

Explanation of the exemptions applied

The Commission is of the view that the information is exempt from disclosure under sections 31(2)(c), 41(1) and 43(2) the Freedom of Information Act 2000 (FOIA).

As required under FOIA, the explanation for applying these exemptions can be found 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 and be satisfied that the support to good causes is maximised
- we also recognise that providing information may also assist individuals challenge the Commission's decisions

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 the Licensee from freely providing information in the future. That would prejudice the Commission's ability to licence, monitor and regulate the Licensee, which in turn would have a detrimental effect on the Commission's regulatory functions
- the Licensee considers that disclosure of the requested information would be very damaging so disclosure would be likely to discourage the provision of information in the future. The Licensee would not have been as full and frank had they expected the information would be made publicly available
- the reasoning for the decision is contained within the Notice

Weighing the balance

Having considered the balance of the public interest, the Commission is of the view that the public interest is in maintaining the exemption. Disclosure of information which is considered to be both highly commercially sensitive and to have been provided in confidence is likely to discourage the Licensee from freely providing information in the future.

In terms of the argument for transparency, the Commission is of the view that the information that has already been made available through the Notice is sufficient explanation of the reasoning for the decision. In particular, the Commission is of the view that the information provided in the Notice satisfies the requirements of Schedule 2A, paragraph 9 of the National Lottery etc Act 1993 (as amended), to give a written statement of the Commission's reasons for any decisions which they may make in the exercise of their functions under sections 5 to 10 or Schedule 3.

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 that has been clearly expressed by the Licensee. 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 43 exemption below, 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

- 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 and be satisfied that the support to good causes is maximised
- we also recognise that providing information may also assist individuals challenge the Commission's decisions
- the material is now several years old

Factors in favour of maintaining the exemption

- we consider that disclosing the information could discourage the Licensee from freely providing information to the Commission in future, which would prejudice the Commission's ability to monitor and regulate the Licensee
- the information requested includes detailed business plans, supplier details, development strategies and methodologies. Disclosure of such information would be likely to prejudice the commercial interests of the Licensee by aiding their competitors to compete with the National Lottery
- providing information relating to the licensee's suppliers would also be likely to prejudice the interests of the suppliers by revealing their service agreements and costs to competitors
- Camelot and other bidders will be starting to prepare for the next licence competition in the near future, if they have not already. Releasing detailed application material at this point would therefore cause even greater prejudice to their interests.

Weighing the balance

Having weighed these issues, the Commission is of the view that the public interest is best served through maintaining this exemption. There is very little that providing this information would do in terms of the public interest whilst disclosure could impact both on the Commission's ability to perform its statutory functions and on the commercial interests of the Licensee.