

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2024

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

Decision (including any steps ordered)

1. The complainant has requested copies of any documents or correspondence that contained the phrases "election interference" or "political interference" between 1 May 2024 and 22 July 2024. The Gambling Commission ('the GC') relied on section 30(3) of FOIA (investigations and proceedings) and section 31(3) of FOIA (law enforcement) to neither confirm nor deny whether it held the requested information.
2. The Commissioner's decision is that, although the GC was entitled to rely on section 30 of FOIA, it was not entitled to neither confirm nor deny whether it held the requested information.
3. The Commissioner therefore requires the GC to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which confirms or denies that the requested information is held. If the requested information is held, it should either be disclosed or the GC should issue refusal notice explaining why it is exempt from disclosure
4. The GC must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 22 July 2024, the complainant wrote to the GC and requested information in the following terms:

"I am writing to make a request under the Freedom of Information Act 2000 for any documents, emails, memos, or minutes that contain the phrases "election interference" or "political interference" shared with or by members of the executive team of the Gambling Commission (as listed on your website:

<https://www.gamblingcommission.gov.uk/about-us/governanceGroup/executive-team>). This request specifically pertains to the period from May 1, 2024, to July 22, 2024.

The purpose of this request is to determine whether any political actors contacted the Gambling Commission to raise concerns about parliamentary candidates engaging in inappropriate gambling activities.

I am particularly interested in any expressions of concern regarding such communication within the Commission, rather than seeking the content of communications with political third parties. It is therefore a separate request from [REFERENCE REDACTED].

Please provide the following information:

- Any internal documents, including emails, memos, or minutes, that mention "election interference" or "political interference" shared with or by members of the executive team."
6. The GC responded on 12 August 2024. It stated that it was relying on section 31(3) of FOIA to neither confirm nor deny whether it held the requested information.
7. Following an internal review, the GC wrote to the complainant on 23 August 2024. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 23 August 2024 to complain about the way their request for information had been handled.
9. In providing its submission to the Commissioner, the GC stated that it was also relying on section 30(3) of FOIA to neither confirm nor deny whether it held the requested information.

10. The Commissioner considers that the scope of his investigation is to determine whether the GC was entitled to rely on sections 30(3) and 31(3) of FOIA to neither confirm nor deny whether it held the requested information.

Reasons for decision

Neither confirm nor deny ('NCND')

11. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in a request. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be considering the likely consequences of confirming or denying whether or not particular information is held.
12. Public authorities need to use the NCND response consistently, over a series of comparable requests, regardless of whether or not they actually do hold the requested information. This is to ensure that an NCND response cannot be taken as an indication of whether or not information is in fact held.
13. The GC has decided to NCND holding any of the requested information in its entirety, citing sections 30(3) and 31(3) of FOIA.
14. The Commissioner has first considered whether the GC was entitled to rely on section 30(3) of FOIA.

Section 30(3) - investigations and proceedings

15. Section 30(3) of FOIA provides an exclusion from the duty to confirm or deny in relation to any information which, if it were held, would fall within any of the classes described in sections 30(1) or 30(2) of FOIA. The GC confirmed that, in this case, sections 30(1)(b) and section 30(2) were the appropriate limbs of section 30.
16. Section 30(1) of FOIA states that information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of:

“(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct”.

17. Section 30(2) also provides that information held by a public authority is exempt information if:

“(a) it was obtained or recorded by the authority for the purposes of its functions relating to:

(i) Investigations falling with subsections (1)(a) or (b)...

and (b) it relates to the obtaining of information from confidential sources.”

18. The Commissioner considers the phrase “at any time” to mean that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, closed or abandoned investigation. The information requested (if it were held) must be held for a specific or particular investigation and not for investigations in general.

19. The Commissioner’s guidance¹ on section 30(1)(b) states:

“The investigation must be one, “which in the circumstances may lead to the decision to institute criminal proceedings”. It clearly covers investigations which commence with specific criminal proceedings identified even if ultimately they do not result in a prosecution. As with section 30(1)(a) there may be an initial investigation, or vetting process, to determine whether a full investigation is warranted. These initial investigations will be protected by section 30(1)(b) provided that the public authority can explain why any full investigation may, in the circumstances, lead to criminal proceedings.”

20. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.

21. The first step is to address whether, if the GC holds information falling within the scope of the complainant’s request, it would fall within the classes specified in section 30(1)(b) of FOIA.

22. The GC explained that, at the time the information request was made, there were two investigations running into the placing of bets on the date of the general election - the GC’s investigation, focussing on

¹ [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/investigations-and-proceedings-foi-section-30.pdf)

suspected offences of cheating, and an investigation by the Metropolitan Police focussed on offences of misconduct in public office. The GC added that its investigation is ongoing, while the Metropolitan Police announced the conclusion of its investigation at the end of August 2024.

23. The GC explained that, if held, the requested information would relate to its ongoing investigation. It explained that Section 28 of the Gambling Act 2005 empowers it to investigate whether any offence has been committed under that legislation and to institute criminal proceedings in respect of any such offence.
24. The Commissioner is satisfied that, as a regulator, the GC has a duty to investigate criminal offences related to gambling and allegations of such offences.
25. Referring to the wording of the request, and to the explanation provided by the GC, the Commissioner is satisfied that any information, if it were held, would be held in relation to such an investigation. The exemption provided by section 30 is, therefore, engaged.

Public interest test

26. Section 30 is a qualified exemption. This means that the Commissioner must consider the public interest test and whether the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.

Public interest in disclosing the requested information

27. The GC has acknowledged that, if held, disclosure of the requested information would promote openness, transparency, scrutiny and accountability concerning how a public authority performs its functions.
28. The complainant has argued that the GC has not taken into account the context of a general election when carrying out its public interest test. They explained that during the campaign it was revealed that the GC was investigating parliamentary candidates for wrongdoing, which the complainant states, significantly affected discussion around the election.
29. The complainant also pointed out that in their request they stated: 'I am not seeking specific information about investigations. Instead I am seeking to understand how the Commission handled concerns about election integrity, which has a high degree of public interest.'

Public interest in maintaining the exemption

30. The GC has explained that its staff tasked with investigating gambling offences and with responsibility for functions relating to such

investigations need a safe space in which to fully consider information and exercise the GC's statutory and regulatory functions.

31. It considers that either confirming or denying it holds the requested information, and specifically whether "election interference" or "political interference" had or had not been the subject of communication or discussion within the GC would reveal or suggest the nature and scope of an investigation, internal communications and decision-making.
32. It explained that either confirming or denying whether the requested information was held would be capable of generating unhelpful speculation about the approach being taken, lines of inquiry, the identity of suspects, witnesses and sources of evidence and or indicate or suggest tactical and operational matters. It considers that this would hinder or undermine the investigation and or prejudice investigatory processes, the future conduct of similar investigations and any criminal proceedings that might be contemplated or instituted by the GC.
33. The GC stated that this is especially sensitive where an ongoing investigation is of media and public interest as is the case here.
34. The GC considers that the stage of an investigation into suspected criminal offences has an important bearing on the extent of harm caused by disclosure. It explained that in this case, the request was made at an early stage of its investigation and at a time when a related police investigation was also underway.
35. The GC explained that its investigation into suspicion of cheating in relation to bets placed on the date of the general election is current. It explained that it has made limited and careful public statements in relation to its current investigation in this case. The GC stated that it is committed to ensuring that in every case any publicity does not prejudice the fairness of any subsequent trial.

Balance of the public interest

36. The Commissioner recognises the public interest in promoting transparency and public understanding with regard to decisions made by public authorities. He also recognises the public interest in matters relating to general elections, and particularly any allegations or concerns about interference with their organisation.
37. The Commissioner also recognises the importance of the GC being able to carry out its investigation into potential cheating offences. However, he is not convinced by the GC's arguments that either confirming or denying that it holds the requested information would prejudice or obstruct its investigatory processes. While matters connected to a general election inherently attract public interest, and could attract

speculation, it isn't clear to the Commissioner how this would hinder the GC's investigation. Indeed, the GC would be expected to cover all possible angles during its investigation, including possible political interference or election interference.

38. The Commissioner notes that the complainant mentions that they are interested in determining whether any political actors contacted the GC with concerns or allegations. The Commissioner considers that confirming or denying whether the specified phrases exist in internal documents and correspondence wouldn't reveal details of the investigation itself, for example it wouldn't state whether the phrases are linked to allegations or external tip-offs, just that the phrases are present.
39. The Commissioner accepts that disclosure of information on this topic would be very likely to result in significant external comment to the detriment of the GC investigation processes. However, he does not consider that the same impact would apply to the GC confirming or denying whether it holds the requested information.
40. Having considered the public interest factors in this case, the Commissioner has concluded that the factors in favour of confirmation or denial outweigh those in favour of maintaining the NCND response.
41. Accordingly, although the Commissioner is satisfied that the GC is entitled to rely on section 30 of FOIA, he is not satisfied that its public interest arguments in maintaining its NCND response are strong enough.
42. The Commissioner's decision is that the GC should issue a new response confirming or denying that it holds the requested information.
43. As the Commissioner has found that the GC was entitled to rely on section 30 to withhold the requested information, if held, but that it was not entitled to maintain its NCND response, he has not deemed it necessary to consider its reliance on section 31(3) of FOIA.

Right of appeal

44. 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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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