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Official

Ref: FOI-162

Dear [REDACTED]

Thank you for your e-mail dated 16 November 2017, which requested information from UK Anti-Doping ('UKAD') pursuant to the Freedom of Information Act 2000 ('the Act'). You requested information pertaining to the UKAD investigation into the package delivered to Team Sky in 2011 ('the investigation'), specifically, your request was as follows:

*"Do you hold a transcript of your 90 minute interview with Bradley Wiggins which he mentioned in his statement issued yesterday? If so, please supply me with a copy"*

UKAD can confirm that it does hold a transcript of an interview conducted with Sir Bradley Wiggins (the "Athlete") on 28 November 2016 in relation to the investigation, such information already being in the public domain by virtue of the Athlete's public statement. Having considered the exemptions under sections 31, 36, 40 and 41 of the Act, UKAD has decided not to disclose the information requested.

#### **Section 41 – Information provided in confidence**

1. 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*

2. 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.

3. The information requested – the transcript of the interview conducted with the Athlete on 28 November 2016 – was created by UKAD. However, most of the content of this document, being the answers provided by the Athlete to the questions put to him, was obtained by UKAD from the Athlete, therefore the first criterion is met with respect to this information. In addition, the questions and comments put to the Athlete in the interview, which form part of the transcript, may also be exempt from disclosure as to disclose those questions would reveal the content of the information obtained during the investigation. It is therefore UKAD's view that the content of the transcript falls within the criteria for information which might be exempt pursuant to Section 41 of the Act.

Would disclosure of the interview transcript with the Athlete constitute a breach of confidence?

4. The Information Commission has said that UKAD will need to consider the following when determining whether the above exemption is engaged:
  - 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.
5. The 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: that is, a formal interview conducted for the purposes of assisting with a confidential ongoing investigation into a possible violation or violations of the World Anti-Doping Code and/or the UK Anti-Doping Rules ('ADR'). This is reflected in Article 5.9.2(b) of the ADR and Articles 12.3.1 and 11.2.2. of the WADA International Standard for Testing and Investigations, which make it clear that UKAD investigations are to remain confidential.
6. The information requested possesses the necessary quality of confidence. This is because it is more than trivial (it relates to a personal matter and it is clear that the Athlete attaches importance to the information) and it is not otherwise accessible. While knowledge that the interview has taken place is publicly known, the details of that interview are not publicly available.
7. It is UKAD's view that the information requested relates to the Athlete's private life – it does not relate to commercial matters. On that basis, UKAD is not required to show detriment.
8. In light of the obligation of confidence that applies to the requested information UKAD has concluded that disclosure of the transcript 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?

9. The Athlete, as a party to the confidence, would have standing to bring a court action against UKAD for breach of confidence if UKAD were 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. The test to be applied in regard to the public interest defence is a test of proportionality: is there a public interest in disclosure that overrides the competing public interest in maintaining the duty of

confidence? UKAD has considered the arguments in favour of disclosure, in particular the need to ensure that public authorities remain transparent, accountable and open to scrutiny, so as to enable individuals to understand how decisions affecting their lives are made and to ensure accountability for the spending of public monies. UKAD has also considered the arguments against disclosure, in particular the impact of that disclosure on the persons mentioned in the transcript and on the Athlete himself and the impact such disclosure would have on the willingness of people to assist UKAD with its investigations in future. Having considered these public interest arguments, UKAD is of the view that the public interest defence would not be successful in the circumstances.

10. UKAD has therefore decided that the information requested is exempt pursuant to Article 41(1) and what is more, is content that this 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 31 – prejudice to the exercise of UKAD’s functions for ascertaining improper conduct**

11. Section 31(1) provides as follows:

*Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)...*

Section 31(2) provides:

*The purposes referred to in subsection (1)(g) to (i) are –*

*(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper...*

12. One of UKAD’s primary functions is to identify and prosecute any athlete or other person who commits an anti-doping rule violation pursuant to the World Anti-Doping Code (‘the Code’) and the ADR, and thus uphold professional standards in the field of sport. Such conduct falls within the meaning of “improper” as prescribed in the Act.
13. The UK Parliament has formally committed the UK Government to the pursuit of doping free sport based on the principles set out in the Code. To meet that commitment, the UK Government has established UKAD and has sought to satisfy the requirements of the UNESCO Convention by adopting the UK National Anti-Doping Policy, issued by the Secretary of State for Digital, Culture, Media and Sport (‘DCMS’), which sets out the specific requirements of the UK Government in the field of doping in sport and the roles and the responsibilities of UKAD. This includes a duty on UKAD to properly investigate and prosecute all anti-doping rule violations set out in Article 2 of the Code.
14. In UKAD’s view, the disclosure of the contents of a confidential interview conducted by UKAD in the course of an investigation into a potential anti-doping rule violation (‘ADRV’) would prejudice UKAD’s ability to effectively investigate and/or prosecute future actual or potential ADRV’s, in that it would discourage individuals and/or organisations from attending interviews, or from providing information to or otherwise assisting UKAD in future, knowing that such information as was provided might be made

public following a request under the Act. This concern is particularly acute (and therefore the potential prejudice particularly severe) because (i) UKAD is an intelligence-led organisation that relies on information provided in confidence, (ii) failure to co-operate is not an ADRV in relation to those bound by the ADR, and (iii) those not bound by the ADR fall outside UKAD's jurisdiction so it is particularly vital that such parties are not discouraged from voluntarily providing information.

15. Given the above prejudice and having weighed the public interest arguments for and against, UKAD has decided that, in this particular case, there is a stronger public interest in the need to protect the ability of public authorities to effectively and efficiently prosecute improper conduct than there is in disclosure of the requested information. In considering the public interest test, UKAD has considered the following arguments regarding disclosure:

Public Interest In Favour	Public Interest Against
<p>Transparency and accountability: increase public confidence by scrutiny and examination of decisions taken in particular cases</p>	<p>Inhibit and impede current and future investigations by UKAD into possible anti-doping violations, not only in cycling but all sports. A key source of UKAD intelligence stems from the cooperation of those involved in the relevant sport. If the content of interviews between UKAD and individuals/bodies assisting UKAD with its investigations were to become public, it would significantly impact on the likelihood of future cooperation by such individuals/bodies in attending interviews or otherwise providing information to UKAD; and therefore impact on UKAD's ability to perform its key functions of ensuring compliance with and enforcement of the ADR.</p>
<p>Provide the public with an understanding of the operation of the anti-doping regime and how UKAD handles its investigations</p>	<p>Becoming embroiled in litigation in respect of a breach of confidence would divert UKAD's limited resources towards legal matters unrelated to its core function.</p>
	<p>A significant amount of information regarding the investigation is already in the public domain by virtue of UKAD's public statement at the conclusion of the investigation and the information and submissions provided to the DCMS Select Committee with respect to its inquiries into doping in sport, including submissions made by UKAD's Chief Executive, Nicole Sapstead, in March 2017 (available <a href="#">here</a>). As such, the public interest in disclosure (as set out to the left) is less compelling than if no information was yet publicly available, particularly in light of the negative effect such disclosure would have (as set out above).</p>

16. Having weighed the public interest arguments for and against disclosure of the information requested, UKAD has decided that there is a stronger public interest in the need to protect UKAD's ability to effectively investigate and prosecute athletes and other persons under the ADR in respect of improper conduct than there is in disclosure of the contents of an interview conducted in confidence.

**Section 36 – prejudice to the effective conduct of public affairs**

17. Section 36(2) 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:*

*(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs*

18. In the opinion of the qualified person, Nicole Sapstead, disclosure of the requested information would prejudice the effective conduct of public affairs. The “prejudice” in this case is that disclosure of the requested information would undermine UKAD’s ability to effectively investigate and prosecute possible ADRV’s and to ensure compliance by individuals and organisations with the ADR.
19. In light of this, UKAD repeats its reasoning as regards the balancing of the public interest test in disclosing or withholding information set out at paragraphs 11 to 15 above.
20. UKAD recognises the general public interest in disclosure of information which would promote openness, transparency and clarity of decision-making. There is a significant public interest in understanding how the National Anti-Doping Organisation proceeds with investigation of possible ADRV’s reported by the media. In recognition of that interest and as already noted above, UKAD has published a detailed statement regarding the outcome of the investigation; Ms Sapstead has also given evidence to the DCMS Select Committee and this information is publicly available. As such, UKAD strongly maintains that there is a greater public interest in the information requested remaining confidential.

#### **Section 40 – personal information**

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

*Any information...is exempt if it constitutes personal data...and...the disclosure otherwise than under this Act would contravene any of the data protection principles.*

22. The information you have requested constitutes “personal data” and “sensitive personal data” under the definition of “data” in the Data Protection Act 1998 (‘DPA’). Personal data is defined by reference to whether information relates to an identifiable individual and whether the data impacts or has the potential to impact on an individual, whether in a personal, family, business or professional capacity. The transcript therefore constitutes personal data. As per the DPA, personal data shall be processed fairly and lawfully and in particular, shall not be processed unless (a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met. The disclosure in this instance would contravene data protection principle one because none of the conditions in Schedule 2 or 3 of the DPA would be met, thus the exemption under section 40(2) applies to the information requested.
23. We note that this exemption is an absolute exemption, thus the public interest test is not required to be considered.

#### **Where to from here?**

24. 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, Director of Business Services, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.
  
25. 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



UKAD