

Official

Ref: FOI-261

Sent via email only: [REDACTED]

05 May 2020

Dear [REDACTED]

1. Thank you for your email of 5 January 2020 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:

*"The cyclist and whistleblower Dan Stevens **provided intelligence to Pat Myhill and Stacey Shevil in the presence of Mike Morgan concerning doping at the Linda McCartney cycling (sic) team. The meeting is is (sic) recorded and noted in 3 tape recordings.***

Please could you provide the written transcript of these meetings."

Summary of Response

3. UKAD confirms that it holds written transcripts of meetings with Dan Stevens. UKAD neither confirms nor denies ('NCND') that it holds the specific information **emboldened** in the above text.
4. UKAD is not disclosing written transcripts of meetings with Dan Stevens. The reasons for this are set out below. The relevant provisions referred to below include provision for a NCND response, and the same reasoning is relevant to the application of NCND to the information emboldened above.

Response

5. UKAD confirms that it holds written transcripts of meetings with Dan Stevens, as referenced [here](#). However, they are exempt from disclosure in accordance with sections 41 and 31 of the Act.

Section 41 – Information provided in confidence

6. 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.*

7. The information requested is therefore exempt from disclosure if the following criteria are met:
- It was obtained by UKAD from any other person;
 - Its disclosure would constitute a breach of confidence;
 - A legal person could bring a court action for breach of that confidence; and
 - That court action would be likely to succeed.

Information obtained from another person

8. While the transcripts of meetings with Mr Stevens were created by UKAD, the information provided by Mr Stevens and recorded in those transcripts is plainly information obtained by UKAD from him. Therefore, the first criterion is met with respect to that information.

Would disclosure of the transcripts constitute a breach of confidence?

9. The Information Commissioner 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 the information 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.
10. The information requested possesses the necessary quality of confidence. This is because it is more than trivial in nature and it is not otherwise accessible - although it is publicly known that the meetings took place, the detail of those meetings remains confidential.

11. 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 it was given: that is, a formal meeting conducted in accordance with UKAD's anti-doping rules (the 'ADR') and the World Anti-Doping Code (the 'WADA Code').
12. As the information requested is confidential, UKAD is not required to show that disclosure would be to the detriment of Mr Stevens. Nevertheless, it is UKAD's view that disclosure of the information requested would be an unauthorised use of it.
13. In light of the obligation of confidence that applies to the information requested, UKAD has concluded that disclosure 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?

14. Given the confidential context in which the information requested was provided to UKAD, disclosure of it would constitute an actionable breach of confidence. Any such action would, in UKAD's view, be likely to succeed as any "public interest" defence would not apply. Further, we consider that, if we were to disclose information/ meeting transcripts, this could have a dangerous precedent effect in terms of the willingness of individuals to meet with UKAD in confidence.
15. The information requested is therefore 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 31 – Law enforcement

16. 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) ...

17. 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.

18. 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.
19. Disclosure of the transcripts of confidential meetings would be likely to prejudice UKAD's ability to effectively investigate and/or prosecute potential ADRVs. This is because it would discourage individuals and/or organisations from attending such meetings or from providing information to or otherwise assisting UKAD, knowing that information provided might be made public following a request under the Act. This concern is particularly acute (and therefore the potential prejudice particularly severe) because:
 - UKAD is an intelligence-led organisation that relies on information provided in confidence;
 - Failure to co-operate is not an ADRV in relation to those bound by the ADR; and
 - 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.
20. Having determined that disclosure of the requested transcripts would be likely to prejudice UKAD's investigation and prosecution function, UKAD has considered the public interest arguments in favour of disclosure.
21. 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 and prosecution function.
22. However, it is UKAD's view that the greater public interest lies in the confidentiality and so effectiveness of this function, so that UKAD can work towards the public policy objective of eliminating doping in sport. UKAD is therefore withholding this information under section 31 of the Act too.

Conclusion

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