



UK Anti-Doping
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Official

Ref: FOI-209

[REDACTED]
Sent via email only:
[REDACTED]

23 November 2018

Dear [REDACTED],

1. Thank you for your emails of 25 and 26 October 2018, in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Specifically, your request was as follows:
 - a. *I'm emailing today to ask whether you'd kindly supply me with a list of sanctions by sport and athlete for each year from 2008 to 2017*
 - b. *Based on your list of historical sanctions, can you tell us the number of individual test samples that were taken each year between 2008 and 2017 for athletes within each sport?*
 - c. *Based on your list of historical sanctions, can you tell us how many athletes were registered professionally and eligible for testing within each sport for each year of testing between 2008 and 2017?*

Decision

2. Having considered your request, we can confirm that we do not hold information with respect to the following:
 - a. part (c) of your request; and
 - b. with respect to parts (a) and (b) of your request, the period 1 January 2008 to 13 December 2009 i.e. UKAD only holds information for the period 14 December 2009 (being the date that UKAD was established) to date.
3. We further note that the information requested at points (a) and (b) – that is held by UKAD – is exempt from disclosure, for the reasons set out below.

Part a: list of sanctions by sport and athlete

4. We confirm that UKAD holds details of sanctions issued by UKAD with respect to Anti-Doping Rule Violations (ADRVs) committed by athletes and athlete support personnel for the period 14 December 2009 to date.
5. However, the above information is exempt from disclosure pursuant to Sections 21 (information accessible by other means) and 40 (personal data) of the Act. The rationale for the application of these exemptions is set out below.

Section 21: information accessible by other means

6. Section 21 of the Act states:

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

7. UKAD publishes the details of all sanctions it has issued since UKAD was founded on its website [here](#).¹ The publication of sanctions is split between “**Current Sanctions**” and “**Historical Sanctions**”. For each sanction, UKAD publishes the sport, National Governing Body, the rule violated, the date of the violation, the period of the sanction and, where the ADRV relates to an adverse analytical finding, the name and class of the relevant Prohibited Substance(s). This information is therefore reasonably accessible to you by other means, as it is freely available on the UKAD website.
8. We note that the name of the athlete to which a sanction relates is only published where that sanction is current. Once a sanction imposed on an athlete or athlete support person has concluded, the details of that sanction are anonymised (i.e.

¹ Where UKAD is made aware of an ADRV by a UK athlete imposed by another Anti-Doping Organisation, UKAD will also publish the details of the sanction imposed by that Anti-Doping Organisation

the name of the athlete/athlete support person is removed) and the remaining sanction details as set out above (sport, rule violated, etc) are moved to the “historical sanctions” section of the website. For the reasons set out below, the name of athletes and/or athlete support persons who have served sanctions for an ADRV in the past is exempt from disclosure pursuant to section 40 of the Act.

Section 40: personal data

9. 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.

10. 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.

11. For the reasons outlined below, UKAD has concluded that, with respect to historical sanctions, the name of the athlete or athlete support person to which a sanction relates is exempt from disclosure pursuant to section 40 of the Act as i) that information constitutes “personal data” as defined under the Data Protection Act 2018 (‘DPA’) and ii) disclosure would contravene the first data protection principle.

12. The information requested – the name of athletes/athlete support persons who have previously served a sanction for an ADRV – is personal data as defined under the DPA. Having determined that fact, UKAD has gone on to consider whether disclosure would contravene any of the data protection principles and in so doing has focused on the first data protection principle as set out in Chapter 2, Article 5(1)(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’).

13. In determining whether or not disclosure of the requested information would contravene the first data protection principle, UKAD has first considered whether disclosure would be fair to the data subjects (being the athletes/athlete support

persons who have previously served a sanction for an ADRV). 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 requested information would not be fair to the data subjects.

14. In coming to this conclusion UKAD has considered the following factors:

- a. That the information sought relates to a determination that the data subject has committed an ADRV; while this is not special category data as defined under the GDPR, it is not trivial personal data.
- b. The reasonable expectations of the data subjects. At the time that the data subjects were sanctioned, their expectation would have been that the details of that sanction would be published only in accordance with the applicable rules – being the UK Anti-Doping Rules ('ADR'), World Anti-Doping Agency ('WADA') Code and WADA International Standards – and would otherwise remain confidential. Article 10.13 of the ADR states that a mandatory part of each sanction shall include automatic publication, as provided in Articles 8.4 and 13.8.² We note in particular Article 8.4.3, which states:

Publication shall be accomplished at a minimum by placing the required information on UKAD's website and leaving the information up for the longer of one month or the duration of any period of Ineligibility.³

The ADR came into force on 1 January 2015. The rules that were applicable prior to this time – being the 2009 version of both the ADR and the World Anti-Doping Code – contained provisions to the same effect as those set out above, with the exception that the period of publication was a minimum of one year.⁴

In light of the above, the reasonable expectation of the data subjects would be that the details of their sanction would not be published or disseminated other than in accordance with the rules and not for longer than the term of their ban.

² The requirement to publish is also mirrored in Article 14.3 of the International Standard for the Protection of Privacy and Personal Information ('ISPPPI')

³ This is also reflected in Article 14.3.4 of the ISPPPI

⁴ Refer Articles 8.4 and 13.7 of the 2009 UK Anti-Doping Rules and Article 14.2 (in particular Article 14.2.4) of the 2009 WADA Code.

- c. The consequences of disclosure to the data subjects. Disclosure could be distressing to the data subjects given that it would contravene their legitimate right to anonymity in respect of the requested information.
 - d. Whether there is a legitimate public interest in the disclosure. UKAD recognises the importance of transparency and accountability in general, both in terms of the public confidence that this inspires and also in providing the public with the ability to examine decisions taken in particular cases. However, in this instance, UKAD is of the view that this interest is met by the level of information currently available on UKAD's website (as outlined above). UKAD has also taken account of the fact that disclosing the requested information would contravene the rights of the data subjects to have the confidentiality of the information respected pursuant to the terms of the ADR and the International Standard for the Protection of Privacy and Personal Information ('ISPPPI'). The rationale for publication as a consequence for an ADRV is both i) to act as a deterrent to others and ii) to ensure that a sanction can be recognised and enforced. That is, to ensure that an athlete or athlete support person currently serving a sanction is not able to participate in sport during the period of their ban. Continued publication of an athlete's (or athlete support person's) name once a sanction has been served has no legitimate anti-doping purpose that isn't served by publication of anonymised data. On balance UKAD does not consider that there is an overriding legitimate public interest in providing the information such as to make its disclosure fair.
15. Having concluded that disclosure of the requested information would not be fair, to disclose the information would contravene the first data protection principle. Therefore, the exemption under section 40(2) of the Act applies to your request for the names of athletes who have previously served a sanction for an ADRV.
16. While satisfied that the information is exempt under section 40(2) as disclosure would violate the first data protection principle, UKAD notes that disclosure would also violate the fifth data protection principle, as set out in Chapter 2, Article 5(1)(e) of the GDPR, which provides that personal data shall be:
- "kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational*

measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation)'"

Part b: number of individual test samples taken each year between 2008 and 2017 for athletes within each sport

17. UKAD publishes a report on its testing programme each quarter and has done so since its commencement. This includes details of the number of samples collected and a breakdown by sport. The information requested (for the period 14 December 2009 to date) is therefore available on UKAD's website [here](#). This information is therefore exempt from disclosure pursuant to section 21 of the Act as it is reasonably accessible to you by other means.

Part c: number of athletes registered professionally and eligible for testing within each sport for each year of testing between 2008 and 2017

18. As noted above, UKAD does not hold information with respect to this aspect of your request. We recommend contacting the National Governing Body for each sport to obtain this information.

Conclusion

19. 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: Philip Bunt, Chief Operating Officer, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.
20. 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