

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 February 2023

**Public Authority:** Serious Fraud Office  
**Address:** 2-4 Cockspur Street  
London  
SW1Y 5BS

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the Serious Fraud Office ("the SFO") for information regarding Football Index.
2. The Commissioner's decision is that the SFO correctly relied on section 31(3) of FOIA to refuse to confirm or deny whether it held information falling within the scope of the request.
3. The Commissioner does not require any further steps.

#### **Request and response**

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4. On 30 May 2022, the complainant made the following request for information under FOIA:

"I am seeking information that your organisation holds about Bet Index Ltd, a company registered in Jersey, which traded as Football Index. The company was granted a gambling licence by the Gambling Commissioner and traded extensively in the UK market. Football Index resembled a stock market but was not authorised by and registered with the Financial Conduct Authority. The company's marketing offered customers the potential for capital appreciation and dividend income.

In March 2021, Football Index collapsed into administration with the loss of over £124 million of customer funds. The company had over one quarter of a million customers at the time. Some commentators have described the Football Index virtual market as a form of Ponzi scheme.

The questions are:

1. On what date was a concern first raised to the SFO about Football index?
  2. Have the SFO been contacted by any of the following organisations in relation to Football index: Gambling Commission/Financial Conduct Authority/Insolvency Service/ Company's administrators (Begbies Traynor)
  3. Have the SFO carried out a preliminary investigation into the circumstances of Football Index in order to establish whether there are reasonable grounds for a full investigation?
  4. Have the SFO specifically assessed whether Football Index was a Ponzi scheme?
  5. Bet Index was a company registered in the jurisdiction of Jersey. Does the location of the company's registration impact the SFO's ability to carry out a full investigation (should it desire) into the circumstances of Football Index?
  6. What is the current status of investigation into Football Index?"
5. On 29 June 2022, the SFO stated that it could neither confirm nor deny whether it holds the information, falling within scope of the request and that the duty in Section 1(1)(a) of FOIA does not apply by virtue of sections 30(3) via section 30(1)(b) for four questions and 31(3) via section 31(1)(a-c) for all the questions.
  6. Upon receiving this response, the complainant asked the SFO to conduct an internal review on 29 June 2022 and on 19 July 2022, the SFO provided its internal review response, maintained its original position, and provided an explanation of how the SFO collaborates with international partners.

## **Background**

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7. BetIndex Ltd (which traded as Football Index) was marketed as a gambling product. Whilst various different options were offered, in broad terms, customers were able to buy notional "shares" in a particular football player using real money.
8. Football players who performed well would see the value of their "shares" rise, whereas those who performed poorly would see a fall. Customers could also receive "dividend" payments based on the performance of the players whose "shares" they held.
9. In March 2021, BetIndex Ltd slashed the dividends it would pay out per share to less than a fifth of their previous value – this was partly due to the suspension of football matches due to the pandemic. This caused the "portfolios" of customers (who had purchased shares based on anticipation of the previous dividend payments) to plunge in value by between 50% and 90%. On 11 March 2021, BetIndex Ltd suspended trading on its platforms. Later the same day the Gambling Commission suspended BetIndex Ltd's gambling licence and the company went into administration.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 20 July 2022 to complain about the way their request for information had been handled.
11. The Commissioner has considered the SFO's handling of the complainant's request, in particular its application of section 31(3). The Commissioner is unaware as to whether or not the information described in the request is actually held by the SFO. He does not consider this necessary for him to reach a decision in this particular case.
12. Should section 31(3) not apply to all the requested information, the Commissioner will go on to consider the application of section 30(3).

## **Reasons for decision**

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13. The following analysis explains why the Commissioner is satisfied that the SFO was entitled to neither confirm nor deny holding the requested information.

## **Section 31-law enforcement**

14. Section 31(3) of FOIA excludes a public authority from complying with the duty at section 1(1)(a) if to do so would, or would likely to, prejudice any of the functions in section 31(1).
15. In its refusal notice, the SFO advised the complainant that it was relying on sections 31(1)(a)(the prevention or detection of crime), (b)(the apprehension or prosecution of offenders) and (c)(the administration of justice) to issue an NCND response to the request.
16. When considering a prejudice-based exemption such as section 31, the Commissioner will:
  - identify the applicable interests within the relevant exemption;
  - examine the nature of the prejudice, the likelihood of it occurring and that the prejudice claimed is real, actual and of substance; and
  - examine whether there is a causal link between confirming / denying and any prejudice claimed.
17. The Commissioner's guidance on section 31<sup>1</sup> explains how the prejudice in terms of section 31(3) will depend on how the request is phrased. If an individual or organisation is identified as a possible subject of an investigation, the greater the chance that confirming the information's existence would, or would likely, prejudice that investigation.
18. In providing evidence to demonstrate a clear link between the provision of confirmation or denial and any prejudice which may occur, the SFO explains that in confirming whether information is held or not, in response to the above request, would set a precedent that forces the SFO to confirm if:
  - "It has received a report of alleged crime committed by a specific person;
  - It has been in contact with partner agencies or other organisations regarding a specific case;
  - It has conducted a pre-investigation into a specific case;

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

- The specific terms a case was assessed against; or
  - The current status of an investigation.”
19. The SFO further explains that the likelihood of receiving equivalent requests that would be covered by such precedent is extremely high and as a result would prejudice the apprehension or prosecution of offenders and the administration of justice.
20. The Commissioner notes the complainant’s comments that they “do not believe that neither confirming nor denying whether it holds the information would prejudice its activities”. However, the SFO has explained that in the majority of cases, it conducts the early stages of its investigations covertly “to ensure investigations can progress without interference, to ensure evidence is preserved and to avoid causing harm to the reputation of individuals who might be considered potential suspects”. Therefore, confirming or denying whether the information is held could prejudice the success of any enforcement activity.
21. When considering whether the public interest test favours maintaining the exemption or confirming or denying the requested information is held, the Commissioner recognises that there is a clear interest in members of the public, who may have lost money and faced financial hardship, knowing whether any action is being taken by any part of Government or law enforcement agency to investigate the collapse of Football Index.
22. However, there is also a strong public interest in allowing the SFO to publish cases via its own internal publication process, rather than at a premature stage. In its response to the Commissioner, the SFO further expands on this stating it may harm the interests of the following people/organisations:
- “The SFO-publishing an investigation at a premature stage may allow the subject(s) to destroy evidence or undertake activity which misleads or harms the SFO’s investigation
  - Subject(s)-publishing an investigation will likely have a negative effect on a subject’s reputation and/or business. Should the results of the SFO’s investigation indicate that no crime has taken place. It will nonetheless be difficult to undo that damage.
  - The UK economy-any negative impact on the subject may have a knock-on effect on the UK economy, as many subjects of FOI investigations are large companies.”

23. In the circumstances of this case, the Commissioner finds that the public interest favours maintaining the exemption at section 31(3) of FOIA and that the SFO were correct to neither confirm nor deny that it held the requested information.
24. As the Commissioner considers that section 31(3) applies to all the requested information, he has not gone on to consider the other exemption cited.

## **Right of appeal**

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25. 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](mailto:grc@justice.gov.uk)

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

26. 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.
27. 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**

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**