

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 May 2014

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

### Decision (including any steps ordered)

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1. The complainant has requested information relating to an investigation into a licensed company. The Gambling Commission refused to disclose the requested information under section 31(1)(g) with subsection (2)(c) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Gambling Commission has correctly applied section 31(1)(g) with subsection 2(c) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

### Request and response

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4. On 28 January 2014 the complainant requested information of the following description:  
  
"1)The 'progress report' that was meant to be delivered by 6 Jan by [named licensee].  
  
2) Correspondence between the Gambling Commission and [named licensee]. Previous emails from the GC assured that 'it had received assurances from [named licensee's] auditors that the company has sufficient assets to cover its gambling liabilities' - I want to see

evidence of these assurances.

- 3) The correspondence from [named licensee] to the GC - in particular with reference to [named licensee's] website, which states '[named licensee] has informed the UK Gambling Commission and we have assured them that ALL customer payments will continue to be paid as previously notified.'
5. On 14 February 2014 the Gambling Commission responded. It refused to provide the requested information under section 31(1)(g) with subsection (2)(c) and section 43 FOIA.
6. The complainant requested an internal review on 15 February 2014. The Gambling Commission sent the outcome of its internal review on 21 March 2014. It revised its position. In relation to part 2 of the request it provided the requested information however it upheld its position in relation to parts 1 and 3 of the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 28 March 2014 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, the Gambling Commission withdrew its application of section 43 FOIA.
9. The Commissioner has considered whether the Gambling Commission was correct to withhold the information requested at parts 1 and 3 of the request under section 31(1)(g) with subsection 2(c) FOIA.

### **Reasons for decision**

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10. The Gambling Commission has argued that the withheld information is exempt on the basis of section 31(1)(g) which provides that information is exempt if its disclosure would or would be likely to prejudice the exercise by any public authority the functions set out in 31(2) of FOIA. It said that this includes an informal 'progress report' (point 1 of the request) and four emails (point 3 of the request).
11. The purpose that the Gambling Commission has argued would be likely to be prejudiced if the information was disclosed is the following within section 31(2):

- (c) Ascertaining whether circumstances would justify regulatory action;
12. In order for section 31(1)(g) of FOIA to be engaged, the Gambling Commission must be able to demonstrate that the potential prejudice being argued relates to the interest listed above.
  13. As with any prejudice based exemption, a public authority may choose to argue for the application of regulation 31(1)(g) on one of two possible limbs – the first requires that prejudice 'would' occur, the second that prejudice 'would be likely' to occur.
  14. The Gambling Commission has stated that it believes the likelihood of prejudice arising through disclosure is one that is likely to occur, rather than one that would occur. While this limb places a weaker evidential burden on the Gambling Commission to discharge, it still requires the Gambling Commission to be able to demonstrate that there is a real and significant risk of the prejudice occurring.
  15. The Commissioner recognises that the Gambling Commission's arguments focus on the prejudice to its regulatory functions that could arise due to the disruption that disclosure could have on the flow of information it receives as part of its role.
  16. The Commissioner has sought to test the validity of these arguments by considering the following questions; Is the Gambling Commission formally tasked in determining whether to take/taking regulatory action? What stage had the investigation reached when the request was submitted? Does the Gambling Commission have powers to compel engagement in the regulatory process and, if so, do these mean the chances of prejudice occurring are effectively removed?
  17. The Gambling Commission explained that it was set up under the Gambling Act 2005 (GA) to regulate commercial gambling in Great Britain in partnership with licensing authorities.
  18. It explained that Section 22 of the GA sets out that the Gambling Commission has a statutory duty to promote the licensing objectives as laid out in section 1 of the Act:
    - (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
    - (b) ensuring that gambling is conducted in a fair and open way, and

- (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.
19. It went on that section 22 of the GA also requires the Gambling Commission to permit gambling, in so far as it thinks it reasonably consistent with pursuit of the licensing objectives.
  20. It said that the Gambling Commission regulates in a transparent, accountable, proportionate, and consistent way. It said that it uses a risk-based approach; it focuses its resources on those issues and operators that potentially present the greatest risk to the licensing objectives as detailed above. It said that when it licenses an operator it looks at suitability, including their financial circumstances, but it does not oversee their businesses on a day to day basis or monitor the financial health of operators directly. It explained that once an operator or individual holds a licence, the Gambling Commission seeks to ensure, through its compliance work, that the licensee remains suitable to hold licences and that they conduct themselves in a way which is consistent with the licensing objectives, the requirements of the GA and the conditions of their licences and related codes of practice.
  21. It went on to explain that under the Act, it is required to issue a Statement of Principles detailing the principles to be applied when exercising its statutory functions (including monitoring compliance by virtue of section 27 of the GA). It provided the following excerpt outlining its general approach to compliance taken from its Licensing, compliance and enforcement policy statement (section 4.9). The Gambling Commission will:
    - act reasonably in discharging its powers under the Act and conducting assessments and visits
    - exercise its powers under the Act fairly, responsibly and with due respect for other parties involved
    - explain what information is required, and why, to ensure requests are appropriate, proportionate, minimise disruption to the business, and enable the relevant person to comply fully with the request
    - seek the co-operation of others wherever possible and only use its statutory powers when necessary.
  22. It explained that the preliminary stages of an investigation will be conducted on the basis outlined above. It said that in order for it to carry out investigations in a timely and effective manner, it relies on being able to conduct informal (or non-statutory) discussions with operators on an open and candid basis. It said that one of the Principles set out in its enforcement policy is that the Gambling Commission will only have recourse to its statutory powers (including

in respect of obtaining information) where necessary and this underscores the importance of informal or non-statutory processes to obtain information from its licensees about matters that may be of concern to the Commission and with a view to deciding whether a formal investigation or enforcement proceedings are required.

23. It explained therefore that the voluntary supply of information by licensees to the Gambling Commission in response to informal requests for information and preliminary enquiries is a critical part of the way in which the Gambling Commission functions. It said that if the Gambling Commission's ability to obtain information on a voluntary basis was undermined, it would need to have recourse to its statutory powers in the early stages of enquiries and this would cause unnecessary delays and expense. Further, it said that it is likely to require licensees to expend resources as they will often require their legal advisors to deal with formal notices and statutory enforcement action. It is therefore in the interests of all parties that matters of concern to the Gambling Commission can be discussed openly and frankly with licensees by way of informal discussions with the aim of a speedy resolution.
24. It said that in the event that there is a substantial risk to the licensing objectives that cannot be managed through compliance work and engagement, the Gambling Commission may then move to a formal regulatory investigation with a view to taking enforcement action (such as a financial penalty, a warning or ultimately the revocation of a licence). A decision as to whether to take such action is normally based on the information which the Gambling Commission has obtained through its preliminary enquiries and informal discussions with licensees and therefore it said that this further underscores the need to preserve and encourage the voluntary supply of information by licensees when discussions are at an early stage.
25. The Gambling Commission has confirmed that at the time the request was made, it was in the process of conducting these preliminary enquiries as referred to above. This process did not complete until March 2014. It said that the purpose of its initial discussions with the licensee in question over the period October 2013 to March 2014 was specifically to ascertain whether circumstances exist which would justify the Gambling Commission taking regulatory action.
26. In this case the Commissioner considers that the Gambling Commission is formally tasked with determining whether regulatory action should be taken, and if so, with taking the necessary action regulatory action under section 22 of the GA. The Commissioner accepts that at the time the request was made preliminary enquiries were ongoing and he is satisfied that those preliminary enquiries are

reliant upon the voluntary supply of information from licensees. Whilst the Commissioner acknowledges that the Gambling Commission has formal powers when taking formal action, it is more efficient to make preliminary enquiries initially to determine whether formal action is necessary.

27. Given the nature of the withheld information, the Commissioner accepts that disclosure would be likely to result in the prejudicial effects to the Gambling Commission's purposes described at section 31(2)(c) of FOIA. As section 31 is a qualified exemption, the next step is for the Commissioner to consider whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Public interest test**

#### **Arguments in favour of disclosing the information**

28. The Gambling Commission put forward the following arguments in favour of disclosure:

Transparency and accountability (parts one and three)

29. There is a legitimate public interest in promoting the accountability and transparency of the Gambling Commission, which is supported by the release of this information. There were a number of similar requests for information relating to the licensee in this case and it received a large number of complaints in relation to this operator. Consumers have a right to see that the Gambling Commission takes action in cases where there is a risk to the licensing objectives. There is also an interest in the public understanding how the Gambling Commission investigates matters of non-compliance and that if there are any failings in this process that these are exposed.

Wider lessons (parts one and three)

30. There is a public interest in highlighting instances of non-compliance within the industry in order to promote compliance from other operators and to highlight to consumers the risks that are associated with gambling. Disclosing the requested information may demonstrate to other licensed operators important lessons.

The number of people affected (part one)

31. There has been speculation about the number of people affected and the amounts that are owed. There is arguably a public interest in disclosing this information as promises of payments have not been honoured in most cases. Disclosing the information requested under request one would provide clarity around this issue.

Probity of investigations (requests one and three)

32. The Gambling Commission has asserted that the "GC has been negligent in their regulation" and that there is a suspicion of wrongdoing. Disclosure of the requested information would demonstrate the steps taken by the Gambling Commission and provide assurances that it has not been negligent or complacent.

**Arguments in favour of maintaining the exemption**

33. The Gambling Commission put forward the following arguments in favour of maintaining the exemption:

Transparency and accountability (parts one and three)

34. The Gambling Commission believes that any public interest in promoting accountability and transparency around the discussions between itself and the licensee in question has been met through information made available to the public by way of press releases on its website and through correspondence with customers who made individual complaints. It said that it is not feasible or appropriate to provide a running commentary on the detail of investigations which are ongoing as to do so would be likely to cause serious prejudice to the conduct of these investigations and render them ineffective. However, the Gambling Commission believes that it has struck an appropriate balance in the information which it has made public by way of the press releases. As will be seen from consideration of these press releases, the Gambling Commission has supplied the public with some information about the dialogue with the licensee in question which it believes meets the public interest in transparency and accountability.

Wider lessons (requests one and three)

35. The Gambling Commission said that it makes statements following investigations where there is a wider message of public interest to communicate. It confirmed it has already produced more detailed information on its website for consumers regarding the risks that are posed through gambling and the role of the Gambling Commission as a

regulator. It said that the issues raised have also contributed to recent considerations regarding the segregation of customer funds.

#### Prejudice to investigations (Requests one and three)

36. As previously outlined, the Gambling Commission reaffirmed it is of the view that it is likely to prejudice ongoing, and future, investigations if were to disclose the withheld information. The licence review referred to in relation to the licensee in this case has not yet been completed so it would not be appropriate to make a disclosure at this time. It said that this prejudice would have been even greater if disclosure was made at the time of the request. It said that it considers that there is a legitimate public interest in avoiding prejudice to the Gambling Commission's ability to effectively investigate instances of non-compliance and engage with licence holders in a timely and candid manner. Disclosing information obtained in this manner would deter the voluntary supply of information and directly impact its ability to perform its statutory functions.

#### **Balance of the public interest**

37. The Commissioner considers that there is a strong public interest in the Gambling Commission operating openly and being accountable in its effectiveness in carrying out its statutory functions. Furthermore he considers that there is a public interest in assuring that the public is being effectively protected in relation to gambling services by the body that is tasked to ensure this. The Commissioner has viewed the information that is publicly available and that which has been disclosed to the complainant and accepts that this does go some way to meeting the public interest arguments in favour of disclosure.
38. The Commissioner does also consider that there is a strong public interest in not disclosing information which would be likely to impede the Gambling Commission's ability to carry out its functions effectively. Therefore disclosing information which would be likely to frustrate the voluntary flow of information between licensees and the Gambling Commission would not be in the public interest.
39. On balance, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption. Section 31(1)(g) with subsection (2)(c) FOIA was correctly applied in this case to the withheld information.



## Right of appeal

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40. 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: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
**Cheshire**  
**SK9 5AF**