

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

### **Decision notice**

**Date:** 30 July 2020

**Public Authority:** 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 the status of the licensing review into a particular casino (the Casino), and data on other licensing reviews that are ongoing or have concluded in 2018.
2. The Gambling Commission provided some information within the scope of the request. However, it refused to provide the remainder of the requested information relying on the exemptions at section 31(1)(g) (law enforcement) and section 40(2) (personal information) of the FOIA.
3. The Information Commissioner's decision is as follows:
  - The information requested in part f) is exempt from disclosure under section 31(1)(g) by virtue of section 31(2)(c) and the public interest favours maintaining the exemption.
  - The information requested in part e) is exempt from disclosure under section 40(2).
4. The Information Commissioner does not require any steps to be taken as a result of this decision notice.

#### **Request and response**

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5. On 20 November 2018, the complainant wrote to the Gambling Commission and requested information in the following terms (for ease of reference the Information Commissioner has numbered each part of the request):

*"I should like to request the following information: an update on the status of the licensing review into [the Casino], and data on other licensing reviews that are ongoing or have concluded this year.*

- a) Is the review into the license of [the Casino] complete?*
- b) If so when did it end and what is the outcome?*
- c) When did the review begin?*
- d) How much has the review cost the Gambling Commission in legal fees to this date?*
- e) Has the Gambling Commission carried out due diligence on [name redacted], who is the new license holder?*
- f) I would also like any correspondence (emails, letters, phone calls, minutes of meetings, briefs or otherwise) involving any of: [the Casino], Gambling Commission staff, Candey law firm, on the subject of the ongoing license review of [the Casino], in 2018 to date.*
- g) Please confirm the number of licensing reviews of land-based casinos carried out by year, in 2015, 2016, 2017, 2018 to date.*
- h) How many reviews of licenses at UK land based casinos are currently ongoing?*

*An update was given to UK Parliament in [date redacted], however I am seeking more information around the processes and procedures, given the change in management at the company - [web link redacted]*

6. The Gambling Commission responded on 7 December 2018 and refused to provide the requested information, citing section 30 of the FOIA (exemption for investigations and proceedings) as its basis for doing so.
7. The complainant requested an internal review of this decision on 12 December 2018. In particular, he raised concerns about how a body is meant to be held to account if it refuses to release the number of enforcement investigations or any kind of numbers relating to investigations, especially historical ones.
8. Furthermore, the complainant stated his belief that as the Gambling Commission initially released information regarding the investigation, the public have a right to know how the investigation is proceeding, including the outcome and the costs incurred as a result of the investigation.

9. The complainant argued that the Gambling Commission has, in the past, made information publicly available about investigations into other online operators, so why not divulge information about this investigation? The complainant believes that the Casino lost any right to privacy by associating itself with the individual that is part of the investigation.
10. The complainant followed up his internal review request with the Gambling Commission on 21 and 29 January 2019.
11. Following an internal review (see section below on "Scope of the case" for more detail), the Gambling Commission wrote to the complainant on 4 February 2019. It revised its position and provided information falling within the scope of parts a), b), c) and g) of the request for information. However, it refused to provide the remainder of the requested information, stating that the information remained exempt from disclosure under section 30(2)(a)(iii) of the FOIA.

### **Scope of the case**

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12. The complainant initially contacted the Information Commissioner on 29 January 2019 to complain about the response he had received to his request for information, and the time taken for the Gambling Commission to carry out the internal review that he had requested.
13. The Information Commissioner therefore wrote to the Gambling Commission on 12 February 2019 and requested that it issue an internal review decision as soon as is practicable and within 10 working days.
14. The Gambling Commission responded to the Information Commissioner on 12 February 2019 and stated that it had provided the complainant with the outcome of its internal review on 4 February 2019.
15. On 15 February 2019, the complainant wrote to the Information Commissioner to complain about the internal review response that he had received from the Gambling Commission.
16. During the course of the Information Commissioner's investigation, the Gambling Commission further revised its position and added other grounds for its refusal to provide the information requested in parts e) and f) of the request for information.
17. It provided the complainant with the information relating to parts d) and h) of the request for information. With regards to part f) of the request, the Gambling Commission further revised its position and stated that it

believed section 31(2)(c) of the FOIA applied to the information requested in this part of the request.

18. With regards to part e) of the request, the Gambling Commission initially revised its position, stating that it considered this information is exempt under section 31(2)(b) and section 31(2)(d) because providing information about the due diligence process would reveal the methods and techniques it used to investigate licences. However, the Information Commissioner considered this part of the request to be a closed-ended question and did not agree that simply disclosing whether or not the Gambling Commission had carried out due diligence on a licence holder would reveal the methods and techniques it uses to investigate licences. She therefore invited the Gambling Commission to reconsider this part of the request. In further reviewing this part of the request and its original response, the Gambling Commission further revised its position and stated its belief that section 40(2) of the FOIA applied to part e) of the request.
19. The Information Commissioner therefore considers the scope of the investigation to be to determine whether the Gambling Commission has correctly relied on section 31 to withhold the information requested in part f) and section 40 to withhold the information requested in part e) of the request for information.

## **Reasons for decision**

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### **Section 31 - law enforcement**

20. Section 31(1)(g) of the FOIA states that information is exempt 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).
21. The purpose listed in section 31(2) which the Gambling Commission has cited is section 31(2)(c) - the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
22. In order for a prejudice based FOIA exemption such as section 31 to be engaged, there must be at least a likelihood that disclosure would cause prejudice to the interest that the exemption protects. In the Information Commissioner's view, three criteria must be met in order to engage a prejudice-based exemption:
  - i. Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was

disclosed has to relate to the applicable interests protected by the exemption,

- ii. Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - iii. Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. whether disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
23. Consideration of the exemption at section 31 of the FOIA is a two-stage process. Even if the above test is met and the exemption is engaged, the information should still be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
24. The Information Commissioner will focus on whether disclosing the information requested in part f) of the request would, or would be likely to, prejudice this function of the Gambling Commission in this case.
25. In its submission to the Information Commissioner, the Gambling Commission has provided some information on its statutory functions. It explained that section 22 of the Gambling Act 2005<sup>1</sup> sets out that the Gambling Commission is responsible for regulating and promoting licencing objectives as set out in section 1 of the Gambling Act 2005. The statutory duties laid out in section 1 are:
- 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.
26. The Gambling Commission stated that operators are required to hold a licence from it in order to offer facilities for gambling to customers

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2005/19/contents>

located in Great Britain. It stated that the Gambling Commission goes through a licence application process as part of this and assesses suitability against criteria set out in the Gambling Act 2005. It stated that Part 5 of the Gambling Act 2005 details the Gambling Commission's statutory functions in relation to the licensing requirements.

27. The Gambling Commission explained that once an operator is licenced, they are subject to ongoing compliance requirements and regulatory action should they fail to meet their licence requirements. The Gambling Commission stated that it has the power to review the performance of licence holders against the terms of their licence under section 116 of the Gambling Act 2005, which grants the Gambling Commission the power to review licences where:
  - it suspects that a licence condition has been breached,
  - it believes the licence holder, or any person connected with the gambling activities, has been convicted of a relevant offence in Great Britain or abroad,
  - it suspects the licence holder may be unsuitable to perform the licenced activities, or
  - it thinks a review would be appropriate.
28. With regard to the context in which the information is held the Gambling Commission has explained that, as part of the licence review process, it will enter into dialogue with the operator, legal representatives and other third parties. It stated that the information collected during this process is for ascertaining if any breaches of the Gambling Commission's Licence Conditions and Codes of Practice, or of the Gambling Act 2005, have occurred. In cases where a breach has occurred the Gambling Commission stated that it considers what regulatory or criminal enforcement is appropriate.
29. The Gambling Commission went onto explain that it has powers to prosecute offences that are contained in the Gambling Act 2005, and also has wide ranging powers in relation to investigating and resolving regulatory matters, including imposing sanctions on licensed operators. It stated that a breach of a licence condition is a criminal offence, though where possible it prefers to instigate regulatory action in accordance with its published Statement of Principles for Licensing and Regulation.
30. Having considered section 22 of the Gambling Act 2005, the Information Commissioner is satisfied that this sets out that the Gambling Commission is formally tasked with determining whether regulatory

action should be taken and, if so, with taking the necessary regulatory action.

31. The exemption provided by section 31(1)(g) is a prejudiced based exemption, and can be engaged on the basis of one of two levels of probability; that prejudice to the Gambling Commission's functions either 'would' occur, or that prejudice would only be 'likely' to occur.
32. In relation to the lower threshold that prejudice 'would be likely' to occur, the Information Commissioner considers that there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.
33. With regard to the higher threshold that prejudice 'would' occur, in the Information Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not; in other words, there is a more than 50% chance of the disclosure causing prejudice, even though it is not absolutely certain that it would do so.
34. In this case, the Gambling Commission has confirmed that it is relying on the higher threshold of prejudice, i.e. that disclosure 'would' result in the prejudice claimed. This means that the Gambling Commission considers there to be a more than 50% chance that disclosure of the withheld information will cause prejudice to its law enforcement functions. If a public authority claims that prejudice would occur, it needs to establish that either:
  - the chain of events is so convincing that prejudice is clearly more likely than not to arise. This could be the case even if prejudice would occur on only one occasion or affect one person or situation; or
  - given the potential for prejudice to arise in certain circumstances, and the frequency with which such circumstances arise (i.e. the number of people, cases or situations in which the prejudice would occur), the likelihood of prejudice is more probable than not.
35. In terms of how the prejudice would be caused, the Gambling Commission has explained that in all the circumstances of the case and the nature of the request, there is a more than 50% chance that prejudice would be caused by disclosure because there has been a great deal of public interest in this particular case, particularly from the media. Given this, the Gambling Commission thinks it is reasonable to believe that the information it discloses in relation to this case will be made publicly available, either by the complainant himself or by the



complainant passing it to the media. The Gambling Commission has argued that this is where the prejudice would occur, as public knowledge of its investigative techniques would highly likely cause prejudice to the Gambling Commission as it may discourage operators from being open and honest with it, and may also frustrate its investigative methods.

36. The Gambling Commission stated that it relies on submissions from operators and third parties to enable it to review licence holders thoroughly and fairly. It stated that it encourages operators to make frank submissions to it regarding compliance matters to allow it to take appropriate steps in a timely manner. The Gambling Commission stated that releasing information about its regulatory work with a specific operator, and the mechanisms that it has in place to support that review process, into the public domain would deter stakeholders from sharing important information with it and therefore prejudicing its regulatory functions and impede its future work.
37. The Information Commissioner notes that any disclosure of information under the FOIA is a disclosure of that information to the public, rather than specifically to the requester. There is therefore no need to consider the probability that the complainant in this case will make the information publicly available, as disclosing the withheld information under the FOIA would make it publicly available by definition.
38. The Information Commissioner has had sight of a random selection of the withheld information, and the Gambling Commission has explained to her why it considers releasing this information would prejudice its functions. Based on the representations provided by the Gambling Commission and the nature of the withheld information, the Information Commissioner is satisfied that there is a real and significant risk that prejudice to the Gambling Commission's functions would occur if that information was to be made publicly available. She has reached this conclusion on the basis that the withheld information provides details of the Gambling Commission's investigative techniques, and so could enable parties under investigation to undermine or counteract those techniques.
39. The Information Commissioner also accepts that the disclosure of the withheld information would have a negative impact on the Gambling Commission's regulatory work, particularly in relation to the information it asks for from operators and third parties to not only ascertain if a licence should be granted but to monitor this and check compliance. There is a legitimate argument that gambling operators and third parties will be reluctant to supply information requested of them if they believe it may be disclosed.



40. The Information Commissioner does therefore accept there is a causal relationship between the requested information and the prejudice being claimed.
41. Given the number of licence applications and investigations that the Gambling Commission deals with each year, it is plausible that at least some of the parties involved in those applications or investigations would seek to use the withheld information to manipulate the process if that information were to be made publicly available. The Information Commissioner therefore accepts the Gambling Commission's view that there would be a more than 50% chance of prejudice occurring to its functions if the withheld information was made public. The Information Commissioner also notes that even if this was not the case, the lower threshold that prejudice 'would be likely' to occur would still likely be met, as there would still be a real and significant risk of prejudice occurring, even if that risk were lower than 50%.
42. In light of the above, the Information Commissioner is satisfied that section 31(1)(g) is engaged in respect of the information requested in part f) of the request for information.

### **Public interest test**

43. Section 31 is a qualified exemption and therefore the Information Commissioner must consider the public interest test and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### *Public interest in disclosing the information*

44. The complainant has argued in his submission to the Information Commissioner that this information is vital in holding a public body to account, and that it is the kind of information usually laid out by regulators such as the Financial Conduct Authority.
45. The complainant has also indicated his belief that it is in the public interest for the Gambling Commission to provide an update on the investigation into the Casino, given the Casino's association with the individual that is part of the investigation.
46. The complainant does not accept that this information needs to be shielded from the public, given how serious this matter is, and that public funds are being used to carry out an investigation that no one knows anything about.
47. The complainant stated that the Gambling Commission has set a precedent in previously naming operators it is investigating and given

updates on, and is of the view that not providing the information here shows a lack of transparency and a lack of consistency.

48. The Gambling Commission accepts that there is a legitimate public interest in promoting accountability and transparency. It recognises that it is important that consumers understand the regulatory activity that the Gambling Commission is taking with specific operators to enable consumers to make informed decisions with regards to their choice of service provider.

*Public interest in maintaining the exemptions*

49. The Gambling Commission has stated that operators are required to provide detailed information, and there are statutory mechanisms in place to compel operators to provide information, but this is not always the most effective way for the Gambling Commission to obtain information from operators. It has stated that it relies on the voluntary supply of information to perform its licensing, compliance and policy functions.
50. With regards to operator specific engagement, the Gambling Commission has stated that it relies on open and frank exchanges in order to reach decisions. Establishing trust with operators is key to this so that they will willingly provide commercially sensitive information in a competitive market, on the understanding that this information will be subject to appropriate safeguards.
51. The Gambling Commission has stated that disclosing operational information (such as the information requested in this case) without sufficient rationale would undermine this trust and make operators less likely to cooperate with requests in future. The Gambling Commission has stated that this would take it down the route of using its formal statutory powers, with legal advisers being required on both sides and more guarded disclosures being made in a less timely fashion, contrary to the public interest.
52. The Gambling Commission has also argued that there is a danger that the release of information relating to a live investigation would compromise that investigation itself. It stated that this would lead to the Gambling Commission being unable to make the full use of its statutory powers to ensure gambling is fair and safe.
53. The Gambling Commission has stated that revealing this information is likely to also reveal the techniques that the Gambling Commission uses in general when conducting investigations. It argued that this could severely hamper the effectiveness of the Gambling Commission's investigatory processes in future cases.

*Balance of the public interest*

54. Having considered the balance of the public interest, the Gambling Commission acknowledges that there is a public interest in promoting the accountability and transparency of public authorities and the importance of having sufficient information in the public domain to support consumers with their choice of operator. However, due to the ongoing review of the Casino's licence, it believes that the release of the withheld information could compromise both this review and other investigations the Gambling Commission may conduct in the future.
55. The Gambling Commission has stated that where it does take action against an operator following an investigation, it publishes that action on its website once the investigation has concluded. The Gambling Commission has clarified that the information it publishes is carefully worded to prevent any current or future prejudice to its functions or its investigatory process.
56. The Information Commissioner has considered the public interest arguments for and against disclosure. She notes that there is a public interest in the general openness, transparency and accountability of public authorities. She also accepts that providing the public with access to information assists them in understanding how certain functions are being carried out, evaluating the effectiveness of that function and assessing whether the resolutions reached are indeed fair and reasonable. The Information Commissioner considers that this is met, to some extent, by the publication of any action the Gambling Commission takes against an operator which would increase the public's understanding of the Gambling Commission's regulatory functions.
57. The Information Commissioner does accept that the principle of confidentiality is important. Undermining this by disclosing information which is voluntarily supplied by operators and third parties to assist the Gambling Commission perform its licensing, compliance and policy functions would not be in the public interest, as it is important that there is trust in a regulator so it can have open and frank communications with operators in order that it can make the right regulatory decisions.
58. There is a significant public interest in ensuring that the Gambling Commission, with its statutory functions under the Gambling Act 2005 to ensure that gambling is conducted in a fair and open manner, can operate efficiently and effectively, something which the Information Commissioner has determined would be affected by disclosure. Against this, she does not consider the arguments for disclosure are compelling.

59. The Information Commissioner has therefore concluded that, in all the circumstances, the weight of the public interest lies with maintaining the exemption.

#### **Section 40 – personal information**

60. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
61. In this case the relevant condition is contained in section 40(3A)(a)<sup>2</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
62. The first step for the Information Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
63. Secondly, and only if the Information Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.
64. In this case, the Gambling Commission has relied on section 40(2) of the FOIA to withhold the information requested in part e) of the request for information.

#### *Is the information personal data?*

65. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual"*.

66. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
67. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or

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<sup>2</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

68. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
69. In this case, the withheld information in question is the personal data of the individual named in the request (the data subject). It identifies them, as the information is provided in response to a question about the data subject. Furthermore, it is biographically significant and has the data subject as its focus.
70. In the circumstances of this case, having considered the withheld information, the Information Commissioner is satisfied that the information relates to the named individual. She is satisfied that this information both relates to and identifies the named individual concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
71. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
72. The most relevant DP principle in this case is principle (a).

***Would disclosure contravene principle (a)?***

73. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

74. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
75. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

***Lawful processing: Article 6(1)(f) of the GDPR***

76. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.

77. The Information Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"*<sup>3</sup>.

78. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test: -

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information.
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question.
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

79. The Information Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

#### *Legitimate interests*

80. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Information Commissioner

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<sup>3</sup> Article 6(1) goes on to state that: -

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that: -

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

81. The Gambling Commission recognises that there is a legitimate public interest in promoting the accountability and transparency of the Gambling Commission. It stated that disclosing the requested information would give customers confidence that the Gambling Commission takes all of the necessary steps to ensure that any individual who provides gambling facilities is suitable, and to uphold the licencing objectives.
82. The Information Commissioner accepts that there is a legitimate interest in understanding the processes the Gambling Commission follows when conducting licencing reviews, especially in cases that have attracted public interest. In addition, disclosure would promote openness and transparency enabling members of the public to satisfy themselves that the appropriate steps are in place when gambling licences are issued.

*Is disclosure necessary?*

83. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
84. The Gambling Commission has stated that it does not consider the disclosure of whether due diligence has been undertaken on the individual named in the request is necessary in this case.
85. The Gambling Commission stated that it publishes the process that it follows when processing an application on its website and it is therefore of the view that the public should be assured that any individual who makes an application will be subject to this process.
86. The Gambling Commission stated that it has also set out in considerable detail at Section 3 in both its "*Licensing Compliance and Enforcement Policy Statement*" and its "*Statement of Principles*", how it goes about



assessing applications it receives. It therefore considers that the complainant will already know in general terms, or could already find out, what checks the Gambling Commission would undertake in relation to an application. Given this, it is the Gambling Commission's view that revealing the personal information requested would be unnecessary, disproportionate, and unfair to the named individual.

87. The Information Commissioner accepts that the information already published by the Gambling Commission lays out the process it goes through when processing an application. Whilst disclosure of the withheld information could give a more specific insight into whether due diligence has been carried out on the data subject in question, it would not significantly add to the information already made public by the Gambling Commission in terms of helping the public understand its processes, particularly as the Information Commissioner has not been provided with any evidence to suggest that the Gambling Commission did not follow its normal processes in this case.
88. The Information Commissioner therefore considers that the disclosure of the withheld information is not necessary to meet the legitimate interest identified.
89. As the Information Commissioner does not consider the disclosure to be necessary to meet the identified legitimate interest, she has not gone on to consider the balance between that interest and the data subject's interests or fundamental rights and freedoms, nor has she gone on to consider whether the disclosure would be fair and transparent to the data subject. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).

### **The Information Commissioner's view**

90. The Information Commissioner has therefore decided that the Gambling Commission was entitled to withhold the information requested in part e) of the request under section 40(2), by way of section 40(3A)(a).

### **Other matters**

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91. During the course of her investigation, the Information Commissioner requested that the Gambling Commission provide her with a copy of the withheld information to help determine whether the exemption was engaged and the balance of the public interest test.
92. The Gambling Commission raised concerns about the sensitivity and volume of information involved. Having taken the Gambling

Commission's concerns into consideration, the Information Commissioner was prepared to limit the information she required to a sample of documents. To this end, the Information Commissioner requested a list of withheld documents from which she could randomly select a number of documents to review.

93. Having received this list, the Information Commissioner requested a random selection of documents. The Gambling Commission informed the Information Commissioner that some of the selected documents were not within the scope of the request. The Information Commissioner therefore requested an updated list so that she could randomly select a sample of documents from the withheld information within the scope of the request.
94. Upon receiving the sample of documents from the updated list of withheld information, it appeared that the Gambling Commission had not identified what information fell within the scope of the complainant's request, as over half of the sample of withheld information it provided to the Information Commissioner was created after the request was received.
95. This raised concerns that, having considered the request and conducted an internal review, the Gambling Commission had still not clearly identified what information fell within the scope of the request and what did not.
96. The Information Commissioner also notes that the Gambling Commission appeared to apply the exemption under section 31 of the FOIA to the requested information in a blanket fashion, rather than considering each piece of information separately.
97. The Information Commissioner reminds the Gambling Commission that, on receipt of a request under the FOIA, it is the public authority's responsibility to first clearly identify what information falls within its scope. It is not possible to consider the application of an exemption to information that has been requested until that information has clearly been identified as falling within the scope of the request in the first place.
98. The public authority will then need to consider each piece of information that falls within scope separately when deciding whether or not to disclose it. Exemptions should not be applied in a blanket fashion.

## Right of appeal

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99. 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)

100. 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.

101. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**