

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2019

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

Decision (including any steps ordered)

1. The complainant has requested from the Gambling Commission (the Commission) information relating to the number of EuroMillions lottery tickets issued missing Millionaire Maker codes (the codes).
2. The Commissioner's decision is that, on the balance of probabilities, the Commission does not hold information within the scope of the request.
3. The Commissioner does not require the Commission to take any steps.

Request and response

4. On 7 June 2018 the complainant wrote to the Commission and requested information in the following terms:

"How many Faulty Lottery Tickets were issued by the National Lottery on 30 Dec 16 with the Millionaire Maker Codes missing on the Lottery Tickets".

5. On 6 July 2018 the Commission responded to the request and denied holding the information.
6. On 19 July 2018 the Commission conducted a review and wrote to the complainant maintaining its position.

Scope of the case

7. On 13 August 2018 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has therefore considered whether, on the balance of probabilities, the Commission holds information within the scope of the request.

Reasons for decision

Section 1 of the FOIA – information held/not held

9. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
10. In this case, the complainant believes that because of the Commission's role as regulator of the National Lottery and also because it conducted a review of a complaint (prior to the date of the request) about a lottery ticket issued missing a code on 30 December 2016 that the information is held by the Commission.
11. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
12. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is

only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

13. The complainant believes that the Commission holds the requested information because it is likely to have collected and/or obtained it as part of its role to regulate the National Lottery; which includes monitoring the reliability and efficiency of the central computer system and network terminals. He also said that the National Lottery "manager" told him there were technical issues at some retail outlets and lottery tickets were issued missing codes. He said that the Commission became aware of this issue and was obliged to find out how many tickets were printed missing codes as part of its role.
14. The complainant also believes the information is held because the Commission conducted a review of a complaint to the National Lottery operator Camelot UK Lotteries Limited (Camelot) about a lottery ticket issued on 30 December 2016 missing a code and contacted it for information about the matter; which included a discussion about the complaint at a meeting with Camelot. He said that he would have expected the Commission to have obtained the requested information as part of this process and that he is concerned that it has confirmed that it did not. He believes the Commission is deliberately withholding the information and does not want to make it available to him. The complainant says that his objective is to find out whether only one lottery ticket was printed missing a code for the 31 December 2016 lottery draw or if there were others, and if so; how many. He said that the Commission can bring this matter to a conclusion by requesting the information from Camelot.

The Commission's position

15. The Commission has explained that it regulates the National Lottery under the National Lottery Act 1993 (NLA). Its obligations include: overseeing the procedures used by Camelot to ensure the integrity of the National Lottery games is maintained, commissioning and publishing research confirming that there is no evidence of non-randomness in the results of the games, granting licences for each game/class of games and ensuring compliance (with the licences).
16. It has however confirmed that there is no business or statutory purpose (no provision within the NLA) for it to specifically and routinely collect information about lottery tickets issued missing codes. It also explained that both it and Camelot have no way of knowing when tickets are printed missing codes and that Camelot is only made aware of the issue if and when a customer reports it. The Commission said that because it

had received a small number of complaints about this issue, as the regulator it asked Camelot to look into a *general issue* of ticket printing errors and report its findings back to the Commission. It reported back a small number of incidents between April 2018 and November 2018. When conducting searches for the requested information, information about these incidents was responsive to the search terms used and is referred to in paragraph 19.

17. The Commission said it did not obtain information about the number of tickets that were reported as missing codes by the public as part of its investigation into the complaint about a ticket issued on 30 December 2016, and was not obligated to under the NLA. It said that information and feedback during the meeting was communicated verbally. It also said that it is satisfied that the review carried out was in line with its procedures and that sending a member of staff to Camelot's office to look through its computer system was not proportionate in relation to a service complaint. It also said that it had no reason to disbelieve the information Camelot provided and consequently upheld the handling of the complaint.
18. The Commission confirmed that it carried out electronic searches for the requested information in its:
 - SharePoint document library,
 - email exchange infrastructure, and
 - historic network file servers.
19. During these searches the Commission searched the terms Millionaire code/codes, Millionaire Maker code/codes, printing error and millionaire printing error and although this returned some results these were then checked and did not relate to any tickets missing codes issued on 30 December 2016. The Commission said that if the requested information was held it would be categorised as 'NL Compliance Material' within its information asset list. Its procedures require that such information (if it had been requested) would have been retained for 2 years.

The Commissioner's View

20. The Commissioner's view is that, on the balance of probabilities, the requested information is not held by the Commission.
21. The Commissioner accepts that although the Commission's role under the NLA is to oversee the procedures used to maintain the integrity of the lottery games; that this does not extend to an obligation to routinely collect information about lottery ticket printing errors. She also notes the Commission's comments about it and Camelot only becoming aware of printing issues once these are reported by customers. She also notes

that although the Commission asked Camelot to look into a general issue of ticket printing errors, this appears to have taken place after the date of the request and the information held in relation to its findings is outside the scope of the request.

22. The Commissioner notes the extent of the searches carried out and the likelihood of the search terms used identifying any information if it were held. She also notes the fact that the Commission carried out a review of the complaint, its comments about proportionality of resources when investigating a service complaint and that it confirmed to her it did not specifically obtain information about the number of tickets issued on 30 December 2016 as part of its review.
23. She further notes that the complainant has stated that he feels the Commission did not carry out a full or detailed enough investigation into the complaint or look into the National Lottery's central computer database, however, these matters do not fall within the Commissioner's remit. Finally, the Commissioner also notes that the complainant has not raised these concerns with the Commission and maintains the information is held without any supporting evidence.
24. The Commissioner therefore concludes that, for the reasons given above, on the balance of probabilities, the Commission does not hold information within the scope of the request.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

**Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF**