

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested information associated with its granting of a betting licence to BetIndex Limited. The Gambling Commission (GC) directed the complainant to relevant published information and withheld an internal guidance document under section 31(1)(g) of FOIA, which concerns law enforcement.
2. The Commissioner's decision is as follows:
 - The GC has correctly applied section 31(1)(g) of FOIA to the information it is withholding, by virtue of section 31(2)(d). The public interest favours withholding the information.
3. The Commissioner does not require the GC to take any corrective steps.

Request and response

4. The complainant had previously requested information about the GC's granting of a betting licence to BetIndex Limited trading as Football Index. The Commissioner had considered the resulting complaint to him under reference IC-103690-T0B0. He had instructed the GC to disclose the requested information with personal data redacted.

5. On 21 December 2021 the complainant wrote to the GC and requested information in the following terms:

"With regard to the information released in this case, I would like to request copies of any internal guidance or definitions you hold regarding "outcomes" in the tables - 'good' / 'adequate' etc."
6. The GC responded on 20 January 2022. It directed the complainant to relevant published information and withheld an internal guidance document under section 31(1)(g) of FOIA by virtue of section 31(2)(d).
7. The GC provided internal review on 25 January 2022. It upheld its position.

Scope of the case

8. The complainant contacted the Commissioner on 25 January 2022 to complain about the way their request for information had been handled.
9. On 13 September 2022, the complainant indicated to the Commissioner that they **may** make further submissions to him by the end of October 2022 which added more context. In response, the Commissioner advised that he was aware of the complainant's previous complaint to him. At the date of this decision the Commissioner had not received a further submission from the complainant and considered that he had all the information he needed to make a decision.
10. The Commissioner's investigation has focussed on whether the GC is entitled to withhold some of the information the complainant has requested under section 31 of FOIA, and the balance of the public interest.

Reasons for decision

11. Section 31(1)(g) of FOIA says that information is exempt information if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
12. The GC's position is that the relevant purpose in this case is subsection 31(2)(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”

13. In its submission to the Commissioner the GC has confirmed that it was set up under the Gambling Act 2005 ('the Act') to regulate commercial gambling in Great Britain in partnership with licensing authorities.
14. Gambling operators are required to hold a licence from the GC in order to offer facilities for gambling to customers located in Great Britain. This involves applying to the GC for an operating licence. During this process, the GC makes an assessment of suitability against criteria set out in the Act and its published policy documents.
15. Part 5 of the Act details the GC's statutory functions in relation to the licensing requirements, and its Policy Statement sets out how the GC will carry out those functions.
16. In particular, the Policy Statement sets out how the GC considers and evaluates licence applications. The Policy Statement also defines the terms the GC uses in assessing applications, namely Inadequate, Just Adequate, Adequate and Good by reference to the extent to which the applicant has demonstrated risk to the licensing objectives, meeting the requirements of suitability, the requirements of the Act and the Licensing Conditions and Code of Practice (LCCP). Accordingly, the GC says, it already publishes the general meaning of those terms used in assessing licence applications.
17. The GC has explained that certain information it had released in response to the earlier request recorded particular outcomes ("good", "adequate" etc) against 45 criteria which it uses to assess an application [for a betting licence], together with a narrative explanation as to the evidence that the GC had considered.
18. The GC has explained that the information which has been requested in this case is contained within a document entitled 'Operational Guidance Note Licensing Application Assessments' dated November 2020 ('the Guidance Note'). This document has been produced internally to assist licensing staff in recording accurate and consistent ratings for the application assessment process.
19. This identifies that the purpose of the licence assessment is to:
 - ensure that the applicant/licensee is suitable to hold a licence
 - check that the applicant/licensee is proposing to conduct their activities in a manner which is consistent with, and minimises the potential risk to, the licensing objectives

- ensure that the applicant/licensee has demonstrated they will comply with the requirements of the Gambling Act 2005 ('the Act') and relevant regulations, and
 - ensure that the applicant/licensee has shown how they will comply with the LCCP, relevant to the licence being applied for.
20. As is explained in the Guidance Note, licence applications are assessed in accordance with the Policy Statement (which is a published document) and, in particular, in accordance with the framework set out in the Policy Statement.
21. The Guidance Note contains (from section 7, page 6 onwards) a detailed guide as to the particular evidence that must be provided by the applicant in order to obtain a particular rating in respect of each of the questions posed as part of the licence assessment. For example, on pages 6 and 7, in assessing question 1 (ownership structure), the Guidance Note sets out what particular evidence Commission staff should be looking to identify and the quality of the evidence that attract a rating of good, adequate, just adequate or inadequate. The same approach applies to all 21 questions which are considered in the Guidance Note.
22. It is the GC's view that its regulatory functions, would be prejudiced by disclosure of the withheld information as follows:
- i. Prejudice to the GC's ability to fulfil its statutory functions by revealing details about how it conducts its assessments; and
 - ii. Prejudice to the GC's ability to raise overall standards in the gambling industry by revealing which matters will be subject to a more detailed assessment, the resources that will be devoted to it and the methodology it will use.

i) Undermining statutory functions

23. The information requested forms part of the GC's licence assessment process. This document sets out the procedure that staff need to follow when assessing licence applications and the applicant's ability to comply with the requirements of the Gambling Act, the LCCP and any other guidance provided by the GC.
24. Releasing the GC's licence assessment process will have a direct impact on its statutory functions. First, it would provide information that would enable applicants to present information required as part of the application process in such a manner to secure a licence. Second, it would undermine the process to determine the genuine suitability of applicants. This would ultimately impact on consumers.

25. The GC considers that disclosing the requested information would provide potential applicants with information that could be used to undermine and circumvent the assessment process. This would reduce the possibility of the GC detecting any non-compliance because they would have been informed of the particular areas of the assessment that the GC directs its resources towards. Namely, the particular form and type of evidence required to obtain particular ratings and conversely, what evidence does not appear to be relevant to the GC's assessment. The GC's concern is that this would result in operators or individuals using the disclosed information to present information in a manner which would avoid further scrutiny. Information could be targeted at the particular factors which those assessing licence applications are considering for evidence of compliance with the published framework.
26. By releasing this document into the public domain, the GC says, it will be in a position where it will not be able to rely on the current process to assess applications. It would need to introduce further assessment processes which have not been disclosed to ensure that the assessment process remains robust and fit for purpose in order for the GC to perform its statutory functions.

(ii) Raising overall standards in the gambling industry

27. The GC also takes the view that disclosure is likely to reduce the overall standards in the gambling industry. This is because operators are able to second guess or predict what specific matters will be subject to a more detailed assessment, the resources that will be devoted to it and the methodology the GC will use. Operators may therefore tailor their applications in a strategic manner. This would deprive the GC of information which would otherwise have been provided and which would be relevant to its assessment of the licence application.
28. The more information about how the GC allocates its resources and the activities it is concerned with, added with information on how it goes about assessing applications, the better able an unscrupulous organisation will be to make an accurate assessment of the likelihood of particular information coming to the attention of that regulator.
29. The GC therefore concludes that the disclosing this information would prejudice its regulatory functions.

The Commissioner's conclusion

30. The Commissioner accepts that the GC is formally tasked with certain regulatory functions under the Gambling Act 2005. And that these functions include assessing that gambling operators that apply to the GC for a gambling licence are suitable for licencing.

31. When the GC assesses a licencing application, it rates the application against a series of criteria, which are detailed in the Guidance Note. The Commissioner agrees with the GC that if it were to disclose the Guidance Note its regulatory function would be likely to be prejudiced. This is because gambling operators would be able to tailor their application for a licence so that it meets the detail of the criteria in the Guidance Note. This would undermine the GC's ability to carry out an authoritative assessment of those operators and their suitability for a licence. Unsuitable operators may therefore be granted licences which would, in turn, diminish standards in the gambling industry.
32. Regarding the level of likelihood of the above prejudice occurring, the GC's position appears to be that the prejudice it describes 'would' occur if it disclosed the information in scope. The Commissioner does not consider that the GC has made a compelling case that the prejudice would definitely occur. But he considers it reasonable that the prejudice the GC envisions through disclosure would be likely to occur. 'Would be likely' imposes a less strong evidential burden than the higher threshold of 'would occur' but the chance of prejudice is still more than hypothetical or remote.
33. The Commissioner has considered the circumstances and is satisfied that the requested information is exempt from disclosure under section 31(1)(g) of FOIA by way of section 31(2)(d).

Public interest test

Public interest in disclosing the information

34. In their request for an internal review, the complainant argued that the public interest favours disclosure as it would aid the public's understanding of the due diligence the GC carried out on BetIndex Ltd.
35. For its part, the GC notes that it is a public body which is required to regulate the gambling industry in the public interest. There is therefore a public interest in members of the public having confidence that the GC is being open and honest with the information it holds so that it can be held to account. It is important that the public is assured that the GC is carrying out its functions in ensuring that any individuals/organisations who are involved in providing gambling facilities to the public have undergone the necessary assessments and will uphold the licencing objectives ensuring that consumers are protected.
36. Disclosing the requested information could demonstrate to stakeholders and relevant parties how the GC is assessing applications. Furthermore, this disclosure may encourage stakeholders to work with the GC and

contribute to its programme of work. This would increase confidence in the GC as a regulator and its ability to uphold the law.

37. Further, in the specific context of this case, the GC recognises that there is significant public interest in relation to the collapse of BetIndex. Disclosing the Guidance Note would provide some additional information as to how the GC assessed the licence application made by BetIndex, specifically the types of evidence which it was considering in giving the relevant ratings.

Public interest in withholding the information

38. The GC says in its submission that it has robust and effective processes and procedures in place which it utilises when assessing licence applications. These procedures and processes have been put in place to minimise the risk of an operator being granted a licence where they do not meet the required standards. This demonstrates to the public at large that they can have confidence in the GC's licence assessment processes.
39. The GC goes on to say that there is an expectation of confidence in much of its work, particularly regarding the techniques used to ascertain if a licence should be granted. It is the impact on this aspect of its work which is more likely to be affected by disclosure. The amount of specific information the GC can release about its specific regulatory techniques, directed specifically at staff who are assessing applications is limited. This is because disclosure could lead to potentially non-compliant operators altering their behaviour specifically to meet the GC's standards purely for assessment purposes. This in turn may impact on the GC's function of ascertaining a gambling operator's fitness to carry out gambling activities.
40. In order to promote transparency, however, the GC notes that there is information that is publicly available, both on its website but also via the Policy Statement. The Statement clearly sets out the required standards that operator licensees are expected to comply with, and the definition of the terms Good, Adequate, Just Adequate and Inadequate within the context of a license application. Therefore it is the GC's view that there is sufficient information publicly available about the assessment process and assessment framework to adequately address the public interest in transparency in respect of this matter. The GC says it also publishes other information about how it assesses license applications, including its 'Statement of principles for licensing and regulation - Gambling Commission' and information about applying for assessing operating license applications. Therefore, to the extent that there is a public interest in transparency around the assessment of license applications

this is already met, in the GC's view, by the material it proactively publishes.

41. The GC also argues that disclosing the information would also undermine its ability to uphold the licensing objectives, which would impact on the trust and confidence of the public in it as a regulator.
42. In addition, disclosing the requested information would prejudice the outcome of the GC's future assessments by exposing assessment techniques and practices, to the detriment of the public interest.
43. Regarding the particular public interest in the collapse of BetIndex, the GC says that it relies on the fact that, since responding to both the initial request and the review, an independent review of the regulation of BetIndex¹ has been published which provides a detailed narrative relating to BetIndex. In particular Chapter 5 – Licensing of BetIndex, from page 60, specifies the actions the GC took in assessing the application.

Balance of the public interest

44. In the GC's view, the public interest in the collapse of BetIndex has been met by the earlier disclosure of the document which prompted the request in this case – namely the document recording how the GC assessed the BetIndex application by reference to each of the relevant criteria, including the particular evidence relied upon in relation to each criteria.
45. The Commissioner agrees that the public interest in the collapse of BetIndex and in how the GC regulates generally has been satisfied to an adequate degree through the information the GC has disclosed in this case, and through the other information it had proactively published at the time of the request. There is greater public interest, in the Commissioner's view, in the GC being an effective regulator of a gambling industry that comprises gambling operators that are fit to practice.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1017268/Report_of_the_Independent_Review_of_the_Regulation_of_BetIndex_Limited_Final_version_130921_.pdf

Right of appeal

46. 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

47. 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.
48. 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

Cressida Woodall
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