

Response to request for information regarding the Health Lottery

I am writing further to your letter dated 4 October 2011 in which you requested the following:

“All the information submitted to the Gambling Commission (the Commission) with regards the 'Health Lottery' by its representatives, including:

1. all information pertaining to the licences of the 51 subsidiary society lotteries
2. all information submitted in relation to the role of the Health Lottery as the external fund manager for the lottery societies and its licences
3. any evidence submitted to the Gambling Commission, with reference to the above, that seeks to demonstrate that the 51 society lotteries have not been combined to form one single lottery”

Introduction

Your letter makes it clear that your interest in asking for this information, which was provided to the Commission by Health Lottery ELM Limited (“the ELM”) and the societies (each of which is a Community Interest Company Limited by Guarantee (“the CICs”)) in confidence, is to help you and others understand how the Commission reached its decision to licence the ELM and the CICs, given your view that the Health Lottery ‘goes against the spirit of the legislation covering lotteries in this country, with the potential result of less money going to charity and less money going to the public purse’. For the reasons set out below we do not think it would be in the public interest to release the information you requested. We can, however, provide general information about the Commission’s approach to lotteries promoted under a single ‘umbrella brand’.

As you are aware, we have recently published an Advice Note which sets out the Commission’s expectation that lotteries promoted by an external lottery manager under a single brand need to be promoted on behalf of genuinely separate societies who exercise control over the way in which their individual lottery is marketed and proceeds distributed. A copy of the Advice Note is attached for ease of reference. As the Advice Note makes clear, that does not preclude the use of other charities to distribute funds, nor does it preclude societies agreeing to use an external lottery manager and common marketing provided each individual society lottery that forms part of a single branded scheme is promoted separately and it is clear to a participant in the lottery which society lottery they are being asked to participate in.

The Commission has also made it clear, in response to other enquiries, that even if the arrangements for marketing individual societies’ lotteries under a single umbrella brand can be made, which are compliant with the requirements of the Gambling Act 2005 and commercially viable, if the effect is to circumvent the existing limits on the proceeds of such lotteries the government has the option of revising the regulations or taking other steps to make the limits achieve what was intended.

FOI response

The Commission holds the application forms and supporting information submitted by the ELM and the 51 CICs, as well as other correspondence sent to the Commission in relation to the applications.

The Commission considers that all of the information provided to it in relation to the applications and subsequent correspondence is exempt from disclosure, as the exemptions

in section 31(2)(c) and/or (d), section 41(1) and section 43(2) of the Freedom of Information Act 2000 (“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.
- A proportion of the money raised through the Health Lottery scheme will be supporting health care projects across Great Britain, so we accept that demonstrating to the public the mechanics of how the Health Lottery operates and how areas could benefit could be beneficial.

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.
- Information about how the Health Lottery is organised and how money is distributed is already available through the websites of the ELM and the 51 CICs.

Weighing the balance

The points in favour of disclosure around the benefit of increasing public understanding of how the ELM and CICs operate in relation to the Health Lottery needs to be balanced against the information which is already being made available through the websites of the ELM and the 51 CICs. These points effectively cancel one another out, which leaves the legitimate public interest in promoting the accountability and transparency of public authorities to be weighed against the risk that releasing information of the sort you have requested may discourage licensees from providing information to the Commission in future. This is the main argument against disclosure.

Having considered the balance of the public interest, 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 would 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 of the Act (commercially sensitive information) 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.
- A proportion of the money raised through the Health Lottery scheme will be supporting health care projects across Great Britain, so we accept that demonstrating to the public the mechanics of how the scheme operates and how areas could benefit could be beneficial.

Factors in favour of maintaining the exemption

- We consider that disclosing the information could discourage licensees from freely providing information to the Commission in future, which would prejudice the Commission's ability to monitor and regulate its licensees.
- Information about how the Health Lottery is organised and how money is distributed is available through the websites of the ELM, the People's Health Trust and the 51 CICs, including the proportion going to good causes and on administering the Health Lottery Trust and the number of prize winners
- Disclosing commercially sensitive information about the way in which the ELM runs its business would be potentially damaging to the ELM.

Weighing the balance

The points in favour of disclosure around the benefit of increasing public understanding in how the ELM and the CICs operate needs to be balanced against similar information being made available through the websites of the ELM and the 51 CICs. As above, these points effectively cancel one another out. This leaves the points regarding the legitimate interest in promoting the accountability and transparency of public authorities as the main argument in favour of disclosure, which needs to be weighed against the potential damage to the licensee if commercially sensitive information is provided, as well as the risks to the effective provision of information to the Commission.

Having weighed these issues, the Commission is of the view that the public interest is best served through maintaining this exemption.