

15 November 2023

**Case reference: IC-264873-P7H4**

We are now in a position to respond to your information request of 19 October.

**Request**

*"[1] Please provide correspondence between the ICO and Bonne Terre Limited from June 2022 to present.  
[2] Please provide correspondence between the ICO and Hestview Limited from June 2022 to present.  
[3] Please provide correspondence between the ICO and government ministers or officials relating to Operation Calder from June 2022 to August 2023."*

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

**Our response**

We understand your request to be for the correspondence we have exchanged with Bonne Terre Ltd and Hestview Ltd for the time period 1 June 2022 to 19 October 2023, and between the ICO and government ministers or officials for the time period 1 June 2022 to 31 August 2023, in relation to Operation Calder. We have assigned these numbers 1 to 3 for ease of reference.

As you may be aware, the ICO has been exploring the use of targeted advertising and personal information within the gambling sector. In particular, whether the misuse of people's personal information may contribute to gambling-related harms. This includes assessing the report submitted to us from the UK campaign group Clean Up Gambling. Operation Calder has not yet been concluded, however we intend to publish our findings at an appropriate date.

In terms of the specific information you have requested, we hold information within scope of your request in point 1. We are withholding this information in full and further details on this are provided below. We do not hold information within scope of your request in points 2 and 3.

### Section 31(1)(g) FOIA

We consider that information we hold within scope of point 1, to be exempt from disclosure under section 31(1)(g) of the FOIA. This section states:

“Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice – (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)”

The purposes referred to in sections 31(2)(a) and (c) are:

- 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

The purposes at section 31(2)(a) and (c) apply when a regulator is determining whether or not there has been a breach of relevant legislation.

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.

Operation Calder has not yet concluded and our enquiries into the matters raised are ongoing. Disclosure at this stage would discourage our discussions with Bonne Terre Ltd, and other relevant organisations, and may damage our ability to conduct and conclude our enquiries fairly and proportionately.

The exemption at section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold.

In this instance, the public interest factors in favour of disclosure are:

- Openness and transparency in the way in which the ICO engages with organisations on concerns that have been raised with us in our capacity as regulator.
- The understandable interest of the public in being able to see our responses to the information provided to those enquires.

The public interest factors in favour of maintaining the exemption are:

- The need for the ICO to continue to encourage Bonne Terre Ltd, and other data controllers, to engage with us in our capacity as regulator of relevant legislation.
- To allow the ICO to maintain the trust and confidence of data controllers by affording the enquiries undertaken and information exchanged an appropriate level of confidentiality. Disclosure of information considered to be confidential, would be likely to have a long term detrimental effect on how organisations cooperate with us and our ability to investigate concerns raised.
- The ICO has a demonstrable history of sharing information about our work. We intend to publish our findings in relation to Operation Calder at the appropriate date.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it, and the information is exempt from disclosure under S31(1)(g) of the FOIA.

#### Section 44 FOIA

In addition, we are withholding the correspondence from this organisation under section 44 of the FOIA. This is an absolute exemption which means that it can be withheld without further consideration if other legislation prevents its release, if it meets certain conditions, and if none of the circumstances that would give us lawful authority to release it apply.

Section 44(1)(a) of the FOIA states;

'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it – a. is prohibited by or under any enactment'

In this case, the Data Protection Act 2018, Part 5, Section 132 prohibits the disclosure of confidential information that –

- a. has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,
- b. relates to an identified or identifiable individual or business, and
- c. is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources, unless the disclosure is made with lawful authority.

We do not have lawful authority to disclose to you the information provided to us by Bonne Terre Ltd as this information was provided in confidence.

Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

This concludes our response to your request. We understand this response may be disappointing but hope the information provided above is helpful.

### **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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**For information about what we do with personal data  
see our [privacy notice](#)**