

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

### **Decision notice**

**Date:** 12 November 2021

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

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

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1. The complainant has requested information relating to the Gambling Commission's ('GC') decision to grant Bet Index Limited, trading as Football Index, a gambling license.
2. The GC refused to disclose the requested information citing section 31(1)(g) (law enforcement) by virtue of section 31(2)(d) of the FOIA.
3. The Commissioner's decision is that the exemption is engaged but that the public interest lies in disclosure. The Commissioner requires the GC to take the following steps:
  - Disclose the requested information with all personal information redacted in accordance with section 40 (personal information) of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 16 March 2021 the complainant wrote to the GC and requested information in the following terms:

*"A copy of the due diligence carried out by the Gambling Commission on Bet Index Limited trading as Football Index prior to granting the betting licence to that organisation.*

*The information sought includes any evaluation the Gambling Commission carried out on the Football Index business model."*

6. The GC responded on 15 April 2021 and refused to provide the requested information, citing section 31(1)(g) by virtue of section 31(2)(d) of the FOIA.
7. Following an internal review the GC wrote to the complainant on 30 April 2021. The GC upheld its original position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 30 April 2021 to complain about the way that their request for information had been handled.
9. The complainant submitted compelling arguments as to why the requested information should be disclosed. The Commissioner will explore these arguments later on in this notice.
10. The Commissioner therefore considers the scope to be to determine whether the GC is entitled to rely upon section 31(1)(g) by virtue of section 31(2)(d) as a basis for refusing to disclose the requested information.

### **Background information**

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11. The 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.
12. 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.
13. 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<sup>1</sup> as *'the biggest failure in UK gambling history.'*

14. In April 2021 the Department for Media, Culture and Sport (DCMS) commissioned an independent review<sup>2</sup> *'to examine in detail the actions taken by the Gambling Commission in the period from September 2015 up to the suspension of BetIndex's licence in March this year.'*
15. The report was published<sup>3</sup> on 13 September 2021 and its findings are: firstly, Bet Index did not properly notify the GC of the nature of the product in its licensing application or inform the regulator when the nature of the product changed after its launch. Secondly, the GC could have responded better to the challenges that Bet Index's model posed and scrutinised its application more. Thirdly, whilst Football Index was not regulated by the Financial Conduct Authority ('FCA'), it represented a stock-exchange type business model and areas of improvement have been identified for regulating such hybrid business models.
16. As a result of these events, the FCA and GC have developed a strengthened Memorandum of Understanding. The GC has also updated the way in which it regulates innovative digital gambling products.<sup>4</sup>
17. The withheld information is a copy of the assessment that the GC undertook as part of its decision to award Bet Index its gambling license.

## Reasons for decision

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### Section 31 – Law enforcement

18. Section 31 of the FOIA states that:

- (1) *"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –*

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

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

<sup>3</sup> [Review of the Regulation of BetIndex Limited: final report - GOV.UK \(www.gov.uk\)](#)

<sup>4</sup> [Gambling Commission responds to independent inquiry into BetIndex - Gambling Commission](#)

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).*

(2) *The purposes referred to in subsection (1) (g) to (i) are –*

*(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."*

19. The Commissioner's guidance<sup>5</sup> states 'As with the other functions described in section 31(2), the function of ascertaining a person's fitness or competence to manage companies or undertake a profession etc is most likely to be derived from statute.'

20. In its submission to the Commissioner, the GC has confirmed that, as a regulator, it performs its functions in accordance with the Gambling Act 2005.<sup>6</sup>

21. Section 22 of the Gambling Act 2005 outlines the GC's statutory duty to promote the licensing objectives as laid out in section 1 of the Act, which 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."*

22. With the above in mind, the Commissioner is satisfied that the functions that the GC enacts represent those referred to within section 31(2)(d). Therefore, she will go onto consider if the exemption has been properly engaged.

23. In order for a public authority to properly engage a prejudice based exemption such as section 31(1)(g), there must be a likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

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<sup>5</sup> [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](http://ico.org.uk/law-enforcement-foi-section-31.pdf)

<sup>6</sup> [Gambling Act 2005 \(legislation.gov.uk\)](http://legislation.gov.uk/Gambling Act 2005)

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, 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 avoid. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

24. Consideration of the section 31 exemption is a two-stage process. Firstly the exemption must be properly engaged and meet the three criteria listed above. Even if this is the case the information should still be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **The applicable interests**

25. Returning to the above, the GC has explained that disclosure would '*reveal the methods and techniques the Commission uses to award licences.*'

26. The GC is concerned that disclosure '*could seriously impact the Commission's ability to assess applicant suitability, if information relating to how it gathers information and evidence as part of the application process became known.*'

27. The Commissioner is satisfied that the arguments presented by the GC outline how disclosure would prejudice the applicable interests within the relevant exemption.

### **The nature of the prejudice**

28. The Commissioner must now consider if there is a causal link between the withheld information and the prejudice that section 31(1)(g) by virtue of section 31(2)(d) aims to protect. Within the GC's submission to the Commissioner, it has outlined two main concerns regarding disclosure.

#### *Disclosure would frustrate the GC's regulatory processes*

29. The GC has explained that disclosure '*could seriously impact the Commission's ability to assess applicant suitability, if information*

*relating to how it gathers information and evidence as part of the application process became known'*

30. The GC's website<sup>7</sup> outlines that it takes the following factors into account: the identity of the applicant and their financial situation, the integrity and competence of the applicant and any criminal record that they applicant may hold. The GC's website<sup>8</sup> also outlines its approach to risk that underpins its licensing, compliance and regulatory functions.
31. The GC believes that it is as transparent as possible about its licensing processes without disclosing any assessment that it has carried out, *'Our view is that the requestor will already know in general terms, or could already find out, what checks the Commission has undertaken in relation to BetIndex which will have been subject to the same regulatory framework as all such applicants.'*
32. The withheld information is a list of 45 questions that the GC has considered as part of its decision to grant Football Index a gambling license. The Commissioner notes that these questions are not unique to Football Index and acknowledges the GC's concern that disclosure would confirm the checks that it conducts before granting a license.
33. The GC has confirmed that *'As part of this assessment the Commission will request the evidence to support the application and the individuals who are relevant to the application'* and an application *'will be assessed using both the information provided as part of the application and also information available from other sources (e.g. government departments, overseas regulators).'*
34. With the above in mind, the Commissioner is not convinced that disclosure of the withheld information, in itself, would allow an applicant to circumvent the application process. Put simply, a gambling license is not granted by the GC upon the merits of the application alone.
35. As outlined in paragraph 33, the GC's application is layered and this provides levels several layers of security. An applicant will not, or should not, be able to circumvent the application process through the disclosure of the withheld information alone.
36. The Commissioner concurs that disclosure may impact the GC's assessment methods. The Commissioner would argue that it may

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<sup>7</sup> [Operating licences - Gambling Commission](#)

<sup>8</sup> [2 - Assessing risk - Gambling Commission](#)

positively affect the application process as applicants will be able to prepare their application more rigorously before submitting it to the GC.

37. Furthermore, the Commissioner notes that any potential applicant is likely to be made aware of such criteria when gathering evidence as part of the application process.
38. Returning to paragraph 31, it is likely that the applicant will be able to make an educated guess as to what checks were carried out in relation to Football Index. Having reviewed the withheld information, the Commissioner does not consider that it reveals to the world anything that could not be reasonably deduced from studying the information that the GC proactively discloses.
39. Furthermore, the GC has explained '*Once licensed, gambling operators are subject to ongoing compliance requirements and are subject to regulatory action should they fail to meet their licence requirements.*<sup>9</sup>' The checks that the GC conducts during the application process, and the aforementioned compliance requirements, should be enough to ensure that disclosure of the requested information does not prejudice the robustness of the GC's regulatory functions.

*Disclosure would discourage open and honest communication with the GC*

40. The GC has stated '*Public knowledge of the Commission's investigative techniques would highly likely cause prejudice to the Commission; it may discourage operators from being open and honest with us.*'
41. The GC has also stated '*Releasing information about our regulatory work with a specific operator and the mechanisms that we have in place to support that application process into the public domain, would deter stakeholders from sharing important information with us.*'
42. The GC has described the withheld information as '*strictly confidential.*' The Commissioner acknowledges that, whilst formal means of gathering information can be employed by the GC, it will be more effective if operators and stakeholders have faith in the confidentiality of the application process.
43. The Commissioner acknowledges that disclosure may undermine the trust between the GC and applicants and stakeholders. However, the Commissioner is not entirely convinced by this argument. The GC has a statutory duty, as outlined by the Gambling Act 2005, to regulate

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<sup>9</sup> [Compliance assessments - Gambling Commission](#)

gambling and supervise gaming law in Britain. Therefore applicants and stakeholders are required by law to assist the GC with its regulatory activity and do not need to be compelled by a good working relationship with the GC to do so.

44. The Commissioner would argue that any applicant or stakeholder who is unwilling to engage in open and honest communication with the GC would be unlikely to do so, with or without disclosure of the withheld information.
45. Ultimately, it is up to the GC to convince the Commissioner that disclosure of the requested information would, or would be likely to, prejudice the law enforcement activities that the GC carries out in order for the exemption to be engaged.
46. In order to establish a causal link the Commissioner must be satisfied that the prejudice claimed is at least possible. Whilst the Commissioner is less convinced by GC's arguments, she acknowledges that there are circumstances in which the prejudice could arise.

### **The likelihood of the prejudice occurring**

47. Returning to paragraph 23, the Commissioner must now consider the threshold of prejudice upon which the GC is relying.
48. The GC has confirmed that it is relying upon the higher threshold of prejudice, disclosure would prejudice the interest that section 31 is designed to protect. 'Would prejudice' means that there is a more than 50% chance of disclosure causing the prejudice, even though it is not absolutely certain that disclosure would do so.
49. The Commissioner acknowledges that a public authority may not be able to provide evidence in support of its application of 'would' prejudice. To do so would require disclosure which would undermine the purpose of the exemption. However, the GC has failed to explain its rationale for the reliance upon the higher threshold of prejudice, other than the generic arguments presented to the Commissioner in its submission.
50. The GC has failed to provide any detailed summation as to the frequency with which this prejudice would occur or any further analysis of the supposed prejudice. The GC has failed to convince the Commissioner that the chain of events leading to the prejudice is clearly more likely than not to arise.
51. The Commissioner therefore does not accept that the higher threshold of 'would' has been demonstrated. Having viewed the withheld information the Commissioner considers the lower threshold of prejudice, 'would be likely to occur' is more appropriate. 'Would be likely to' represents a real

and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.

### **Is the exemption engaged?**

52. The Commissioner's guidance on the prejudice test<sup>10</sup> states '*Establishing the appropriate level of likelihood is also important because it has an effect on the balance of the public interest test.*'
53. Since the Commissioner considers the exemption to be engaged on the basis that disclosure would be likely to cause prejudice, she has now gone on to consider whether the public interest lies in disclosure or maintaining the exemption.

### **The public interest test**

54. The Commissioner's guidance states that '*Although there is a clear public interest in protecting the ability of public authorities to perform their law enforcement activities, the public interest test requires that all the circumstances of the case are considered. This will include the significance of the information itself and the issues that it addresses.*'

#### *Public interest arguments in favour of disclosure*

55. The GC has acknowledged that disclosure would promote accountability and transparency. The GC has stated '*It is important that the public are assured that the Commission is carrying out its functions in ensuring that any individuals who are involved in providing gambling facilities to the public have undergone the necessary due diligence checks and will uphold the licencing objectives ensuring that consumers are protected.*'
56. The Commissioner notes the above is the only public interest argument in favour of disclosure that the GC has submitted.
57. The complainant has argued that the GC has conducted a generic public interest test which fails to take into account the circumstances of the case, '*The specific circumstances of this case include that many thousands of customers have lost thousands of pounds of their money due (sic) the financial collapse of this organisation. The Gambling Commission was the regulatory body.*'
58. The complainant has elaborated, '*There is a very strong public interest that The Gambling Commission is a capable and effective regulator with oversight of gambling businesses within its remit. In the case of Bet*

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<sup>10</sup> [the\\_prejudice\\_test.pdf \(ico.org.uk\)](https://ico.org.uk/the_prejudice_test.pdf)

*Index Limited trading as Football Index there is a very strong public interest in understanding The Gambling Commission's regulatory oversight of this company – including its actions and inactions...High-value, unregulated or poorly-regulated gambling changes lives and leads to societal damage. In exceptional tragic cases it can lead to suicide.'*

*Public interest arguments in favour of maintaining the exemption*

59. The GC has emphasised its concern that disclosure of the requested information would undermine its processes, to the point that they are less efficient and robust. The GC has highlighted that it does not consider this in the public interest, keeping in mind its role to ensure that gambling operators uphold the principles outlined in the Gambling Act 2005.
60. Furthermore, the GC has once again emphasised the *'license application form expressly states that information provided will be treated in confidence.'* The undermining of the confidential environment that the application process is conducted in will, the GC is concerned, undermine its effectiveness and robustness as a regulator.
61. The GC has stated *'The information that is publicly available on our website clearly sets out the assessment process that applies to all licence applications and the subsequent report on the Independent Review of BetIndex provides further details into the specific Licensing of BetIndex. Therefore, it is our view that there is sufficient information publicly available about the Licensing process to adequately address the public interest in this matter.'*
62. To reiterate, the report in question highlighted the events that led to the collapse of Football Index and the lessons learned for the GC. The Commissioner understands that the GC have already made changes to its processes as a result of the review.

*The balance of the public interest*

63. The GC is of the opinion that *'revealing the due diligence and outcome of checks that were undertaken would be unnecessary, disproportionate, and unfair.'* However, the Commissioner is mindful of her own guidance which indicates that the significance of the information and the matters that it addresses must be taken into account.
64. On the one hand, the Commissioner understands the complainant's position. She acknowledges that, at the time that the GC suspended Football Index's gambling license, the platform had 278,585 customer

accounts<sup>11</sup> and many of Football Index's customers will have suffered significant monetary losses as a result of the business's collapse.

65. Because of the interest that section 31 is designed to protect, it follows that the public interest arguments required to overturn the exemption must be significant. The Commissioner has taken into account how far the report goes to answer the complainant's questions regarding the appropriateness of the GC's actions and the lessons learnt as a result of Football Index's collapse. To a certain extent, the publication of this report goes a long way to addressing the public interest arguments. The Commissioner also notes that some of the requested information has already been released into the public domain through this report.<sup>12</sup>
66. The Commissioner has also reviewed the information that is in the public domain about the GC's application process and concurs that reasonable deductions about the withheld information could be made from this information. She has also considered the extent to which disclosure would prejudice the interests that section 31 is designed to protect, taking into account the GC's application process and the generic arguments that the GC has provided in support of its application of the exemption.
67. Returning to the GC's concern that disclosure would be '*unnecessary, disproportionate, and unfair,*' the Commissioner is mindful that there is an inherent interest in the public understanding how an important decision, such as the granting of a gambling license, is reached and if this decision was made using the appropriate information. The need to create a full picture of what exactly happened increases with the circumstances, and repercussions, of the decision reached.
68. The Commissioner remains mindful of the sheer impact that the collapse of Football Index had, both in monetary terms and emotional distress to users. The Commissioner concurs with the complainant that some of the losses, for individuals, will have been life changing.
69. The public interest test must be carried out by a public authority with the specific circumstances of the case in mind and, in this instance, the Commissioner believes that the GC has overestimated the severity and the likelihood of the prejudice that disclosure would cause. She also

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<sup>11</sup>[Report of the Independent Review of the Regulation of BetIndex Limited. Final version 130921 .pdf \(publishing.service.gov.uk\) Paragraph 3.4](#)

<sup>12</sup>

[Report of the Independent Review of the Regulation of BetIndex Limited. Final version 130921 .pdf \(publishing.service.gov.uk\) Paragraph 15.65](#)

considers that the GC has underestimated the public interest in the disclosure of the withheld information, especially against the backdrop of DCMS's review of the Gambling Act 2005.<sup>13</sup>

70. Whilst the Commissioner considers the balancing act in this case to be very fine, she believes that the public interest lies with disclosure. She considers disclosure is warranted in this instance by the circumstances of the case.

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<sup>13</sup> [Gambling-related harms evidence review: summary - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## Right of appeal

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71. 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)

72. 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.
73. 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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**Information Commissioner's Office**  
**Wycliffe House**  
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