

[REDACTED]

Official

Sent via email only: [REDACTED]

Ref: FOI-304

17 May 2021

Dear [REDACTED]

1. Thank you for your email of 15 March 2021 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 (the 'Act').
2. Your request was for information relating to the following article on WalesOnline: <https://www.walesonline.co.uk/sport/rugby/rugby-news/drugs-rugby-very-welsh-problem-15313345>.
3. Specifically, your request was as follows:
 - “1. The articles appeared in November 2018, surely by march 2021 one would anticipate the accusations would have been fully investigated? If not why not?”
 2. What is UKAD’s policy? Intelligence not given covertly is it being ignored when certain NGB’ are Involved? Are there double standards for clubs and NGB’S compared to individuals?”
4. By email dated 18 March 2021, UKAD sought clarification from you. In relation to part 1 of your request, we asked if you were requesting confirmation as to whether the accusations in the article on WalesOnline have been investigated by UKAD, and if not, why not. In relation to part 2 of your request, we asked if you were requesting information relating to UKAD’s policy in investigating potential Anti-Doping Rule Violations ('ADRVs').
5. By reply email dated 19 March 2021, you confirmed that part 1 of your request was for confirmation as to whether the accusations in the article on WalesOnline have been investigated, specifically:
 - “have the acusations been investigated? If yes what were the conclusions and actions? Did ukad or wru investigate? If not investigated reasons why not? What is ukad’s interpretation of the accusations or have they been ignored?”
6. In the same email dated 19 March 2021, you confirmed that part 2 of your request is for information relating to UKAD’s policy in investigating ADRV’s.

Summary of Response

7. In response to part 1 of your request, UKAD refuses to confirm or deny that it holds the information requested.
8. The information requested at part 2 of your request is exempt from disclosure under section 21 of the Act, as it is information accessible to you by other means.

Response to part 1 of your request

9. Pursuant to section 31(3) of the Act, UKAD neither confirms nor denies that the accusations in the article on WalesOnline have been investigated. The reasoning for this response is set out below.
10. This 'neither confirm nor deny' response to part 1 of your request should not be taken as an indication that the information requested is or is not held by UKAD.

Section 31 – Law enforcement

11. 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)”.

12. The relevant purpose in section 31(2) of the Act is the following:

“...

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

13. Section 31(3) of the Act further provides:

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

14. UKAD refuses to confirm or deny whether it holds the information in part 1 of your request as to do so would prejudice UKAD's ability to exercise its functions for the purpose of ascertaining whether any person is responsible for any conduct which is improper.

15. One of UKAD's main functions is the investigation and prosecution of 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.¹
16. UKAD investigates ADRVs under the UK Anti-Doping Rules (the 'ADR').² Confidentiality is a fundamental characteristic of such investigations – all stages of the investigation process are confidential, and information relating to a matter can only be published by UKAD pursuant to Articles 8.5 and 13.8 of the ADR as follows. Once a case has concluded fully (i.e. there is no further right of appeal), and it has been determined by UKAD (via an Issued Decision) or by a first instance or appeal panel decision of the National Anti-Doping Panel (the 'NADP') that an ADRV has been committed, UKAD is required by those Articles to publicly report the relevant decision. UKAD does this by publication on its website.³
17. If UKAD were to confirm, on request, that it is investigating any particular matter, this would enable individuals to discover the existence of otherwise confidential investigations. This in turn would create the risk of any such investigation being prejudiced or interfered with.
18. Confidentiality is also necessary so that individuals are not discouraged from assisting UKAD with the exercise of its functions for the purpose identified in section 31(2)(b), for fear that such assistance may become public and that they may be subject to reprisals. Without confidentiality, anybody who did assist would be inhibited from being fully frank, for the same reason.
19. Information provided voluntarily and confidentially is vital to UKAD's ability to carry out its functions. This is particularly the case as UKAD has no power to compel anybody to cooperate with it, or to provide information to it.
20. Having determined pursuant to section 31(3) of the Act that to confirm or deny whether the information requested is held would prejudice UKAD's functions, UKAD has gone on to consider the public interest arguments in favour of confirming or denying whether we hold the information requested, and those in favour of maintaining the section 31(3) exemption and so giving a 'neither confirm nor deny' response to part 1 of your request.

¹ For your information in this respect, we enclose a decision of the Information Commissioner's Office from December 2018, reference FS50753154.

² <https://www.ukad.org.uk/sites/default/files/2020-11/2021%20UK%20Anti-Doping%20Rules%20v1.0%20FINAL.pdf>.

³ Details of current sanctions can be found on the UKAD website [here](#).

21. In favour of confirming or denying whether we hold the information in part 1 of your request, UKAD recognises the importance of transparency and accountability in general, both in terms of the public confidence that this inspires and in providing the public with the ability to examine decisions taken in particular cases.
22. Conversely, UKAD considers that there is a public interest inherent in a public body maintaining confidentiality in respect of the information requested. UKAD has also considered the prejudice to the exercise of its investigatory functions if the exemption were not maintained in this instance, and the effect this would have on its ability to further its important public policy objective of eliminating doping in sport.
23. UKAD has come to the conclusion that the public interest in confirming whether the accusations in the article on WalesOnline have been investigated is outweighed by the public interest in ensuring the effectiveness of UKAD in carrying out its functions for the purpose identified in section 31(2)(b) of the Act. It follows that UKAD refuses to confirm or deny whether it holds the information requested in part 1 of your request.

Response to part 2 of your request

24. Information relating to how UKAD investigates potential ADRVs is outlined on the UKAD website.⁴ Pursuant to section 21 of the Act, since this information is publicly available it is exempt from disclosure in responding to part 2 of your request.

Section 21 – Information accessible to applicant by other means

“(1) Information which is accessible to the applicant otherwise than under section 1 is exempt information.”

Conclusion

25. 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 request and should be addressed via email to: foi@ukad.org.uk. Please remember to quote the reference number above in any further communications.
26. 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.

⁴ <https://www.ukad.org.uk/violations/intelligence-and-investigations>

Yours sincerely,

UK Anti-Doping

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