

04 August 2022

Sent via email only to:

**REF: FOI-341**

Dear [REDACTED]

1. Thank you for your email of 27 May 2022, in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Specifically, your request was as follows:
  - a. *The number of Therapeutic Use Exceptions [sic – Exemptions] ('TUEs') applied for by English football clubs (made up of Football League and Premier League clubs) during the 2021-2022 season;*
  - b. *Sub-totalled by club.*

### Summary of Response

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2. UKAD discloses the relevant data pertaining to request a. directly below.
3. UKAD withholds the sub-totalling in request b. on the basis of section 40 of the Act (i.e., personal data).

### TUEs applied for in 2021/2022 season (football)

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4. We have understood your request to be for the number of TUEs applied for by players affiliated to English football clubs during the 2021-22 season. These numbers can be broken down by relevant football leagues as follows:

Premier League	11
Championship	9
League One	10
League Two	9

## Personal data

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5. UKAD is withholding the requested sub-totalling of the above data by club because there is a real risk that, in so doing, UKAD may inadvertently identify relevant TUE applicants and/or disclose the personal data (and special category personal data) of the relevant TUE applicants.

### Section 40 exemption: personal data

6. Section 40(2) of the Act states:

*Any information... is also exempt information if—*

- (a) it constitutes personal data which does not fall within subsection (1) [personal data of which the applicant is the data subject], and*
- (b) the first, second or third condition below is satisfied.*

Section 40(3A)(a) of the Act states:

*The first condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles.*

7. UKAD has concluded that, in view of the typical number of TUE applications per League per year (which then broken down further by club is obviously even smaller), there is a genuine risk that disclosure of the information requested may identify any individual making a TUE application. This would mean that any information relating to such an application would constitute “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 (‘UK GDPR’). This is because it would be information relating to an identified living individual.
8. Moreover, given the obvious link between TUE applications and health, there is a risk that such disclosure would also constitute processing of special category (health) data (per section 10(1) DPA and Article 9 UK GDPR). There is a general prohibition on processing special category data save for where relevant conditions apply.
9. As a starting point, having determined that the information you have requested is personal data, UKAD has gone on to consider whether disclosure would contravene any of the data protection principles as set out in Chapter 2, Article 5(1)(a) of the UK GDPR. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully.

10. The lawful basis on which UKAD generally processes this type of 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, as set out in the Information Commissioner's (ICO) Guidance Note on section 40 of the Act, UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act<sup>1</sup>.
11. Accordingly, UKAD may only lawfully disclose the information you have requested on a different basis. The only two bases that may apply are consent (being consent to disclose that information under the Act) or if disclosure would be necessary for the purposes of legitimate interests. Athletes applying for a TUE have an expectation that their application and the details associated with it will remain confidential. Therefore, UKAD may only lawfully disclose this information to you if it is necessary for the purposes of legitimate interests (which outweigh the corollary interests of the relevant athlete). To establish this lawful basis, 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 individual.
12. UKAD acknowledges the legitimate public interest in transparency and accountability regarding anti-doping matters. However, it is UKAD's view that disclosing the information you have requested would not be necessary to achieve that purpose, particularly given the information UKAD publishes pursuant to the Rules<sup>2</sup>. UKAD is also of the view that even if such disclosure was necessary, it would not outweigh an individual athlete's right to privacy when applying for a TUE. Therefore, UKAD does not have a lawful basis to disclose this information to you and we are withholding the information requested under the exemption in section 40 of the Act.
13. For completeness, UKAD's position is that, to the extent such disclosure may constitute processing of special category data, it also does not consider any of the relevant conditions (per Article 9 UK GDPR) to the prohibition generally on processing such data apply here. UKAD has a specific 'anti-doping derogation' for

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<sup>1</sup> Available [here](#)

<sup>2</sup> Information about UKAD's testing program, and current and historical Anti-Doping Rule Violations ('ADRVs') are contained on the UKAD website [here](#) and [here](#).

processing special category data in connection with its public purposes (paragraph 27, Schedule 1, Part 2 of DPA). In its view, the derogation does not extend to the type of processing which might be required in responding to your specific request.

## Conclusion

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14. 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 via email to: [foi@ukad.org.uk](mailto:foi@ukad.org.uk). Please remember to quote the reference number above in any further communications.
15. 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 5A

Yours sincerely

A handwritten signature in blue ink that reads "UK Anti-Doping".

**UK Anti-Doping**