

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2023

Public Authority: Gambling Commission

Address: 4th Floor
Victoria Square House
Birmingham
B2 4BP

Decision (including any steps ordered)

1. The complainant has requested information relating to the decision to grant BetIndex Limited, trading as Football Index, a gambling license.
2. The Gambling Commission disclosed information and withheld the rest under section 31(2)(c) and (d), by virtue of 31(1)(g) (law enforcement) and section 40(2) (personal information).
3. The Commissioner's decision is that:
 - On the balance of probabilities, the GC does not hold any further information relevant to the request.
 - The withheld information engages section 31(2)(c) and (d), by virtue of 31(1)(g), and the public interest lies in maintaining the exemption, except for two documents.
 - The withheld information engages section 40(2) and to disclose this information would be unlawful, except in relation to one data subject.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the two documents: UKAS testing document and accompanying summary report. The GC should redact all personal data from these documents.
 - Disclose the personal data identified in the confidential annex.

5. 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 FOIA and may be dealt with as a contempt of court.

Background information

6. The complainant previously requested information, again on the decision to grant Football Index a gambling license, from the Gambling Commission ('GC'). This case was considered by the Commissioner under the reference IC-103690-T0B0.¹ The information that fell within the scope of the investigation was a copy of the 'due diligence' that the GC conducted into Football Index. As a result of that investigation, the Commissioner ordered the GC to disclose this due diligence which was a list of 45 questions, and answers, relating to Football Index.
7. The background information into Football Index and its collapse is outlined in paragraphs 11-16 of IC-103690-T0B0.

Request and response

8. On 20 December 2021 the complainant wrote to the GC and requested information in the following terms:

"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.

(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."

¹ [IC-103690-T0B0 \(ico.org.uk\)](https://ico.org.uk)

9. The GC chose to deal with parts 1 and 2 of the request separately. The Commissioner has dealt with part 1 of the request under the reference IC-152082-N3J4². Part 2 is the subject of this notice.
10. On 21 January 2022 the GC responded to part 2 of the request. It disclosed approximately 25 documents with redactions made under section 31(2)(d) and section 40(2).
11. The complainant requested an internal review on 24 January 2021.
12. On 21 February 2022 the GC provided the outcome to its internal review. It disclosed a further 13 documents, again with redactions made under section 31(2)(d) and section 40(2).

Scope of the case

13. The complainant has three concerns about the handling of this request. Firstly, that information is being inappropriately withheld under section 31, secondly, that information is being inappropriately withheld under section 40(2).
14. As part of this investigation, the Commissioner has viewed all of the information that is being withheld under both section 31 and section 40(2).
15. Finally, the complainant is concerned that the GC has still failed to identify **all** of the information that falls within scope, that is, all of the information that it considered as part of Football Index's application. The Commissioner will consider this concern first – then he will go onto consider the GC's application of the exemptions.

² [IC-152082-N3J4.pdf \(ico.org.uk\)](https://ico.org.uk/IC-152082-N3J4.pdf)

Reasons for decision

Section 1 – information held/not held

16. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
17. In order to make his determination, the Commissioner asked the GC to explain the searches it had undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.
18. The GC has provided the Commissioner with the following contextual information about how it handles licence applications, such as the one that is the subject of this notice:

"The Commission's Licensing Department uses a case management database, called Siebel, to manage licence applications. When a 'case' is opened on Siebel, the system will allocate a number to it, and the regulatory caseworker will save all relevant documents, including correspondence, notes, and attachments to this case management system under that relevant case number.

In this case, when Football Index applied for their operating licence in 2015, a new case was opened on Siebel where the regulatory caseworker saved the documentation regarding the assessment of the application, including the documents supporting the assessments made. Cases on Siebel are matter-specific, and therefore there will be no other documents saved under that 'case' which were not either sent or received in the course of the assessment of Football Index's licence application."

19. As the subject of this request is a license application, and the GC has explained that all license applications are handled on Siebel, the Commissioner considers it appropriate that the focus of this request is the information contained within Siebel.
20. The GC has also explained that:

'The relevant Licensing member of staff who assessed Football Index's application at the time has thoroughly checked their electronic working and storage areas for relevant material which has been saved in a shared location for access to be granted to respond to this request. Electronic records relating to the work of the Licensing team are strictly segregated on Siebel from the physical and electronic working areas of the rest of the Commission.'
21. For that reason, the GC is 'confident that all relevant documents have been considered as part of this request.'
22. The GC has explained that it has not searched its wider systems, for example, those outside of Siebel. It has explained that to do so 'would have retrieved a large number of records which would need to be sifted to identify information that fell within scope of the request which would result in the application of s12, where the cost of compliance exceeds the appropriate limit.'
23. The Commissioner has noted that the GC hasn't made any enquiries outside of Siebel or the appropriate licensing member of staff. This is a similar approach to the one the Commissioner takes when he receives a request for information about one of his cases; he would search the case management system and ask the Case Officer to search their own systems. However, he wouldn't search systems which aren't used for case management purposes or approach staff who had no involvement with the case.
24. To reiterate, when considering section 1 the Commissioner is not required to prove for definite that information, or in this case, further information is held. He is only required to reach a decision on the balance of probabilities. The Commissioner is satisfied that the GC has performed relevant and targeted searches. He is also satisfied that the GC has identified all relevant information and no further information is held that would fall within the scope of the request.

Section 31 – law enforcement

25. The information that was considered in IC-103690-T0B0, and subsequently disclosed, was a list of 45 questions that the GC considered as part of its decision to grant Football Index a gambling license. These questions are known as the 'due diligence' and were not

unique to Football Index, whereas the withheld information in this instance is.

26. As part of this 'due diligence' check, the GC will have received and created supporting evidence in relation to Football Index which is the information being withheld in this instance. Information has been redacted from the disclosed information, and five documents withheld in their entirety, under section 31. The GC has explained that this information represents:

'the correspondence between the Commission and the operator, and the information resulting from the same form part of the licence application process. Requests were made, and documents were provided to enable the Commission to make a full assessment of the suitability of a potential operator and the applicant's ability to comply with the requirements of the Gambling Act 2005, the LCCP³ and any other regulations and guidance provided by the Commission.'

27. In IC-103690-T0B0 the GC was relying upon section 31(2)(d) by virtue of section 31(1)(g). In this case, the GC is doing the same and also relying upon section 31(2)(c) by virtue of section 31(1)(1)(g).

28. Section 31 states:

- (1) "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
- (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 –
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise
- (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".

29. The GC's submission cites 31(2)(c) and (d), by virtue of 31(1)(g), 'on the basis that disclosure would prejudice the Commission's exercise of

³ [Licence Conditions and Codes of Practice - Gambling Commission](#)

its statutory functions, and specifically the function of ascertaining the fitness or competence of an applicant for a licence to be authorised to carry out gambling activities.' As a regulator, the GC performs its functions in accordance with the Gambling Act 2005.⁴

30. 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.'
31. Even though the withheld information in the two cases is different, the GC's arguments in support of its application of the exemption(s) are the same. In the GC's opinion, disclosure would:
 - "i) Prejudice to the Commission's ability to fulfil its statutory functions by revealing details about how the Commission assesses licence applications, and
 - ii) Prejudice to the Commission's ability to raise overall standards in the gambling industry by revealing information which has been provided in confidence which would impact on the Commission's relationship with operators within the industry as a whole."
32. Paragraphs 18-55 of IC-103690-T0B0 provides an analysis relating to section 31(2)(d). The Commissioner doesn't deem it necessary to repeat that analysis again. He is satisfied that, since the withheld information in both cases relates to the due diligence conducted into Football Index, its disclosure would be likely to frustrate the GC's statutory functions, and regulatory functions, that it carries out in line with section 22⁵ and section 117⁶ respectively of the Gambling Act 2005. Therefore, the exemptions are engaged.
33. When applying a prejudice-based exemption such as section 31, a public authority must make it clear whether disclosure would, or would be likely to, result in the prejudice envisaged. These are two separate, distinct terms. 'Would be likely to' is the lower threshold of likelihood and 'would' is the higher.

⁴ [Gambling Act 2005 \(legislation.gov.uk\)](http://legislation.gov.uk)

⁵ [Gambling Act 2005 \(legislation.gov.uk\)](http://legislation.gov.uk)

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

34. Paragraphs 47-51 of IC-103690-T0B0 explains why the GC had failed to convince the Commissioner that the chain of events leading to the prejudice is clearly more likely than not to arise and he considers it the same in this case. Therefore, the Commissioner is satisfied that the exemptions are engaged but on the lower threshold, disclosure 'would be likely to' result in the prejudice.
35. He has now gone onto consider whether the public interest lies in disclosure or in maintaining the exemptions.

Public interest test

36. The arguments both for disclosure and for maintaining the exemption are outlined in paragraphs 54-62 of IC-103690-T0B0.

The balance of the public interest

37. The Commissioner considers this to be a finely balanced case, as was IC-103690-T0B0. In that case, the Commissioner was persuaded that the withheld information, which was the actual due diligence that the GC had conducted into Football Index, warranted disclosure.
38. To reiterate, the information that is being withheld in this case was either provided to the GC, or created by the GC, in order for it to assess Football Index's suitability for a gambling license. Some of the information relates to the organisational structure, finances and administration of Football Index and some of it directly relates to Football Index's compliance with the standards that the GC oversees.
39. Therefore, the Commissioner has taken the same approach as in IC-103690-T0B0 and decided that any information that directly relates to the due diligence that the GC carried out should be disclosed. This is the following documents: the UKAS testing document and the accompanying summary report (with all personal data redacted). These two documents describe the testing carried out in relation to Football Index, and demonstrate compliance with the appropriate criteria.
40. Like in IC-103690-T0B0, the Commissioner must be mindful of the sheer impact that the collapse of Football Index had, both in monetary terms and emotional distress to users and some of the losses, for individuals, will have been life changing. He is satisfied that the majority of operators would recognise the exceptional circumstances surrounding Football Index, which collapsed with approximately £90 million of customer stakes trapped inside the platform and was described in the

media⁷ as 'the biggest failure in UK gambling history.' He is satisfied that other operators would also acknowledge that disclosure of the testing information, in this instance, is equally exceptional.

41. The Commissioner is also satisfied that the gambling license application process is multi-layered. He is not convinced disclosure of the testing information, in itself, would allow an applicant to circumvent the application process. Ultimately, whilst disclosure might mean that an applicant is more aware of the testing criteria and process, they will still need to build a product or platform that will stand up to this testing, and undergo the other checks required for a gambling license.
42. The Commissioner acknowledges that the GC has disclosed the majority of the supporting information relevant to Football Index. He also accepts that the information the GC has chosen to withhold has the potential to frustrate its regulatory functions. This is why the Commissioner has only ordered the disclosure of the documents that relate to the actual testing of Football Index which, in the Commissioner's view, is a vital process within due diligence.
43. Given the sheer amount of information that the GC has disclosed in relation to this request, the sensitivity of the remaining information and its comparative irrelevance to the due diligence, the Commissioner is not persuaded that disclosure of this information would sufficiently add to the debate around Football Index to justify its disclosure.

Section 40(2) – personal information

44. Section 40(2) of FOIA states:

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

It constitutes personal data which does not fall within subsection (1), and

The first, second or third condition below is satisfied."

45. 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 of the public otherwise than under this Act-

⁷ [Football Index collapse: 'I lost £4,000 in seven days' - BBC News](#)

Would contravene any of the data protection principles.”

46. 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.
47. 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.
48. The two main elements of personal data, according to Part 1, Section 3(2) of the DPA18⁸ are: the information must relate to a living person and that the person must be identifiable from that information.
49. In this instance, the GC has redacted the names, job titles, contact details of its staff and the same, plus photographs, of third parties associated with Football Index. The Commissioner is satisfied that this information both relates to and identifies the individuals concerned – therefore it is personal data.
50. The fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles and the most relevant data protection principle in this case is (a) which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”⁹.
51. When a request for personal data is made under FOIA, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent as described above.
52. When considering whether disclosure of personal data would be lawful, the Commissioner must consider whether there is a legitimate interest in

⁸ [Data Protection Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁹ [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 \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](https://www.legislation.gov.uk)

disclosing the information, whether disclosure is necessary, and whether the legitimate interest identified overrides the rights and freedoms of the data subjects (the individuals referred to within paragraph 48).

53. The complainant is pursuing a legitimate interest with this request: they wish to know the seniority and identity of the individuals involved in the decision, or who had the final 'sign off', to grant Football Index a gambling license and those associated with the platform. This is a valid interest for the complainant to have. Furthermore, there are broader legitimate interests in openness and transparency to consider.
54. The GC has not otherwise made the redacted personal data available and there are no less intrusive means, other than disclosure under FOIA, by which to obtain this personal data. Therefore, disclosure is necessary to meet this legitimate interest.
55. The Commissioner will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject(s). Firstly, he will start with the personal data of the GC staff.
56. Ultimately, when the GC makes a decision, it does so as a regulator. Individual staff members are acting on behalf of the regulator, using the GC's policies and procedures. The decision to grant Football Index a gambling license was not taken by an individual but by the GC as a regulatory body. Furthermore, from the withheld information the Commissioner can see that the decision to grant this license was not taken by a single individual, but collaboratively by several GC staff.
57. The GC has explained that its staff members would have a 'reasonable expectation' that their personal data would not be disclosed in this capacity, especially as the GC has explained that, in relation to Football Index, 'staff members have previously been subject to abuse/threats online.'
58. The Commissioner is satisfied that the GC has been appropriately scrutinised¹⁰ regarding the Football Index collapse but to open up individuals to such scrutiny would not be proportionate. Therefore, he doesn't consider the legitimate interests in disclosure outweigh the fundamental rights or freedoms of the GC staff. Therefore, disclosure would be unlawful.

¹⁰ [Government publishes independent report into regulation of Football Index - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

59. The Commissioner will move onto consider the personal data of those associated with Football Index. To reiterate, similar circumstances were considered in IC-152082-N3J4, in which the Commissioner considered it would not be lawful to disclose the personal data of those affiliated with Football Index within the due diligence that the GC carried out.
60. Like in IC-152082-N3J4, the information being withheld is names and biographical information of individuals associated with Football Index. This biographical information relates to the ownership, finances and operation of Football Index and its parent company. In this instance photographs of individuals are also being withheld.
61. The Commissioner understands that gambling license application forms expressly states that information provided will be treated in confidence. This includes any personal data contained within said application form. Therefore, the individuals associated with BetIndex would have a reasonable expectation that this information would not be disclosed to the world at large, via disclosure in relation to an FOI request.
62. Furthermore, the Commissioner must also be mindful of the circumstances surrounding the case. The GC is concerned that 'Release of the information would cause unnecessary or unjustified damage or distress to individuals due to the subject matter and the strength of public feeling about these matters. There is likely to be unwanted attention from aggrieved customers of BetIndex who will target individuals specifically for the role that they have within the Commission or with BetIndex itself.'
63. To reiterate, in IC-152082-N3J4 the ICO accepted that the circumstances surrounding the collapse of Football Index meant that releasing the names of those affiliated with the company would expose them to unwanted and potentially distressing contact or abuse. He stands by this position in relation to the majority of data subjects.
64. The Commissioner acknowledges that the report the DCMS commissioned into the collapse of Football Index found that it 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. This contributed to its collapse.
65. However, the Commissioner notes that in response to this request the GC disclosed Football Index's business plan. Whilst this document contains redactions, these redactions do not relate to the nature of the product. The Commissioner considers this document, and the testing documents, go some way towards meeting the public interest in this matter.
66. Furthermore, the aforementioned report does not go onto attribute this failing to any one individual and it does not disclose any personal data of

those affiliated with Football Index. Football Index has already been subject to the robust scrutiny of the GC and an independent government inquiry, rather than focusing on the performance or the behaviour of certain individuals.

67. Ultimately, the Commissioner is not convinced that disclosure of this personal data would contribute to any constructive debate about the collapse of Football Index and for that reason, when weighed up against the consequences that disclosure would illicit, the Commissioner does not consider the legitimate interest in disclosure outweighs the fundamental rights and freedoms of the majority of the data subjects. Therefore, disclosure would be unlawful.
68. The Commissioner would like to stress that the withheld information in the two cases is different and in IC-152082-N3J4 it was not possible to separate out the personal data of one data subject from another, whereas in this case it is.
69. The Commissioner notes that one of the data subjects' names, and job title, is already in the public domain in association with Football Index. Clearly, this is relevant and the Commissioner recognises that senior figures are expected to be accountable for the actions of their organisation. Whilst this individual might not be in a public facing role, the Commissioner must remind himself of the sheer scale and consequences of the collapse of Football Index. The GC has provided no evidence that the individual's opinion was sought in response to this, or any previous, FOI request.
70. So, in relation to this one data subject the Commissioner must question the extent to which the reasonable expectation of the data subject involved is actually reasonable, given the circumstances and that this information is already in the public domain. Furthermore, the Commissioner must also question the extent to which the individual would be subject to any further threats or abuse – since their identity and affiliation with Football Index is already within the public domain.
71. The Commissioner is satisfied that the seniority of the individual in question means that they should expect to be subject to a much greater degree of scrutiny, accountability and transparency than others associated with Football Index.
72. The Commissioner is therefore satisfied that the legitimate interests in disclosure of this data subject's personal data outweighs the rights of the data subject in this instance.
73. In the circumstances, the Commissioner therefore considers that there would be a lawful basis for the disclosure of this information.

Fairness and transparency

74. Even though it has been demonstrated that disclosure of the requested information under FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
75. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons and the requirement for transparency is met because as a public authority, the GC is subject to FOIA.

Right of appeal

76. 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

77. 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.

78. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF