

Response to request for information regarding the Health Lottery

I am writing in response to your request under the Freedom of Information Act 2000 ("the Act") for information about the Health Lottery ELM and the related 51 Community Interest Companies (CICs).

You have requested any discussions, emails, phone calls etc that the Commission holds in relation to the process of approving the operating structure as well as any guidance and special controls that were imposed before the licences were granted.

I can confirm that we hold the following information in relation to your request:

1. A record of the hearing at which the application for an operating licence submitted by the Health lottery ELM was granted
2. Written communications with the Health Lottery ELM generated through the application process
3. Written communications with the 51 CICs generated through the application process

In reference to your question around special controls, the Commission has the power to impose licence conditions when an operating licence is granted. I can confirm that no conditions were attached to the operating licences granted to the Health Lottery ELM or to any of the 51 CICs.

1) A record of the hearing at which the application for an operating licence submitted by the Health Lottery ELM was granted

The record of this hearing is attached. Personal information and commercially sensitive information has been redacted.

- 2) Written communications with the Health Lottery ELM generated through the application process and**
- 3) Written communications with the 51 CICs generated through the application process**

In relation to the information exchanges between the Commission and the Health Lottery ELM, and between the Commission and the 51 CICs, the Commission considers that this information is exempt from disclosure, as the exemptions in section 31(2)(c) and/or (d), section 41(1) and section 43(2) of the Act apply. Our reasons for applying these exemptions are explained below.

Section 31

Section 31 of the Act ('law enforcement') provides that information held by a public authority is exempt if its disclosure would or would be likely to prejudice the exercise of a public authority of its functions, which includes its regulatory and licensing functions (s.31(2)(c) and (d)). Section 31 is a qualified exemption so we are required to consider whether maintaining the exemption is in the public interest.

Factors in favour of disclosure

- We recognise that there is a legitimate public interest in promoting the accountability and transparency of the Commission so that people can understand the decisions made by the Commission.
- We also recognise that providing information may also assist individuals challenge the Commission's decisions.
- We are aware that there is considerable media interest in the Health Lottery, which suggests that the general public is interested in how the lottery is run.

Factors in favour of maintaining the exemption

- We are concerned that disclosing information, which has been provided to the Commission in confidence in relation to the exercise of the Commission's licensing functions, could discourage applicants and licensees from freely providing information to the Commission. That would prejudice the Commission's ability to licence, monitor and regulate licensees, which in turn would have a detrimental effect on the Commission's regulatory functions.
- The Commission has made its position on promoting multiple society lotteries clear through a guidance note published in August 2011(attached) and in a previous response to a request under the Act http://www.gamblingcommission.gov.uk/gh-about-us/freedom_of_information_act/foi_requests.aspx

Weighing the balance

Having considered the balance of the public interest in light of the points above, the Commission is concerned that by disclosing any of the information requested we would compromise the transparent communication between the regulator and the regulated community upon which effective regulation is founded. This applies to these particular licensees and the impact that disclosure would have on a wider basis with other licensees. It is in the public interest that applicants and existing licensees should be open and honest with the Commission in the knowledge that the information disclosed will be used for legitimate regulatory purposes. If applicants or licensees believed it was likely that such information would reach the public domain it could have an impact on the accuracy, honesty and level of detail of information supplied to the Commission, which would have a direct impact on the Commission's ability to investigate instances of non-compliance and perform our statutory duties effectively.

Section 41

Section 41(1) of the Act ('information provided in confidence') provides that information is exempt information if: it was obtained by the public authority from any other person (including another public authority); and, disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person. The Commission considers that both requirements are met. The information was provided in confidence, which is a point which is clearly stated on our application forms. We also consider that it would be detrimental to the provider of the information if the information were disclosed and that disclosure would constitute an actionable breach. Bearing in mind that detriment, and the factors to which we have referred in weighing the balance under the section 31 exemption, we do not consider there to be a public interest which would lead the court to refuse to uphold the duty of confidentiality.

Section 43

Section 43(2) of the Act ('commercial interests') provides that information is exempt information if: its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). Section 43 is a qualified exemption so we are required to consider whether maintaining the exemption is in the public interest.

Factors in favour of disclosure

- As before, we recognise that there is a legitimate public interest in promoting the accountability and transparency of the Commission, so that people can understand the decisions made by the Commission.
- We recognise that providing information may also assist individuals challenge the Commission's decisions.
- We are aware that there is considerable media interest in the Health Lottery, which suggests that the general public is interested in how the lotteries promoted under that brand are run.

Factors in favour of maintaining the exemption

- We are concerned that disclosing information, which has been provided to the Commission in confidence in relation to the exercise of the Commission's licensing functions, could discourage applicants and licensees from freely providing information to the Commission. That would prejudice the Commission's ability to licence, monitor and regulate licensees, which in turn would have a detrimental effect on the Commission's regulatory functions.
- Disclosing commercially sensitive information about the way in which the ELM runs its business would be potentially damaging to the ELM as it would reveal the internal structure of their business as well as details of suppliers, systems and details of business plans and projections.

Weighing the balance

Having weighed these issues, the Commission is of the view that the public interest is best served through maintaining this exemption. Disclosing such information would be likely to prejudice the interest of the Commission. If applicants or licensees believed it was likely that such information would reach the public domain it could have an impact on the accuracy, honesty and level of detail of information supplied to the Commission, which would have a direct impact on the Commission's ability to investigate instances of non-compliance and perform our statutory duties effectively.

Request

Dear Gambling Commission,

I am looking for information on your involvement prior to the setting up of 'The Health Lottery' which seems to be a pseudo national lottery run by 51 shell CIC companies.

As the Gambling Commission has licensed all 51 'local' companies who use The Health Lottery ELM Limited to provide lottery facilities for them, I presume there was discussion before the setting up of this complex structure and that the operating structure has been cleared by the Gambling Commission.

I am looking for discussions, emails, phone calls etc about this process and also any guidance and special controls imposed before the granting of such licences.