

Official

Ref: FOI-262

[REDACTED]  
Sent via email only:  
[REDACTED]

07 May 2020

Dear [REDACTED]

1. Thank you for your email of 15 January 2020 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act').
2. Your request was for:
  - a) *The testing dates for Dillian Whyte from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - b) *The testing dates for Josh Taylor from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - c) *The testing dates for Josh Warrington from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - d) *The testing dates for Callum Smith from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - e) *The testing dates for Billy Joe Saunders from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - f) *The testing dates for Sam Hyde from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - g) *The testing dates for Marcus Morrison from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - h) *The testing dates for Mark Jeffers from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - i) *The testing dates for Steven Ward from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*
  - j) *The testing dates for Liam Conroy from the 1<sup>st</sup> of January 2019 until 31<sup>st</sup> of December 2019*

k) *How much it costs for 1 drug test.*

### Summary of Response

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3. UKAD confirms that we hold some of the information at part a) of your request, specifically testing dates for Mr Whyte between 20 June and 20 July 2019 inclusive. However, for the reasons set out below, that information is exempt from disclosure pursuant to sections 31 and 40 of the Act.
4. In respect of the testing dates, if any, for Mr Whyte in 2019 outside the period between 20 June and 20 July 2019 inclusive, and the information set out at parts b) to j) of your request, UKAD neither confirms nor denies ('NCND') whether it holds this information, also pursuant to sections 31 and 40 of the Act, both of which contain specific provision for a NCND response.
5. UKAD is disclosing the information at part k) of your request.

### Testing dates for Dillian Whyte between 20 June and 20 July 2019 inclusive – part of request part a)

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#### Section 31 – Law enforcement

6. UKAD referenced in a public statement<sup>1</sup> that Mr Whyte provided several doping control samples between 20 June and 20 July 2019 inclusive to UKAD and VADA. It is therefore public knowledge that UKAD holds some of the information that you have requested in respect of Mr Whyte. However, we are withholding this information under section 31 of the Act as releasing it would be likely to prejudice the exercise by UKAD of its regulatory functions.

7. 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) ...*

8. Section 31(2) of the Act provides:

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

*...*

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<sup>1</sup> <https://www.ukad.org.uk/news/ukad-and-mr-dillian-whyte-issue-joint-statement>

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

9. One of UKAD's core functions is to identify and prosecute any Athlete or other Person who commits an Anti-Doping Rule Violation ('ADRV') contrary to applicable Anti-Doping Rules. Such conduct falls within the meaning of 'improper' pursuant to section 31(2)(b) of the Act.
10. It is UKAD's view that publishing testing dates relating to a named professional boxer for a specific time period would risk undermining its testing programme by reducing both its deterrent effect and its effectiveness in detecting prohibited substances. This information would indicate to other professional British boxers the likelihood of being tested at any given time. A fundamental principle of drug testing is that it is conducted without advance notice.
11. More generally, it would give an insight into UKAD's testing strategy and may enable testing patterns to be identified, providing assistance to any other Athletes who may seek to cheat by attempting to evade testing or avoid the detection of ADRVs.
12. Having determined that it should withhold this information pursuant to section 31 of the Act, UKAD has considered the public interest arguments in favour of, and those against, releasing the information. UKAD recognises the importance of transparency and accountability in general, and specifically in providing the public with more understanding of its anti-doping regime.<sup>2</sup>
13. Conversely, UKAD considers that the more important public interest lies in the maintenance of an effective anti-doping programme, so that UKAD can work towards its public policy objective of eliminating doping in sport.
14. UKAD therefore withholds this information under section 31 of the Act. It is also exempt from disclosure pursuant to section 40 of the Act.

#### **Section 40 – Personal Information**

15. This information is "personal data", as 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'). This is because it is information relating to an identified living individual.

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<sup>2</sup> Please note that UKAD publishes testing statistics every quarter. The data is broken down by National Governing Body (including the British Boxing Board of Control) and can be found here: <https://www.ukad.org.uk/quarterly-reports-ukads-testing-programme>

16. Accordingly, UKAD may only disclose this information if to do so would not contravene 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.
17. The lawful basis on which UKAD processes personal data is contained in Chapter 2, 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>3</sup>, UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.
18. Accordingly, UKAD may only lawfully process (i.e. disclose) this personal data on a different basis. The only two bases that may apply are consent, or if disclosure would be necessary for the purposes of legitimate interests. Consent has not been given for this disclosure.
19. For UKAD to lawfully process this data on the basis that it is necessary for the purposes of legitimate interests, 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
  - c. the legitimate interests outweigh the interests and rights of the individuals.
20. As outlined at paragraph 12 above, UKAD acknowledges the legitimate public interest in transparency and accountability in general, and specifically in providing the public with more understanding of its anti-doping regime. However, it is UKAD's view that disclosing the information requested would not be necessary to achieve that purpose, particularly given the information UKAD publishes about its testing statistics. Therefore, UKAD does not have a lawful basis to disclose the information requested.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/2614720/personal-information-section-40-and-regulation-13-version-21.pdf>

### **The remaining information requested under part a) and parts b)-j) of your request**

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21. In respect of the testing dates, if any, for Mr Whyte in 2019 outside the period 20 June and 20 July 2019 inclusive, and the information set out at parts b) to j) of your request, to confirm or deny whether this information is held would confirm whether or not each of the named boxers was tested during a specified period.
22. UKAD is therefore giving a NCND response to these parts of your request, based on sections 31(3) and 40(5B) of the Act, applying the same reasoning as set out above.

### **Part k) of your request**

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23. UKAD confirms that it holds the information requested at part k) of your request. A standard urine Sample test costs £440 + VAT and a standard blood Sample test costs £419 + VAT.

### **Conclusion**

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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, 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.
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



**UK Anti-Doping**