

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2022

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

Decision (including any steps ordered)

1. The complainant has requested information that was withheld in response to a previous request.
2. The Gambling Commission refused to provide the requested information, citing section 40(2) of FOIA.
3. The Commissioner's decision is that the Gambling Commission is entitled to rely upon section 40(2) in order to refuse to provide the requested information.
4. The Commissioner does not require the public authority to take any steps.

Background information

5. The Gambling Commissioner ('GC') regulates gambling and supervises gaming law in Britain. If an individual or business wishes to operate a gambling function, it must first be granted a gambling license by the GC.
6. Football Index was granted a gambling license by the GC and launched in October 2015. It was marketed as a platform for individuals to gamble on football players.
7. The GC suspended Football Index's gambling license in March 2021 and it entered administration shortly after, leaving approximately £90 million worth of customer stakes trapped in the platform. The collapse of

Football Index has been described in the media as 'the biggest failure in UK gambling history.'¹

8. In April 2021 the Department for Media, Culture and Sport (DCMS) commissioned an independent review² 'to examine in detail the actions taken by the Gambling Commission in the period from September 2015 up to the suspension of Bet Index's licence in March this year.'
9. On 16 March 2021 the complainant made a request for information to the GC relating to its decision to grant Bet Index Limited, trading as Football Index, a gambling license.
10. The Commissioner investigated the GC's handling of this request and issued his decision on 12 November 2021³. The case was handled under the reference IC-103690-T0B0.
11. In relation to IC-103690-T0B0 the Commissioner's decision was that the requested information engaged section 31(1)(g) (law enforcement) of FOIA but that the public interest favoured disclosure. Therefore, the Commissioner ordered disclosure of the information. However, since the Commissioner did not consider section 40(2) (personal data) in his investigation, he instructed the GC to redact all personal data from the disclosed information.
12. The GC complied with the Commissioner's decision notice and disclosed the withheld information, with all personal information redacted.

Request and response

13. On 20 December 2021 the complainant wrote to the GC and requested the following information:

"Thank you for providing information to me following the ICO's intervention. However:

- (1) I am seeking disclosure of all personal information (currently redacted) in the documents on the basis that the public interest favours disclosure.

¹ [Football Index collapse: 'I lost £4,000 in seven days' - BBC News](#)

² [Government publishes independent report into regulation of Football Index - GOV.UK \(www.gov.uk\)](#)

³ [IC-103690-T0B0 \(ico.org.uk\)](#)

- (2) I believe that the information provided to me (and the ICO) was / is incomplete (i.e. the due diligence was based on more than the question checklist). I am therefore seeking disclosure of ALL information within the scope of my request.”
14. The GC chose to split the above request into two and respond to each separately. It provided its response to part 1 on 21 January 2022, refusing to disclose the requested information under section 40(2) and in line with the Commissioner’s decision.
15. The GC provided its internal review outcome on 25 January 2022, upholding its original position.

Scope of the case

16. The complainant contacted the Commissioner on 25 January 2022 to complain about the way that their request for information had been handled.
17. To reiterate, the scope of the IC-103690-T0B0 was to consider the GC’s application of section 31(1)(g). The Commissioner did not consider whether it was appropriate to disclose the personal data and so erred on the side of caution and ordered its redaction.
18. The scope of this investigation is to consider the application of section 40(2) in this instance.

Reasons for decision

Section 40 – personal information

19. Section 40(2) of FOIA states:

“Any information to which a request for information relates is also exempt information if-

- (a) It constitutes personal data which does not fall within subsection (1), and
- (b) The first, second or third condition below is satisfied.”

Subsection (1) refers to exempt information that constitutes personal data of which the applicant is the data subject.

20. In this instance the relevant condition is contained in section 40(3A)(a) which states:

“The first condition is that the disclosure of the information to a member if the public otherwise than under this Act-

(a) Would contravene any of the data protection principles.”

21. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.

22. Secondly, and only if the Commissioner is satisfied that the requested information constitutes personal data, he must establish whether disclosure of that information would breach any of the data protection principles.

Is the requested information personal data?

23. Part 1, Section 3(2) of the DPA18⁴ defines personal data as:

“any information relating to an identified or identifiable living individual.”

24. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.

25. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

26. An identifiable living individual is one who can be identified, either directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

27. The information being withheld here is names, and biographical information, of individuals who appear in the gambling license application for Football Index. This biographical information relates to the ownership, finances and operation of Football Index and its parent company. Having reviewed the withheld information, the Commissioner

⁴ [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

is satisfied that this information falls within the definition of 'personal data' as outlined in paragraph 23.

28. The fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
29. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"⁵.

Would disclosure contravene principle (a)?

30. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
31. In order to be lawful, one of the lawful bases listed in Article 6(1)⁶ of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

Lawful processing: Article 6(1)(f) of the UK GDPR

32. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."
33. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the FOIA, it is necessary to consider the following three-part test:

⁵ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

⁶ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

34. **i) Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interest test

35. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA or may represent the private concerns of the requestor.

36. It is important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).

37. During the previous investigation the complainant expressed their concerns that it was within the public interest to see who 'signed off' on the decision to grant Football Index a license. There is a private legitimate interest being pursued here.

38. The Commissioner also considers that there is a legitimate interest in disclosure of this information, given the broad principles of accountability and transparency that underpin FOIA.

Necessity test

39. The Commissioner must now consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.
40. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
41. Again, the Commissioner notes that the complainant wishes to know who 'signed off' on the decision to grant Football Index a gambling license. The Commissioner is satisfied that any decision taken by a regulatory body such as the GC represents that regulatory body as a whole. Therefore, the responsibility to grant Football Index a gambling license lies with the GC as a regulatory body and not any individual member of staff.
42. Furthermore, the Commissioner notes that the withheld information does not relate to any GC staff but the personal data of those affiliated with Football Index. For that reason, disclosure is not 'necessary' to meet that specific legitimate interest.
43. However, the Commissioner recognises that the complainant may still be interested in the withheld information and, even if they are not, there is still a broad legitimate interest being pursued in this request.
44. The Commissioner is satisfied that the specific information requested in this case has not otherwise been made available to the public. Therefore, there are no less intrusive means of achieving said broad legitimate interest.

Balancing test

45. Since the Commissioner is satisfied that disclosure is necessary for the purpose that this legitimate interest represents, he will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject.
46. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
47. In performing this balancing test, the Commissioner has considered the following

- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
48. In the Commissioner's view, the balancing test should take into account whether the data subjects' concerned have a reasonable expectation that their information would not be disclosed. This expectation may be influenced by a number of factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose which this personal information serves.
49. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
50. From his investigation into IC-103690-T0B0, the Commissioner knows that the gambling 'license application form expressly states that information provided will be treated in confidence.' This includes any personal data contained within said application form.
51. Therefore, there is a reasonable expectation, of all of the data subjects involved, that their personal data would not be disclosed in response to a request received under FOIA and would only be used by the GC for its regulatory purposes.
52. The Commissioner must also consider whether disclosure would cause any harm or distress to the data subjects. The Commissioner has reminded himself of the circumstances surrounding the collapse of Football Index, including the amount of money lost by some individuals. The Commissioner must consider the possibility that disclosing the names of those affiliated with Football Index, in any way, would expose them to unwanted and potentially distressing contact or abuse.
53. The Commissioner must also consider whether this information is already in the public domain. Whilst he acknowledges that information about the ownership, and structure, of Football Index is in the public domain through Companies House, this information is limited. The withheld information is not in the public domain.
54. The Commissioner has also considered the steps taken to investigate Football Index's collapse such as the inquiry referred to within paragraph 8.

The Commissioner's view

55. The Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. Therefore, he considers that there is no Article 6 basis for processing and disclosure of the information would be unlawful.
56. It is the Commissioner's view that the personal data should be withheld under section 40(2). Having decided that disclosure would be unlawful, the Commissioner does not need to go on to separately consider whether disclosure would be fair or transparent.
57. To summarise, the findings of the aforementioned inquiry were as follows: Bet Index failed to adequately inform or update the GC of the nature of its business model; the GC failed to respond or probe into the novel nature of the platform and Football Index should have, in part, have been regulated by the Financial Conduct Authority ('FCA').
58. The complainant is clearly greatly concerned with the circumstances surrounding Football Index, including its collapse. However, the withheld information does not hold the GC any more accountable, or shed any further light on how it came to grant and then subsequently revoke Football Index's gambling license.
59. The Commissioner is mindful that Football Index's gambling license application was disclosed as a result of the Commissioner's investigation into IC-103690-T0B0 and whilst he recognises that there is a legitimate interest in transparency around the collapse of Football Index, he does not consider this outweighs the fundamental rights of those associated with the enterprise.
60. For example, not all of the data subjects, if any, will have been involved in submitting the gambling license application to the GC. To release their personal data into the public domain, when there is no evidence, they knowingly submitted any erroneous or misleading information, would be unfair.
61. Furthermore, the Commissioner notes that some of the individuals named within the gambling license application had limited involvement with the Football Index enterprise itself; they actually represent the parent organisation of Football Index and have simply been named to demonstrate the platform's organisational structure.
62. In terms of transparency and accountability surrounding the role of both GC and the FCA, these matters have been extensively considered through the aforementioned inquiry; the findings of which have been fed back to both the GC and the FCA who have made the appropriate changes.

63. Ultimately, the Commissioner is concerned with the harm and distress that disclosure of the personal data could cause and he does not consider the legitimate interests of the request outweigh the fundamental rights and freedoms of the data subjects in this instance. Disclosure of the withheld information does not shed any light on the processes which allowed Football Index to collapse, with such catastrophic consequences.
64. Furthermore, the withheld information does not reflect what the complainant is actually seeking. It relates to the names of individuals involved in Football Index as a business model. The withheld information does not name any employees of the GC and the Commissioner notes that the decision to award Football Index a gambling license was taken by the GC as a regulatory body, not an individual.

Right of appeal

65. 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

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

66. 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.

67. 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

Alice Gradwell
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Wycliffe House
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