

Official

Ref: FOI-251

Sent via email only: [REDACTED]

03 April 2020

Dear [REDACTED]

1. Thank you for your email of 28 November 2019 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act').
2. Specifically, your request was as follows:

*"Please provide copies of all emails sent and received by Nicole Sapstead between October 1, 2019, and today's date which relate in any way to Alberto Salazar. Please include all attachments and 'copied in' emails."*

### Summary of Response

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3. UKAD is disclosing one email to you, which is included with this letter. UKAD is not disclosing any more of the information you have requested. The detail of the basis for this response is set out below.

### Response

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4. UKAD confirms that it holds further emails that you have requested. However, they are all exempt from disclosure in accordance with section 31 of the Act. In addition, some are also exempt from disclosure pursuant to sections 41 and 42 of the Act.

#### Section 31 – Law enforcement

5. Section 31(1) of the Act 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) ...*

6. Section 31(2) of the Act 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 ...*

7. One of UKAD's main functions is the investigation and prosecution of Anti-Doping Rule Violations ('ADRVs'). This function falls within section 31(1)(g) of the Act, as it is exercised for the purpose set out in section 31(2)(b) of the Act.
8. Save for the one email we have disclosed to you, all of the requested information concerns UKAD's consideration of any action it may take following the arbitration decisions in the cases of the United States Anti-Doping Agency ('USADA') and Alberto Salazar and Dr Jeffrey Brown. Disclosure of that information would be likely to prejudice any potential action relating to athletes or athlete support personnel under UKAD's jurisdiction. It would also give an insight into UKAD's strategy more generally and therefore would be likely to prejudice its general investigative function.
9. Having determined that disclosure of the information would be likely to prejudice UKAD's investigative function, UKAD has considered the public interest arguments in favour of disclosure. UKAD recognises the importance of transparency and accountability in general, and specifically in providing the public with more understanding of how it exercises its investigative function.
10. However, it is UKAD's view that the greater public interest lies in the confidentiality and effectiveness of its investigative function, so that UKAD can work towards the public policy objective of eliminating doping in sport. Disclosure of the requested information would undermine the effectiveness of UKAD's investigative function.
11. UKAD has concluded that the public interest in disclosing the information requested is outweighed by the public interest in maintaining the effectiveness of its investigative function. UKAD is therefore withholding the information you have requested, save for the one email we have disclosed, under section 31 of the Act.

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

12. Section 41(1) of the Act states:

*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.*

13. The information requested is therefore exempt from disclosure if the following criteria are met:
  - a. It was obtained by UKAD from any other person;
  - b. Its disclosure would constitute a breach of confidence;
  - c. A legal person could bring a court action for breach of that confidence; and
  - d. That court action would be likely to succeed.
14. Some of the requested information meets the above criteria, such that disclosure of it would constitute a breach of confidence actionable by the relevant third party. Any such action would be likely to succeed, with the public interest in disclosure not outweighing UKAD's duty of confidence.
15. Therefore, in addition to the application of the section 31 exemption to all of the withheld information, parts of that information are also exempt from disclosure pursuant to section 41 of the Act. This exemption is an absolute exemption, and as such UKAD is not required to consider the public interest test any further in this context.

#### **Section 42 – Legal professional privilege**

16. Section 42(1) of the Act states:

*Information in respect of which a claim to legal professional privilege ... could be maintained in legal proceedings is exempt information.*

17. In addition to the application of the section 31 exemption to all of the withheld information, some of the information requested is also exempt from disclosure pursuant to section 42 of the Act for the following reasons:
  - a. The emails are between internal legal counsel and Nicole Sapstead;
  - b. The predominant purpose of the emails was the seeking and/or giving of legal advice; and
  - c. The privilege associated with the emails has not been waived (that it, it has not been previously disclosed to the world at large).

18. Having established that section 42 of the Act is engaged in this instance, UKAD is required to apply the public interest test.
19. The principle of legal professional privilege ('LPP') is fundamental to English law. The ability of clients and lawyers to exchange views and advice freely and frankly is vital to the proper administration of justice. As such, the Information Commissioner has advised that the public interest in disclosure will need to be strong to warrant a departure from the principles of LPP.
20. UKAD has considered the public interest arguments in favour of disclosure set out in paragraph 9 above. Weighed against these is UKAD's ability to seek and consider legal advice in a confidential context, which is of critical importance to its function.
21. Having considered these arguments, together with the general fundamental importance of the principle of LPP, UKAD has concluded that, in the circumstances, there is a greater public interest in withholding the information requested than in disclosing it.
22. Finally, please note that attached to one of the withheld emails were the final arbitration awards in the cases of USADA and Alberto Salazar and Dr Jeffrey Brown. As these decisions are both publicly available (here <https://www.usada.org/wp-content/uploads/Jeffrey-Brown-FINAL-AAA-Award.pdf> and here <https://www.usada.org/wp-content/uploads/Salazar-AAA-Decision-1.pdf>) they are exempt from disclosure pursuant to section 21 of the Act.

## Conclusion

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23. 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.
24. 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

UK Anti-Doping

**UK Anti-Doping**