

Official

Ref: FOI-332

Sent via email only: [REDACTED]

16 May 2022

Dear [REDACTED]

1. Thank you for your email of 3 February 2022 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) I seek records held by UKAD that mentioned 'Tizanidine'.*

*Please include emails/memos/minutes of meetings specifically with reference to the Intelligence and Investigations Team within UKAD.*

*Please search for such records between the following dates: 1.1.2021 until 1.2.2022*

*ii) I seek records held by UKAD that mention the word 'Ingebrigtsen'.*

*Please include any records held by UKAD on email/texts/whatsapp/company memos/minutes of meetings specifically with reference to the Intelligence and Investigations Team within UKAD.*

*Please search for such records between the following dates: 1.1.2021 until 1.2.2022.*

## Response

3. In relation to request i), pursuant to section 31(3) of the Act, UKAD neither confirms nor denies that it holds any emails, memos or minutes of meetings

relating to the Intelligence and Investigations Team which mention 'Tizanidine'. The reasoning for this response is set out below.

4. In relation to request ii), pursuant to section 31(3) of the Act, UKAD neither confirms nor denies that it holds any emails, texts, WhatsApp messages, Company memos or minutes of meetings relating to the Intelligence and Investigations Team that mention the word 'Ingebrigtsen'. The reasoning for this response is also set out below.
5. These 'neither confirm nor deny' responses should not be taken as indications (in either case) that the information requested is or is not held by UKAD.

### **Section 31 – Law enforcement**

6. 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).”*

7. 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”.*

8. 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).”*

9. UKAD refuses to confirm or deny whether it holds the information pursuant to your requests as to do so would prejudice UKAD's ability to exercise its functions for the purposes of ascertaining whether any person is responsible for any conduct which is improper. The exercise of such functions is done in the context of our regulatory framework and rules including (in the context of

request i)) which substances and methods are prohibited in sport per the Prohibited List.

Request i)

10. UKAD's purpose is to ensure doping-free sport, promoting and protecting clean sport through education, testing and enforcement. The Prohibited List sets out the substances and methods prohibited in sport (i.e., these purposes/ functions fall within section 31(1)(g) of the Act, as exercised for the purpose in section 31(2)(b)). If/when the World Anti-Doping Agency ('WADA') decides to make changes to that List, these are also published by UKAD.
11. UKAD's position in relation to any medications or drugs not on that List (which '*Tizanidine*' is not), or which may or may not be on that List in the future, is necessarily a matter for UKAD to keep secure and under review in order to ensure the robustness of its evaluative processes (including ensuring the safe space in which any investigations into medicines or drugs or methods – to the extent any are conducted – can take place) and that any future enforcement action is not pre-empted or undermined.

Request ii)

12. One of UKAD's main functions is the investigation and prosecution of Anti-Doping Rule Violations ('ADRVs'). This function also 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.<sup>1</sup>
13. UKAD investigates potential ADRVs under the applicable anti-doping rules, such as the UK Anti-Doping Rules (the 'ADR')<sup>2</sup>. 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

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

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

has been committed, UKAD is required by those Articles to publicly report the relevant decision. UKAD does this by publication on its website.<sup>3</sup>

14. If UKAD were to confirm or deny on request, that it is investigating any particular matter (or not), this would enable individuals to discover the existence of otherwise confidential investigations and/or advertise the careful choreography of its approach to any such investigations. This in turn would create the risk of any investigations or future investigations being prejudiced or interfered with or the careful approach to any such investigations being undermined.
15. 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.
16. 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.

#### Public interest tests

17. Having determined pursuant to section 31(3) of the Act that to confirm or deny whether the information requested (via requests i) and ii)) 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 'neither confirm nor deny' responses to your requests.
18. In favour of confirming or denying whether we hold information pertaining to your requests, 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.
19. Conversely, UKAD considers that there is a public interest inherent in a public body maintaining confidentiality in respect of the purposes explained above.

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<sup>3</sup> Details of current sanctions can be found on the UKAD website here: <https://www.ukad.org.uk/sanctions>

UKAD has also considered the prejudice to the exercise of its investigatory functions if the exemption were not maintained in these instances, and the effect(s) this would have on its ability to further its important public policy objective of eliminating doping in sport.

20. UKAD has come to the conclusion that the public interest in favour of confirming or denying whether or not it holds the information requested is outweighed by the public interest in ensuring the effectiveness of UKAD in carrying out its functions for the purposes identified in section 31(2)(b) of the Act. It follows that UKAD refuses to confirm or deny whether it holds the information pertaining to your requests (i) and (ii).

## Conclusion

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21. 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](mailto:foi@ukad.org.uk). Please remember to quote the reference number above in any further communications.

22. 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".

**UK Anti-Doping**