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06 March 2018

Official

Ref: FOI 169

Dear 

1. Thank you for your e-mail dated 20 December 2017 which requested information from UK Anti-Doping ('UKAD') pursuant to the Freedom of Information Act 2000 ('the Act'). You requested information pertaining to "the Tyson Fury case", specifically, your request was as follows:

Please could I make an FOI request to see any email or written correspondence between UKAD and the DCMS regarding the Tyson Fury case, which has now concluded, from February 1 2015 until December 20 2017.

2. Please note that, for the purposes of this request, UKAD is treating your reference to "the Tyson Fury case" as a request for information in respect of:
 - the associated cases of Tyson Fury and Hughie Fury in relation to the adverse analytical findings which were dealt with together in proceedings before the National Anti-Doping Panel; and
 - the case against Tyson Fury in relation to his alleged failure to provide a Sample in September 2016,

together referred to as the "Fury Cases".

Material held

3. UKAD confirms that it holds copies of email correspondence between the Department of Digital, Culture, Media and Sport ('DCMS') and employees of UKAD in relation to the Fury Cases.

Summary of Decision

4. UKAD has decided to disclose some of the information requested to you. This includes the enclosed documents and the information provided further below.
5. UKAD has concluded that some of the information you have requested is exempt from disclosure pursuant to the exemptions specified under sections 31(1)(g), 36(2)(b)(ii) and 36(2)(c) of the Act.

Information provided

6. The enclosed documents have been partially redacted pursuant to section 40 of the Act (personal information) and are, in summary, as follows:
 - a. Email chain with the subject line "RE: NADP hearing" (final email dated 12 July 2017);
 - b. Email with the subject line "BBC tomorrow" dated 7 November 2017;
 - c. Email with the subject line "FOI request" dated 10 November 2017; and
 - d. Email chain with the subject line "Re: - RE: January GIA Forms" (final email dated 15 December 2017).

7. We otherwise provide you with the following information in response to your request:
 - a. The following information was included in a report (dated 18 October 2016) provided by UKAD to DCMS via an email dated 31 October 2016. The email itself contains no content regarding the Fury Cases. The extract of the report relevant to your request is as follows:

"Legal Support: ...The additional spend has been driven by the external counsel requirements for the Fury, [REDACTED] and [REDACTED] cases..."
 - b. The following information was included in reports provided by UKAD to DCMS via email dated 12 February 2017 for the purposes of the Tailored Review (the email itself contains no content regarding the Fury Cases). The extracts of the reports relevant to your request are as follows:
 - i. From a report dated 17 January 2017: *"Legal Support: ...The current spend has been driven by the external counsel requirements for the Fury, [REDACTED] and [REDACTED] cases. The proposed budget adjustments in Table 4 include a reduction in the external counsel budget, recognising the forecast partial recovery of legal fees from UKAD's insurers for costs incurred for the Fury case"*
 - ii. From a report dated September 2016:
 1. Under a heading "Media and Public Relations" and a sub-heading "What have been the talking points in Q1", the following was noted as a talking point: *"UKAD's alleged investigation of world boxing champion, Tyson Fury"*
 2. Under a heading "Media and Public Relations" and a sub-heading "Key Words Word Cloud": *"Based on all of the written international, national and regional coverage collated by Kantar Media over the last quarter, the "Word Cloud" below has been created to detail the terms most used in articles relating to UK Anti-Doping...[REDACTED] relates to [REDACTED] which is connected to the Tyson Fury story".* The image itself does not contain any mention of the Fury Cases.
 - iii. From a report (undated):
 1. Under a heading "Legal" and a sub-heading "Non Analytical Violations": *"There was one Non-Analytical violation (for which UKAD had RMA) sent for Independent Review in the Q2 period relating to a refusal by Tyson Fury (BBBOC) that occurred on 7 September 2016".* Under a further sub-heading entitled "Notice of Charge", it is recorded that a 'Notice of Charge' dated 16 September 2016 was issued to Tyson Fury (BBBOC) for a refusal dated 7 September 2016.

2. Under a heading "Media and Public Relations" and a sub-heading "What have been the talking points in Q2", the following was one of several points listed: "UKAD charging Tyson and Hughie Fury under Article 2.1 of the World Anti-Doping Code". Under a further sub-heading "Key Words Word Clouds":
 - a. An image is provided regarding media topics in written and broadcast media collated by Kantar Media over the last quarter. The image includes the words "Tyson Fury" (the image has not been provided pursuant to section 40 of the Act as it contains other names).
 - b. An image is provided regarding social media coverage as collated by Kantar Media over the last quarter. The image includes the words "Tyson Fury" (the image has not been provided pursuant to section 40 of the Act as it contains other names).
3. Under the sub-heading "Observations and Commentary": "...In Quarter Two, we have seen an unprecedented level of media coverage for UKAD, as a result of [REDACTED] and two very high profile cases – the Furys and [REDACTED]... That said, the coverage around Tyson Fury – which was the most prominent story over the quarter – has, anecdotally, been relatively neutral within the written and broadcast media. Whilst UKAD does not have the budget to carry out a detailed sentiment analysis on media coverage, the general feeling within the team is that, on the whole, the story has been reported as a simple statement of fact relating to the charge announced at the beginning of August...Interestingly, the Fury case has shown us that in some sports the fan base is hugely engaged with social media. Indeed, during Quarter Two, there were 3,331 tweets relating to UK Anti-Doping and Fury, from 2,810 unique sources, with an engagement rate of 41%. As a result, the term "Fury" in direct relation to UK Anti-Doping, had a potential reach of 67 million people – this is a far greater reach than through traditional media outlets. This is reflected in the above word clouds, with the written and broadcast cloud showing a similar split between Tyson Fury, [REDACTED] and the term drugs tests. In the social media word cloud, Tyson Fury is the dominant term. One of the most interesting facts in regards to the Fury case, is the engagement rate. In comparison, a similar search for [REDACTED] revealed a 14% engagement rate. This shows that the boxing fraternity is much more likely to re-tweet, discuss and share opinions online than the [REDACTED] fraternity..."
 - iv. From a report dated 3 November 2016, under a heading "Legal Support": "...The additional spend has been driven by the external counsel requirements for the Fury, [REDACTED] and [REDACTED] cases..."
 - c. The following information was included in a report (dated 13 February 2017) provided by UKAD to DCMS via email dated 24 February 2017. The email to which this report was attached contains no content regarding the Fury Cases. The extract of the report relevant to your request is as follows:
 - i. Under the heading "Legal Support", "...The current spend has been driven by the external counsel requirements for the Fury, [REDACTED] and [REDACTED] cases. The budget

adjustments in Table 4 include a reduction in the external counsel budget in Quarter 3, recognising the forecast partial recovery of legal fees from UKAD's insurers for costs incurred for the Fury case"

- d. The following information was provided by UKAD to DCMS via email dated 29 June 2017. The email itself contains no content regarding the Fury Cases. One of the attachments to this email referred to the Fury Cases. The extract of that attachment that is relevant to your request is as follows:

- i. Under the heading "External legal support costs 2016/17", is the following:

	Gross cost (£)	Insurance recovery booked (£)	Net charge (£)
Fury	279,215	(229,216)	50,000

- e. The following information was provided by UKAD to DCMS via email dated 9 June 2017. The email itself contains no content regarding the Fury Cases. However, an indirect reference was made to the Fury Cases in an attachment as follows: "*The reasons for the movement [of figures] is due to the additional external legal counsel costs incurred to support the ongoing high profile case"*

Section 36(2)(c): prejudice to the effective conduct of public affairs

8. Section 36(2) provides as follows:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –

(c) Would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

9. By ratifying the UNESCO Convention, the UK Parliament has formally committed the UK Government to the pursuit of doping free sport based on the principles set out in the World Anti-Doping Code ('the Code'). To meet that commitment, the UK Government has established UKAD and has sought to satisfy the requirements of the UNESCO Convention by adopting the UK National Anti-Doping Policy, issued by the Secretary of State for Digital, Culture, Media and Sport, which sets out the specific requirements of the UK Government in the field of doping in sport and the roles and the responsibilities of UKAD. This includes a duty on UKAD to properly investigate and prosecute all anti-doping rule violations ('ADRVs') set out in Article 2 of the Code.

10. In the reasonable opinion of the qualified person, Nicole Sapstead, disclosure of some of the information you have requested would be likely to prejudice the effective prosecution of ADRVs. This is because it would enable athletes in future cases to employ tactics during the prosecution process to seek to exploit any perceived weaknesses in UKAD's funding position in order to try to avoid a ban or secure a reduced ban for an ADRV. If such a strategy were successful, the prejudice is clear. Even if it were not successful, it would lead to an increase in the time and costs involved in UKAD prosecuting such cases, and thus lead to prejudice, particularly bearing in mind UKAD's limited resources as a publicly-funded body.

11. UKAD has therefore concluded that some of the information requested may be exempt from disclosure pursuant to section 36(2)(c) of the Act, subject to consideration of the public interest both for and against disclosure.

The Public Interest Test

12. UKAD recognises the general public interest in disclosure of information which would provide transparency in respect of a public body's decision-making regarding spending in all cases, not just high-profile ones. UKAD has of course already met the public interest in respect of the amount spent by UKAD (and therefore the use of public resources) on the Fury Cases by providing, in response to a separate FOI request, details of the costs incurred by UKAD in the Fury Cases, available on UKAD's website (refer FOI 156, dated 7 February 2018).
13. On the other hand, against the disclosure of the correspondence, there is a public interest in the continued ability of UKAD to meet its core functions, in particular, the effective and efficient prosecution of ADRVs, in all cases. UKAD agrees with the opinion of the qualified person set out at paragraph 11 above, that disclosure of some of the correspondence you have requested would be likely to prejudice the effective prosecution of ADRVs, for the reasons given in that paragraph.
14. UKAD is strongly of the view that, in the circumstances of this request, the public interest in the disclosure of some of the requested correspondence sought in this particular case is outweighed by the public interest in UKAD protecting its ability to conduct effective prosecutions of ADRVs.

Section 31(1)(g): prejudice to the exercise of public functions for the purpose of ascertaining whether any person is responsible for any conduct which is improper

15. Section 31(1) 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)...

16. Section 31(2) 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...

17. One of UKAD's core functions is to identify and prosecute any athlete or other person who commits an anti-doping rule violation pursuant to the Code and the UK Anti-Doping Rules ('ADR'), and thus uphold professional standards in the field of sport. Such conduct falls within the meaning of "improper" for the purposes of the Act. In UKAD's view, disclosure of correspondence between UKAD and DCMS in respect of the funding of a particular case would be likely to prejudice UKAD's ability to prosecute future ADRV cases. In this respect UKAD agrees with and adopts the reasoning of Nicole Sapstead set out at paragraph 10 above.
18. In light of this, UKAD is also of the view that the same public interest analysis as set out at paragraphs 12-14 applies to the exemption under section 31(1)(g) of the Act.

19. UKAD has therefore concluded that there is a stronger public interest in the need to protect UKAD's ability to effectively prosecute athletes and other persons under the ADR in respect of improper conduct than there is in disclosure of all of the information that you have requested.

Section 36(2)(b)(ii): inhibit the free and frank exchange of views for the purposes of deliberation

20. Section 36(2) provides as follows:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act -

(b) would, or would be likely to, inhibit –

(ii) the free and frank exchange of views for the purposes of deliberation...

21. UKAD has considered your request and, in the reasonable opinion of the qualified person, Nicole Sapstead, disclosure of some of the information requested would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
22. Ms Sapstead considers that disclosure of some of the correspondence you have requested would impact upon the nature of any such future discussions, in that it would adversely affect the willingness of UKAD and DCMS (UKAD's parent department) to freely and frankly discuss their respective positions on the funding of cases brought by UKAD pursuant to the ADR. Prosecuting ADRV cases is one of UKAD's core functions, and so the funding of those cases is of fundamental importance to UKAD's public role. UKAD and DCMS discuss funding on an on-going basis, and need to be able to do so in a way that enables all options to be explored as circumstances demand. Disclosure of part of the requested correspondence would undermine the effectiveness of such discussions in the future.
23. Some of the information you have requested relates to correspondence containing strategic discussions between UKAD and DCMS in respect of a then ongoing matter and the potential cost implications of that case. Notwithstanding that the Fury Cases have ended, UKAD is of the view that this exemption still applies to the correspondence sought, subject to consideration of the public interest both for and against disclosure.
24. UKAD has weighed the considerations identified by Ms Sapstead (above at paragraph 22) against the public interest in disclosing the requested information.
25. UKAD has also considered the following factors in favour of disclosure:
- a. The importance of transparency in public decision making, in particular the increased trust in government that this inspires;
 - b. The importance of transparency regarding the application of public monies; and
 - c. The importance of public oversight of decisions and in knowing that a decision has been made in accordance with an appropriate process.
26. In considering (b) above, UKAD has taken account of the fact that it has disclosed to the public the cost of the Fury Cases to UKAD.

27. Having weighed the public interest considerations both for and against disclosure, UKAD is of the view that there is a greater public interest in maintaining UKAD's ability to engage in free and frank discussions about funding with DCMS on an on-going basis, than in disclosing those discussions in one particular case. UKAD has therefore concluded that some of the information you have requested is exempt from disclosure pursuant to section 36(2)(b)(ii) of the Act.

Where to from here?

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 to: Philip Bunt, Director of Business Services, 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