

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 October 2016

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

### Decision (including any steps ordered)

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1. The complainant has requested addresses for a gambling operator obtained by the Gambling Commission as part of its licencing application process. The Gambling Commission refused to provide this on the basis of section 31(1)(g) in conjunction with 31(2)(d).
2. The Commissioner's decision is that the exemption is engaged and the public interest favours maintaining the exemption. She requires no steps to be taken.

### Request and response

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3. On 18 February 2016 the complainant wrote to the Gambling Commission and requested information in the following terms:

*"I understand that licencees are required to provide the UKGC with their 'Head Office' addresses, which are the main addresses they trade from or carry out their administration duties from.*

*The definition of 'Head Office' is the main office of a company or organisation where its employees work.*

*The address given for BGO Entertainment Ltd is merely a postal pick-up address for a farm house in Alderney. This is clearly not BGO's 'Head Office' address.*

*Please therefore provide me details for the Head Office and operating address(s) for BGO Entertainment Ltd."*

4. The Gambling Commission responded on 17 March 2016. It stated that the Head Office for BGO is that listed on its public licence register. The Gambling Commission confirmed it held other addresses where BGO conducted aspects of their business – the operating addresses as referred to in the request – but considered this information exempt as it was provided to the Gambling Commission on a confidential basis and not made publicly available. The Gambling Commission stated that the operating addresses were being withheld on the basis of section 31(1)(g) with 31(2)(d) of the FOIA.
5. The complainant requested an internal review of this decision on 17 March 2016. He raised concerns as to how disclosure of addresses would prejudice the work of the Gambling Commission.
6. Following an internal review the Gambling Commission wrote to the complainant on 18 April 2016. It upheld its position that the information was exempt by virtue of section 31(1)(g) of the FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 19 April 2016 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to determine if the Gambling Commission has correctly relied on the provisions of section 31 to withhold the operating addresses of BGO Entertainment Ltd.

### **Reasons for decision**

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9. Section 31(1)(g) of FOIA states that information is exempt if its disclosure would, or would be likely to prejudice the exercise by any public authority of its functions for any of the purposes in subsection (2).
10. The purpose listed in section 31(2) which the Gambling Commission has cited is:

31(2)(d) – the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any

profession or other activity which he is, or seeks to become, authorised to carry on.

11. The Information Commissioner will focus on whether disclosing the information would, or would be likely to prejudice this function of the Gambling Commission.
12. In explaining this, the Gambling Commission has provided the Information Commissioner with some information on its statutory functions. It explained that section 22 of the Gambling Act 2005<sup>1</sup> sets out that the Gambling Commission is responsible for regulating and promoting licencing objectives as set out in section 1 of the Gambling Act. The statutory duties laid out in section 1 are:
  - (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
  - (b) ensuring that gambling is conducted in a fair and open way, and
  - (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.
13. Having looked at section 22 of the Gambling Act the Information Commissioner is satisfied that this sets out that the Gambling Commission has statutory responsibility for fulfilling the objectives at section 1. Therefore the Information Commissioner is satisfied that the Gambling Commission does have a function of ascertaining a gambling operator's fitness to carry out gambling activities.
14. The exemption provided by section 31(2)(g) can be engaged on the basis that the prejudice to the Gambling Commission's functions either 'would' occur, or on the basis that the prejudice would only be 'likely' to occur. In this case the Gambling Commission has argued that the prejudice it claims could be caused is only likely to occur. This lower test still requires there to be a real and significant risk of the harm arising if the information was released. Although it is easier to engage an exemption on the lower test, the fact that there is less risk of the prejudice occurring is taken into account when considering the public interest test.
15. In terms of how the prejudice is likely to be caused the Gambling Commission has explained that in order to operate a gambling facility in Great Britain, operators must hold a licence from the Gambling

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2005/19/contents>

Commission. Obtaining a licence involves an application process and an assessment of suitability is made against criteria set out in the Gambling Act. Once licensed, gambling operators are subject to ongoing compliance requirements and are subject to regulatory action should they fail to meet their licence requirements.

16. Section 106 of the Gambling Act sets out how the Gambling Commission must provide consumers with access to an operator's details. This sections states that the Gambling Commission shall:

*(a) maintain a register of operating licences containing such details of and relating to each licence as the Commission thinks appropriate,*

*(b) make the register available for inspection by members of the public at all reasonable times, and*

*(c) make arrangements for the provision of a copy of an entry in the register to a member of the public on request.*

17. The above allows members of the public to identify the registered address of an operator. However, in this case the complainant was also seeking all other addresses known to the Gambling Commission for BGO Entertainment Ltd.
18. The Gambling Commission also, as part of its licencing requirements, requires that operators provide a point of contact for consumers to make complaints. It does this by requiring operators to provide details of how to make a complaint and relevant contact details including the identity of the Alternative Disputes Resolution entity to which disputes can be referred.
19. The Commissioner notes that this means that the Gambling Commission is obliged to maintain a register of licences and make this available for inspection. The wording of section 106 suggests that the detail of what is contained in this register is for the Gambling Commission to determine. Clearly, the Gambling Commission considers this to include the registered office address but not all other operating addresses it holds.
20. The Gambling Commission has explained that as part of the application process, operators are required to provide it with sufficient information to understand the operator's business and assess their suitability. Remote gambling operators who offer gambling through websites, such as BGO, will often have a number of business addresses for a number of reasons including customer service centres, registered head offices, data centres and operational offices. This information is provided to the Gambling Commission so it has a full picture of the operations of the

applicant but is not intended to be placed on the public register as the Gambling Commission does not deem this to be appropriate.

21. Given the Information Commissioner accepts it is for the Gambling Commission to determine what is appropriate to include on the public register, she must now consider how disclosing information not on the public register – in this case any operational addresses for BGO – would be likely to cause prejudice to the Gambling Commission's function of ascertaining a gambling operator's fitness to carry out gambling activities.
22. The Gambling Commission argues that it requires licence applicant's to make full and candid submissions at the application stage and throughout the life of a licence. In doing so, it assures licensees that the confidentiality of commercial information will be respected and information provided in confidence will remain in confidence. When addresses are provided as part of the licence application, the section of the application form states that the Gambling Commission requires a correspondence address in the UK for it to contact the operator about matters in relation to its operating licence.
23. Operational addresses which are not made public by the operator are therefore treated as being provided in confidence as part of the application. The application forms expressly state that information provided will be provided in confidence and the Gambling Commission therefore believes that disclosure of information included on the application form which is not otherwise publicly available would be likely to impact on the voluntary supply of information from that operator and other operators in the future.
24. The Gambling Commission acknowledges it has mechanisms to compel the provision of information from licence applicants and gambling operators but it stresses that it relies on the voluntary supply of information in order to perform its licensing, compliance and policy functions. It argues that establishing trust with operators is key to having open and frank exchanges and this, in turn, will make operators more inclined to provide commercially sensitive information on the basis it is trusted to be kept with appropriate safeguards.
25. Whilst the information in this case is not obviously information which would carry a large weight of commercial confidentiality, the Gambling Commission argues that disclosing even operational information such as this without sufficient rationale would undermine trust and make operators less likely to cooperate fully in the future. The Gambling Commission considers that if it were to be in a situation in the future where it has to use its formal powers to compel the provision of information then this information, provided under compulsion, would be

of a different and arguably less satisfactory quality than if information was voluntarily supplied.

26. The Information Commissioner accepts that the information requested in this case is not information that the Gambling Commission makes available as part of its public register, nor is it information which BGO makes available. She acknowledges that disclosure of this information may undermine the trust with which applicants and operators provide information to the Gambling Commission. That being said, if it is a requirement of the application process for applicants to provide operational addresses for correspondence then it is difficult to accept that disclosing this information would impact on the application process. Prospective operators will still have to undertake the licencing application process and will still have to provide the information requested as part of this process if they want to establish a gambling operation.
27. However, the Information Commissioner has considered the broader argument that, whilst disclosure might not affect the application process, it would be likely to have a wider impact on the voluntary disclosure of information in other scenarios. There appears to be an underlying expectation of confidence in much of the Gambling Commission's work, particularly as regards information it asks for to not only ascertain if a licence should be granted but to monitor this and check compliance. It is the impact on this work of the Gambling Commission which is more likely to be affected by disclosure as there is a legitimate argument that gambling operators will be reluctant to voluntarily supply information requested of them if they believe it may be disclosed. This in turn may impact on the Gambling Commission's function of ascertaining a gambling operator's fitness to carry out gambling activities.
28. The Information Commissioner has previously accepted<sup>2</sup> arguments that disclosure could have a prejudicial affect where there is a real possibility it will slow down or otherwise impede regulatory activity. This has been accepted in cases where regulatory bodies or those with statutory duties to regulate activities have argued that disclosing certain information obtained voluntarily would change the nature of the communications the regulator would have in the future. The Commissioner has previously concluded that it is not suggested that any party would refuse to cooperate or provide information to a regulatory body but the nature of

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<sup>2</sup> FS50184898, FS50465587

the communications would change, both formal and informal communications.

29. The Commissioner considers the same principle applies here. Whilst formal means of gathering information can be employed by the Gambling Commission; it will be more effective if the operators have faith in the confidentiality of the application process and the Gambling Commission's need to obtain information solely for the purpose of regulating and monitoring compliance. Disclosing information obtained as part of the application process would put at risk the effectiveness of the communications between the Gambling Commission and the operators.
30. The Information Commissioner does therefore accept there is a causal relationship between the requested information and the prejudice being claimed. She notes that the Gambling Commission has relied on the lower limb of the exemption that the prejudice 'would be likely' to occur. In this case, she is satisfied the Gambling Commission has demonstrated that there is a possibility that is more than remote of the stated prejudice occurring. For this reason the Information Commissioner accepts the exemption is engaged.
31. As section 31 is a qualified exemption, she has now gone on to consider the public interest arguments in favour of disclosure and maintaining the exemption.

*Public interest arguments in favour of disclosure*

32. The Gambling Commission accepts there is a legitimate public interest in promoting accountability and transparency. It recognises that it is important that consumers have the ability to contact operators and have a right of redress in the event of legitimate complaints.

*Public interest arguments in favour of maintaining the exemption*

33. The Gambling Commission argues that operators are required to provide detailed information and there are statutory mechanisms in place to compel the provision of information but this is not the most effective way to obtain information. It states it relies on the voluntary provision of information to perform its functions and open and frank exchanges are integral to decision making. Establishing trust with operators is important to this so they will willingly provide commercially sensitive information in a competitive market in the understanding that this information will be subject to appropriate safeguards. Disclosing operational information (such as the information requested here) without sufficient rationale would undermine this trust and make operators less likely to cooperate with requests in future. This would

potentially result in the Gambling Commission having to use its more formal statutory powers in the future, leading to more guarded disclosures which would not be in the public interest.

34. The Gambling Commission also argues that there is no compelling public interest argument for disclosure given the limited use that the requested information could have to anyone. The operational addresses held for gambling operators would not be of any assistance to individuals wanting to contact the operator as the Gambling Commission already publishes the registered address and where to make a complaint. An Alternative Dispute Resolution process is also in place.

*Balance of the public interest arguments*

35. The Information Commissioner considers there are relatively strong public interest arguments in favour of withholding the information but the arguments in favour of disclosure in this case are less significant.
36. The Commissioner does acknowledge the public interest in increased accountability and transparency but considers this has been met to some extent by the publication of information in the public licence register. The information published here is the information required of the Gambling Commission under section 106 of the Gambling Act and provides individuals with the contact information they should need to raise concerns or complaints with the operator. In any event, the Commissioner cannot see how disclosing an alternative address held by the Gambling Commission would increase the public's understanding as to how the Gambling Commission verifies an operator is fit to practice, or how this disclosure would increase accountability.
37. The Commissioner does accept that the principle of confidentiality is important. Undermining this by disclosing information which is collected with the expectation it is being used solely as part of an application process would not be in the public interest as it is important that there is trust in a regulator so it can have open communications with prospective operators and make the right decisions about the granting of licences.
38. There is a significant public interest in ensuring that the Gambling Commission, with its statutory functions under the Gambling Act to ensure that gambling is conducted in a fair and open manner, can operate efficiently and effectively – something which the Information Commissioner has determined would be affected by disclosure. Against this, she does not consider the arguments for disclosure are compelling.
39. The Commissioner has therefore concluded that, in all the circumstances, the weight of the public interest lies with maintaining the exemption. She does not require any steps to be taken.



## Right of appeal

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40. 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)

41. 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.
42. 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** .....

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