

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 January 2016

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

#### Decision (including any steps ordered)

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1. The complainant has requested the details of the auditor who provided assurances in respect of the financial standing of an online bookmaker. The Gambling Commission refused the request under section 43(2) – prejudice to commercial interests.
2. The Commissioner's decision is that the Gambling Commission was entitled to rely on the exemption. He does not require the Gambling Commission to take any further action in this matter.

#### Request and response

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3. The complainant initially asked the Gambling Commission for details of the assurances it had received as to the financial position of Interactive Gaming and Sports Pty Ltd (iGAS). The Gambling Commission had provided him with a link to where he could find their response to an earlier request for the same information. That response comprised of a letter dated 22 November 2013 from a firm of auditors. Although the contents of the letter had been disclosed the name and address of the auditors had been redacted. Therefore on 11 May 2015 the complainant wrote to the Gambling Commission again and asked:

“Is the information as to who the auditors are available?”

4. The Gambling Commission responded on the 15 May 2015 and explained that the letter had only ever been published in its redacted form and

that the name of the auditors was not publicly available. The complainant asked the Gambling Commission to review this decision on 1 June 2015.

5. The Gambling Commission responded on 29 June 2015 and informed the complainant that it was withholding the details of the auditor under the exemption provided by section 43(2) – prejudice to commercial interests.

## **Background to the request**

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6. iGAS was the parent company of the online bookmaker Canbet Sports Bookmakers UK Ltd, commonly known as Canbet.
7. It is well documented that Canbet got in to financial difficulties in 2013 with many of its customers having problems withdrawing their winnings. Complaints from these customers resulted in the Gambling Commission contacting Canbet in October 2013 regarding its financial position and in 2014 commenced a licence review.
8. As explained on the Gambling Commission's website, it received assurances from the auditor of the iGAS group that it had sufficient assets to meet its liabilities, including those of Canbet. The request is for the details of the auditor contained in that letter.
9. Having investigated the concerns of Canbet's customer the Gambling Commission formed the view that there were grounds for revoking Canbet's licence. However it did not prove necessary for the Gambling Commission to exercise its regulatory powers as Canbet surrendered its bookmaker's licence in April 2014. It was later placed in administration. A number of its customers were unable to retrieve the money they had in their on line accounts.

## **Scope of the case**

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10. The complainant originally contacted the Commissioner on 21 July 2015 to complain about the way his request for information had been handled, but his complaint was only accepted when he provided additional documentation on the 4 August 2015.
11. The complainant did not accept that disclosing the information would prejudice the auditor's commercial interests and argued that even if it would there was a pressing public interest in releasing information that

would shed light on whether the Gambling Commission properly carried out its regulatory duties in respect of Canbet.

12. The Commissioner considers that the issue to be decided is whether the details of the auditor are exempt under section 43(2) and, if so, whether the public interest favours maintaining the exemption.

## Reasons for decision

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13. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person. The term 'person' includes a legal entity such as the firm of auditors who wrote the letter which is the focus of the request.
14. As far as is relevant to this case, commercial interests relate to the ability to participate in some form of commercial activity, which is one usually undertaken for profit. The Gambling Commission has argued that if the information was released the auditors would become the target of internet based campaigns aimed at discrediting the former directors of Canbet and their business associates. It believes that the damage caused to the reputation of the auditors would be likely to dissuade potential clients from engaging them. The Gambling Commission consulted with the auditor and Gambling Commission's arguments are based on the response it received.
15. The Commissioner accepts that the Gambling Commission's concerns relate to the commercial interests of the auditors.
16. The exemption can be engaged on the basis that the alleged harm to commercial interests either 'would' occur or 'would be likely' to occur. The Gambling Commission is seeking to apply the exemption on the basis of the lower test, ie that the prejudice would be likely to occur. This is taken to mean that there must be a more than hypothetical possibility of the prejudice occurring. There must be a real and significant risk, even if that risk falls short of being more probable than not. (Although relying on the lower threshold makes it easier to engage the exemption, the lower level of certainty means there is less weight given to the factors for maintaining the exemption when considering the public interest test.)
17. The issue for the Commissioner to decide is whether the releasing the name and other details of the auditors contained in the letter would be likely to result in the firm of auditors becoming a target of campaigns to discredit them and, if so, whether this would drive away clients. This involves considering whether there is a logical connection between the release of the information and the potential prejudice.

18. When responding to the Gambling Commission's enquiries as to how the disclosure would affect them, the auditor argued that former directors of Canbet, together with its former employees and consultants had been subject to harassment from anonymous individuals. This involved abusive phone calls and a sustained campaign conducted through the internet and social media. It directed the Gambling Commission to a particular blog which it claimed demonstrated some of those involved in the campaign wished to cause both financial damage and physical harm to those it held responsible for the losses they had incurred as a result of Canbet's collapse. The Auditors went on to argue that if it was identified as the auditors who provided the assurances as to iGAS's financial position it too would become the target of the ongoing campaign resulting in a commercial loss to its business.
19. The Commissioner was unable to access the particular blog referred to, but has carried out an internet search in respect of Canbet and two of its former directors. There were numerous references to the two directors, many styling themselves as warnings to anyone considering doing business with either director and accusing them of fraud, theft, dishonesty and lying as well as using terms such as 'scam artists'. Some articles contain photographs of one of the directors and his family and names family members including his young daughter. It is clear from the moderator's comments on another blog that postings containing libellous statements, and even threats of violence, had been removed. Another article published on the internet had a broader scope and included comments on a business associate involved with Canbet and commented that it was still investigating the involvement of another company, the implication being that if the authors believed it too was culpable in what they believed to be Canbet's wrong doing, that company would be named.
20. The Commissioner finds it very plausible that some of those affected by the collapse of Canbet would hold the firm of auditors partly responsible for their losses. This would be on the belief that without the auditor's letter of assurance, the Gambling Commission may have taken some form of action which would have prevented Canbet's customers losing their money. As a consequence the Commissioner considers the auditor's concerns that the internet campaigns against Canbet would be extended to include themselves are realistic. It is important to note that the Commissioner is not suggesting that these are the complainant's motives, nor he is suggesting that the auditors are in any way responsible for the money lost by customers. It is simply that a disclosure under FOIA is regarded as a disclosure to the world at large and the Commissioner accepts that there are those who would seek to use the information in the way described.

21. For the exemption to be engaged it is also necessary that becoming a target of internet campaigns would damage the auditor's commercial interests. The Commissioner finds that there is a realistic prospect of the auditor's daily operations being disrupted by harassment, for example, through anonymous telephone calls. Of far more significance though is damage that could be caused to the firm's reputation in the face of a sustained and malicious campaign to discredit them. Whilst existing and many potential customers may dismiss the contents of such blogs as containing unsubstantiated allegations, the Commissioner considers that others may wish to avoid being associated with an auditor who was attracting such attention. Whilst it is difficult to quantify with certainty the level of harm that could be caused, the Commissioner recognises that professionals, such as auditors, trade on their reputation for integrity and he is satisfied that any damage to that reputation would prejudice their commercial interests. The exemption is engaged.

### **Public interest test**

22. Section 43 is subject to the public interest test as set out in section 2(2) of FOIA. This means that even though the exemption is engaged the information can only be withheld if the public interest in maintaining the exemption (ie preventing the harm to the auditor's commercial interests) outweighs the public interest in disclosing the information.
23. The Gambling Commission has responsibility for promoting certain objectives which includes ensuring that gambling is conducted in a fair and open way. When it licenses an operator it considers their financial suitability, including their financial circumstances. Once an operator holds a licence the Gambling Commission seeks to ensure through its compliance work, that the licensee remains suitable to hold its license (however this stops short of overseeing its day to day business or monitoring a licensee's financial health).
24. The Gambling Commission recognises that there is a legitimate public interest in promoting accountability and transparency of the way in which it carries out these regulatory duties. There is a value in consumers seeing that the Gambling Commission takes action in cases where there is a risk to its licensing objectives and there is also an interest in the public understanding how the Gambling Commission investigates matters of non-compliance. It is important that consumers have confidence in the Gambling Commission and if there are failings, that these are exposed.
25. The complainant has argued very strongly that the Gambling Commission did fail to properly investigate the financial standing of Canbet. He believes that the Gambling Commission should not have accepted the assurances provided by auditor as it was clear from the

contents of the auditor's letter that it had only carried out limited checks on the group's financial standing.

26. The Commissioner notes that the auditor's letter is unambiguous as to what records they had viewed when providing their opinion and state explicitly that they had carried out a "limited review" of these documents. It is therefore possible take a view on the weight that the Gambling Commission should have afforded these assurances based on the information that is already available. There is an argument that establishing who the auditor was would allow consumers to take a view on the standing of that company. That is, one might argue, for example, that it would be understandable for Gambling Commission to have confidence in the assurances if they had been provided by one of the large, international firms of auditors. Nevertheless the Commissioner considers that providing the name and address of the auditor would not assist consumers in scrutinising the performance of the gambling Commission to any great extent and the public interest has already been largely met by disclosing the contents of the letter.
27. The complainant also believes that the Gambling Commission was obliged to visit the auditor and has raised other concerns over what he considers to be shortcomings in how the Gambling Commission performed its regulatory role and over the business practices of Canbet itself. However the Commissioner does not accept that disclosing the auditor's details would in any way assist the complainant or any of Canbet's customers in understanding these issues. He also notes the Gambling Commission's assertion that it performed its regulatory duties in a competent manner. It has gone on to say that it considers much of the dissatisfaction with its investigation in to Canbet is based on a misunderstanding of its role as a regulator and the extent to which it is able to protect customers if an operator becomes insolvent.
28. The Commissioner also considers that there would be a public interest in providing information if it would inform a debate on whether the existing legislation provides adequate protection for consumers. However he is satisfied that the actual information requested would not assist such a debate.
29. Although the exact number of Canbet's former customers who are owed money is not known, nor is the amount they are owed, the Commissioner accepts there may be many and has no reason to discount reports by a national media outlet in Australia that well over 1m Australian dollars were lost (£480,000). There would therefore be a value to those customers in disclosing the auditor's details if this would provide them with a means of recovering their money. However the Gambling Commission has stated that it has seen nothing that would suggest the auditor acted in an improper manner which could lead to it

being referred to the relevant authorities. In support of this opinion the Gambling Commission has pointed out that it has not been approached for the name of the auditor by any such authorities and has been informed by the auditor themselves that they have not been contacted by any agency over the collapse of Canbet. Therefore disclosing the information would not necessarily assist Canbet's former customers recover the money they are owed.

30. Nevertheless there is some value to the customers in providing them with information which would allow them to explore this avenue for themselves. However without knowing the numbers who are owed money and without having some idea how many of those who are actively seeking some form of redress, it is difficult to determine whether disclosing the information would serve a truly public interest as opposed to simply the private interests of a number of individual gamblers.
31. Having considered the public interest factors in favour of disclosing the auditor's details the Commissioner finds that the information would be of some, but limited, use in helping people take a view on whether it was appropriate for the Gambling Commission to accept the assurances it received. That is, it would give some indication of the prominence of the auditor concerned. However the public interest in scrutinising the Gambling Commission's performance in this respect has been largely met by the disclosure of the content of the auditor's letter. Furthermore the Gambling Commission has publicly set out the limits of its regulatory role, stating on its website that it does not oversee the day to day business of the operators it licenses, nor does it monitor the financial health of operators in real time.
32. The information may also be of some assistance to those seeking some form of redress from those responsible for the loss of the funds they had placed with Canbet. However the weight that can be given to this interest is again limited. This is because the allegations against the auditors are unclear and unsubstantiated. Therefore it is not at all clear to the Commissioner that the information would assist those affected by Canbet's collapse.
33. Against these factors in favour of disclosure the Commissioner has weighed the public interest in preventing the damage to the auditor's commercial interests that would be likely to occur if the information was disclosed. In doing so the Commissioner has had regard for the fact that despite an argument that the auditor acted improperly in providing the assurances it did, the Gambling Commission has found no evidence to support this.

34. Although it is difficult to quantify the potential commercial loss that the auditor would suffer through the damage inflicted by internet campaigns aimed at discrediting it, the Commissioner is satisfied that it could potentially be significant. Even though it is only likely that the disclosure would have such an effect, the Commissioner finds that the public interest in preventing this potential harm outweighs the limited value the information would have in allowing additional scrutiny of the Gambling Commission and in allowing customers to explore alternative means of redress.
35. The public interest in favour of maintaining the exemption outweighs that in disclosure. The Gambling Commission is entitled to rely in section 43(2) to withhold the information. The Commissioner does not require the Gambling Commissioner to take any further action in this matter.
36. When presenting arguments in favour of maintaining the exemption the Gambling Commission has also explained that in carrying out its regulatory duties it has to rely on the voluntary cooperation of third parties such as the auditor to provide it with information. It has no formal powers to compel third parties to provide it with information. It has argued that if it was to disclose the auditor's details on this occasion it would discourage others from cooperating in the future. Although the Commissioner accepts the logic of this argument, it is not relevant to public interest in maintaining the section 43(2). That is, it does not relate to the public interest in preventing the potential prejudice to the auditor's commercial interests. Rather it is an argument for preventing any prejudice to the Gambling Commission's ability to obtain information on a voluntary basis and therefore to perform its regulatory functions.



## Right of appeal

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37. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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** .....

**Robert Mehan**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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