

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 February 2011

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

Summary

The complainant made a request to the Gambling Commission for information relating to betting integrity statistics. The Gambling Commission refused the request under the exemption in section 30(1)(a)(i) of the Act.

The Commissioner's decision in this case is that the exemption under section 30(1)(a)(i) is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner does not require any steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

Background

2. The Gambling Commission is an independent non-departmental public body sponsored by the Department for Culture, Media and Sport. The Gambling Commission was set up in 2005 under the Gambling Act 2005 to regulate most commercial gambling in Great Britain.
3. Section 22 of the Gambling Act sets out the Gambling Commission's three licensing objectives:
 - to keep crime out of gambling;

- to ensure that gambling is conducted fairly and openly; and
- to protect children and young people from being harmed or exploited by gambling.

The Request

4. On 16 February 2010 the complainant made the following information request to the Gambling Commission:

"Under the provisions of the Freedom of Information Act I would be grateful if the Gambling Commission could provide the following information, with regard to its betting supplement from November 2009:

A1. State how many of the 71 suspicious betting cases reported to it were received in:

- *2007;*
- *2008; and*
- *2009.*

A2. For the figures provided for A1 (above), please split those into the following categories as having been reported by:

- *Betting Operators;*
- *Sports;*
- *Media;*
- *Public; and*
- *Any other source.*

A3. For the figures provided in A1 and A2 (and identifying which year and by category e.g. betting operators) how many of the 71 reported cases have been determined to be:

- *Unsubstantiated;*
- *Passed to sports for investigations; and*
- *Under active investigations.*

A4. For the particular sport to be denitrified [identified] that relates to each of the figures provided in A1,A2 and A3 e.g. the total number of football related cases in 2007, who those were report [reported] by, and whether they have been substantiated etc in the following form:

<i>Sport</i>	<i>Year</i>	<i>Reported by</i>	<i>Action</i>
<i>Football</i>	<i>2007</i>	<i>Betting operator</i>	<i>Passed to sport</i>
<i>Football</i>	<i>2007</i>	<i>media</i>	<i>unsubstantiated</i>
<i>Rugby</i>	<i>2007</i>	<i>public</i>	<i>under investigation</i>

A5. What is the Commission's methodology/approach for determining the reported cases of 71 – does it count any email received alleging betting corruption in these figures?"

5. The Gambling Commission responded to the complainant on 24 February 2010. The Gambling Commission provided information relating to question 5, but advised that it was refusing the remainder of the request under section 30(1)(a)(i) of the Act. The Gambling Commission also advised that it already published certain information relating to suspicious betting activity on its website.
6. On 10 March 2010, the complainant requested an internal review of the Gambling Commission's decision to refuse his request. This was completed on 1 April 2010 and upheld the original decision.

The Investigation

Scope of the case

7. On 30 April 2010, the complainant contacted the Commissioner complaining about the Gambling Commission's decision not to release the information he requested.

Chronology

8. On 14 June 2010 the Commissioner wrote to the Gambling Commission to advise it of the complaint and to request a copy of all withheld information in the case. The Gambling Commission responded to the Commissioner on 29 June 2010, providing the withheld information and further arguments in support of its application of section 30.
9. On 4 November 2010 the Commissioner wrote to the Gambling Commission regarding its application of the Act and asked for further representations regarding its application of the exemption. The Gambling Commission responded to the Commissioner on 1 December 2010.

Analysis

Exemptions

Section 30 – Investigations and proceedings conducted by public authorities

10. Section 30(1) provides that:

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,....”.

11. The Gambling Commission has argued that the withheld information is exempt on the basis of section 30(1)(a)(i) of the Act. The task for the Commissioner is therefore to reach a conclusion on whether the withheld information falls within the scope of section 30(1)(a)(i).
12. In considering whether the exemption is engaged, it is first necessary to determine whether the Gambling Commission has powers to carry out investigations of the kind specified in section 30(1)(a)(i).
13. Section 28 of the Gambling Act sets out its powers to investigate and institute criminal proceedings in respect of offences committed under the Act. This includes the offence of cheating to which the requested information relates. Therefore, the Commissioner is satisfied that the Gambling Commission does have the powers as specified in section 30(a)(i).
14. The next question is whether the withheld information has at any time been held for the purposes of an investigation as specified in section 30(1)(a)(i). The Gambling Commission has indicated to the Commissioner that the withheld information was held for the purposes of a specific criminal investigation. It has advised that each of the 71 reports relating to the complainant’s request concerns a report relating to suspicious betting activity and more specifically, allegations that may amount to a criminal offence of cheating as set out in section 42 of the Gambling Act. The Gambling Commission advised the Commissioner that the cheating may relate to either a person involved in the event, for example a sports player, someone in a position to

influence the event, for example an official such as a referee or Sports Governing Body (SGB), or someone placing a bet.

15. The Gambling Commission explained that any of the 71 investigations which had been concluded could at any time receive further information which could lead to it recommencing its investigation.
16. In light of the above the Commissioner is satisfied that the withheld information was held by the Gambling Commission for the purposes of an investigation which may have lead to a decision to institute criminal proceedings which the Gambling Commission had power to conduct. The Commissioner therefore finds that the exemption at section 30(1)(a)(i) is engaged.

The public interest test

17. Having established that the section 30(1)(a)(i) exemption is engaged, the Commissioner must go on to consider the public interest test as set out in section 2(2)(b) of the Act.

Public interest arguments in favour of disclosing the requested information

18. The Gambling Commission accepted the legitimate public interest in promoting accountability and transparency. It also acknowledged that disclosure of the withheld information would demonstrate to stakeholders and relevant parties that the Gambling Commission is active in investigating cases of suspicious betting activity. This may encourage stakeholders such as SGBs and other law enforcement agencies to work more closely with the Gambling Commission.
19. The Gambling Commission recognised that those engaged in lawful and legitimate betting have a right to understand where cheating in the betting industry lies so that they can make better informed decisions. The Gambling Commission accepted that disclosure of the withheld information might assist this, but argued that its own published research information demonstrates low levels of public concern in respect of this point. Therefore, the Gambling Commission felt there was limited public demand for disclosure of this information.
20. Finally the Gambling Commission suggested that disclosure of the withheld information may also have the effect of discouraging cheats from continuing their unlawful activity, as it would demonstrate the Gambling Commission's proactive work in the investigation of alleged criminal activity.

Public interest arguments in favour of maintaining the exemption

21. The Gambling Commission argued that disclosure of the withheld information would make it possible to link publicly-known events with some of the cases in question. This could alert individuals involved in betting frauds to the fact that the Gambling Commission was investigating a particular case and provide them with an opportunity to alter their behaviours and evade detection. This would result in making it more difficult for the Gambling Commission to achieve its aims.
22. The Gambling Commission considered that further publication may deter third parties from reporting suspicious betting activity. SGBs may be less inclined to share reports of alleged wrongdoing with the Gambling Commission if it is known that their information will be published in a form where the individual sports and events can be identified with the potential to impact negatively on a sport's image, viability and financial wellbeing.
23. The Gambling Commission also suggested that further disclosure may undermine confidential reporting to its confidential intelligence reporting line. People may be concerned about the implications for them of individual, identifiable reports being published. The Gambling Commission used an example of recriminations from organised crime and considers that anything that impacts on its receipt of third party reports would be detrimental to its powers and responsibilities as set out in section 28 and 1 of the Gambling Act. The Commissioner accepts that disclosure of the information could give individuals an indication about the patterns of investigations but considers it unlikely that these statistics could be directly related back to the person or body who made the confidential report and as such he has afforded this argument less weight.
24. It is the Gambling Commission's firm belief, however, that disclosure of more disaggregated information will be accompanied by increased media speculation on cheating in betting, and it highlighted to the Commissioner the already significant media speculation concerning cheating in betting on a range of matters including snooker, cricket and the various competitions within television programmes. The Gambling Commission believes that any further disclosure would only lead to an increase in such media speculation, rumour and conjecture that would be detrimental to the Gambling Commission's powers and responsibilities, with individuals and SGBs less inclined to report suspicious betting if they believed their reports could end up being scrutinised in the media. Such media speculation could be to the detriment of the Gambling Commission in terms of impeding the time and space available to it to determine the course and outcome of its investigations.

Balance of the public interest arguments

25. In deciding where the balance of the public interest lies, the Commissioner has considered the arguments put forward by the Gambling Commission and accepts that disclosure of the withheld information in this case would make it possible to link publically known events with some of the cases in question, potentially tipping off offenders and providing the opportunity to change behaviours, hide or destroy evidence and make the detection of offences more difficult. This would have the effect of negatively impacting on the Gambling Commission's ability to achieve its aims.
26. Furthermore, there is a substantial public interest in ensuring the Gambling Commission has the time and space to carry out its work to determine the most effective way in which to run investigations. The Commissioner accepts that it is in the public interest to ensure that individuals committing crime are caught and subject to an independent prosecution process - and that this process should not be compromised by any media-led speculation that could arise from any further disclosure. Furthermore, as well as impacting on the investigation process, the Commissioner accepts that such media speculation could be seen as being harmful to a sport's reputation, which may make individuals and bodies less inclined to report suspicious betting activity and making the detection of such offences more difficult.
27. Having determined that the arguments in favour of maintaining the exemption have considerable weight the Commissioner has balanced them against the arguments for disclosure.
28. A general public interest factor in favour of disclosure is enhancement of the transparency and accountability of the public authority. The withheld information in this matter breaks down reports of alleged criminal activity which when investigated may lead to criminal prosecutions. The Commissioner accepts that disclosure of this information may contribute to greater public understanding of the work of the Gambling Commission and, by identifying where cheating exists, help the public make better informed decisions as to where they should place their bets. However, the Commissioner considers that the potential harm such disclosure could cause to the investigative process – by tipping off suspects involved in criminal activity or through increased media speculation – outweighs any benefit of disclosure.

Conclusion

29. The conclusion of the Commissioner in this case is that the public interest in the maintenance of the exemption outweighs that in the

disclosure of the information requested. In coming to this conclusion, the Commissioner has noted public interest arguments in favour of disclosure including the general public interest in improving the transparency and public understanding of the work of the Gambling Commission. However, the Commissioner has found, given the content of the information, that these arguments are outweighed by the public interest in favour of maintaining this exemption. In this case the public interest in protecting the ability of the Gambling Commission to investigate and institute criminal proceedings in respect of offences committed under the Act is greater than the public interest in disclosure.

The Decision

30. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

31. The Commissioner requires no steps to be taken.

Right of Appeal

32. 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
Arnhem House
31, Waterloo Way
LEICESTER
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 15th day of February 2011

Signed

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

Legal Annex

Freedom of Information Act 2000

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - i) whether a person should be charged with an offence, or
 - ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”