

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2022

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

Decision (including any steps ordered)

1. The complainant requested from the Gambling Commission ("GC") information relating to football index/BetIndex and correspondence between the forensic accountant and other staff members of the GC. The GC refused the request under section 14(1) (vexatious requests) of FOIA.
2. The Commissioner's decision is that the request was not vexatious and therefore, the GC is not entitled to rely on section 14(1) of FOIA to refuse the request.
3. The Commissioner requires the GC to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the complainant, which does not rely on section 14(1) of FOIA.
4. The GC must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 26 November 2021, the complainant wrote to the GC and requested information in the following terms:

“I would like to formally request any email correspondence relating to football index/betindex between the forensic accountant assigned to the case and other staff member of the gambling commission, in order of newest to oldest.”
6. On 6 December 2021 the GC responded and confirmed it does hold information that falls within the scope of the request. It considered the information requested exempt from disclosure under section 31(1)(g) (law enforcement) by virtue of subsection 31(2)(c) of FOIA.
7. On the same day the complainant asked for an internal review.
8. On 6 January 2022 the GC provided its internal review response. It partially upheld its original decision that section 31(1)(g) of FOIA was engaged, and also considered that some information (certain emails) could be disclosed to the complainant subject to redactions. The GC released some information (several emails) to the complainant, and withheld the remaining emails under section 31(1)(g) and section 40(2)(personal information) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 7 January 2022 to complain about the way his request for information had been handled.
10. During the course of the Commissioner’s investigation and following further consideration, the GC considered the request to be vexatious and relied on section 14(1)(vexation requests) of FOIA to refuse to comply with the request.
11. The GC referred the Commissioner to previous requests relating to BetIndex Limited t/a Football Index (“BetIndex”), and said that GC’s regulatory activities in respect of BetIndex have been subject to numerous FOI requests and also an independent inquiry conducted by Queen’s Counsel. The GC said it “recognises that numerous individuals were adversely affected by the collapse of BetIndex. Regrettably, staff at the GC have become the subject of campaigns, in particular on social media, which have resulted in distress and in some instances threats of harm.

Due to the nature of the request, and the risk of identification of GC staff either directly or indirectly, the GC has commenced a careful examination of the material in question." The GC went on to explain that since then, "it became apparent that this task was going to consume a very significant amount of time and create an undue burden on the GC."

12. The following analysis focuses on whether the GC correctly determined that the request was vexatious and entitled to refuse to comply with the request under section 14(1) of FOIA.

Reasons for decision

Section 14(1) – vexatious requests

13. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
14. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
16. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
17. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("*Dransfield*")². Although the case was subsequently appealed to the

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

18. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
19. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
20. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

The complainant's view

21. The complainant disputes the GC's view that his request is vexatious. He informed the Commissioner that he had initially asked the GC for some information which was refused, and when he highlighted to the GC that it had not applied the public interest test correctly, it subsequently provided some of the information which he said “was supposed to be exempted.” The complainant disagrees with the GC's position to cite section 14(1) of FOIA, and he is of the view that the GC are “misrepresenting information” to both the Commissioner and to him.

The GC's view

22. The GC's position is based on the amount of time and resources required to review the material which falls within the scope of the request. It said it would impose a grossly oppressive burden on the GC and would cause a disproportionate level of disruption to its resources.

23. The GC explained the reasons it considers the request to be a burden on its staff. The GC said that it is a small public authority with less than 400 staff in total. It stated it has received 43 requests relating to BetIndex and associated organisations since March 2021. Some of these resulted in internal review requests and some escalated to the ICO. The GC confirmed that six of the received requests had been from this complainant, and three of those had undergone internal review. This, the GC said, has generated a significant workload for its FOI Team and resulted in a diversion of resources.
24. The GC identified approximately 300 emails which fall within potential scope of the complainant's request. It said that around 90 of these emails have been reviewed, and considers that it is likely these emails will require extensive redactions to remove personal data, and any other information which is likely to be withheld under other applicable exemptions. The GC assessed it is likely that less than 25% of the content of these emails will be deemed disclosable, after redactions have been applied.
25. With regard to staff time taken, the GC calculated that it has taken approximately 25 days to establish that some of the first 90 emails considered, could be released with the relevant redactions applied and to start the redaction and quality assurance process. The GC listed the staff directly involved in processing the request and this included: the FOI Officer, Information Compliance Manager, Chief Technology Officer, internal/external lawyers, and Compliance staff. On this basis, the GC said that to continue this review for the totality of the material falling within the scope of the request, and to consider which exemptions may apply and the public interest (where relevant), along with applying any redactions if necessary, would take a further 50 working days of staff time.
26. The GC considers that the resources required would be a significant burden on its resources, and divert staff time away from carrying out its regulatory functions. It explained that it would involve reviewing the remaining emails, considering the applicable exemptions, and redacting the emails of the relevant information.
27. The GC recognises that there is some value in the information being released. It said it is aware that the complainant was personally affected by the collapse of BetIndex, and understands that he believes the information is necessary to hold the GC to account, and ensure transparency in its decision-making in relation to BetIndex. However, the GC emphasised to the Commissioner "that the substantive and relevant content of the emails which are the subject of the request, fed into the independent review by [name redacted] resulting in the Report published in September 2021.

The recommendations of that Report have also since been implemented by the GC." It stated that it has also released information in response to 17 separate FOI requests relating to this matter to provide greater transparency in its decision-making. The GC said it believes "the wider public interest is unlikely to be served beyond that provided by the extensive information already in the public domain and therefore there is only very limited value in the request itself."

28. With regard to the motive of the complainant, the GC said he has not explicitly set out reasons for his request or whether he was personally affected by the collapse of BetIndex. However, the GC acknowledges the complainant's concerns which included; a forensic accountant being involved; the Gambling Act 2005 review due to be completed, and concerns that if gambling operators were aware of the GC's operations, they would look to exploit them. In its response to these concerns, the GC said it was unclear as to how this relates to the information being requested.
29. The GC said that its staff have experienced threats of harm via social media and sustained campaigns to identify those involved in the BetIndex case, particularly those in the role of forensic accountant (to which this request relates). This, it said, is due to the high-profile nature of the case and the number of customers involved. The GC also stated many people's views are that the GC and/or its staff were negligent in the collapse of BetIndex, or willingly complicit in its collapse. It explained that "this has created a hostile environment for its staff, despite the independent Report published setting out detailed findings into the GC's actions in the regulation of BetIndex."
30. The GC added that the burden is further heightened by the need to protect its staff from harm and distress that could be caused by disclosure. It said; "this can only be offset by extremely rigorous quality assurance of material proposed for disclosure to ensure that there is no risk of identification either directly or indirectly, for example jigsaw identification when the information is read with other material which has been disclosed or other publicly available information. This process which is both costly and time-consuming."
31. The GC reported that if it were to complete this request, it would have spent in excess of 97 days of staff time to prepare a disclosure which would be over 75% redacted. It said that this does not present any new or unknown information into the public domain, over and above what has already been released or has been assessed by the public enquiry.

32. The GC considers the request to be vexatious on the basis that there is limited value in the request; it is likely to impose a grossly disproportionate burden on the GC; and that it has concerns about the potential for harassment and distress if the information is disclosed.

The Commissioner's decision

33. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
34. In this case, the Commissioner's understanding is that the GC had commenced "a careful examination of the material in question" and decided that this task was going to consume a significant amount of time and create an undue burden on the GC. The GC concluded that based on the amount of time and resources required to review the material which falls within scope of the request, it would impose a grossly oppressive burden on the GC and would cause a disproportionate level of disruption to its resources. The GC stated it had identified approximately 300 emails which fall within potential scope of the complainant's request. It also said that in order to continue this review for the totality of the information falling within scope of the request, it would take a further 50 working days of staff time.
35. The Commissioner considers that the GC could have conducted a sampling exercise to determine the time it would take to review the information and make the necessary redactions. This would have allowed the GC to estimate the extent of the requested information that it actually holds and it would help to support its position of how burdensome compliance with the request would be.
36. The Commissioner accepts the GC argument that to comply with the request would take a considerable amount of time to complete. However, the GC has failed to adequately demonstrate that this represents a grossly oppressive burden on its limited resources.
37. The Commissioner acknowledges that six of the requests which the GC received relating to BetIndex have been from this complainant, and that three of the requests have undergone internal review. The GC has not stated the timeframe in which the six requests were received i.e. over a number of weeks, months or years.

38. The Commissioner accepts that the receipt of all requests relating to this topic has generated a significant workload for the GC and resulted in a diversion of resources. However, the Commissioner does not deem the complainant's six requests to be a high volume. In view of this, he does not consider this to be a convincing argument which demonstrates that this request would impose a grossly oppressive burden on the GC, and is likely to cause a disproportionate level of disruption on its resources.
39. The Commissioner's decision is that the request was not vexatious, and he orders the GC to issue a fresh response which does not rely on section 14(1) of FOIA.

Right of appeal

40. 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.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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

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