



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2016/0255

**Heard at Field House
On 25th May 2017**

Before

Miss Fiona Henderson

JUDGE

And

Ms Alison Lowton

Mr Stephen Shaw

TRIBUNAL MEMBERS

Between

Mr Roddy Mansfield

Appellant

and

The Information Commissioner

Respondent

and

The Gambling Commission

Second Respondent

The Appellant represented himself

The Information Commissioner chose not to be represented at the hearing

Mr Christopher Knight of Counsel represented the Gambling Commission

Subject: Section 31(1)(g) in conjunction with s31(2)(d) FOIA

Case Law:

Hogan and Oxford City Council v Information Commissioner [2011]1 Info LR 588

C-230/14 Weltimmo v Nemzeti ECLI:EU:C:2015:639

DECISION AND REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice FS50625745 dated 27th October 2016 which held that The Gambling Commission (GC) had properly applied Section 31(1)(g) in conjunction with s31(2)(d) FOIA. The Commissioner required no further action to be taken.

Background

2. The Gambling Commission is the national regulator of all commercial gambling within Great Britain (apart from Spread Betting). It was established by the Gambling Act 2005. In order to operate a gambling facility in Great Britain operators must hold a licence from the GC. An application is made by the operator and an assessment of suitability is made against criteria set out in the Gambling Act. Once licensed, operators are subject to ongoing compliance requirements and subject to regulatory action should they fail to meet the requirements of their licence.
3. S106 of the Gambling Act requires the GC to maintain a register of operating licences, available for inspection by the public. The GC are responsible for determining what details are appropriate to include in the register. At present this includes an address as recorded on the licence. This is the address given in section 2 of the application form. According to the GC's Policy Statement, the publication of information in the register is intended to increase transparency¹. As part of the licensing requirements² operators must provide a point of contact for consumers to make complaints – how to make a complaint, relevant contact details and the identity of the Alternative Disputes Resolution entity to which disputes can be referred.

Information Request

4. BGO Entertainment Ltd are a remote gambling operator who offer gambling through websites and hold remote bingo and remote casino operating licences.
5. The Appellant is a journalist who has concerns that certain remote gambling companies including BGO Entertainment Ltd are using affiliated companies to target people through unwanted email marketing "spam" to encourage them to gamble. He provided newspaper articles to the Tribunal to demonstrate that this is a widespread problem and there has been no effective regulatory response to address this. The seriousness of this problem and the impact that it has upon the vulnerable was evidenced through a newspaper report of a young man driven to suicide as a result of his unsuccessful struggle with gambling. He had been targeted with gambling advertisements despite efforts to self exclude.
6. The Appellant has been bombarded with spam since 2014 and has struggled to find a way to stop receiving the unwanted email communications because:
 - i. Often there is no option to "unsubscribe" on the emails which may come from abroad.
 - ii. Blocking the sender email address is fruitless as multiple communications are sent from numerous different addresses.

¹ Licensing compliance and enforcement under the Gambling Act 2005 policy statement March 2015 section 7.2.

² Social Responsibility Code 6.1.1. on complaints and disputes pursuant to s24 the Act and a condition of the operating licence under s82(1) of the Act.

- iii. If there is a link to “unsubscribe”, using this link confirms to the sender that it is a monitored email address which risks increasing the amount of “spam” received and is contrary to ICO advice not to respond to unknown links.
 - iv. He has approached BGO Entertainment Ltd who have stated that the emails come from an affiliate but have refused to disclose their identity. Contacting BGO Entertainment Ltd has not stopped the “spam”.
 - v. The Alternative Dispute Resolution services is widely scorned as being ineffectual by consumers and does not adjudicate on data protection complaints.
 - vi. His approach to the Gambling Commission for intervention has been unsuccessful as they do not consider individual complaints.
 - vii. The ICO has informed him that it does not enforce individual complaints
He argues that the remedy is to take individual action in the County Court. However, the only address he has for the company (which is the address listed on the GC register) is a postal pick up address in Alderney which would not enable him to serve proceedings in the UK and would not enable him to enforce judgment in the UK.
7. On 18th February 2016 The Appellant wrote to the GC:
*“I understand that licensees are required to provide the UKGC with their “Head Office” addresses, which are the main addresses they trade from or carry out their administration duties from.
The definition of “Head Office” is the main office of a company or organisation where its employees work.
The address given for BGO Entertainment Ltd is merely a postal pick-up address for a farm house in Alderney. This is clearly not BGO’s “Head Office” address.
Please therefore provide me details for the Head Office and operating address(s) for BGO Entertainment Ltd.”*
8. The GC responded on 17th March 2016 stating that the Head Office for BGO Entertainment Ltd is that listed on its public licence register [the Alderney address]. Although the GC holds other addresses where BGO conducted aspects of their business (operating addresses) this was not disclosed as the GC relied upon s31(1)(g) with 31(2)(d) FOIA.
9. The decision was upheld on internal review dated 18th April 2016.

Complaint to the Commissioner and Appeal to the Tribunal

10. The Appellant complained to the Commissioner on 19th April 2016. The decision having upheld the GC’s use of s31 FOIA, the Appellant appealed to the Tribunal on 30th October 2016. His grounds can be summarised as:
- i. The Commissioner did not distinguish between information provided voluntarily and mandatorily in assessing prejudice.
 - ii. The Commissioner incorrectly identified the information as commercially sensitive.
 - iii. The Commissioner did not weigh the competing public interests accurately.
 - iv. The Commissioner failed to address inconsistencies in GC’s submissions over the public register.
 - v. The Commissioner had taken the GC’s submissions at face value without assessing their validity.
11. The GC were joined on 2nd December 2016 by the Registrar, they opposed the appeal.

12. The Tribunal is in receipt of an open bundle of material of some 290 pages. In addition it has had regard to the GC's skeleton argument dated 9th May 2017 and the Appellant's additional evidence dated 10th May 2017. The Tribunal has had sight of the withheld material which has been placed in a closed bundle pursuant to rule 14 GRC Rules. The Tribunal has not found it necessary to refer to the withheld information directly and has therefore not provided a closed annex to the decision. The Tribunal has taken all information before it into consideration even when not referred to explicitly.
13. The case was listed for an oral hearing, however, the Commissioner indicated that she would not attend the hearing due to resource constraints. The Tribunal heard open and closed evidence from Mr Turton (Information Manager at the GC) and submissions from the Appellant and on behalf of the GC. The day after the oral hearing the Appellant submitted additional written submissions entitled "closing submissions". The GC has not objected to the consideration of these submissions (which raise no new matters) but crystallize the arguments made at the hearing. It included an email from the campaign group "Justice for Punters" supporting the appeal and setting out the information they believed should be made publicly available. The Tribunal takes into account that the Appellant is a litigant in person and cannot therefore to be taken to be familiar with the rules of procedure. The overriding objective as set out in rule 2 GRC Rules requires the Tribunal to facilitate the parties' participation in the case. We are satisfied that there is no injustice to the respondents in considering this material and have therefore taken it into consideration.

Preliminary Matter – the status of 2 addresses obtained by the Appellant

14. The Appellant attended the London Gambling Affiliate Conference posing as an affiliate in February 2017 and spoke to one of BGO's affiliate managers. He was given a London address which he was told was responsible for marketing, operations and customer experience and a Norwich address which was responsible for finance and administration. His research showed that there are 2 separate companies: BGO Entertainment Ltd which has the registered address in Alderney and BGO Studios Ltd which has a registered address in Norwich.
15. The GC's position is that of neither to confirm nor deny whether those addresses form part of the closed material. The Tribunal is satisfied that this is the right approach. The Tribunal observes that the addresses were provided after the information request and may not reflect the position at the relevant date. There are 2 separate corporate entities. The registered address of BGO Studios is in Norwich but that of BGO Entertainment Ltd is in Alderney. The Tribunal was told by GC that BGO studios' corporate function is listed as providing software services, it is not a subsidiary of BGO Entertainment Ltd; the Tribunal does not know the precise legal relationship between the companies.
16. The GC confirmed that the withheld material was the address given in section 2 of the application form. No address was given in relation to section 6 and GC reconfirmed when preparing for the appeal that it holds no further addresses relating to the application or subsequent enforcement process³. Although operators are required to update certain types of information should it change post the grant of a licence, only

³ See para 30 below

the head office is specified and other addresses in s2 and s6 are not required to be updated.

17. The Appellant's arguments relating to confirmation of whether either or both of these addresses are included in the withheld material indicated that:

- i. the provision of these addresses if they relate to BGO Entertainment Ltd would be indicative of the company being in breach of its Data Registration obligations under DPA as it is not listed in the UK with the Information Commissioner.
The Tribunal is satisfied that this is outside the jurisdiction of the Tribunal and disclosure to the Appellant under FOIA or pursuant to these proceedings would not further that aim. The ICO is a party to this case and can be taken to have been informed of the Appellant's concerns in this regard through service of his evidence on the point.
- ii. He argued that if either of these addresses was not known to the Gambling Commission it would indicate that BGO Entertainment Ltd had not filled out their application form accurately. This was material in relation to the expectation of BGO Entertainment Ltd and the effectiveness of the GC's application scrutiny.
The Tribunal notes the timing of this information, provision of these addresses in February 2017 is not indicative that the form was incorrectly completed in 2014-2015 when the application was made and considered⁴, and
- iii. The Appellant argued that if either or both of these addresses was in the closed material, since it had been given out to a member of the public it was in effect in the public domain and there would be no prejudice in its disclosure pursuant to FOIA.
The Tribunal repeats its observations relating to the uncertainty of the legal entity associated with the addresses and the timings. Additionally, disclosure to a potential business partner by an affiliate pursuant to their legitimate business function is not the same as disclosure to the world at large by the GC.

Whether the Exemption is engaged

18. S31 of FOIA provides that:

(1) Information ... is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

...

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(2) The purposes referred to in subsection (1)(g) to (i) are—

...

(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,...

⁴ The transitional licence was granted 29.10.14 and the full licence 18.3.15

19. It was not disputed that s31(2)(d) FOIA applied to the GC, we agree. S22 of the Act provides that:

In exercising its functions under this Act the Commission shall aim—

- (a) to pursue, and wherever appropriate to have regard to, the licensing objectives, and*
- (b) to permit gambling, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives.*

20. The licensing objectives are set out in s1 of the Gambling 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.*

21. S70 of the Act requires the Commission to have regard to the licensing objectives and to the applicant's suitability when considering an application for an operating licence. From this we are satisfied that the GC has a function in ascertaining gambling operators' fitness to provide gambling services.

22. The issue between the parties was whether disclosure of the operating addresses would be likely to prejudice the exercise of its functions. We are satisfied that likely to occur means that there must be a real and significant risk of the harm arising if the information was released⁵ even if that risk is less than 50%.

23. S69 of the Gambling Act states:

(2) An application must—

... (b) specify an address in the United Kingdom at which a document issued under this Act may be served on the applicant,

(c) be made in such form and manner as the Commission may direct,

...

(f) contain or be accompanied by such other information or documents as the Commission may direct, ...

24. The Gambling Commission provide a standard application form and guidance notes relating to completion. More information is required to complete the application form than the prescribed information set out in s69(2). This information is mandatory. Insofar as is relevant to this information request:

- S1 of the form states:

“Once a licence has been granted details must be published on the public register under section 106 of the Gambling Act 2005”

- S2 of the form states:

“please provide the following details for the contact you want the Gambling Commission to correspond with about this application. This can be an

⁵ Hogan and Oxford City Council v Information Commissioner [2011]1 Info LR 588

employee of the applicant or other representative such as a Solicitor... The address provided MUST be in Great Britain”.

- Registered companies are required to provide business registration details and all applicants must provide their head office address. The form states: *“please note, your head office address will be listed on your licence and will be used to issue annual fee invoices, regulatory documentation etc.”.*

25. Additionally:

- If facilities for gambling are to be provided through known premises, those addresses should be provided in s6. Mr Turton’s evidence was that this is not the same as betting shop premises which are licenced by local authorities under guidance issued by the GC but would include premises used for administration and gambling software.
- S8 requires declaration of any investigations or convictions for criminal offences or civil penalties relating to corporate duties or regulatory investigations. It does not require County Court judgments to be listed.
- All applicants must provide their policy to ensure that the licensing objectives will be met. The explanatory notes specify that an they should detail (amongst other matters) what marketing and advertising an operator will be carrying out and how an operator will ensure that they are compliant with the Advertising Codes of Practice and the LCCP⁶ and their procedures for self exclusion and how this will be monitored.

26. The form contains the following clause in section 13

“Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000. The Gambling Commission’s policy on release of information is available on our website... We will treat all information as confidential and will only disclose that information to third parties where it is necessary to do so in order to carry out our functions or where we are required by law to disclose the information. The Gambling commission would not normally expect that the disclosure of commercially sensitive information would be in the public interest.”⁷

27. The Tribunal is satisfied that the effect of the above clauses is that the expectation of the operator is that the head office address details on the licence are what will be published on the register and that the UK contact address given pursuant to s2 is for a limited purpose and will not be published on the register. Whilst further disclosures might be made under FOIA this would be after consideration of necessity, legal obligation and the public interest. The GC would approach these requests from the position that the information had been provided in confidence.

28. The Tribunal has considered the impact of providing to the public information disclosed to the GC which is not on the public register. In assessing the Appellant’s arguments relating to mandatory/voluntary information the Tribunal accepts that the information was mandatory and its provision a requirement of the application process. However, we take into account that whilst the operator cannot prevent the information from being disclosed, they did not have the expectation that it would be disclosed. The Appellant argues that:

⁶ licensing conditions and codes of practice issued under s24 of the Act.

⁷ P186 bundle

- i. Under s106 it is a matter for the GC what information they put on the register so operators would know that this could change should the GC so decide. The Tribunal observes that the operators are entitled to rely upon the GC's stated policy at the time that the information is provided by them. Whilst the GC could change its policy retrospectively, the arguments relating to the impact that this would have on trust could be expected to apply.
- ii. The GC are already sharing information with Police, the Courts and from Mr Turton's evidence, the ICO, as such the Appellant argues that an expectation of confidentiality is thus unrealistic. The Tribunal observes that this is explicitly stated in the caveats that disclosure would take place "*where we are required by law to disclose the information*".
- iii. The Appellant argues that the GC should not be giving the expectation of confidentiality in the context of a FOIA environment and that this has the effect of trying to "contract out" of FOIA. The Tribunal is satisfied that this does not amount to contracting out of FOIA which is in specific contemplation and subject to the balance of public interest where applicable, but reflects that the regulation is of a commercial enterprise in a competitive field.

29. In light of these findings we move on to consider what impact the disclosure of information that an operator had expected would not be made public would have on the future relationship, co-operation levels and trust of this and other operators. The GC accept that it can compel the provision of information both in relation to the application for licence process and in relation to its regulatory role once the license is granted. However, we note that there can be an element of choice in the information that an operator is required to supply (e.g. the identity and address of the contact in s2) and the GC relies on the voluntary supply of information to perform other licensing, compliance and policy functions.

30. The GC do not suggest that the address is inherently confidential or commercially sensitive. The Tribunal has had regard to the terms of paragraph 25 of the Decision notice and is satisfied that this was also the conclusion reached by the Commissioner such that ground 2 of the Appellant's appeal falls. The GC's argument is that the impact of disclosure is not limited to BGO Entertainment Ltd's future levels of co-operation. Indeed it is acknowledged that in the recent investigation of BGO Entertainment Ltd of April 2017⁸ in which BGO Entertainment Ltd received a Formal warning and a fine, the GC had to resort to formal powers as BGO had failed to take timely and effective action to address the breaches of the SR code and provided inaccurate assurances that the problems had been addressed.

31. The disputed information is not information that appears on the register. We are satisfied that it is not information that BGO Entertainment Ltd⁹ have made available to the general public. Disclosure would remove the element of choice that BGO Entertainment Ltd are entitled to have in where and how they interact with the public. This is a commercial enterprise and s22 of the Act requires the GC to permit gambling

⁸ P289

⁹ NB paragraphs 14-17 above

where this is reasonably consistent with pursuit of the licensing objectives. It is accepted that the withheld information was provided in response to section 2 of the form. There being an element of choice in what information is provided in response to this compulsory question¹⁰ in our judgment adds to the loss of trust in its disclosure. The impact of this disclosure we are satisfied would be likely to slow down or otherwise impede regulatory activity.

32. The GC's case is that much of the information sought by them from operators as part of its regulatory functions is commercially sensitive and the loss of trust associated with disclosure of information that it was not expected would be, they argue will be likely to impact upon the frankness and flow of information in future. Their argument relies upon what disclosure represents and the impact that this would have on this and other companies in their interactions with the GC in relation to their regulatory role. Although the GC can compel provision of information, and information provided in the application process (from whence the disputed information derives) is mandatory; compulsion is not the most effective way to obtain information for its regulatory role which relies more upon co-operation and engagement with the GC. Their policy is to seek the co-operation of others wherever possible and only use its statutory powers when necessary.¹¹ The Commission's role is to uphold the licensing objectives set out in the Act. If the Commission can achieve those objectives without time consuming, costly and burdensome enforcement action, it will do so.¹²
33. Disclosure of operational information (even if its provision was mandatory) without sufficient rationale contrary to expectation would undermine trust and make operators less likely to co-operate in the future where voluntary information is sought. This would be likely to result in the GC having to use more formal statutory powers. Mr Turton's evidence is that this is more expensive to all parties, more time consuming and likely to lead to more guarded disclosures. We accept this evidence.
34. We are therefore satisfied that there is a causal relationship between the requested information and the prejudice claimed and that there is a possibility that is more than remote of the stated prejudice occurring and that s 31 is therefore engaged.

Public interest.

35. S31 is a qualified exemption and subject to the public interest test pursuant to s2(2)(b) FOIA.

Appellant's arguments:

36. The Appellant argues that there is a public interest in vulnerable people not being encouraged to gamble and data being used in accordance with an individual's wishes. We accept that unwanted email marketing can be distressing and may contravene the licensing objectives. Although affiliates and spam are encompassed in the code provisions there is a public interest in the codes being effectively enforced. The Appellant's experience is that the GC is not prepared to address the issue of spam and inappropriately targeted email marketing. His evidence is that the ICO do not deal with individual complaints and have not brought any enforcement action against and is

¹⁰ it does not have to be an operating address and could be the address of a proxy e.g a Solicitor

¹¹ 4 Policy statement

¹² 5.1 Policy statement

not even monitoring any gambling companies despite the sector being regularly in the top 3 for Spam¹³. His case is that he is therefore deprived of a regulatory remedy. He argues that the only way to enforce standards is through private litigation. His case is that the details available on the public register are insufficient to provide an effective remedy as he has insufficient information to issue proceedings in the UK and no knowledge of assets against which to enforce a judgment here.

37. The GC do not accept that they are not enforcing adequately. The Tribunal was pointed to various published decisions which the GC argued evidenced that they used both formal and informal methods to maintain standards including their decision of April 2017 relating to BGO Entertainment Ltd. The Appellant argued that the fact that this company had been investigated for breaches relating to their marketing but that the issue of spam was not addressed supports his contention that the GC are not upholding the licensing objectives adequately. The GC's evidence was that they did not comment on individual cases prior to determination, and that the Formal warning will stay on file and will be taken into account if GC identify any further regulatory failures on BGO Entertainment Ltd's part.
38. The GC has a duty to ensure that the licensee remains suitable to hold licences and that they conduct themselves in a way which is consistent with the licensing objectives¹⁴. Compliance with the Social Responsibility Code is a condition of the licence and any breach may lead to review of the licence with a view to suspension, revocation or the imposition of a financial penalty. Social Responsibility code 1.1.2 requires licensees to take responsibility for third parties with whom they contract for the provision of any aspect of the licensee's business related to the licensed activities (which includes marketing affiliates and advertising networks)¹⁵. However, Mr Turton's evidence was that the GC has never taken action on spamming. This is because ICO lead on PECR¹⁶ compliance. There is a memorandum of understanding between ICO and GC and if GC are aware of DPA breaches they pass this on. In his experience this has been discussed between the organisations. There is no statutory duty to investigate complaints about licensees, the GC is not an Ombudsman service, but the GC may decide to look into matters relating to a complaint¹⁷ although this will depend upon whether an issue is widespread enough and serious enough to warrant their intervention.
39. We accept that disclosure would add to transparency relating to the Gambling operators but the Tribunal takes into consideration that this is in relation to the regulation of a private commercial interest. The Appellant argues that disclosure of the address and hence his ability to take action against the operator would expose the GC's and ICO's regulatory failings which would be in the public interest. He also maintains that he "falls between two stools" of the ICO and GC. We take into account the nature of the information sought, and are not satisfied that disclosure would add transparency relating to the activities of the GC or improve or alter the way in which they regulate. We observe that it is outside the remit of this Tribunal to assess the adequacy of the GC's performance of its regulatory role, however, we accept that the

¹³ As per Andrew Walsh p 65. This evidence was unchallenged by the ICO.

¹⁴ Licensing compliance and enforcement under the Gambling Act 2005 policy statement March 2015 section 4.

¹⁵ P287

¹⁶ Privacy and electronic communications regulations

¹⁷ Policy statement 4.15

Appellant has not been able to obtain a remedy for the unwanted spam through the GC. The Appellant is already in a position to highlight what he maintains are the failures of regulation by the GC and ICO with the information already in his possession. A UK address in our judgment would not further the matter as he already has the ability to issue proceedings.¹⁸ Whilst litigation instigated by him constitutes a private interest, we are satisfied that it is in the public interest that consumers should have the ability to contact operators and have a right of redress in the event of legitimate complaints.

40. The Appellant argues that limiting disclosed information to that on the public register is inconsistent with the stated aims of transparency and the apparent wish to give the public a point of contact and an effective method of complaint¹⁹. The GC rely upon the alternative dispute resolution which all operators are required to offer. Additionally their case is that the Alderney address is sufficient to ensure a private legal remedy and dispute that disclosure of the withheld information is necessary to further this aim because the Appellant can:
- Write pre-action correspondence seeking confirmation of an address for service in the UK. The Appellant accepted he had not taken this step.
 - Rely upon the ICO's enforcement powers²⁰.
 - Issue Proceedings in Alderney where BGO Entertainment Ltd have an entry on the register of data controllers there and have equivalent legal obligations to PECR. They may be sued for breach of their duties in that jurisdiction.
41. The Appellant argues that disclosure is necessary to inform him as to whether to issue proceedings at all. We are not satisfied that concerns that the Appellant has that issuing proceedings in Alderney would be impractical are well founded. He argued that all Alderney Solicitors were likely to be conflicted because of their involvement in work for online gaming companies registered there (this situation had arisen in a Gibraltar case with which he drew a parallel). The GC noted that he has not yet made those enquiries and his concern amounts to speculation. Similarly his concern that without a UK address he would not have an address for Bailiffs to attend to enforce judgment is speculative. It implies that BGO Entertainment Ltd would not comply with any judgment and that there would be assets belonging to BGO Entertainment Ltd at the address that is withheld. The withheld information was provided from section 2 of the form it does not have to be premises owned by the company it is not therefore inevitable that this address would fulfil the Appellant's aims.
42. The GC argued that since the Appellant had got 2 addresses in the UK which he believed were used by BGO Entertainment Ltd he did not need the withheld information in order to issue proceedings and enforce a judgment. The Tribunal is not satisfied that it is proper to take this into account and has not done so. The addresses were obtained after the relevant date and were not something that could have been taken into consideration when the request was refused. As set out above the status of those addresses is not clear.
43. In relation to the public interest arguments advanced and addressed in relation to the 2 addresses obtained by the Appellant, to the extent that any of them are applicable to the

¹⁸ See paragraph 40 below

¹⁹ As per ground iv of the appeal

²⁰ Which may include data controllers who advertise in the UK in respect of online business aimed at UK consumers regardless of where it is registered C-230/14 Weltimmo v Nemzeti ECL:EU:C:2015:639

withheld information the Tribunal repeats its reasoning as set out in paragraph 17 above. The Appellant argues that disclosure would enable him to establish whether the operator is committing a criminal offence under s17 DPA. He is not the regulator, that role is fulfilled by the ICO. We are satisfied that there is a memorandum of understanding between ICO and GC and that the ICO would have access to this information for regulatory purposes if necessary. The Appellant is entitled to raise this with the ICO without the need for disclosure as a precondition.

44. Equally the Appellant argues that the address would allow him to make a subject access request to establish who is processing his data on BGO Entertainment Ltd's behalf (revealing the identity of the spamming affiliates). The Tribunal takes into consideration the Operator's registration as a data controller in Alderney and is not satisfied that disclosure of the withheld information would further this aim.
45. The Tribunal is satisfied from the above that disclosure of the information is not necessary for the Appellant to obtain an effective remedy. The availability of alternative remedies significantly reduces the public interest attached to the disclosure of this information for the reasons advanced by the Appellant.

The GC's arguments against disclosure

46. The GC argue that as well as disclosure failing to advance the public interest significantly, disclosure would harm the public interest as it would undermine their regulatory approach and thus be likely to prejudice their regulatory function as envisaged in paragraphs 28-34 above. The likely impact of this in relation to time and resource constraints on the number and efficacy of the investigations and assessments in turn would be likely to prejudice the licensing objectives and risk an increase in the ills they seek to avoid. We accept that the regulation of the gambling industry is a matter of high public importance and it is in the public interest that this should not be prejudiced. The fact that the risk of prejudice is only likely to occur means that it is given less weight when balancing the public interest, however, we accept that this factor should still be given significant weight in light of its importance.
47. Taking all these matters into account we are satisfied that the public interest in withholding the information outweighs the public interest in disclosure.

Conclusion

48. For the reasons set out above we are satisfied that the GC were entitled to rely upon s31 FOIA to withhold the information and the appeal is refused.
49. This decision is unanimous.

Signed

Judge of the First-tier Tribunal
Date: 18th August 2017