

Official

Ref: FOI-224

[REDACTED]
Sent via email only:
[REDACTED]

18 April 2019

Dear [REDACTED]

1. Thank you for your email of 10 March 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 Exemptions ('TUEs') applications made in the sport of boxing. Specifically, your request was as follows:
 - a) *How many boxers have applied for a Therapeutic Use Exemption in the past three calendar years and also year to date?*
 - b) *How many of those applications were approved?*
 - c) *What types of prohibited substances were approved?*
 - d) *Please explain the process to assess applications and what processes are involved.*
 - e) *Does Anthony Joshua have any TUEs in place currently, and if so, what?*
 - f) *Since Anthony Joshua turned pro in 2013, how many TUEs has he been granted by UKAD, and if so, what for and when?*

Summary of Response

2. UKAD is disclosing the information in part of d) of your request.
3. UKAD is not disclosing the information in parts a) to c) of your request. The detail of the basis for this response is set out below.
4. In relation to parts e) and f) of your request, UKAD neither confirms nor denies whether 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.
5. Please also note that the approach taken to the application of the relevant exemptions below should not be taken as in any way indicative of the position of the individual in your request or any other boxer. It is simply an application of the

relevant tests in the context of the wider framework, rules and procedures applicable to UKAD as an organisation subject to the Act.

The Therapeutic Use Exemption process under the UK Anti-Doping Rules

6. We set out below responses in respect of each of your requests for information. To contextualise those responses, 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')¹.
7. 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 website².
8. All information submitted as part of the TUE application is confidential, in keeping with the World Anti-Doping Agency ('WADA') International Standard for Therapeutic Use Exemptions ('ISTUE') and International Standard for the Protection of Privacy and Personal Information ('ISPPPI'). Athletes applying for a TUE have an expectation that their information will only be processed in this manner³ and as such UKAD extends this confidentiality to the fact that a TUE application has or has not been made.
9. If UKAD were to confirm whether an individual athlete has or has not made a TUE application, this could have an unfairly adverse impact on the reputation of an athlete and/or lead to speculation about the use of prohibited substance for performance enhancing purposes rather than legitimate medical reasons.
10. If UKAD were to release certain statistical information about TUE applications (such as the number of applications and details of the substance approved) for sports (such as boxing) with a relatively low number of athletes required to make TUE applications, this could identify athletes who have applied for a TUE and/or information around the TUE applied for/ granted. Further information about which

¹ <https://www.ukad.org.uk/resources/document/uk-anti-doping-rules>

² <https://www.ukad.org.uk/medications-and-substances/about-TUE/>

³ 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>

athletes are required to submit TUE applications, including in advance of being tested, is outlined on the UKAD website⁴.

11. In the interests of transparency and accountability UKAD has previously published information about TUE applications (refer FOI-117⁵ and FOI-201⁶). However, UKAD no longer provides this specific information for the reason set out at paragraph 10 above, which is further explained below.

Part d) of your request

12. UKAD confirms that it holds the information requested.
13. The process by which TUE applications are assessed is outlined in the ISTUE and Article 4 of the UK Anti-Doping Rules. Both documents are available online on the WADA⁷ and UKAD websites.

Parts a) to c) of your request

14. UKAD confirms that it holds the information requested. However, we are withholding this information under the exemptions provided in sections 21, 40 and 41 of the Act.

Section 21 – information available by other means

15. Section 21(1) of the Act states: Section 21 of the Act states:

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

16. UKAD is not disclosing the information requested with respect to the period 1 January 2016 to 2 November 2016 as the information is exempt pursuant to section 21 of the Act, being reasonably accessible to you by other means. The information is available, free of charge, on our website (refer FOI-117, as above).
17. As for the information from 3 November 2016:

Section 40 – personal information

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

Any information... is also exempt information if—

⁴ <https://www.ukad.org.uk/medications-and-substances/tues/>

⁵ Available here: https://www.ukad.org.uk/assets/uploads/FOI/2016/12/FOI_117.pdf

⁶ Available here: https://www.ukad.org.uk/assets/uploads/FOI/2018/10/FOI-_201.pdf

⁷ https://www.wada-ama.org/sites/default/files/resources/files/istue_2019_en_new.pdf

(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.

19. 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 –

(a) would contravene any of the data protection principles.

20. UKAD has assessed that, in view of the typical number of TUE applications in the sport to which your request relates, there is a more than theoretical risk that disclosure of specific and limited statistical information, alongside specific medication information which is readily connectable to a medical condition, may identify the individuals making the TUE applications. This 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.

21. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully. UKAD has concluded that to disclose this information would not be fair or lawful. 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 disclosing the information requested.

22. It may assist you in understanding UKAD's rationale if you read the Information Commissioner's (ICO) Guidance Note on what constitutes personal data. This is available on the ICO's website⁸.

Section 41 – confidential information

23. As explained in the plenary paragraphs above (and repeated insofar as it is relevant to section 40), the information underlying the request was imparted in a clear relationship and expectation of confidence. For the purposes of the public interest considerations in play for this exemption, we repeat the conclusions drawn in paragraph 21c. above.

Parts e) and f) of your request

24. UKAD neither confirms nor denies that it holds the information requested pursuant to section 40(5B) of the Act. This is because if the information requested existed it would be considered 'personal data' (as outlined at paragraph 21 above).
25. Section 40(5B) of the Act states, in respect of personal data:

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—

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

26. In this respect, UKAD adopts the reasoning set out in paragraphs 20 and 21 above to neither confirm nor deny whether it holds the information requested.
27. For the avoidance of doubt, please be reminded 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.

⁸ <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

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: 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.
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

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

UK Anti-Doping