

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2024

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

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence between Anna Turley and a number of Gambling Commission staff between 1 January 2020 and 3 July 2024. The Gambling Commission ('the GC') would neither confirm nor deny holding the requested information, citing section 40(5B) of FOIA (personal information) as its basis for doing so.
2. The Commissioner's decision is that section 40(5B) of FOIA is engaged and that the GC was entitled to neither confirm nor deny whether it holds the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 24 July 2024, the complainant wrote to the GC and requested information in the following terms:

"Please provide all email correspondence between Anna Turley (the former and current MP for Redcar) and the

-Chief executive
-Deputy chief executive
-Director of communications
-Head of governance
-Executive director for policy development

Of the Gambling Commission from 1st January 2020 and 3rd July 2024 concerning gambling regulation.”

5. The GC responded on 12 August 2024. It stated that it was relying on section 40(5B) of FOIA to neither confirm nor deny whether it held the requested information.
6. Following an internal review, the GC wrote to the complainant on 20 August 2024. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 3 September 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the GC was entitled to neither confirm nor deny whether it holds the requested information.

Reasons for decision

Neither confirm nor deny ('NCND')

9. 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.
10. 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.
11. The GC has decided to NCND holding any of the requested information in its entirety, citing section 40(5B) of FOIA.

Section 40 - personal information

12. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of

the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.

13. Therefore, for the GC to be entitled to rely on section 40(5B)(a)(i) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:
 - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - Providing this confirmation or denial would contravene one of the data protection principles.

Would confirming or denying that the requested information is held constitute the disclosure of a third party's personal data?

14. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:-

"any information relating to an identified or identifiable living individual".

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
17. As the requested information concerns possible email correspondence between Anna Turley and a number of GC staff members, the Commissioner is satisfied that, if the GC confirmed whether or not it holds the requested information, this would result in the disclosure of a third party's personal data; namely whether Anna Turley corresponded with staff at the GC during the specified period and the content of any such correspondence. The first criterion set out above is therefore met.

Would confirming whether or not the requested information is held contravene one of the data protection principles?

18. The fact that confirming or denying whether the requested information is held would reveal the personal data of a third party does not automatically prevent the GC from refusing to confirm whether it holds this information. The second element of the test is to determine whether such a confirmation or denial would contravene any of the data protection principles. The most relevant DP principle in this case is principle (a).

Would a confirmation or denial contravene principle (a)?

19. Article 5(1)(a) GDPR states that: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
20. In the case of an 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 (or as in this case, the public authority can only confirm whether or not it holds the requested information), if to do so would be lawful (that is, it would meet one of the conditions of lawful processing listed in Article 6(1) GDPR), be fair and be transparent.

Lawful processing: Article 6(1)(f) of the UK GDPR

21. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.
22. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"¹.
23. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
 - i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;

¹ Article 6(1) goes on to state that:- "Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:- "In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

- ii) Necessity test: Whether disclosure of the information (or confirmation or denial as to whether the information is held) is necessary to meet the legitimate interest in question;
- iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

24. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

25. In considering any legitimate interests in confirming whether or not the requested information is held in response to a FOIA request, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

26. The GC has acknowledged that confirmation or denial may be desirable for transparency reasons, and may also satisfy public curiosity in the topic to which the request relates. However, it considers that there is no pressing social need for such a response. It has stated that whilst the subject of the request is a legitimate interest for the requestor to have, it appears to be a private interest for them, and of less wider interest to the general public.

27. The GC considers that a third party, before their time in a public facing position, would not expect their private correspondence, nor the confirmation of the existence of such correspondence, to be disclosed to the world at large.

28. The complainant has explained that:

"Anna Turley is the serving MP for Redcar, having previously been MP for the constituency up to the 2019 election. After losing her seat in 2019, she moved into the lobbying sector, working for lobbying firm Arden Strategies, as well as completing work for the Betting and Gaming Council.

There is a longstanding debate about whether it is appropriate for former members of parliament to use the influence, experience, and contacts gained in office to obtain lucrative roles in the private sector after they have left office. This request was intended to inform this debate.”

29. The complainant has argued that the requested information falls within Anna Turley’s professional activity, and does not contain any sensitive personal information, such as health information. They explained that as Anna Turley was acting as a lobbyist during the time period of the request, she may have used the status, contacts and experience obtained as a public servant to her personal benefit, acting for a client with vested interest.
30. The complainant has explained that there is a strong public interest in the press being able to perform its role of holding those with power to account.
31. Having considered the complainant’s arguments, the Commissioner accepts that the complainant has a legitimate interest in seeking the requested information.
32. Therefore, the Commissioner recognises there is a legitimate interest in providing a confirmation or denial in this case.

Is confirming whether or not the requested information is held necessary?

33. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so confirming whether or not the requested information is held would not be necessary if the legitimate aim could be achieved by something less. Confirmation or denial under FOIA that the requested information is held must therefore be the least intrusive means of achieving the legitimate aim in question.
34. The GC has argued that there is no necessity in confirming or denying that information is held that outweighs the privacy rights of the individual named in the request.
35. However, the complainant is seeking information that could provide evidence of a former MP using their contacts and knowledge to benefit their lobbyist role in the time period specified in the request. The Commissioner is satisfied that confirmation or denial would be necessary in this case in order to meet the legitimate interest.

Balance between legitimate interests and the data subjects' interests or fundamental rights and freedoms

36. It is necessary to balance the legitimate interests in confirming whether or not the requested information is held against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of the confirmation or denial. For example, if a data subject would not reasonably expect the public authority to confirm whether or not it held the requested information in response to an FOIA request, or if such a confirmation or denial would cause unjustified harm, their interests or rights are likely to override legitimate interests in confirming or denying whether information is held.
37. The GC has explained that Anna Turley's public facing positions within parliament were held outside the date parameters set out within the initial request. It considers that personal identifiable information processed during this specific time period would be when this individual was not in a public facing position. It added that, should this individual have communicated with the GC during the requested time period, they would reasonably expect their personal data to be processed lawfully and fairly and therefore not disseminated to the public.
38. The GC considers that, if held, disclosure of the requested information could expose the individual to unwanted and potentially distressing contact. It considers that even confirming or denying that the requested information is held may cause any concerned individuals harm or distress due to the invasion of their privacy.
39. The GC has acknowledged that the subject of the request has previously held, and currently does hold, a public facing role. With such a role, there is an expectation of a certain level of scrutiny of correspondence undertaken, particularly with government departments. However, it considers that the parameters of the request have been very specific. It explained that the request specifies a period of time where Anna Turley did not hold a public facing role, and as such she should not be held to the same level of external scrutiny in her communications as a private individual.
40. In their complaint to the Commissioner, the complainant pointed to a previous decision² concerning a declaration of interest made by Lord Wharton. This decision found that the legitimate interest outweighed the data subject's fundamental rights and freedoms. The complainant

² [ic-181449-w3f0.pdf](#)

argued that similar legitimate interest arguments apply in this case. However, the Commissioner notes the requested information in that case related to information provided by Lord Wharton in a professional capacity, and that he was required to declare any conflicts of interests. The Commissioner notes that there is no current requirement for prospective MPs to declare any of their activities leading up to their appointment.

41. The Commissioner acknowledges that there is a legitimate interest in the requested information, if held. He notes that there has been discussion in the press about the relationship between lobbying and influence on Government policy. He acknowledges that there would be particular interest in someone who had previously been an MP, lost their seat and spent time as a lobbyist, and then became an MP again. The Commissioner has provided further consideration of the legitimate interest in the confidential annex to this notice.
42. However, he also agrees with the GC's argument that a third party, before their time in a public facing position, would not expect their private correspondence, if held, to be disclosed to the world at large.
43. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms, and that confirming whether or not the requested information is held would not be lawful.
44. The Commissioner has therefore decided that the GC was entitled to refuse to confirm whether or not it held the requested information on the basis of section 40(5B) of FOIA.

Right of appeal

45. 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

46. 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.
47. 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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