

6 November 2015

Mr Ben Fairless

By email: foi+request-1351-06c0c1d9@righttoknow.org.au

ACMA file reference: ACMA2015/758

Dear Mr Fairless,

Request for access to documents under the *Freedom of Information Act 1982*

I refer to your *Freedom of Information Act* (FOI Act) request of 5 November 2015, in which you sought access to "any complaint made in relation to Click to Call, BetCall or any other service offered in 2015 by Australian licenced online betting operators that ACMA referred or declined to refer to the AFP in the last 12 months." You have also sought access to any referral made to the AFP.

Clarification of scope

Your request refers to "any other service offered in 2015 by Australian licenced online betting operators". The ACMA has interpreted this element of your request to mean any other 'click-to-call' type services offered by Australian licensed operators. Can you please confirm whether the ACMA's interpretation is correct via email to Phyllis.fong@acma.gov.au by **13 November 2015**?

The FOI Act only applies to documents of an agency that are in existence at the date an FOI request is received. Therefore, please note that the timeframe for this request will be taken to be 1 January 2015 to 5 November 2015. It is open to you to make a separate FOI request at a later time for documents created after 5 November 2015.

Documents containing personal information and/or business or professional affairs of third persons

A number of documents which fall within the terms of your request contain personal information about third persons. Section 47F of the FOI Act relevantly provides:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

A number of documents which fall within the terms of your request also contain information about the business or professional affairs, or concerning the business, commercial or financial affairs, of third parties.

Section 47G of the FOI Act relevantly provides:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs

of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, [...] an agency for the purpose of administration of the law of a Commonwealth [...] or the administration of matters administered by an agency.

As the individuals whose personal information, and the individuals and organisations whose information concerning their business, professional, commercial or financial affairs, which appear in these documents may reasonably wish to contend that the information is exempt under section 47F or 47G of the FOI Act, the ACMA is required, in accordance with sections 27 and 27A of the FOI Act, to give them a reasonable opportunity to make submissions in relation to the application of the exemption.

I will therefore be writing to the relevant individuals and organisations in relation to the documents that contain their personal information and/or information concerning their business, professional, commercial or financial affairs.

Charges

The processing charges which the ACMA is entitled to charge are prescribed in the *Freedom of Information (Charges) Regulations 1982*.

These charges include:

- searching and retrieving (\$15.00 per hour)
- making a decision on access (\$20.00 per hour after the first five hours, which are for free)
- photocopying a written document (10 cents per page)
- making a copy of a written document other than a photocopy (\$4.40 per page)
- postage or delivery (an amount not exceeding cost of postage or delivery)
- transcribing (\$4.40 per page)
- supervising, if the applicant wishes to inspect (\$6.25 per half an hour, or part thereof).

The ACMA will, in accordance with section 29 of the Act, advise you if you are liable to pay any charge and provide a preliminary assessment of those charges.

Time for processing

The statutory timeframe for responding to your request under the FOI Act is generally 30 days, commencing the day following the day on which the ACMA received the valid application.

However, to enable the abovementioned third party consultation to occur, the statutory time period for processing the request has, in accordance with subsection 15(6) of the FOI Act, been extended by 30 days to **4 January 2016**.

The decision on access will be made as soon as practical, but in any event by **4 January 2016**, unless the timeframe is further extended under the FOI Act. You will be notified should there be any further extensions.

Publication

Please note that from 1 May 2011, the ACMA is required, under section 11C of the FOI Act, to publish on its website information which has been released in response to an FOI access request made to the ACMA after that date. This requirement does not apply to the following information:

- personal information about any person, if publication of that information would be unreasonable;
- information about the business, commercial, financial or professional affairs of any person, if publication of that information would be unreasonable;
- other information covered by a determination made by the Australian Information Commissioner, if publication of that information would be unreasonable; and
- any information, if it is not reasonably practicable to publish the information because of the extent of modifications to a document (or documents) that would need to be made to delete the information listed in the above dot points.

In accordance with the Guidelines issued by the Office of the Australian Information Commissioner (accessible at www.oaic.gov.au), the ACMA will publish the information on its website in the form of a Disclosure Log. The ACMA will make available the documents for downloading for a minimum period of 12 months from the time the documents are listed on the Disclosure Log.

Further information

Further information about the FOI Act, including the ACMA's publication obligations, is available on the ACMA's website at www.acma.gov.au.

Please do not hesitate to contact me on 02 9334 7831 or at Phyllis.fong@acma.gov.au if you have any questions.

Yours sincerely,



Phyllis Fong
Manager
Community Broadcasting and Safeguards Section

Authorised decision maker pursuant to section 23(1) of the FOI Act