

Official

Ref: FOI-214

[REDACTED]
Sent via email only:
[REDACTED]

11 February 2019

Dear [REDACTED]

1. Thank you for your email of 18 December 2018 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Your request was for information relating to Celtic Football Club, specifically:
 - a. *How many Celtic Football Club players submitted samples for drugs test in season 2017/2018?*
 - b. *How many Celtic Football Club players submitted samples for drugs test in season 2018/2019?*
 - c. *How many Celtic Football Club players samples failed the UKAD drugs test in season 2017/2018?*
 - d. *How many Celtic Football Club players samples failed the UKAD drugs test in season 2018/2019?*
 - e. *How many Celtic Football Club players have been banned from playing football in seasons 2017/2018 and 2018/2019?*
 - f. *Do you hold information on drugs test for Celtic Football Club player Leigh Griffiths?*
 - g. *Has he ever failed the UKAD drugs test?*
 - h. *Is Leigh Griffiths currently banned from football as a result of a failed drugs test?*

Summary of response

2. Please note that UKAD publishes testing statistics every quarter. The data is broken down by National Governing Body (including the Scottish Football Association) and can be found here: <https://www.ukad.org.uk/anti-doping-rule-violations/quarterly-reports-on-testing-programme>
3. UKAD also publishes decisions taken in completed Anti-Doping Rule Violation (ADRV) cases on its website for the duration of the athlete's ban, here: <https://www.ukad.org.uk/anti-doping-rule-violations/current-violations/>
4. Historical ADRV cases can be found here: <https://www.ukad.org.uk/anti-doping-rule-violations/historical-sanctions/>
5. Aside from the information set out at the links provided above, UKAD is not disclosing any information pursuant to your request; and in respect of items f, g and h, we neither confirm nor deny whether we hold the information sought. The detail of the basis for this response is set out below.
6. **Please note that the approach taken to the application of the relevant exemptions below should not be taken as in any way indicative of the position of any individuals or the club mentioned in your request. It is simply an application of the relevant tests, including public interest tests (where applicable), in the context of the wider framework, rules and procedures applicable to UKAD as an organisation subject to the Act.**

Parts a & b of your request

7. UKAD confirms that it holds the information requested. However, we are withholding this information under the exemption provided in section 31 of the Act on the grounds that releasing the information would be likely to prejudice the exercise by UKAD of its regulatory functions.

8. 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)...

9. 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...

10. One of UKAD's core functions is to identify and prosecute any athlete or other person who commits an ADRV contrary to the UK Anti-Doping Rules ('the Rules')¹. This function falls within section 31(2)(b) the Act. UKAD uses its testing program to discover ADRVs.
11. It is UKAD's view that publishing testing data for a particular club (whether in football or any other sport) for a specific time period would risk undermining the testing program. This information would indicate to such a club and its players the likelihood of being tested at any given time. A fundamental principle of drug testing is that it is conducted without advanced notice.
12. More generally, it would give an insight into UKAD's testing strategy and may enable testing patterns to be identified, providing assistance to any athletes who may seek to cheat by attempting to evade testing or avoid the detection of ADRVs.
13. Having determined to withhold the information pursuant to section 31 of the Act, UKAD has considered the public interest arguments in favour of releasing the information. UKAD recognises the importance of transparency and accountability in general, and specifically in providing the public with more understanding of its anti-doping regime².
14. Conversely, UKAD considers that the more important public interest lies in the maintenance of an effective anti-doping regime, so that UKAD can work towards its public policy objective of eliminating doping in sport. Disclosing the information requested would undermine the effectiveness of the testing program as it would be likely to reduce both its deterrent effect and its effectiveness in detecting prohibited substances.
15. UKAD has concluded that the public interest in knowing how many individuals from one particular club may have provided samples for drug testing during specific periods is outweighed by the public interest in ensuring the effectiveness of UKAD's

¹ <https://ukad.org.uk/resources/document/uk-anti-doping-rules>

² As referenced at paragraph 2, where a hyperlink is provided, UKAD does publish a significant amount of testing information.

testing program. UKAD therefore withholds this information under section 31 of the Act.

The anti-doping process under the UK Anti-Doping Rules

16. We set out below responses in respect of each of your other requests for information. To contextualise those responses, we explain briefly here the anti-doping process that applies to all clubs (in football and other sports) bound by the Rules.
17. All stages of the anti-doping process are confidential, subject to paragraph 21 below. The question as to whether any particular athlete has provided a sample for analysis to UKAD (ie undergone a UKAD drugs test) at any particular time is confidential, as is the result of the analysis of that sample, whether it be positive (ie it reveals the presence of a prohibited substance in the sample) or negative.
18. A positive result does not necessarily lead to a charge for an ADRV, as an athlete may have a Therapeutic Use Exemption (TUE) permitting the use of an otherwise prohibited substance due to a medical condition. If sample analysis does lead to a positive result, and a charge is *not* issued for this reason, the positive result and the existence and detail of the TUE would also remain confidential.
19. Should a positive result lead to a charge being issued against an athlete for an alleged ADRV, the fact and details of that charge, and (where applicable) the fact that the athlete had been made subject to a provisional suspension pending the outcome of any proceeding, would be confidential.
20. Any communications between UKAD and the athlete in respect of the charge, and any resultant hearing in front of the tribunal that deals with such cases (the National Anti-Doping Panel, or NADP) would take place on a private and confidential basis, as would any appeal hearing. Ultimately the charge may be found not proved by the tribunal.
21. At the end of the ADRV prosecution process information can be published by UKAD, pursuant to Articles 8.4 and 13.8 of the Rules³ as follows. Once a case has concluded fully (ie there is no further right of appeal), and it has been determined by UKAD (via an Issued Decision) or by a hearing or appeal panel of the NADP that an ADRV has been committed, UKAD is required by those Articles to publicly report the relevant decision.

³ There are very limited circumstances where a decision may be made not to publish pursuant to these Rules, including where the World Anti-Doping Agency decides this is appropriate due to information amounting to “substantial assistance” under the Rules being provided to UKAD by an athlete – but these are very rare, exceptional cases.

22. Hyperlinks to UKAD's website where decisions have been published in accordance with Articles 8.4 and 13.8 of the Rules are provided at paragraphs 3 (for current bans) and 4 (in respect of athletes whose ban has expired) above.
23. The overall effect of this scheme is to balance athletes' right to privacy and confidentiality during the doping control process and transparency in how ADRV cases are dealt with. Releasing any details of the process outside of this scheme could be extremely damaging to the reputation of an athlete, because it would lead to speculation about the use of prohibited substances, for example were it to be reported that an athlete had tested positive for a substance before all of the facts were established.
24. **It's important to underline paragraph 6 above, to emphasise that the below responses are in no way indicative of the position of any individuals or the club referred to in your request.**

Parts c & d of your request

25. UKAD confirms that it holds the information requested. However, we are withholding this information under the exemption provided in section 31(1)(g) of the Act. UKAD withholds this information as to provide it would be likely to prejudice UKAD's core function of identifying and prosecuting any athlete or other person who commits an ADRV contrary to the Rules. This function falls within section 31(2)(b) the Act.
26. UKAD uses its testing program to discover ADRVs. If UKAD were to reveal the information requested, it would breach the confidentiality of the testing program. This information would remain confidential in respect of any club subject to the Rules unless and until it was disclosed in the circumstances described in paragraph 21 above.
27. If UKAD were to reveal the information requested outside of the circumstances described in paragraph 21 it would jeopardise UKAD's relationship with the sporting community to such an extent that it would be likely to lead to a lack of co-operation in the testing program by sports, teams and athletes, if not a refusal to participate in it at all.
28. It would also erode faith more generally in the confidentiality of UKAD's wider activities. This would be very likely to have a detrimental impact on the provision of intelligence to UKAD, which is vital for UKAD to carry out its functions falling within section 31(2)(b). This is particularly important as UKAD has no power to compel

people to provide information to it or co-operate with it, and so is reliant on information provided voluntarily.

29. Having determined to withhold the information pursuant to section 31 of the Act, UKAD has again considered the public interest arguments in favour of releasing the information. The issues involved – transparency versus the confidentiality necessary to operate an effective, efficient and just anti-doping scheme – are the same as described in our response to parts a and b of your request at paragraphs 13 and 14 above.
30. UKAD has concluded that the public interest in knowing how many (if any) individuals from one particular club may have provided a positive sample during specific periods is outweighed by the public interest in ensuring the effectiveness of UKAD's testing program. UKAD therefore withholds this information under section 31 of the Act.

Part e of your request

31. We have taken your request to be in respect of players banned due to a breach of the Rules, as opposed to, for example, due to a disciplinary charge brought by the Scottish FA. UKAD confirms that it holds this information but withholds it as exempt from disclosure under section 31 of the Act.
32. The circumstances in which athletes subject to the Rules may be banned for anti-doping violations and whether or when a ban will be published are as outlined under the above header "*The anti-doping process under the UK Anti-Doping Rules*". Unless and until those circumstances applied any such relevant information would be confidential for the reasons set out above. Therefore, the reasoning applied in respect of parts c and d of your request, as set out above at paragraphs 26 to 28, applies equally to this part of your request.
33. That being so, UKAD considers that the balance of the public interest therefore also lies in this information being withheld, again for the same reasons as applied above in respect of parts c and d of your request.

Parts f, g & h of your request

34. In relation to these parts of your request UKAD neither confirms nor denies whether it holds the information requested. In doing so UKAD relies on the exemptions in section 40 and section 31 of the Act.

Section 40 – Personal information

35. If the information requested exists it 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 (‘GDPR’). This is because it is information relating to an identified living individual.

36. Section 40(5B) of the Act states, in respect of personal data:

The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

(i) would (apart from this Act) contravene any of the data protection principles

37. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully. UKAD has concluded that to confirm or deny that it holds the information requested would not be fair and so would contravene that principle. Therefore, pursuant to Section 40(5B) of the Act, UKAD can neither confirm nor deny that it holds the information.

38. In coming to this conclusion UKAD has considered the following factors:

- a. That the information sought is not trivial personal data.
- b. The reasonable expectations of the data subject. We have set out above the confidentiality of UKAD’s doping control process, and the circumstances in which details of ADRV cases are published. All athletes subject to the Rules have a reasonable expectation that UKAD would not release any information relating to that process unless their case falls to be published as set out in paragraph 21 above.
- c. Whether there is a legitimate public interest in the disclosure. UKAD recognises the importance of transparency and accountability in general, both in terms of the public confidence that this inspires and also in

providing the public with the ability to examine decisions taken in particular cases. In this instance UKAD is of the view that this interest is met by the level of information currently provided on UKAD's website (as outlined above) in respect of its cases. UKAD is also of the view that there is a general public interest in UKAD, as a public body, adhering to any duty of confidentiality that it is subject to.

39. This exemption is an absolute exemption, and therefore UKAD is not required to consider the public interest test any further in this context.

Section 31 – law enforcement

40. Further, UKAD neither confirms nor denies that it holds the information requested relying on the exemption under section 31(3) of the Act, which states:

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

41. In this respect, UKAD adopts the same reasoning as is set out above in paragraphs 26 – 28 in respect of parts c and d of this request. In relation to the public interest test, we adopt the reasoning set out at paragraphs 29 and 30. To this we would add that UKAD also recognises the general public interest in UKAD respecting the confidences that apply to the information that it holds.

Conclusion

42. 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, 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.
43. 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

UK Anti-Doping

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