

Official

Ref: FOI-187

24 April 2018

██████████
Sent via email only to:
████████████████████

Dear ██████████,

1. Thank you for your email of 24 March 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:

I am writing to you under the Freedom of Information Act 2000 to request the following information from UKAD:

- a. *The level of nandrolone found in the urine sample of Hughie Fury, after his fight on February 21, 2015.*
 - b. *The level of nandrolone found in the urine sample of Tyson Fury, after his fight on February 28, 2015.*
 - c. *Correspondence between UKAD and Hughie Fury between February 21, 2015 and March 24, 2018 regarding his failed test, suspension and subsequent hearings.*
 - d. *Correspondence between UKAD and Tyson Fury between February 28, 2015 and March 24, 2018 regarding his failed test, suspension and subsequent hearings.*
2. In responding to your request, we have broken your request into two parts. Part one of this letter responds to your request for nandrolone levels (points (a) and (b) above) and part two responds to your request for correspondence between UKAD and Hughie and/or Tyson Fury (points (c) and (d) above).

Part one: request for nandrolone levels

3. We confirm that UKAD holds information about the levels of metabolites of nandrolone reported to be present in the urine sample of i) Hughie Fury collected

after his fight on 21 February 2015 and ii) Tyson Fury collected after his fight on 28 February 2015.

4. 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.

5. The information you have requested constitutes both “personal data” and “sensitive personal data” as defined under the Data Protection Act 1998 (‘DPA’).
6. Having determined that the information requested is “sensitive personal data”, UKAD has gone on to consider if 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 Schedule 1 to the DPA, which is as follows:

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.

7. 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 either Tyson and/or Hughie Fury. 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.
8. In coming to this conclusion UKAD has considered the following factors:
- a. That the information sought is sensitive personal data.
 - b. The reasonable expectations of the data subjects. At the time that the Furys provided their samples for analysis, their expectation would have been that any details of those samples would be processed and disclosed only in accordance with the UK Anti-Doping Rules (ADR) and the applicable International Standards, and otherwise would remain confidential. As the proceedings relating to those samples have concluded, the Furys’ expectation would be that such information will not now be publicly disclosed.

- 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 confidentiality in respect of the requested information. This is particularly the case as the relevant proceedings have concluded; both boxers are free to resume their careers and are in the process of doing so.
 - 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 providing the requested information devoid of any further evidential context may well lead to uninformed speculation. Furthermore, disclosure would contravene the rights of the Furys 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). 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.
9. 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 the information.
 10. As UKAD has concluded that disclosure of the information would be unfair, it is not required to consider whether any of the conditions in Schedule 2 and/or Schedule 3 of the DPA would be met. Nonetheless, for the sake of completeness, UKAD is satisfied that none of the conditions in Schedule 2 or 3 of the DPA are met in this case.

Part two: request for correspondence between UKAD and Hughie and/or Tyson Fury

11. You have requested copies of correspondence between UKAD and either Tyson and/or Hughie Fury regarding their respective “*failed test, suspension and subsequent hearings*”, with respect to the date ranges noted above. UKAD has taken this to be a request for correspondence in the associated cases of Tyson Fury and Hughie Fury which were dealt with together and which were resolved via Issued Decision dated 12 December 2017. UKAD has also taken your request to be both (i) for direct correspondence between Tyson and/or Hughie Fury and UKAD; and

- (ii), for indirect correspondence between Tyson and/or Hughie Fury and UKAD i.e. via either party's legal representatives.
12. UKAD can confirm that it does hold the information requested. However, this information is exempt pursuant to section 12 of the Act. Section 12 states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of compliance would exceed the appropriate limit. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and Schedule 1(1) of the Act, which provide that the limit for the cost of compliance is £450, or 18 hours at the flat rate of £25 per hour.
 13. UKAD is not aware of the precise number of records that it holds that are within your request. It is very likely to number in the thousands. In a preliminary exercise, for the purposes of this request for information, we have identified one folder containing 823 potentially relevant email records which would require review in order to enable us to respond to your request. We can estimate that, with respect to this folder alone, it would take at least 2-3 minutes to review each record. This would therefore take UKAD some estimated 27- 41 hours.
 14. Based on the above, UKAD is therefore not obliged to comply with your request for information. However, pursuant to Section 16 of the Act, UKAD would like to provide you with some advice and assistance in refining your request. We invite you to consider reducing the scope of your request to bring it within the cost ceiling. For example, you may wish to request copies of communications with respect to a more limited period of time.
 15. If you would like to submit a further request for information under the Act in light of our advice, we will then consider that request on its merits.

Conclusion

16. 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.
17. 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 5A

Yours sincerely

UK Anti-Doping

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