

Response

Thank you for your request for “all information held about how my initial submission was handled”.

The information was passed to the team within the Commission which deals with marketing and advertising. This team works with the ICO in order to reduce the level of nuisance calls and spam text marketing by educating the gambling companies and related organisations about the law. Information brought to our attention by members of the public, along with other sources, helps to provide an overview of operators’ compliance to the requirements placed on them as licensed entities.

The Commission will neither confirm nor deny whether further information is held in relation to this request. As previously outlined, the Commission does not comment on individual operators or cases and when we do it is because there is significant public concern about a particular operator. The duty in s.1(1)(a) of the Freedom of Information Act 2000 (FOIA) (“to be informed in writing by the public authority whether it holds information of the description specified in the request”) does not apply, by virtue of s.31(3) of the FOIA (Law enforcement). This is explained in more detail in the attached.

Explanation of the exemption applied

The Commission has the power under s.27 of the Gambling Act 2005 to undertake activities for the purpose of assessing compliance with provision made by or by virtue of this Act and the power to apply regulatory sanctions to operators who are found to be non-compliant.

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)).

The duty to confirm or deny whether information is held does not apply to the extent that this function would be prejudiced.

The Commission does not comment in relation to individual cases as a matter of course, unless there is a significant public interest that would be served in doing so. In relation to investigations into matters of non-compliance, the Commission is of the view that the public interest is best served through preserving the ability to effectively investigate such activity.

The public interest test

Where a qualified exemption such as section 31 is engaged, the public authority must demonstrate that the balance of public interest is in maintaining the exemption. In balancing the public interest test we have considered the following matters:

In favour of maintaining the exemption

In the Commission’s view, the factors in favour of maintaining the exemption under section 31 in relation to requests about investigations are as follows:

- disclosure could prejudice the success of any investigation conducted by the Commission, to the detriment of the public interest
- disclosure could deter operators from voluntarily supplying information should a public statement be made confirming an investigation was underway

- disclosure could undermine the independence of the investigative process and the ability of the Commission to effectively fulfil a statutory function
- disclosure of information relating to investigative processes and methodology could assist non-compliant operators in masking their activities
- In favour of disclosure
- On the other hand, there are factors in favour of disclosing information, in relation to requests centring on investigations, as follows:
- there is a legitimate public interest in promoting accountability and transparency of public authorities
- public disclosure of case related information could discourage non-compliant activities being pursued

Weighing the balance

The Commission is of the view that the public interest is best served by protecting the effective investigation and monitoring of compliance. Should the Commission comment on or disclose information in relation to ongoing investigations, this would impair the Commission's ability to effectively conduct investigations for the reasons outlined above.

The Commission's position is to neither confirm nor deny whether information is held in relation to issues which may, or may not, be under active investigation. As such, you should not take this response as an indication that the requested information is either held or not held.

If you are experiencing problems with gambling, there are a number of organisations that offer help and assistance. A link to these organisations is available here:

<http://www.gamblingcommission.gov.uk/Useful-links/Responsible-gambling.aspx>

Review of the decision

If you are unhappy with the service you have received in relation to your Freedom of Information request and wish to make a complaint or request a review of our decision, you should write to FOI Team, Gambling Commission, 4th floor, Victoria Square House, Victoria Square, Birmingham, B2 4BP.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Gambling Commission. The ICO can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Request

Action being taken in relation to unsolicited marketing