

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 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 correspondence from the executive team to the Labour Party. The above public authority ("the public authority") relied on section 31 of FOIA (law enforcement) to refuse to confirm or deny that it held any information.
2. The Commissioner's decision is that the public authority has not demonstrated that section 31(3) of FOIA is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether it holds any information within the scope of both part 1 and part 2 the request. If any information is held, it must either be disclosed or a refusal notice issued that complies with section 17 of FOIA.
4. The public authority 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 the Act and may be dealt with as a contempt of court.

Background

5. On 12 June 2024, the Guardian newspaper [published an article](#) alleging that a senior aide to the Prime Minister had made a £100 bet on a July election, three days before the Prime Minister called an election for July.
6. Over the next few days, several more aides, or people connected to them, [confirmed](#) that the public authority was investigating them over allegations of “cheating” relating to betting on the date of the election. Several members of the Metropolitan Police’s close protection teams were also [referred for investigation](#).
7. The public authority [announced](#) a joint investigation with the Metropolitan Police into offences under the Gambling Act and Misconduct in Public Office. The Metropolitan Police closed its part of the investigation on 23 August 2024 and [announced](#) that it would not be seeking any prosecutions for Misconduct in Public Office. The public authority’s investigation remains open at the date of this notice.

Request and response

8. On 23 June 2024, the complainant wrote to the public authority and requested information in the following terms:
 - “1. Email subject lines: Please provide the email subject lines for all emails sent from the Gambling Commission executive team (as listed on your [website](#)) to any email address with the domain name '@labour.org.uk' during the period from 15 May 2024 to 23 June 2024. That includes any response emails, i.e. an email that includes 'Re:' in the subject line.
 - “2. Sentences containing specific terms: Please provide any sentence within those emails that contains one or more of the following words: 'Tory', 'Tories', 'Conservative', 'Conservatives', or 'CCHQ'.

“Please ensure that the search covers the entire chain of emails rather than just the emails sent by any member of the executive committee. If a relevant term appears further down the email chain (e.g., in a previous correspondence to which a member of the executive committee is responding), include the sentence containing the term. If no such content is found, simply list the email subject line as laid out in part 1 of this request.”

9. The public authority responded on 22 July 2024. It refused to confirm or deny that the information was held and relied on section 31 of FOIA in order to do so. It upheld this stance following an internal review.

Scope of the case

10. At the outset of his investigation, the Commissioner wrote to the public authority. He noted that the public authority's position had been set out clearly in its refusal notice and internal review. He allowed the public authority ten working days in which to add to its arguments, if it wished to do so, but noted that he would make a decision, after those ten working days, on the basis of the evidence available to him at that time.
11. The Commissioner's correspondence was not responded to and he has therefore proceeded on the basis that the public authority had nothing further that it wished to add.

Reasons for decision

12. Section 31 of FOIA allows a public authority to refuse to confirm or deny that it holds information if the mere act of confirming (or denying) that information is held would make it more difficult for a law enforcement body to enforce the law.
13. The public authority has noted that section 22 of the Gambling Act gives it specific functions as a regulator including:
 - Preventing gambling from being a source of crime or disorder.
 - Ensuring gambling is conducted in a fair and open way.
 - Protecting children and other vulnerable people from harm.
14. The public authority explained that confirming or denying whether the information was held would affect its ability to carry out its functions because:

"There is an expectation of confidence in much of the Commission's work, particularly regarding the external conversations that take place between the Commission and third parties. It is the impact on this work of the Commission which is more likely to be affected by disclosure.

"Confirming or denying information which makes specific individuals or events identifiable could alert individuals involved to the fact that the

Commission was/is or alternatively wasn't/isn't engaging in specific conversations; providing an opportunity for individuals to alter their behaviours or evade detection. This would result in making it more difficult for the Commission to achieve its aims.

"Further to this, simply confirming or denying this request for information would impact on the openness of stakeholders when sharing important information with us or other law enforcement agencies. The amount of information released is carefully considered in order to protect the integrity of the Commission's work and individuals from being unfairly associated with unsubstantiated allegations."

15. In its internal review, the public authority further noted that:

"The Commission relies on the voluntary disclosure of information to be able to regulate effectively. Therefore, confirming or denying whether the requested information is held could impact on the willingness of individuals to supply essential information to the Commission and on the confidence, individuals have in the Commission's ability to handle information appropriately."

The Commissioner's view

16. The Commissioner accepts that the public authority has appropriate functions which are capable of being harmed by a confirmation, or a denial, that the information is held. However, he is not persuaded that, in these circumstances, those functions would be harmed.

17. In respect of part 1 of the request, if the public authority were to confirm that it held information, it would only be confirming that one or more members of its executive team had sent an email to someone within the Labour party during the time period specified. It would not give any indication of the content of any email or the reason why it had been sent. If an email were held, there would be no way of telling which investigation it related to – or if it even related to an investigation at all.

18. At the point the request was responded to, it had already been announced that the public authority was carrying out a joint investigation, alongside the Metropolitan Police. Therefore even if the Commissioner were to accept (which he does not) that any communication could **only** relate to that investigation, simply confirming that some information exists does not reveal the existence of an investigation that is not already publicly known.

19. Conversely, if the public authority denied holding information, it would be revealing that its executive team had not contacted the Labour Party during that period. Given that the period in question fell during the general election campaign (when public authorities traditionally put

some routine activities on hold that might affect the election) it would not be wholly surprising if no correspondence existed.

20. Confirming or denying that information is held would not reveal whether the Labour party had proactively contacted the public authority, or provided any evidence. The request only applies to emails that were **sent** by the executive team, not those which were **received**.
21. It is possible that, if the public authority does hold information, that that information may reveal something about how the public authority goes about its investigations. But merely confirming or denying that **any** information is held does not reveal anything.
22. In respect of part 2, the Commissioner accepts that part 2 is predicated on part 1. If no information is held within the scope of part 1, there could be nothing held within the scope of part 2.
23. For largely the same reasons as for part 1, the Commissioner does not consider that the public authority is entitled to refuse to confirm or deny that it holds information within the scope of part 2.
24. Simply confirming that it holds one or more emails containing the word "Conservative" (or a synonym) still does not reveal anything about the content of that correspondence, as it does not reveal the context in which the word was used.
25. For example, a communication to the Labour party (especially during an election campaign) might contain a phrase such as "we are writing in similar terms to the Conservative, Liberal Democrat and Reform parties." That phrase, in itself, gives no indication of the broader context in which it was used. It also demonstrates that such correspondence (if it existed) could be completely unconnected to any investigation – for example if the public authority wished to remind all political parties about the law as it relates to fundraising activities that include gambling (such as raffles or lotteries).
26. Conversely, if the public authority confirmed that it held information within the scope of part 1, but not part 2, it would only be confirming that it had contacted the Labour party, but not used any synonym of the word "Conservative". That, again, is not especially surprising or something that might give an insight into any process of investigation.
27. The Commissioner does not therefore consider that the public authority is entitled to rely on section 31 of FOIA to refuse to confirm or deny that the information is held. It must now confirm or deny whether it holds any information within the scope of either part of the request.

Right of appeal

28. 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

29. 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.
30. 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

Pamela Clements
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