

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2023

Public Authority: Gambling Commission
Address: Victoria Square House
Birmingham
B2 4BP

Decision (including any steps ordered)

1. The complainant requested information from the Gambling Commission ('the public authority'). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold some of the requested information. He is also satisfied that the public authority does not hold any further information within the scope of the request.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 6 April 2022, the complainant made the following request for information to the public authority:

"I wish to make a freedom of information request for the following:

(1) The resignation letter of the former Chief Executive, Neil McArthur.

(2) The correspondence from the Gambling Committee informing the UK government of the CEO's resignation."

4. In relation to part (1) of the request, the public authority confirmed that it did not hold the requested information. The public authority provided the information it held that fell within the scope of part (2) of the request, but redacted some information citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

5. The reasoning below covers whether the public authority is entitled to rely on section 40(2) of FOIA to withhold some of the requested information. It will also cover whether the public authority has, on the balance of probabilities, provided all of the information it holds.

Section 40 - personal information

6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles.¹ The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
7. The Commissioner has reviewed the withheld information in this case and is satisfied that it is personal data, as it relates to and identifies living individuals.
8. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
9. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
10. The Commissioner considers that the complainant is pursuing a legitimate interest in the requested information, which they believe is of wider public interest. The complainant wants to understand the circumstances surrounding the departure of the public authority's Chief Executive, which took place around the same time as the collapse of gambling operator BetIndex. There is clearly a broad legitimate interest

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

in ensuring the public authority's accountability and transparency in relation to this matter.

11. However, the Commissioner does not consider that disclosure of the withheld information is necessary to satisfy these interests.
12. Firstly, the Commissioner is aware that (separately to the request in question) the public authority has disclosed under FOIA other information relating to BetIndex. This goes some way to satisfy the broader legitimate interests in its accountability and transparency regarding this matter. The Commissioner is further satisfied that the information already disclosed to the complainant in this case meets the complainant's legitimate interest to an adequate degree.
13. Secondly, the Commissioner's view is that the withheld information would not further public understanding of this matter. The Commissioner considers that the individuals concerned have a strong and reasonable expectation that their personal information will not be disclosed to the world at large without any lawful basis for doing so.
14. The Commissioner's decision is therefore that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.

Section 1 – general right of access to information

15. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.²
16. The complainant asked the Commissioner to investigate whether all of the information held within the scope of the request has been provided. However, he did not put forward any specific arguments or evidence to suggest that further information was held.
17. The public authority provided submissions to the Commissioner regarding the searches it carried out to identify information within the scope of the request. It confirmed that all recorded information it held

² <https://www.legislation.gov.uk/ukpga/2000/36/section/1>

was provided to the complainant, subject to limited redactions of information withheld under section 40(2).

18. The Commissioner is satisfied that the searches described by the public authority were sufficient. He is therefore satisfied that, on the balance of probabilities, the public authority does not hold any further information within the scope of the request.

Right of appeal

20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
Team Manager
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