

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

### **Decision notice**

**Date:** 8 August 2022

**Public Authority:** The Gambling Commission  
**Address:** 4<sup>th</sup> Floor Victoria Square House  
Birmingham  
B2 4BP

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

---

1. The applicant has requested the address(es) at which two EuroMillions lottery tickets were purchased. The Gambling Commission has withheld the information under section 40(2), section 41(1) and section 43(2) of FOIA, which concern personal data, information provided in confidence and prejudice to commercial interests respectively.
2. The Commissioner's decision is as follows:
  - The Gambling Commission is entitled to withhold the requested information under section 43(2) of FOIA and the public interest favours maintaining this exemption. It is also entitled to withhold the information under section 41(1).
  - The Gambling Commission breached section 17(1) of FOIA as it did not refuse the request under section 41(1) within the required timescale.
3. The Commissioner does not require the Gambling Commission to take any corrective steps.

#### **Request and response**

---

4. On 27 April 2021 the applicant wrote to the Gambling Commission (GC) and requested information in the following terms:

“ Request for information.

Please provide the following details of the following transactions/tickets namely:  
the address or addresses of the relevant agent/retailer as listed for example  
at [https://www.whatdotheyknow.com/request/435141/response/1063683/attach/3/Active%20Agents%2020171102.CSV.txt?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/435141/response/1063683/attach/3/Active%20Agents%2020171102.CSV.txt?cookie_passthrough=1)

at which each of the following two tickets that

(a) bore the following UK Euromillion numbers HJSG75337 and JJSC65813 respectively and  
(b) were both entered for the draw on 3rd March 2017 and  
(c) were both listed as winning numbers at <https://www.euromillions.com/results/03-03-2017> as Millionaire Maker Codes,  
were purchased.

On 9th March and 25th March 2021, the solicitor to the Gambling Commission stated by letter to the General Regulatory Chamber that the information I had requested was held by the GC.

I now request that information.”

5. On 24 May 2021 the GC responded. It advised it holds information relating to the address of the retailer in question but that this information was exempt as disclosure would prejudice the GC's commercial interests and those of Camelot.
6. Following an internal review, the Gambling Commission wrote to the applicant on 23 June 2021. It upheld its original response.

### **Scope of the case**

---

7. On behalf of the applicant, the complainant contacted the Commissioner on 16 September 2021 to complain about the way that the request for information had been handled.
8. In its submission to the Commissioner on 20 July 2022, the GC advised that, in addition to section 43(2), it had also now applied section 40(2) and section 41(1) to the requested information. As he does with all public authorities, in his initial correspondence to the GC (on 23 June 2022 in this case) the Commissioner advised the GC that it should

communicate any new position to the complainant, and he will assume it has done so.

9. The Commissioner's investigation has first focussed on whether the requested information is exempt from disclosure under section 43(2) of FOIA, and the balance of the public interest. He is also prepared to consider the GC's application of section 40(2) and/or section 41(1) to the information. Finally, the Commissioner will consider the GC's refusal of the request.

## **Reasons for decision**

---

### **Section 43 – commercial interests**

10. Section 43(2) of FOIA says that information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
11. In order for section 43(2) to be engaged the Commissioner considers that three criteria must be met. First, the actual harm that the public authority alleges would, or would be likely, to occur if the withheld information were disclosed has to relate to the applicable interests within the relevant exemption.
12. Second, 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 that is alleged must be real, actual or of substance.
13. Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – eg disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather, there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
14. Section 43(2) is subject to the public interest test.
15. In its submission to the Commissioner, the GC has confirmed that in its view the commercial interests of the Licensee, currently Camelot UK Lotteries Limited (Camelot) and the National Lottery would be prejudiced in two ways:

- i. Prejudice to future ticket sales by undermining the principle of anonymity upon which players participate.
  - ii. Prejudice to Camelot's ability to efficiently and accurately determine which claims are valid and which are fraudulent.
16. **Undermining anonymity:** The GC says that the conditions of the Licence to run the National Lottery requires Camelot to protect the anonymity of winners as follows :
  - not disclose the identity of any Player who has won a prize in any National Lottery Game,
  - not disclose the identity of any person who is likely to be entitled to any share in part of any such prize, or
  - provide or share any information further to which the identity of any such Player or person can be ascertained.
17. The GC's view is that, if the requested information were disclosed to the public, the anonymity of the winner could be compromised, and their identity divulged. This could be, for example, because the retailer or their staff may have knowledge of the winner's identity, and they could be approached by a member of the public once the outlet had been identified to them.
18. The GC is duty bound by section 4 of the National Lottery etc. Act 1993 to exercise its functions under that Act in a manner which is most likely to secure that the interests of every participant in a lottery that forms part of the National Lottery are protected. In exercising those function the GC is also required to do its best to secure that the net proceeds of the National Lottery are as great as possible .
19. Releasing this information would therefore, the GC says, set a precedent for similar requests of this nature. This would impact on the protection of winners and the appetite of the public to participate in the games, with the notion that they may eventually be identified. Further, damage to Camelot's commercial interests would result from a winner's anonymity being compromised, given that some National Lottery players may feel less inclined to buy tickets if they are of the view that winner confidentiality cannot be assured.
20. The GC considers there to be a substantive risk that disclosing the outlet of the winning ticket could lead to the disclosure of the identity of the winner. The right of winners to remain anonymous is a fundamental part of running the National Lottery and is known and accepted by players of National Lottery games. The relatively low numbers of winners who chose to waive their anonymity demonstrates the importance of this protection to National Lottery players.

21. The GC says that there is also a risk that, in the event that releasing the details of an outlet leads to a member of the public undertaking their own investigation at the outlet, and/or area local to the outlet, and successfully identifying the winner, any financial, emotional or physical harm caused to the winner from being identified would be extremely detrimental to the reputation of the National Lottery. This could lead to a loss of customer confidence and potentially lead to legal action if the National Lottery were felt to be culpable in any way for the outcome, all of which have a direct commercial impact on the operator.
22. Aside from the breach to the licence and statutory requirements for winner identity to be protected, the GC therefore considers that should the outlet details be released, it could lead to a direct commercial impact to the National Lottery and good causes if player trust in winner anonymity were to be eroded by this action. This would cause players to feel less willing to participate in games, and thereby impact sales and good causes.
23. **Prejudice to validation process:** The GC says that Camelot undertakes a number of checks when a potential winner initially registers a claim to a prize. A key indicator in this process is the ability of the claimant to identify the area and outlet where they purchased the winning ticket/scratchcard. Where a claimant is unable to validate this information, this requires further investigation into the claim.
24. Disclosure to the public of the outlet where a winning ticket was purchased could provide sufficient information for an individual, who is not the genuine claimant, to lodge a spurious claim, inhibiting the ability to investigate and differentiate such claims efficiently. Disclosing this information would also set a precedent for disclosure of this type of information which relate to future claims.
25. The GC says that releasing outlet data for specific tickets, therefore, has a direct implication for the investigation into prize claims. It not only provides key information that would enable fraudulent claims, but it also potentially makes the process of determining the genuine claimant more onerous, as well as hampering the requirement to validate pay prizes without undue delay.
26. This type of activity is evidenced by the number of spurious claims that are registered when the region of sale of an unclaimed high tier prize is released to help alert the unknown winner to check their ticket. In such cases, releasing the region alone generates a significant number of prize claims for a single ticket. The ability to query the outlet of sale from the claimant is a key enabler in determining which of these claims can be discounted.

27. The GC has confirmed that it considers that disclosing the requested information 'would' prejudice the commercial interests of Camelot and the National Lottery.
28. Prior to making a decision in respect of the request, the GC says it sought representations from Camelot on 12 March 2021 and, based on the strength of the representations it provided, it was the GC's view that the exemption was engaged. The GC has provided the Commissioner with a copy of its correspondence with Camelot.
29. In correspondence to the Commissioner dated 21 September 2021, the applicant has set out at length why they consider section 43(2) cannot be engaged. To summarise, they consider this is for the following reasons:
  - Camelot is not in competition with anyone, although the applicant notes that the commercial interest in question is the profit derived from the sale of tickets.
  - That people would not be dissuaded from buying lottery tickets if the information were disclosed, because the chance of winning is so remote.
  - Ticket sales may be increased by the publicity surrounding known winners and that anonymity may reduce sales.
  - A retailer of a winning ticket would be unlikely to disclose who won the ticket, not least because they would not know that a winning ticket was bought at their outlet.
  - The GC's position that disclosure could make the process of validating claims more onerous is an exaggeration of an inconvenience.
  - The ability of someone being able to identify the winner of a lottery ticket if the retailer details were disclosed is an unlikely hypothesis.
30. The Commissioner has taken account of the complainant's arguments but he is satisfied that disclosing the withheld information would be likely to prejudice other parties' commercial interests, for the reasons that the GC has given. Namely:
  - The harm that the GC alleges would occur if the withheld information were disclosed relates to Camelot's (and the National Lottery's) commercial interests and so is applicable to the interests within section 43.

- If the address(s) from which specific lottery tickets were bought were disclosed, it would compromise the anonymity of the individual(s) who bought those lottery tickets. It would also prejudice the validation process; that is, it would make it more difficult to determine genuine and fraudulent claims for a lottery ticket win. The first factor would inhibit individuals from buying lottery tickets, which would impact sales and the funds available to pass to good causes. The second factor would potentially lead to the National Lottery making payments against fraudulent claims.
  - The GC has told the Commissioner that it considers that the above commercial interests of Camelot and the National Lottery **would** be prejudiced if the requested information was to be disclosed. The Commissioner does not consider that the GC has made a compelling case that the prejudice it envisions would (definitely) occur. He does, however, accept that the likelihood of the above prejudice occurring meets the lower threshold of 'would be likely to' prejudice Camelot's and the National Lottery's commercial interests.
31. Since the three criteria at paragraphs 11-13 have been met, the Commissioner has decided that the requested information engages the exemption under section 43(2) of FOIA. He has gone on to consider the public interest test.

## **Public interest test**

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

32. The applicant did not present any public interest arguments for disclosure in their request for an internal review. In their correspondence to the Commissioner of 21 September 2021, the applicant has referred to existence of the [FOIA] legislation "in favour of public access to information held by a public authority and its presumption in favour of access."
33. The GC notes that it is a public body which, through grant-in-aid, is required to regulate the National Lottery in the public interest. It acknowledges that there is therefore a public interest in members of the public having confidence the GC is being open and honest with the data it holds so that it can be held to account. For example, disclosing the information would enable the public to identify any concerns with retailers who have sold winning tickets, and draw this to Camelot and the GC's attention.

### **Public interest in maintaining the exemption**

34. The GC says that specific details of where a particular lottery ticket was purchased, and the potential impact that releasing these details would have on customer confidence, would be detrimental to Camelot and the National Lottery and as a consequence, returns to good causes.
35. As stated above, the terms of the National Lottery licence explicitly state that the anonymity of players should be protected. Disclosing this information could potentially disclose the identity of players which would have a detrimental impact on individual players and the participants in the National Lottery as a whole. Player confidence would be negatively affected and trust in the National Lottery itself would be eroded as the requirements of the licence would not be fulfilled.
36. Players could also be deterred from purchasing tickets if they felt they could potentially be identified from the release of information relating to where a ticket was purchased. This in turn could impact the return to good causes.
37. Disclosure of the requested information would also undermine Camelot's ability to comply with the requirements of its licence. This would therefore impact on the public's trust and confidence in it as a licensee which would have a reputational risk to Camelot and the National Lottery itself.
38. Camelot has robust and effective processes and procedures in place which are utilised when validating the potential winner of a National Lottery prize. These procedures and processes have been put in place to minimise the risk of fraudulent claims, protect valid prize winners and to demonstrate to the public at large that they can have confidence in the integrity of the lottery.
39. If this information were disclosed, the GC says, it would undermine these processes and potentially assist fraudsters in pursuing false claims.
40. Finally, the GC argues that there is also a reputational risk to the National Lottery. This can translate into a risk to returns to good causes if any harm were to come to an individual as a result of someone being identified from the retailer information being released. This would have a direct commercial impact on the operator of the National Lottery as players would be less inclined to play for fear of their own health and safety.



## **Balance of the public interest**

41. The applicant may well have their own personal interest in the information they are seeking but no case has been made for there being any wider public interest in it. The Commissioner can see no wider public interest in the addresses of a specific outlet(s) that sold specific lottery tickets a number of years ago.
42. On the evidence presented to him, the Commissioner is satisfied that there is greater public interest in maintaining the section 43(2) exemption for the reasons the GC has given. That is, the public interest in the maximum number of people buying lottery tickets in order to generate funds for good causes and, also related to the funds available for good causes, the public interest in the National Lottery minimising the money it might pay out to fraudulent claims.
43. The Commissioner has found section 43(2) of FOIA to be engaged and the public interest to favour maintaining this exemption. However, in the interests of completeness the Commissioner will also consider the GC's reliance on section 41(1).

## **Section 41 – information provided in confidence**

44. Section 41(1) of FOIA provides that information is exempt if, under subsection (a) the public authority obtained it from any other person and, under subsection (b), disclosure would constitute a breach of confidence actionable by that person or any other person. This exemption is absolute and therefore not subject to a public interest test, as such.
45. In its submission to the Commissioner, the GC has explained that under the National Lottery etc. Act 1993, it is required to issue a licence to authorise a person to run the National Lottery. The Third Licence is currently held by Camelot and will expire in 2023.
46. In order to award a fourth licence, the GC is currently running a competition for the 4th National Lottery Licence (4NL). The GC opened the competition to award the next licence on 28 August 2020. All interested parties that were successful in reaching the Invitation to Apply (ITA) stage of the competition were provided with supporting documents to prepare their application. As Camelot is the incumbent who has run the National Lottery since 1993, they provided various material to the GC in order to assist the competition.
47. As part of the application process the information requested was made available by Camelot to the GC via a formal process. The GC then uploaded this, as well as other information, for applicants via a virtual data room (VDR). This was purely for the purpose of supporting the

competition and for applicants to understand how many terminals of each type there were, and the geographic distribution of these, in order for them to be able to respond to the ITA.

48. The GC has no ongoing regulatory use for this data and the VDR will be closed down at the end of the competition. The VDR is an external hosted service provided to 4NLC.
49. The GC goes on to say that, beyond the VDR admin team, access is controlled and provided only to applicants to the 4th National Lottery licence under the provisions of the Application Process Agreement (APA) and for the following 'Agreed Purpose' only:

"Agreed Purpose" means enabling the Applicant to:

- (a) form a view on whether or not to submit an Application;
- (b) evaluate whether or not and on what terms the Applicant might proceed with an Application Proposal;
- (c) respond to the ITA by formulating its Application (if applicable);
- (d) finalise the terms of the New Licence with the Commission (if applicable); and
- (e) disclosing information to Representatives and Associated Persons for the purposes of (a)-(d) above in accordance with this Agreement";

50. It is the GC's view that the requested information was provided to it by Camelot, in confidence, with the sole intention that it would be used as described above and that, therefore, the section 41 is engaged.
51. The GC says it does not ordinarily hold information relating to the address of a particular retailer where a winning ticket had been sold; this information is not routinely provided to it by Camelot. The address data was provided by Camelot on this occasion for a very specific purpose; namely, to facilitate the competitive bidding process for the 4NL.
52. Access to this information was only provided to a limited number of third parties e.g. potential bidders, who had access to the VDR and who were required to sign and agree the APA which contains specific confidentiality undertakings. By signing the agreements, the third parties would have clear expectations that the information that they had access to would only be available to them as part of a stringent bidding process and any

wider disclosure of this information would have a detrimental impact on the integrity of the competition process.

53. The GC has confirmed that the information is not available elsewhere and Camelot has provided this information to it on the understanding that this information will be kept confidential and that it will only be used for the specified purpose and will not be released into the public domain.
54. The information was imparted to it in circumstances of confidence and has the necessary quality of confidence. This is affirmed by the requirement for the limited number of applicants to the 4NL competition having to sign an APA.

**a) Did the GC obtain the information from another person?**

55. The Commissioner understands that at the time of the request the GC held the requested information and that it had obtained it from another person, namely Camelot.

**b) Would disclosure constitute a breach of confidence actionable by that person or another person?**

56. In considering whether disclosing the information constitutes an actionable breach of confidence the Commissioner considers the following:
- whether the information has the necessary quality of confidence;
  - whether the information was imparted in circumstances importing an obligation of confidence; and
  - whether disclosure would be an unauthorised use of the information to the detriment of the confider.
59. **Necessary quality of confidence:** The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. He is satisfied that the information in this case has that quality. Camelot provided it to the GC as part of the 4NL application process, so it is more than trivial, and the information is not otherwise accessible.
57. **Circumstances imparting an obligation of confidence:** This limb is concerned with the circumstances in which the confider of information passed the information on. The confider may have attached specific conditions to any subsequent use or disclosure of the information (for example in the form a contractual term or the wording of a letter). Alternatively, the confider may not have set any explicit conditions but

the restrictions on use are obvious or implicit from the circumstances (for example information a client confides to their counsellor).

58. In view of the circumstances in which Camelot provided the information to the GC, ie the 4NL application process that the GC has described - the Commissioner considers that Camelot would have had the reasonable expectation that the information it was providing would not be disclosed to the world at large in response to a request under FOIA. In the Commissioner's view it would have been reasonable for Camelot to assume that the GC would treat the information confidentially. As such, the Commissioner is satisfied at Camelot provided the GC with the information in circumstances importing an obligation of confidence.
59. **Detriment to the confider:** The First-tier Tribunal (Information Rights) in *Bluck v ICO and Epsom and St Helier University Hospital Trust* refers to the fact that "...if disclosure would be contrary to an individual's reasonable expectation of maintaining confidentiality in respect of his or her private information...", this exemption can apply. The Commissioner has accepted that disclosing the information in question in this case would be contrary to Camelot's reasonable expectations. Disclosure would therefore cause detriment to Camelot.

**Is there a public interest defence for disclosure?**

60. As noted, section 41 is an absolute exemption and not subject to the public interest test. However, the common law duty of confidence contains an inherent public interest test. This test assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence (and is the reverse of that normally applied under FOIA). British courts have historically recognised the importance of maintaining a duty of confidence so it follows that strong public interest grounds would be required to outweigh such a duty.
61. The GC says it does accept there is a public interest in the openness and accountability in the activity of public bodies. However, in these particular circumstances, disclosing the retailer information would not add to the understanding of the decisions made by the GC or add to public debate. The GC considers that there is, however, a stronger public interest in protecting the integrity of the process to award the 4th National Lottery Licence and ensuring that those who are contributing information towards that process can do so with the confidence that the information will not be subsequently disclosed.
62. The GC's view that the public interest in disclosure does not outweigh the public interest in maintaining the duty of confidence.

63. The Commissioner also recognises that there is a public interest in public authorities being open and transparent. He notes that there is plenty of information about Camelot and the National Lottery in the public domain.
64. The Commissioner appreciates that the information is of interest to the applicant in this case but considers it has minimal wider, public interest. He is mindful of the wider public interest in preserving the principle of confidentiality and the need to protect the relationship of trust between confider and confidant. In this case, there is strong public interest in the integrity of the 4NL competition process not being undermined through disclosing information provided to the GC in confidence, as part of that process.
65. The Commissioner has considered all the circumstances of this case and the nature of the information being withheld under section 41(1). He has concluded that there is stronger public interest in maintaining the obligation of confidence than in disclosing the information. Therefore, the Commissioner finds that the condition under section 41(1)(b) is also met and that the GC is also entitled to withhold the requested information under section 41(1) of FOIA.

### **Section 17 – refusal of request**

66. Under section 17(1) of FOIA, a public authority which, in relation to any request for information, is to any extent relying on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which (a) states that fact (b) specifies the exemption in question, and (c) states (if that would not otherwise be apparent) why the exemption applies.
67. The time for complying with section 1(1) is 20 working days following the date of receipt of the request. The applicant submitted their request to the GC on 27 April 2021. The GC's late reliance on section 41(1) means that it did not comply with the requirements of section 17(1) of FOIA.

## Right of appeal

---

68. 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)

69. 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.
70. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**