

Explanation of the exemptions applied

Section 43

Information contained within regulatory returns is of a commercially sensitive nature as it relates to the performance and running of the business and is not otherwise in the public domain. Section 43(2) of the FOIA (commercially sensitive information) provides that information is exempt information if: its disclosure under the FOIA 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

There is a legitimate public interest in promoting the transparency of the Commission and in making information available to the public.

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.

The returns include a detailed breakdown of the areas in which the operators generate their turnover. Disclosing commercially sensitive information about licensees can place them at a disadvantage with their competitors.

The Commission recognises that the information submitted through regulatory returns is likely to be of a commercially sensitive nature (as stated in the collection forms and guidance). Operators submit the information on this basis that it will be treated as confidential, a view which has been confirmed on a number of occasions.

The Commission makes available aggregated or anonymised information about the gambling industry which is taken from the regulatory returns that are submitted. Operators have a reasonable expectation that such returns would not be published on an individual basis.

Weighing the balance

Whilst the Commission aims to be open and transparent, there is a need to preserve the confidentiality of information submitted on that basis and to be mindful of the commercial sensitivities of information that is held.

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

Section 40

Section 40(2) Personal Data – Regulatory Returns obtained from operators contains personal information of a 3rd party.

It would be disproportionate for us to publically disclose the identity of these individuals given their position within the organisation unless there is a strong public interest in doing so. These individuals have a legitimate expectation that their personal details will not be disclosed unnecessarily. The Data Protection Act 1998 requires the processing of personal data to be fair and lawful.

On balance, there is no legitimate public interest in disclosing their identity and it would not be fair to do so. This information is therefore exempt under section 40(2) of the Freedom of Information Act 2000.

Section 41

Information provided in confidence Section 41 – Similarly to section 43 above, data contained within Regulatory Returns is submitted to the Commission in confidence that it will not be further circulated to an external audience as it contains information that could be considered of a commercially sensitive nature. Disclosure of the information would give rise to an actionable breach of confidence. If there is a breach of confidence, the 3rd party or any other party affected may have the right to take action through the courts.