

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 01 June 2011**

**Public Authority:**        **Big Lottery Fund**  
**Address:**                 **1 Plough Place**  
                                     **London**  
                                     **EC4A 1DE**

#### **Summary**

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The complainant initially requested copies of all documents relating to the risk analysis process and the full risk assessment for all the applications made by the complainant in 2008, 2009 and 2010. At the time of the request and internal review the complainant refined the request to focus on the reasons why the applications had been rejected. The Big Lottery Fund ('the BLF') provided some information in the scope of the initial request and refused the remaining information, citing the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime). The Commissioner finds that the public authority correctly cited the exemption and is therefore not required to disclose the remaining information.

#### **The Commissioner's Role**

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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**

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2. The complainant has made multiple applications to the BLF which have been rejected. The complainant made the substantive request in an attempt to understand the reasons behind the decisions.

## The Request

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3. On 17 May 2010 the complainant made a request to the BLF for the following information:

*"Copies of all documents relating to the risk analysis process and the full risk assessment made for all the applications made by the Yemeni Community Association Sheffield in 2008, 2009 and 2010."*

4. On 14 June 2010 the BLF responded. It disclosed some of the information requested and withheld the remainder of the information on the basis of the exemption contained in section 31(1)(a) (Law enforcement).

5. On 9 July 2010 the complainant wrote requesting an internal review of the decision and stating:

*"We are not asking for an outline for the procedure. We just want to know what the problem with our organisation is so that we can address it."*

6. On 5 August 2010 the BLF wrote to the complainant with the results of the review. The review was refined to consider the complainant's statement in paragraph 3 and focussed on the information which contained the reasons why the named association did not pass risk assessment. The review upheld the application of section 31(1)(a).

## The Investigation

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### Scope of the case

7. On 29 October 2010 the Commissioner received a complaint about the way the request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

*"We were not asking for information relating to the process as we fully understand this will 'circumvent fraud controls' but we requested to know why our organisation had failed the process. Basically what is/was the fault so that we can address it."*

8. The Commissioner notes that the complainant considers there to be a lack of clarity in the BLF's correspondence and assumes that in withholding the information by citing section 31(1)(a) the BLF is implying that the complainant will commit fraud. The Commissioner's view is that such an inference should not be deduced from the application of the exemption.

9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## **Chronology**

10. The Commissioner contacted the public authority on 16 February 2011.
11. On 25 March 2011 the public authority provided the Commissioner with a full and detailed response to his questions along with the withheld information.

## **Analysis**

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### **Exemptions**

#### **Section 31**

12. The public authority has cited section 31(1)(a), which provides an exemption for information which, if disclosed, would or would be likely to prejudice the prevention or detection of crime. Consideration of this exemption is a two-stage process; firstly to determine whether the exemption is engaged as a result of prejudice relevant to the exemption being, at least, likely to result through disclosure of the withheld information. Secondly, the exemption is qualified by the public interest test, which means that the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

#### **Prejudice Test**

13. The Commissioner follows a three stage approach in applying the 'prejudice test':
  - There is the need to identify the applicable interests within the exemption.
  - Consideration of the nature of the prejudice claimed.
  - The likelihood of prejudice occurring as a result of disclosure.
14. In this case the Commissioner believes that the causal relationship between disclosure and the prejudice predicted by the public authority is clear: the BLF argues that disclosure would prejudice the prevention or detection of crime. The complainant believes that disclosure would not reveal the risk assessment process. The Commissioner's view is that in disclosing to the world at large information relating to the reasons why the complainant's application to the BLF was declined, would inform all

prospective applicants of elements of the risk assessment processes that are not in the public domain which, in this case, are relevant to factors relating to the prevention or detection of crime.

15. In the second point the Commissioner considered the arguments advanced by the BLF and their relevance to the section 31(1)(a) exemption. The BLF advanced the argument that in disclosing the withheld information the BLF would reveal details that could make the Fund vulnerable to future fraud. The BLF considered that disclosing the requested information sought in the refined request would also reveal information about the risk assessment process and the undisclosed fraud controls which could be used to the benefit of fraudulent applicants and would prejudice the prevention or detection of crime.
16. The likelihood of prejudice occurring was identified by the BLF as being the higher level, that being the prejudice 'would' occur. The test the Commissioner applies when considering whether prejudice would result is that the likelihood of this must be at least more probable than not. The Commissioner acknowledges that the BLF cannot determine how many fraudulent applications would be made as a result of disclosure of the requested information. However having examined the withheld information he considers it to be more probable than not that disclosure would prejudice the detection of fraudulent applications.
17. The complainant has made its position clear that its request is not made to discover information regarding the processes involved in the assessment of applications. In fact the complainant acknowledges that to reveal the processes used would prejudice fraud controls. However the Commissioner, in examining the withheld information, has determined that the relevant processes would be revealed if the requested information was disclosed. The BLF also provided the Commissioner with information establishing the real and significant risk of fraud faced by the BLF which has resulted in the sophisticated and rigorous anti-fraud processes now in place.
18. Having concluded that the exemption is engaged, and as section 31 is a qualified exemption, the Commissioner went on to consider the public interest test under section 2(2)(b) of the Act. This favours disclosure unless:

*"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."*

### **Public interest arguments in favour of disclosing the requested information**

19. In this case the public authority provided the Commissioner with a detailed public interest assessment. It noted the strong public interest in the BLF being accountable for its decisions and as transparent as possible about the way decisions are made.
20. Disclosure of the withheld information would provide the public with further details of how the BLF processes applications and, in particular, evidence that there are strong anti-fraud measures in place. The BLF explained that this would reassure the public that the processes and procedures utilised in respect of 'risk rejected' applicants are fair. As a result the public would have increased confidence in the public authority's ability to manage public funds.
21. Potential fraudsters may be deterred as they would be more aware of the strength of the BFL's detection processes and measures in place. There is a clear public interest in applicants being deterred from submitting fraudulent applications because the time and therefore cost to the public of investigating such applications would be reduced.
22. The BLF identified a strong public interest in the public being able to challenge the decisions made by public authorities from an informed position. In releasing the requested information applicants would better understand the decisions taken by the BLF and would be better able to challenge those decisions. This would also enable public debate around how the BLF spends public money.
23. Disclosure of the requested information would provide greater clarity for rejected applicants. It could be argued that this could prevent organisations who have failed the risk assessment, without being specifically told the reasons why, from drawing conclusions such as being suspected of wrongdoing.

### **Public interest arguments in favour of maintaining the exemption**

24. The Commissioner notes that the BLF publishes a substantial amount of information about the application process with some information on the risk analysis process published in the Good Governance Guide.<sup>1</sup>
25. The BLF is subject to external audit procedures with the National Audit Office auditing its accounts in order to ascertain that adequate

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<sup>1</sup> [http://www.biglotteryfund.org.uk/good\\_governance\\_guide2.pdf](http://www.biglotteryfund.org.uk/good_governance_guide2.pdf)

regulations and procedures including fraud controls are in place. The BLF can therefore already demonstrate its public accountability in this way.

26. There is a strong public interest in the BLF protecting public money. If disclosure of the requested information enabled fraudulent applicants to submit successful applications this would reduce the amount of public funding available for honest applicants. The Commissioner notes that even if the fraudulent applicants were detected public money would have been unnecessarily spent in the detection of the fraud.
27. The BLF explained to the Commissioner that it has identified how criminal gangs have developed methods to de-fraud lottery distributors. The Commissioner noted its concern regarding this method of organised fraud alongside fraud by opportunistic organisations assisted by disclosure of the withheld information. There is a strong public interest in not encouraging fraud by any group.
28. The BLF explained to the Commissioner its concern in respect of honest applicants losing confidence in the BLF if dishonest organisations were able to circumvent the fraud controls in place. The Commissioner acknowledges that there is a public interest in not undermining honest applications.
29. The Commissioner accepts that where disclosure of information about anti-fraud strategies would undermine the operation of those strategies, the public interest is likely to lie in keeping the information confidential. The benefits of greater public scrutiny in such circumstances would be self-defeating. This factor weighs heavily in the public interest.

### **Balance of the public interest arguments**

30. The Commissioner has recognised public interest considerations of significant weight which favour disclosure. However, he must give appropriate weight to the public interest in avoiding the prejudice to the prevention and detection of crime and the protection of public funds that he has accepted would be more probable than not to result from disclosure of the withheld information. The public interest inherent in the exemption combined with the prejudice to the primary function of the public authority in the fair allocation of public funds, in the Commissioner's view tips the balance in favour of withholding the information.
31. The Commissioner concludes that the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

## **The Decision**

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

## **Steps Required**

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33. The Commissioner requires no steps to be taken.

## Right of Appeal

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34. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

35. 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.
36. 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 1<sup>st</sup> day of June 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex

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### Law enforcement

#### **Section 31(1) provides that –**

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”