

Official

Ref : FOI-205

[REDACTED]
Sent via email only to:
[REDACTED]

24 October 2018

Dear [REDACTED]

1. Thank you for your email of 5 September 2018 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Your request was for information relating to communications between UKAD and WADA, the IAAF and/or Lord Sebastien Coe. Specifically, your request was as follows:

Please could you provide me with:

(a) All correspondence between member of the UKAD Executive Team and Board and the IAAF, its officials or staff, between 1 April 2018 and 1 August 2018

(b) All correspondence between member of the UKAD Executive Team and Board and WADA, its officials or staff between 1 April 2018 and 1 August 2018

(c) All correspondence between UKAD, its officials or staff and Sebastian Coe (Seb Coe/Lord Coe) between 1 April 2018 and 1 August 2018

2. We note that the above request was submitted following an earlier request for a greater time frame, which we had advised you by email dated 4 September 2018 was exempt pursuant to Section 12 of the Act.

Decision

3. UKAD confirms that it holds some of the information requested – being information falling within point (b) above – and has reviewed all correspondence falling within the scope of your request. To confirm, UKAD does not hold any information falling within points (a) or (c) of your request.

4. Copies of the information you have requested – that are not exempt for reasons discussed below – are enclosed and a list provided below. Where redactions have been made to enclosures, this is because that information is exempt pursuant to section 40 of the Act (personal data). Further details regarding this exemption, and others relied upon, are set out below. Please note that emails marked with a * below include attachments, copies of which have also been enclosed.

	Date	Email from	Email to
a.	12/06/2018	Emily Robinson	Stacy Spletzer et al
b.	12/06/2018	Emily Robinson	Catherine MacLean
c.	29/06/2018	Adam Klevinas	Matthew Johnson
d.	17/05/2018	Adam Klevinas	Matthew Johnson
e.	16/04/2018	Florence Rangeon	Julia Hardy et al
f.	01/08/2018	Nicole Sapstead	Olivier Niggli
g.	10/07/2018	WADA-AMA Communications	Nicole Sapstead
h.	09/07/2018	Stacy Spletzer	Nicole Sapstead
i.	09/07/2018	Rob Koehler	Nicole Sapstead
j.	03/07/2018	Craig Reddie	Nicole Sapstead
k.	22/06/2018	George Tsamis	Nicole Sapstead
l.	22/06/2018	George Tsamis	Nicole Sapstead
m.	22/06/2018	George Tsamis	Nicole Sapstead
n.	22/06/2018	George Tsamis	Nicole Sapstead
o.	22/06/2018	George Tsamis	Nicole Sapstead
p.	28/05/2018	WADA-AMA Communications	Nicole Sapstead
q.	08/05/2018	Rob Koehler	Nicole Sapstead
r.	07/05/2018*	Senior Executive Assistant on behalf of Olivier Niggli	Nicole Sapstead
s.	25/04/2018	Tom May	Nicole Sapstead
t.	24/04/2018	WADA-AMA Communications	Pat Myhill
u.	05/04/2018	Craig Reddie	Nicole Sapstead

	Date	Email from	Email to
v.	04/04/2018 ¹	Tom May	Nicole Sapstead et al
w.	06/07/2018	WADA-AMA Communications	Pat Myhill
x.	20/06/2018	WADA-AMA Communications	Pat Myhill
y.	24/05/2018	WADA-AMA Communications	Pat Myhill
z.	24/05/2018	WADA-AMA Communications	Pat Myhill
aa.	17/05/2018*	Administrative Assistant for Tim Ricketts	UKAD Testing Officers
bb.	07/05/2018	WADA-AMA Communications	Pat Myhill
cc.	24/04/2018	WADA-AMA Communications	Pat Myhill
dd.	18/04/2018	WADA Compliance	Pat Myhill
ee.	04/04/2018	WADA-AMA Communications	Pat Myhill
ff.	31/05/2018	WADA-AMA Communications	Philip Bunt
gg.	31/05/2018	WADA-AMA Communications	Philip Bunt
hh.	24/05/2018*	Gareth Wellings	Eva Vizioli

5. We note that we have also withheld, pursuant to section 21 of the Act, copies of various emails from WADA to members of the UKAD Executive Team, where the content of those emails is already in the public domain. The emails are circular emails sent from a general WADA email account, each containing a copy of a

¹ Attachment is exempt pursuant to section 21 of the Act as it is publicly available here: https://www.wada-ama.org/sites/default/files/2018_symposium_fd_one_year_since_code_compliance.pdf

WADA news release, the contents of which are available on the WADA website [here](#).²

Information withheld

Section 40 exemption: personal data

6. Section 40(2) of the Act states:

Any information... is also exempt information if—

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

Section 40(3A)(a) of the Act states:

The first condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles.

7. Pursuant to the above, UKAD has withheld personal data, as evidenced by redactions made to the enclosed documents, namely email addresses, phone numbers and family details.
8. In deciding to withhold that personal data, UKAD has considered whether disclosure of that personal data would contravene one of the data protection principles. In so doing UKAD has focused on the first data protection principle as set out in Chapter 2, Article 5(a) of the General Data Protection Regulation ('the GDPR'), which is as follows:

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency').

9. UKAD has first considered whether disclosure would be fair to the persons concerned in the circumstances. If disclosure would not be fair, the exemption under section 40(2) of the Act would be satisfied and the requested information could not be disclosed. After considering the various factors applicable in this matter, UKAD has concluded that disclosure of the personal data described above would not be fair to the data subjects.
10. Furthermore, some of the emails that you have requested relate to what were then ongoing arbitration proceedings before the National Anti-Doping Panel ('NADP'),

² <https://www.wada-ama.org/en/media/news>

concerning a UK athlete. Those emails constitute “personal data” as defined under the DPA, as they relate to an identifiable individual. UKAD has considered whether disclosure of that information would be fair to the data subject, being the athlete to whom the proceedings relate, and has concluded that disclosure would not be fair in the circumstances.

Section 41 (information provided in confidence)

11. Section 41(1) of the Act provides as follows:

Information is exempt information if –

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

12. The information requested is therefore exempt if the following criteria are met:

- It was obtained by the authority from any other person;
- Its disclosure would constitute a breach of confidence;
- A legal person could bring a court action for that breach of confidence;
- That court action would be likely to succeed.

13. Some of the information requested – being emails concerning what were then ongoing and confidential arbitration proceedings, an email between members of the WADA NADO Ad-hoc Working Group and an email from WADA resetting the ADAMS login for Mr Myhill – is exempt from disclosure pursuant to section 41 of the Act.

Would disclosure of the information requested constitute a breach of confidence?

14. The Information Commission has said that, in considering whether the above exemption is engaged, the following factors are relevant:

- whether the information has the necessary quality of confidence;
- whether it was imparted in circumstances importing an obligation of confidence; and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider. However, where the information requested relates to a person’s private life, there is no requirement to show detriment, this is assumed.

15. The withheld information requested was imparted in circumstances importing an obligation of confidence. The restrictions on use of the information were implicit from the circumstances in which the information was given. With respect to the email between members of the WADA NADO Ad-hoc working group, we note that Nicole Sapstead has signed a confidentiality declaration as a member of that group. With respect to the email concerning the ADAMS login, these details were plainly meant for Mr Myhill alone, as to disclose them would enable unauthorised access to that system. Finally, as provided for in the Procedural Rules of the NADP, any correspondence between parties to arbitration proceedings before the NADP is confidential.
16. The withheld information requested possesses the necessary quality of confidence. This is because it is more than trivial, and it is not otherwise accessible. With respect to those emails relating to what was then an ongoing case, whilst the outcome of that case is now in the public domain, the details of any communications and/or discussions regarding arbitration proceedings remain confidential, as provided for in the Procedural Rules of the NADP.³
17. With respect to the emails that relate to what was then an ongoing case, it is UKAD's view that the information requested relates to an Athlete's private life and as such UKAD is not required to show detriment. With respect to the remaining emails discussed above, disclosure would be both unauthorised and cause commercial detriment to the confider.
18. In light of the obligation of confidence that applies to the requested information UKAD has concluded that disclosure of the information described above would constitute a breach of confidence.

Could a legal person bring a court action for that breach and would that action be likely to succeed?

19. Various legal persons, including WADA, would have standing to bring a court action against UKAD for breach of confidence if UKAD was to disclose the information requested. In UKAD's view, that action would be likely to succeed. In coming to this conclusion, UKAD has considered whether there is a public interest defence to the disclosure in the circumstances and concluded that there is not.
20. UKAD has therefore decided that part of the information requested (as described above) is exempt pursuant to section 41(1) and what is more, is content that this

³ Refer rule 11.4 of the 2015 Rules of the National Anti-Doping Panel, available at: <https://www.sportresolutions.co.uk/resources/rules-and-forms>

decision complies with the overall purpose of the exemption, being to give those who provide confidential information to public authorities a degree of assurance that their confidences will continue to be respected should information fall within the scope of the Act.

Section 36(2)(b)(i) (inhibit the free and frank provision of advice)

21. Section 36(2)(b)(i) of the Act provides as follows:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act would, or would be likely to, inhibit the free and frank provision of advice

22. UKAD has confirmed with the qualified person, Nicole Sapstead, that disclosure of the following correspondence would inhibit UKAD's ability to provide free and frank advice to individuals, sporting bodies and other relevant stakeholders in future, as it would inhibit the process of providing advice:

- a. Emails between WADA/UKAD and a national governing body requesting advice on the interpretation and application of a specific provision of the WADA Code; and
- b. Email from WADA to UKAD and other anti-doping organisations, asking for review of the draft 2017 testing figures report.

23. It is necessary and desirable for UKAD to provide external advice and feedback to stakeholders in relation to anti-doping matters, whether of its own volition or upon request from stakeholders. UKAD considers it appropriate, necessary and consistent with the ADR and National Anti-Doping Policy that such advice be sought and given in confidence. To disclose requests for such advice (and any advice given) would deter stakeholders from approaching UKAD for its advice.

24. In considering the public interest in this context, UKAD has taken into account that disclosure of the information would provide transparency in respect of UKAD's work and/or provide the public with an understanding of the operation of the anti-doping regime. However, in UKAD's view the balance of the public interest in this case strongly lies in not providing the information sought. UKAD considers that disclosing the material would both damage the relationship between UKAD and its stakeholders and set a precedent that would serve to inhibit UKAD's future free and frank provision of advice and feedback to stakeholders. UKAD provides this advice towards the important public policy objective of eliminating doping in sport. It is therefore in UKAD's view in the greater public interest for UKAD to continue to be able to provide free and frank advice in a confidential context.

Section 36 – prejudice to the effective conduct of public affairs

25. Section 36(2)(c) of the Act provides as follows:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

26. UKAD has withheld a copy of a piece of correspondence between UKAD and WADA concerning another Anti-Doping Organisation as it is exempt pursuant to section 36(2)(c) of the Act. In the opinion of the qualified person, Nicole Sapstead, disclosure of this piece of correspondence would prejudice the effective conduct of public affairs, in that it would prejudice UKAD's ability to perform one of its core functions, namely, cooperation with WADA and other relevant Anti-Doping Organisations in the coordination and implementation worldwide of a high quality and efficient anti-doping effort for sport, as provided for in the National Anti-Doping Policy. In Ms Sapstead's view, disclosure of this piece of correspondence would prejudice UKAD's ability to perform this function as it would damage the relationship between UKAD and its stakeholders and in turn damage UKAD's ability to be active in ensuring a consistent anti-doping program worldwide.
27. Given Ms Sapstead's conclusion in respect of prejudice to the effective conduct of public affairs, UKAD has gone on to consider the public interest test. UKAD has reached the view that the public interest in disclosing this piece of correspondence is outweighed by the public interest in withholding that correspondence, given the prejudice that would be caused to UKAD's functions if it did so. UKAD recognises the general public interest in disclosure of information which would promote openness, transparency and clarity of decision-making, as well as understanding of UKAD's interactions with WADA and other Anti-Doping Organisations. However, UKAD also recognises the public interest in ensuring that UKAD is able to meet its functions as provided for under the National Anti-Doping Policy, in particular the importance of WADA and other Anti-Doping Organisations being willing to engage with UKAD regarding the international fight against doping in sport. Disclosure of this piece of correspondence would significantly impact on the likelihood of future cooperation by such bodies including the provision of information to UKAD.

Conclusion

28. If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be

addressed to: Pat Myhill, Director of Operations, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.

29. If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely



UK Anti-Doping