

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 November 2020

**Public Authority:** Gambling Commission  
**Address:** 4<sup>th</sup> Floor Victoria Square House  
Birmingham  
B2 4BP

### Decision (including any steps ordered)

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1. The complainant has requested the address or addresses of the retailer(s) from which two specific lottery tickets were purchased. The position of the Gambling Commission ('the Commission') is that it does not hold the requested information.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities, the Commission does not hold the information the complainant has requested and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require the Commission to take any remedial steps.

### Request and response

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4. On 16 August 2019 the complainant wrote to the Commission and requested information in the following terms:

*"The Commission maintains through a third party a system which (1) logs all National Lottery transactions that are made, i.e. each ticket that is bought and*

*(2) the details of all retailers at which such tickets may be purchased. This information is "held" for the purposes of the Freedom of Information Act : see Paragraphs 44 to 46 FoI Decision Notice 12 February 2015.*

*Request for information.*

*Please provide the following details of the following transactions/tickets namely:*

*the address or addresses of the relevant agent/retailer as listed for example at*

*[https://www.whatdotheyknow.com/request/435141/response/1063683/attach/3/](https://www.whatdotheyknow.com/request/435141/response/1063683/attach/3/Active%20Agents%2020171102.CSV.txt?cookie_passthrough=1)*

*[Active%20Agents%2020171102.CSV.txt?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/435141/response/1063683/attach/3/Active%20Agents%2020171102.CSV.txt?cookie_passthrough=1)*

*at which each of the following two tickets that*

*(a) bore the following UK Euromillion numbers HJSG75337 and JJSC65813 respectively*

*and*

*(b) were both entered for the draw on 3rd March 2017 and*

*(c) were both listed as winning numbers at <https://www.euromillions.com/results/03-03-2017> as Millionaire Maker Codes, were purchased."*

5. On 6 September 2019 the Commission responded. It advised that it does not hold the information the complainant has requested.
6. Following an internal review, the Commission wrote to the complainant on 20 September 2019. It upheld its original response.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 30 January 2020 to complain about the way her request for information had been handled.
8. Under section 50(2)(b) of the FOIA the Commissioner is not obliged to make a decision if she considers there has been an undue delay in making an application for one. The Commissioner expects a complainant to apply for a decision within three months of their last meaningful contact with a public authority. However, due to the circumstances explained to her, the Commissioner made an exception in this case.
9. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the Commission holds the information the complainant has requested.

## Reasons for decision

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10. Under section 1(1) of the FOIA anyone who request information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to him or her if it is held and is not exempt information.
11. Under section 3(2) of the FOIA, information is held by a public authority if it is held by 'another person' on behalf of the authority.
12. The complainant has referred to the Commissioner's decision in FS50553684<sup>1</sup> from 2015. That decision concerned the Gambling Commission and a request for information about the location of lottery ticket terminals. In the course of that investigation the Commission had indicated that it held such information. The complainant therefore considers that the Commission holds the information she has requested in this case.
13. But the complainant also considers that, if the Commission does not hold the information itself, then another person holds it on behalf of the Commission. The Commission can therefore be said to hold the information for the purposes of the FOIA.
14. In its initial submission to the Commissioner the Commission provided the following context. It explained that it regulates and is responsible for awarding the licence to run the National Lottery. The current operator of the National Lottery is Camelot UK Lotteries Ltd.
15. A copy of the National Lottery Section 5 licence can be found on its website: <https://www.gamblingcommission.gov.uk/PDF/NL-licences/NL-Third-licence.pdf>
16. Section 5 of the Licence – Service Requirements, provides that the Licensee shall at all times ensure that its running of the National Lottery (including Licensee Assets and its Technology Operation) is Fit for Purpose. Further to this, Licence Condition 5.14 provides that

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1043304/fs\\_50553684.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1043304/fs_50553684.pdf)

- a. the Licensee shall establish, operate and maintain an Independent Verification System which possesses the functionality specified by the Commission; and
  - b. establish, operate and maintain a separate copy of the Independent Verification System for the use of the Commission, which possesses the functionality specified by the Commission and which is maintained independently of the system referred to in Condition 5.14(a);
17. To meet the requirements of this licence condition the Commission and Camelot jointly licence from a third party (Elsym) the necessary software for an internal control system (known as ICS) in relation to Camelot's Lottery Operating Systems. The primary purpose of this software is to independently process all lottery transactions it receives from the Lottery Systems.
  18. The ICS provides an audit trail of these transactions as well as producing reports and data that allows Camelot and the Commission to verify the integrity of the Lottery Systems. Licence condition 5.14(e) specifies the reporting requirements as required by the Commission. The information that is held in this system is stored as raw (underlying) data.
  19. The systems receive the same financial transaction data as Camelot's main gaming systems and generate financial reports to balance against these systems. The Commission notes that the computer hardware required to run both copies of the ICS system are owned by Camelot and operated and located at their premises. The data located on these servers is owned by Camelot.
  20. The Commission went on to explain that, each day, the ICS produces a number of reports in pdf format which are located on the ICS server, hosted on a segregated network owned and maintained by Camelot at its premises.
  21. There are a number of daily and weekly reports that are generated as required by licence condition 5.14(e). These reports are accessed by the Commission's National Lottery Compliance Team or, if required, the Commission's internal IT department.
  22. The Commission says it has a right to access the reports generated from the raw data, but it does not have access to the raw data itself. Therefore, unless a particular report is produced and made available to the Commission, the Commission does not retrieve any other information from this system. If the Commission did require a particular report to be generated, it would need to make the request directly to the third party provider to write and produce this report.

23. In its submission the Commission then went on to note that the complainant has asked for information relating to the address details of the agent/retailer(s) where specific lottery tickets were purchased
24. The Commission confirmed that it *does* hold a report, downloaded from the Camelot ICS to a Commission system, that contains the winning lottery numbers outlined in the request and the retailer ID code for where those tickets were purchased. However, the report does not provide the details as to the identity of the retailers (such as their name and/or address), which forms the subject of the request.
25. To be able to penetrate that data and produce it in an understandable and useful format (ie to ascertain the addresses of the relevant agent/retailer where the two 'winning' tickets were purchased) the Commission said it would need to commission a report produced from the raw data to link the retailer id to their actual name and address.
26. In the Commission's view, as this information is held on a database that it does not have complete unrestricted right to use, exploit or access and cannot produce reports itself, this information cannot be said to be held by the Commission.
27. To enable the Commission to retrieve the information requested it would have to request for a specific report to be generated by the third party and then transfer it from Camelot's ICS to a Commission system.
28. The Commission then addressed the Commissioner's 2015 decision, raised by the complainant, which related to a request for information about National Lottery terminals and retailer addresses. That decision notice detailed the Commission's confirmation that it held a copy of the ICS to monitor compliance and, in addition, that it held the system for its own purposes including fulfilling FOI requests.
29. The Commission advised the Commissioner that, on reflection, its view now is that the Commission does not hold, and has never actually held, a copy of the ICS – it simply has access to the Camelot ICS as permitted by the licence condition. The Commission said that if the same request that the 2015 decision notice related to were received today, its position now would be that it does not hold that data, for the reasons given above.
30. The Commission finally detailed searches that it nonetheless undertook for information falling within the scope of the complainant's request in the current case.
31. The Commission said it carried out a review of the reports that are generated from the ICS. As the reports that it holds have been generated for a specific purpose it could be easily identified whether the

reports included the information requested. As advised above, the Commission said it does hold a report with details of transactions but not the details of the retailer where tickets were purchased. To retrieve this information would require a direct request to the third party for a bespoke report to be generated.

32. The Commission confirmed it does not have access to any other information relating to the National Lottery apart from what is provided by the third party for standard, routine reports.
33. Checks were made with the third party to establish whether any of the existing reporting, held by the Commission, contained the information requested. The third party confirmed that they do not.
34. The Commissioner detailed the Commission's submission to the complainant. She explained that having considered both parties' arguments, she was satisfied, on the balance of probabilities, that the Commission does not hold the information the complainant has requested, nor is it held by a third party on the Commission's behalf.
35. The complainant did not accept this. She considered that there would be terms in one or more contracts involving the Commission, Camelot and Elsym that would show that Camelot and/or Elsym held the information she is seeking on the Commission's behalf. Associated with this, the complainant questioned whether the Commission would need the requested information from a third party for reporting purposes and whether a third party would be contractually obliged to provide the information to the Commission if the Commission were to ask for it.
36. The Commissioner discussed these matters with the Commission and the Commission then sent her a further submission.
37. First, the Commission confirmed that it is a condition of the National Lottery licence that Camelot provides the Commission with access to a copy of the ICS to enable the Commission to verify the integrity of lottery systems. Although the Commission has access to this system and, as a consequence, the reports generated from within the system, it does not hold the information for its own purposes. The Commission has access to specific reports which are generated from this system, to enable it to undertake its functions. It does not have free access to the information held within the system itself.
38. The Commission has then told the Commission that it holds three Contracts/Agreements relating to the relationship between Camelot, Elsym and the Gambling Commission. These are as follows
  - Software Supply Agreement between Camelot and Elsym
  - Consultancy Agreement between Camelot and Elsym

- Consulting Agreement between Camelot/Elsym and the Commission
39. Both Agreements between Camelot and Elsym set out specific clauses for both organisations to comply with any requests received from the Commission under its obligations under the FOIA. The Commission sent the Commissioner a copy of these clauses, which she has reviewed. In the Commission's view this requirement will apply only to information that either party holds about the Commission, eg copies of contractor Agreements. The Commission does not consider it applies to the information that the Commission has access to on ICS. The three way Agreement between Camelot, Elsym and the Commission does not include such clauses.
40. The Commission has confirmed that all software and equipment is held on Camelot's premises and owned by Camelot and it pays for all services provided by Elsym. The Commission pays the sum of £1 for the software licence of the second copy of ICS provided by Elsym. The money paid by Camelot for Elsym's services includes licences, software support, training for staff etc; it does not include provision for the processing of ad-hoc report requests. If the Commission needed a report which was not included in the standard suite of reports that are produced, they would need to approach Camelot who would have to liaise and contract with Elsym to obtain the necessary information before it was in a position to provide it to the Commission.
41. With regard to the complainant's remaining points at paragraph 35, the Commission has confirmed that it does not receive the information the complainant has requested in any of the reports that are produced for the Commission. The requested information is contained within the total information upon which specific reports to the Commission are made, but a specific report containing the requested information is not produced for the Commission and is not required to meet the reporting requirements of the third party.
42. The Commission has noted that the licence to operate the National Lottery could be modified to include the requested information in the reporting pack (in future), however it would need to identify a regulatory requirement to amend the licence to include it.

### *Conclusion*

43. The Commissioner has considered the Commission's submissions and the complainant's arguments. First, with regard to the Commissioner's 2015 decision, the Commission has acknowledged that, in the course of that investigation, it had erroneously indicated that it *does* hold the type of information that is requested in this case; the Commission has now



confirmed that, in fact, it did not and does not hold that information. Having discussed that matter with the Commission, and for the reasons discussed in this notice, the Commissioner accepts that is the case.

44. As has been noted, if Camelot or Elsym holds the information the complainant has requested on behalf of the Commission, the Commission could be said to hold this information itself for the purposes of the FOIA. Camelot holds the requested information in the ICS operated by Elsym. It provides other information held in the ICS – not the requested information - to the Commission for the reports required by the licence to run the National Lottery. The Commission has confirmed that it, itself does not have complete unrestricted right to use, exploit or access the reports in question – or to the raw data behind those reports held in the ICS - and it cannot produce those reports itself.
45. As above, the Commission has confirmed that the current reporting that the Commission receives does not include the information that the complainant has requested, and the Commission does not hold information in any other report that would enable it to fulfil the request.
46. The Commissioner accepts the Commission's position that through the contracting arrangements between the three bodies – the Commission, Camelot and Elsym – Camelot and Elsym are obliged to supply information they may hold *about the Commission*, in response to FOIA requests.
47. The Commission is routinely provided with a specific element of the information held in Camelot/Elsym's ICS, for the standard reporting that is required. However, the Commissioner accepts that the FOIA contracting arrangements between the three parties do not apply to *all* the information held on the ICS. She is satisfied that Camelot and Elsym are not obliged to provide the Commission with any information in the ICS, for the purpose of responding to an FOIA request such as in this case, that is over and above information that they must provide for routine, reporting purposes.
48. The Commissioner is therefore satisfied the Commission does not hold the requested information itself and that no other person holds the information on behalf of the Commission. As such, the Commissioner is satisfied that the Commission complied with section 1(1)(a) of the FOIA when it communicated to the complainant that it does not hold the information she has requested.



## Right of appeal

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49. 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

50. 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.
51. 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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**SK9 5AF**