

Official

Ref : FOI-248

28 February 2020

Sent via email only to: [REDACTED]  
[REDACTED]

Dear [REDACTED]

1. Thank you for your email of 1 November 2019 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Your request was for correspondence relating to the status of Thymosin Beta-4 as a Prohibited Substance. Specifically, your request was as follows:

*I am making a freedom of information request for any correspondence relating to the status of the use of substance Thymosin Beta-4, from 2012 onwards.*

2. On 4 November 2019, UKAD requested the following clarification in relation to your request for information:

*In order that UKAD can provide an accurate response, we require you to clarify your request for information. In particular, please specify:*

- *The type of correspondence (e.g. internal or with third parties) and, if possible, with whom; and*
- *The form of correspondence you seek (e.g. letter and/or email).*

3. By reply on 5 November 2019, you provided the following clarification:

*Internal and with other NADOs and WADA. Email only is fine.*

4. On 13 December 2019, UKAD requested further clarification from you in relation to your request for information, specifically:

*Please confirm the meaning of the phrase 'the status of the use of substance Thymosin Beta-4' – e.g. does this relate to the inclusion of Thymosin Beta-4 on the World Anti-Doping Agency Prohibited List?*

5. By reply on 14 December 2019, you provided the following clarification:

*The request is related to, but not limited to, the inclusion of Thymosin Beta-4 on the World Anti-Doping Agency Prohibited List. That is to say that any request (within the previously set out parameters) to confirm the status of Thymosin Beta-*

4 (on the WADA Prohibited List) would be in scope, rather than being limited to discussion regarding the decision to place Thymosin Beta-4 on the list.

6. On 15 December 2019, UKAD requested further clarification from you in relation to your request for information, specifically:

*Unfortunately, we still require clarification from you regarding the term 'status of the use of'. Could you please clarify this phrase beyond the inclusion of Thymosin Beta-4 on the WADA Prohibited List.*

7. By reply on 16 December 2019, you provided the following clarification:

*'Correspondence relating to the status of the use of Thymosin Beta-4' is meant to mean*

- Any correspondence about the status of Thymosin Beta-4 in relation to its inclusion (or otherwise lack of) on the WADA Prohibited List (e.g. adding it to the list)*
- Any correspondence about the status of Thymosin Beta-4 in relation to its existence (or otherwise lack of) on the WADA Prohibited List (e.g. is it on the list?)*
- Any correspondence about the status of Thymosin Beta-4 in relation to its use being prohibited or permitted under the WADA code (e.g. if it's not specifically named, does it fit under S2, S0 or other categories on the list?)*

*The phrase 'the status of the use of' is meant to mean whether or not it is (WADA) prohibited to use the substance. I'm just trying to ensure that the scope is not accidentally narrowed through misinterpretation as TB-4 was a prohibited substance prior to it being named as one on the WADA Prohibited List.*

*Thymosin Beta-4 was not specifically named as a prohibited substance until 1 January 2018 (although it was previously classified under one of the general categories). Hence the request is meant to cover correspondence both about the adding of TB-4 to the prohibited list as a specified (e.g. named directly on the list) substance (as it took effect on 1/01/18) and any correspondence relating to the permitted or prohibited status of TB-4 when it was not a specified substance.*

## Response

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8. UKAD confirms that it holds some of the information requested – being internal correspondence relating to *'the status of the use of Thymosin Beta-4'* i.e. its prohibited status and addition to the WADA Prohibited List. To confirm, UKAD does not hold any external correspondence with another NADO and/or WADA relating to *'the status of the use of Thymosin Beta-4'*.

9. Copies of the correspondence you have requested are enclosed and a list provided below. Where redactions have been made to the enclosures, this is of personal details of the sender / recipient. That information is exempt from disclosure as personal data, pursuant to section 40 of the Act. Further details regarding this exemption are set out below.

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**Documents**

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- a. UKAD internal email correspondence dated 25/01/2019 to 04/02/2019
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10. UKAD also encloses the following documents which address, amongst other matters, the inclusion of Thymosin Beta-4 as a named Prohibited Substance under section S2.3 of the WADA Prohibited List. Whilst these documents do not strictly fall within the scope of your request, as they are not correspondence regarding '*the status of the use of Thymosin Beta-4*', we are disclosing them as documents held by UKAD which address the prohibited status of Thymosin Beta-4 more generally.

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**Documents**

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- b. 100% Me: 2018 Prohibited List – Summary of Changes (Note: this is a factsheet that was created by UKAD and shared with athletes as a way of communicating the main changes to the 2018 Prohibited List).
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- c. WADA Summary of Major Medications and Explanatory Notes: 2018 Prohibited List (Note: this document was created by WADA and published on its website to set-out the main changes to the 2018 Prohibited List<sup>1</sup>).
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**Information Withheld**

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11. Further to paragraph 9 above, UKAD is withholding some information, specifically 'personal data', in the correspondence it is disclosing to you. The legal basis for this is set out in detail below.
12. Section 40(2) of the Acts 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*

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<sup>1</sup> [https://www.wada-ama.org/sites/default/files/prohibited\\_list\\_2018\\_summary\\_of\\_modifications\\_en.pdf](https://www.wada-ama.org/sites/default/files/prohibited_list_2018_summary_of_modifications_en.pdf)

*(b) the first, second or third condition below is satisfied.*

13. 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.*

14. Personal data is 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'), and includes information relating to an identified living individual.
15. UKAD has assessed that the correspondence you have requested contains personal data, that is personal information that relates to identified living individuals. Therefore, UKAD has gone on to consider whether disclosure of the personal data would contravene any of the data protection principles as set out in Chapter 2, Article 5(1)(a) of the GDPR. The first data protection principle states that personal data shall be processed lawfully, fairly and in a transparent manner.
16. The lawful basis on which UKAD processes personal data is contained in Chapter 1, Article 6(1)(e) of the GDPR and section 8 of the DPA, being that it is necessary for the performance of a task carried out in the public interest (i.e. eliminating doping in sport). However, pursuant to the Information Commissioner's ('ICO') Guidance Note on section 40 of the Act<sup>2</sup>, UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.
17. Accordingly, UKAD may only lawfully disclose the personal data contained in the correspondence you have requested on a different basis. The only two bases that may apply are consent (being consent to disclose that personal data under the Act) or if disclosure would be necessary for the purposes of legitimate interests. The individuals have not provided consent to this disclosure. Therefore, UKAD may only disclose this personal data to you if it is necessary for the purposes of legitimate interests. To establish this lawful basis, all three of the following criteria must be met:
- a. the purpose of disclosure is a legitimate interest;
  - b. disclosure must be necessary for that purpose; and

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

- c. the legitimate interests outweigh the interests and rights of the individuals.
18. UKAD acknowledges the legitimate public interest in transparency and accountability regarding the performance of its functions. However, it is UKAD's view that disclosing the personal data in the correspondence you have requested would not be necessary to achieve those functions. Therefore, UKAD does not have a lawful basis to disclose this personal data to you and we are withholding it pursuant to the exemption in section 40 of the Act.

### Conclusion

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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: Pat Myhill, Director of Operations, 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

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

UK Anti-Doping