purpose of preparing for existing or anticipated legislation. Advice privilege covers such communications when they're made for the purpose of seeking or giving legal advice.

We find that the information in scope of your request is subject to Advice privilege.

## **Public interest test**

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

In this case the public interest factors in disclosing the information are:

- Increased transparency about the nature of the legal views and opinions towards this product, rather than, for example, the technical views about the details of the processing activities. In particular, transparency about any concerns from legal perspective and whether they were acted upon
- Confirmation whether the outcome of this Sandbox work took account of the professional legal advice

The factors in withholding the information are:

- Allowing a safe space for staff to obtain legal expertise, in the form of recorded correspondence, to ensure that our Sandbox work is backed up and shaped by professional legal advice

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

## **FOIA section 40(2)**

You will see that some third party personal data has been redacted in our response. It is exempt under section 40(2) of the FOIA. There is also personal data contained in the documents which have otherwise been withheld, however for that reason, the exemption is less relevant.

Disclosure of this data would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. So we are withholding the information under section 40(2) of the FOIA.

## Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

## Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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