



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**EA/2019/0378**

**BETWEEN:**

**RICHARD PAUL**

**Appellant**

and

**THE INFORMATION COMMISSIONER**

**Respondent**

**Hearing: Royal Courts of Justice, Belfast on Wednesday 19 February 2020.**

**Before: Brian Kennedy QC, Marion Saunders and Anne Chafer.**

**Appearances: For the Appellant: Richard Paul.**

**Result: Appeal dismissed.**

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**Decision with Reasons**

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## **Introduction:**

[1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”) The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice dated 20 September 2019 (reference FS50861699) which is a matter of public record.

[2] The Tribunal Judge and lay members sat to consider this case at an oral hearing on 19 February 2020.

## **Factual Background to this Appeal:**

[3] Full details of the background to this appeal, the request for information and the Commissioner’s decision are set out in the Decision Notice. The appeal concerns the question of whether the Commissioner was correct to determine that the requested information should not be disclosed as it represented the personal information of a member of staff employed by the Gambling Commission.

## **CHRONOLOGY:**

5 June 2019	Appellant requests from Gambling Commission (“GC”) information about the employment arrangements and qualifications of a “ <i>betting specialist</i> ” employed by the Commission
20 June 2019	GC, in role of Public Authority answers queries about employment arrangements but refuses to disclose information about the qualifications of the individual
2 July 2019	Internal review by GC resulted in request being refused
29 July 2019	Complaint from Appellant to the Information Commissioner

## **RELEVANT LEGISLATION:**

### ***Freedom of Information Act 2000***

#### **Section 40 Personal Information**

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which does not fall within subsection (1), and
- (b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).]

(4A) The third condition is that—

- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information, which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—
  - (i) would (apart from this Act) contravene any of the data protection principles, or
  - (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;
- (b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);
- (c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);

(d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.]

(6).....

(7) In this section—

“the data protection principles” means the principles set out in—

- (a) Article 5(1) of the GDPR, and
- (b) section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

(8) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (misapplying the legitimate interests gateway in relation to public authorities) were omitted.

**COMMISSIONER’S DECISION NOTICE:**

[4] The Respondent Commissioner was satisfied that the information related to a specific and identifiable individual, and it had specific biographical significance. It was therefore plainly personal information. The Respondent Commissioner turned then to the three-fold test of legitimacy, necessity and balancing. She found that the Appellant had a legitimate interest, in that he was pursuing a resolution following what he believed to have been wrongdoing on the part of a bookmaker in changing the terms of a bet after the fact. However, the individual whose information is being sought is “*not in a public facing, or senior role*”, and is not currently in the public domain. As there would be no reasonable expectation that the information would be publicly available, disclosure of the information would not be lawful. The Gambling Commission’s refusal was upheld.

**GROUNDS OF APPEAL:**

***Ground 1 – Incompetence on the part of public officials***

[5] The Appellant alleged either corruption or incompetence on the part of the individual whose information he had requested (and who he claimed occupied a much more senior role than the Gambling Commission alleged) and also two named officers of the Commissioner.

### ***Ground II – Misconduct by the Gambling Commission***

[6] The Appellant alleged that a particular bet that was advertised both online and in the branches of a particular betting company did not accord with how the bet played out, and the company changed the terms of the bet after the bets had been placed to the disadvantage of numerous customers. The Appellant claimed that the Gambling Commissioner had stated that they had taken the advice of the individual in question (subject of the request) and that the company had not acted unlawfully.

### **COMMISSIONER'S RESPONSE:**

[7] The Commissioner reaffirmed her reliance on the Decision Notice, and stated that it was not for her or the Tribunal to determine whether or not Mr Paul's complaint against the gambling company was substantiated. The Tribunal's role is purely to determine whether the Commissioner was right in law. She also declined to respond to the Appellant's "*gratuitous aspersions*" about her officers.

[8] Regarding the seniority of the employee in question, the Commissioner is satisfied that the Appellant had overstated the official's role. It is common for senior officials to take advice from subordinates without it being a necessary corollary that the advice is accepted without challenge.

### **APPELLANT'S REPLY:**

[9] The Appellant replied by redoubling his attacks on the Commissioner's staff members for alleged incompetence. He clarified that he only wished to know the

qualifications of the individual insofar as they pertain to the gambling industry and their position as a 'gambling expert'. He also claims that no-one with whom he has communicated in the Gambling Commission has questioned the advice given by the individual, hence his conviction that their position is more senior than the Commission says.

### **HEARING:**

**[10]** The Appellant attended the oral hearing while the Respondent relied upon her reasoning in the Decision Notice and the written submissions in her Response to the Grounds of Appeal. The Appellant provided the Tribunal with a detailed and comprehensive account of the motive for his request and his concern about the lack of governance and control of gambling and betting in the UK generally and Northern Ireland in particular. He explained how Gambling Commission ("GC") has no jurisdiction in Northern Ireland ("N.I."). He explained his understandable frustration that there appears to be no responsible body in a position to deal with his complaints and concerns in relation to the regulation and control of Gambling in N.I. in particular or even other parts of the UK as his view is that the GC is ineffective and certainly has provided him with no assistance or satisfaction relating to his significant and genuine concerns. The Tribunal found the Appellant a sincere and dedicated citizen with genuine concerns. We agree with the Respondent that there is a significant public interest in the Appellants request.

**[11]** Nevertheless we explained to the Appellant, the comprehensive Response to his grounds of Appeal by the Respondent and explained in detail how the Respondent had carefully reasoned the public authority's reliance on section 40(2) of FOPIA and how it related to Personal Data in this appeal and in particular how where section 40 is engaged under the first condition, it is an absolute exemption, so there is no further public interest balancing exercise. We explained how the Respondent accepted there was a legitimate public interest in transparency around the advice by a public servant to a public authority in the exercise of its public functions. We also explained the importance of the need for the protection of individuals' personal details when not in a

senior or public facing role, where that individual would have a reasonable expectation that their employer would keep their personal data private.

**[12]** The Tribunal then explained how the Grounds of Appeal failed to address the specific reasoning in the Decision Notice as set out therein. The Tribunal explained that we accept and adopt the Respondents reasoning in her impugned Decision Notice. We also agreed with the suggestion from the Respondent that the grievances, so understandably aired by the Appellant, are beyond the scope of the Respondent or this Tribunal. We agree his recourse is elsewhere. We further agreed that a reworded request could still be made in a way that section 40(2) might not be engaged as it is in part 4 of his request in this appeal. We explained that FOIA places a duty on the Public Authority to assist citizens in presenting an effective request.

#### **CONCLUSION:**

**[13]** The Tribunal accept and adopt the reasoning in the Decision Notice and the Response to the Grounds of Appeal in this case. We also accept that the Appellant is a genuine and concerned citizen playing a significant role in questioning the Public Interest in the regulation and control of betting within the UK. We can accept his genuine cause for concern and the need for some form of inquiry or further regulation and control of gambling and in particular in Northern Ireland. However in the circumstances we find the Appellant has failed to identify any error of Law in the Decision Notice under appeal. No error of Law in the Decision Notice under appeal has been established and we therefore unanimously dismiss this appeal.

Brian Kennedy QC

Date:24 February 2020

Promulgation date: 6 March 2020