

Official

Ref: FOI-220

[REDACTED]  
Sent via email only:  
[REDACTED]

29 March 2019

Dear [REDACTED],

1. Thank you for your email dated 20 February 2019 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 Therapeutic Use Exemption ('TUE') applications made by Mr Anthony Joshua. Specifically, your request was as follows:

*"I would like to know the records of all Therapeutic Use Exemption ('TUE') applications that were granted to heavyweight boxer Anthony Joshua since he won gold at the London 2012 Olympics. The details I would like, if available, are: medicine involved, reasons for application and dates of application."*

### Summary of response

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2. UKAD neither confirms nor denies that it holds the information requested. The detail of the basis for this response is set out below. Please note that this "neither confirm nor deny" response to your request should not be taken as an indication that the information you requested is or is not held by UKAD.
3. Please also note that the approach taken to the application of the relevant exemption below should not be taken as in any way indicative of the position of the individual in your request. It is simply an application of the relevant test in the context of the wider framework, rules and procedures applicable to UKAD as an organisation subject to the Act.

### Response

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4. UKAD neither confirms nor denies that it holds the information requested. In doing so, UKAD relies on the exemption in section 40 of the Act.

5. We set out below the application of the exemption in section 40 of the Act to your request for information. To contextualise that response, we explain briefly here the role of the TUE process in the anti-doping system that applies under the UK Anti-Doping Rules ('the Rules').
6. The primary purpose of the anti-doping process is the elimination of doping in sport through the detection and prevention of Anti-Doping Rule Violations ('ADRVs'). The TUE process is an important part of this system, as it represents a means by which an athlete can obtain approval to use a prescribed prohibited substance or method for the treatment of a legitimate medical condition. Information outlining the TUE application process, is publicly available on the UKAD website<sup>1</sup>.
7. All stages of the anti-doping process are confidential and information relating to a specific athlete will only be published if it is determined that an ADRV has been proved. Athletes applying for a TUE have an expectation that their information will only be processed in this manner<sup>2</sup> and as such UKAD extends this confidentiality to the fact that a TUE application has or has not been made.
8. The overall effect of this scheme is to balance athletes' rights to privacy and confidentiality and transparency in how UKAD detects and prevents ADRVs. If UKAD were to confirm whether an individual athlete has or has not made a TUE application, this could be extremely damaging to the reputation of an athlete and lead to speculation about the use of prohibited substance for performance enhancing purposes rather than legitimate medical reasons. This could also undermine the anti-doping process as it would deter other athletes with legitimate medical conditions from applying for a TUE.

#### *Section 40 – personal information*

9. If the information requested exists it would constitute "personal data" as defined in Section 3(2) of the Data Protection Act 2018 ('DPA') and Article 4(1) of the General Data Protection Regulation (EU) 2016/679 ('GDPR'). This is because it is information relating to an identified living individual.
10. Section 40(5B) of the Act states, in respect of personal data:

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<sup>1</sup> <https://www.ukad.org.uk/medications-and-substances/about-TUE/>

<sup>2</sup> See paragraph 6 of the UKAD standard TUE application form, available here: <https://www.ukad.org.uk/assets/uploads/Files/2019/TUE%20Application%20Form.pdf>

*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*

11. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully. UKAD has concluded that to confirm or deny that it holds the information requested would not be fair or lawful – as explained below. Therefore, pursuant to Section 40(5B) of the Act, UKAD can neither confirm nor deny that it holds the information.
12. In coming to this conclusion UKAD has considered the following factors:
  - a. That information of the type sought is special category personal data as defined in Chapter 2, Article 9 of the GDPR, as it concerns a person's health. The disclosure of special category data is prohibited unless an exemption applies per Article 9(2)/ Schedule 1 DPA. We do not consider any of the requirements in these provisions are met in this case
  - b. The reasonable expectations of the data subject. We have set out above the confidentiality of the TUE process – all athletes subject to the Rules have a reasonable expectation that UKAD would not release any information relating to that process; and,
  - c. 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. On the other hand, UKAD has taken account of the fact that disclosure would contravene the rights of athletes who have applied for a TUE to have the confidentiality of that information respected pursuant to the terms of the Rules, the ISTUE and the ISPPPI. In this particular case, UKAD does not consider that there is an overriding legitimate public interest in confirming or denying whether it holds the information requested.

## Conclusion

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13. 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: Matthew Johnson, Director of Legal and Regulatory Affairs, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.
14. 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

A handwritten signature in blue ink that reads "UK Anti-Doping".

**UK Anti-Doping**