

Official

Ref: FOI-276

Sent via email only: [REDACTED]

17 June 2020

Dear [REDACTED]

1. Thank you for your email of 30 April 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:

"I wish to request the release of the full report into Alberto Salazar and his relationship with UK Athletics."

Summary of Response

3. UKAD has treated this as a request for the 2015 report by UK Athletics' ('UKA') Performance Oversight Committee ('the POC Report').

4. UKAD is not disclosing the information you have requested. The detail of the basis for this response is set out below.

Response

5. UKAD confirms that it holds the information you have requested. However, the entire POC Report is exempt from disclosure in accordance with sections 41 and 31 of the Act. In addition, any sections of the POC Report containing personal data are exempt from disclosure in accordance with section 40 of the Act.

Section 41 – Information provided in confidence

6. Section 41(1) 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 POC Report was provided to UKAD by UKA, a legal person for the purposes of section 41(1)(a) of the Act. It has the quality of confidence and was shared with UKAD subject to an express obligation to keep it confidential.
8. More generally, UKAD is also subject to a duty of confidentiality arising from rule 5.9.2(b) of the UK Anti-Doping Rules (the 'ADR') in respect of such information provided to it.
9. In the circumstances, disclosure of the POC Report would be an unauthorised use of it. The POC Report contains private information disclosed by individuals in confidence to UKA. To the extent that detriment is relevant (which we would suggest it is not because of the private information contained therein), the detriment to UKA is evident since disclosure of the report would damage the relationship that UKA has with the confiders.
10. For all of the above reasons, disclosure of the information would constitute an actionable breach of confidence against UKAD by UKA, and/or potentially the individuals who confided in it.
11. We have considered whether a public interest defence would apply in any potential action for breach of confidence, and have concluded that such a defence would not be successful. Under section 41 of the Act, the public interest in maintaining confidentiality prevails unless the public interest in disclosure outweighs it.
12. We consider that is not the case as there is a strong public interest in UKAD maintaining the confidentiality of the POC Report, as UKAD relies on information provided to it voluntarily and in confidence in order to work towards its public policy objective of eliminating doping in sport. There is a further, more general, strong public interest in public bodies such as UKAD adhering to express obligations of confidentiality.

13. Given the limbs of the relevant tests for an actionable breach of confidence have been made out, and no defence exists, any such action would be likely to succeed.

Section 31 – Law enforcement

14. 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) ...

15. 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.

16. 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.
17. Disclosure of the POC Report would be likely to prejudice UKAD's ability to investigate and/or prosecute potential ADRVs effectively. This is because it would discourage individuals and organisations from providing confidential information to or otherwise assisting UKAD, knowing that information provided could be made public following a request under the Act.
18. This concern is particularly acute (and therefore the potential prejudice particularly severe) because:
- a. UKAD is an intelligence-led organisation that relies on information provided to it voluntarily and in confidence, notably from athletes and sports governing bodies;
 - b. Failure to co-operate with UKAD is not an ADRV in relation to those bound by the ADR; and

- c. Those not bound by the ADR fall outside UKAD's jurisdiction altogether, so it is particularly vital that such parties are not discouraged from voluntarily providing information.
19. Having determined that disclosure of the POC Report would be likely to prejudice UKAD's investigation and prosecution function, UKAD has considered the public interest arguments in favour of disclosure.
20. 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.
21. 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.

Section 40 – Personal Information

22. The POC Report contains “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 information relating to an identified living individual or individuals.
23. 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.
24. 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 Act¹, UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.

¹ <https://ico.org.uk/media/for-organisations/documents/2614720/personal-information-section-40-and-regulation-13-version-21.pdf>

25. 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.
26. 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 interest outweighs the interests and rights of the individuals.
27. As outlined above, UKAD acknowledges the legitimate public interest in transparency and accountability in general. However, it is UKAD's view that disclosing the information requested would not be necessary to achieve that purpose. Moreover, the legitimate interest in disclosure does not outweigh the interests and rights of the individuals. Therefore, UKAD does not have a lawful basis to disclose the information requested.

Conclusion

28. 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: 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.
29. 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".

UKAD