

Explanation of exemption applied

Section 31 of the Freedom of Information Act 2000 (FOIA) ('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 including "the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise" (s.31(2)(c)).

Information that is generated through investigations (such as the Canbet investigation) may engage this exemption.

Section 31 is a qualified exemption so we are required to consider whether maintaining the exemption is in the public interest.

In favour of disclosure

- there is a legitimate public interest in promoting the accountability and transparency of public authorities
- there is an interest in highlighting instances of non-compliance within the industry in order to promote compliance from other operators
- over a year has passed since the investigation was concluded

In favour of maintaining the exemption

- the Commission publishes information on regulatory sanctions that it imposes
- the Commission released a detailed summary of the investigation and the action that was taken regarding Canbet
- releasing correspondence and investigation materials is likely to discourage other operators from freely engaging in future investigations and impede the voluntary supply of information
- releasing information regarding the investigative approach taken may allow non-compliant operators to conceal such actions
- investigators require a private thinking space to conduct their investigations whilst they are in progress to explore all aspects of a case without fear that these would be publically released. Releasing these could impact on the approach of investigators in future cases

Weighing the balance

Having considered the balance of the public interest, the Commission is of the view that the balance of the public interest lies in maintaining the exemption.

The arguments regarding transparency and wider lessons are satisfied through the information published by the Commission regarding this case. Whilst a year has passed since the conclusion of this individual case, the prejudice that would be likely to occur through the release of investigation materials to future investigations remains a determining factor.