

17 December 2019

J Howarth

Email: fyi-request-11820-0e8c6ed2@requests.fyi.org.nz

Dear Mr Howarth

OFFICIAL INFORMATION ACT REQUEST

The Commission has received your email dated 6 December 2019, in which you request, under the Official Information Act 1982 (“OIA”), “the full transcript from the Commission’s hearings on SKYCITY’s Hamilton application to increase the number of EGM in the Hamilton Casino”.

While the Commission is subject to the OIA generally, under the provisions of the OIA, it is only a subject organisation in respect of certain of its functions, and certain of the information that it holds is expressly excluded from the statutory definition of “official information”.

“Official information” is defined by section 2 of the OIA as any information held by a department, a Minister of the Crown in his official capacity, or an organisation. However, expressly excluded from the definition (by section 2 (h)(ii) and (iii)) is “evidence or submissions made to ... a commission of inquiry ... appointed” either under the Commissions of Inquiry Act 1908 or otherwise by any Act to inquire into a specified matter. In addition, section 2(6) provides that “department” and “organisation” under the OIA do not include certain bodies in certain circumstances, namely:

- (a) ...; or
- (b) in relation to its judicial functions, a tribunal;
- ...
- (d) a commission of inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908; or
- (e) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed, pursuant to, and not by, any provision of an Act, to inquire into a specified matter;
- ...

Section 2(6)(b), (d) and (e) all apply to exclude the Commission as a subject organisation. The former applies to the Commission’s judicial functions (which is the function that it is performing in determining the Hamilton application). The latter two arise from section 225 of the Gambling Act 2003 which provides that the Commission must be treated as if it were a commission of inquiry under the Commissions of Inquiry Act 1908.

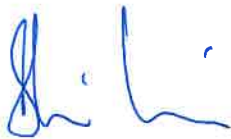
The information which you have sought is held by the Commission pursuant to its judicial function. In relation to those functions only, the Commission is not an organisation to which the OIA applies. In addition, the information that you have requested is not official information, subject to the OIA.

Transcripts of evidence in Court are known as the Judge’s Notes and do not form part of the formal court record. They are shared only with counsel appearing to assist in making submissions. The Commission has adopted a similar approach with regard to access to its transcripts of evidence.

The Gambling Commission declines to provide them to you for the reasons set out above.

You are entitled to make a complaint about the Commission's decision to the Office of the Ombudsmen. It can be contacted at PO Box 10152, Wellington 6143 or at info@ombudsmen.parliament.nz.

Yours faithfully



Blair Cairncross
Executive Director Gambling Commission
Tel: 09-353 7222
blair.cairncross@gamblingcom.govt.nz