

[REDACTED]

Ref: FOI-449

Sent via email only:

[REDACTED]

16 October 2024

Dear [REDACTED]

1. Thank you for your email of 13 September 2024 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:

I write to make an 'open government request' for all prehearing agendas and follow-up minutes and/or hearings with conclusions in relation to any female UK based track and field running and/or hurdling athlete 'suspected/alleged/accused' of 'misdemeanours', especially in the use of inappropriate drugs/medicinal substances, between 2006 and 2010.'

2. UKAD subsequently asked you to clarify some of the phrases and terms used in your request. Your replies to UKAD's queries, received on 18 September 2024, are repeated in the table below:

	Terms	UKAD Query	Requestor's Reply
1	"prehearing agendas"	Please clarify what you are referring to.	<i>Before any accusation might be made and/or before any official meeting might be called at which an accused would be called upon to attend - it is assumed that there would have been some preliminary UK Sports meetings to decide whether or not there was sufficient evidence upon which to take some action against a UK based athlete. In addition, it is assumed that some contact would be made with an accused athlete drawing their attention to the fact that they were under investigation.</i>

2	<i>“hearings with conclusions”</i>	Please clarify if you are referring to finalised decisions of the National Anti-Doping Panel.	<i>Yes to ‘finalised decisions of the National Anti-Doping Panel.’ In addition, I refer to any hearing(s) or meeting(s) to which an athlete might have been called upon to attend to explain themselves or a meeting in which an athlete decides to attend to defend any accusation made against them of the inappropriate/forbidden/banned substance, drug, chemical ...</i>
3	<i>“female UK based”</i>	Please clarify whether this refers to female athletes known to be residing in the UK or something else.	<i>Whose main residence/base is in the UK. Many UK athletes go abroad for a period of time while training.</i>
4	<i>“suspected/alleged/accused of misdemeanours”</i>	Please clarify what you mean when referring to misdemeanours.	<i>Abuse/use of inappropriate/forbidden/banned substances, drugs, chemicals ..</i>
5	<i>“inappropriate drugs/medicinal substances”</i>	Please clarify whether you are referring to substances contained in the World Anti-Doping Agency’s Prohibited List for the applicable year or something else.	<i>The period between 2006 and 2008 preceded the Beijing Olympics. I include any inappropriate/forbidden/banned substances, drugs, chemicals ... that might negatively impact an athletes chances for being chosen to represent the UK in the Beijing Olympics between 1st January 2006 and the date of the actual 2008 Olympic games. The period after the 2008 Olympic Games up until 31st December 2010 might be relevant if there were any repercussions, appeals, follow-up within the context of the FOI request that I have submitted.</i>
6	<i>“between 2006 and 2010”</i>	Please provide the complete	<i>1st January 2006 to 31st December 2010.</i>

		date range (e.g., 1st January 2006 to 31st December 2010).	
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Response

3. UK Sport previously had responsibility for the management of the UK's national anti-doping programme via its Drug Free Sport Directorate. Established in December 2009, UKAD became the UK's stand-alone National Anti-Doping Organisation ('NADO') assuming responsibility for anti-doping within the UK from UK Sport.
4. UKAD neither confirms nor denies that it holds the information requested. In doing so, UKAD relies on the exemptions in sections 31 and 40 of the Act.
5. Please note that this "neither confirm nor deny" response to your request should not be taken as an indication that the information requested is or is not held by UKAD.
6. Please also 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 the class of athletes in your request. It is simply an application of the relevant test in the context of the wider framework, rules, and procedures applicable to UKAD as an organisation subject to the Act.

Section 31 – Law enforcement

7. Section 31 of the Act provides as follows:

Section 31 Law enforcement

(1) 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),

(2) 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,

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

(3) 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 requested as to do so would prejudice UKAD's (and/or any other relevant organisation's) ability to exercise its functions for the purpose of ascertaining whether any person is responsible for any conduct which is improper, which in this context means committing an Anti-Doping Rule Violation ('ADRV') contrary to the UK Anti-Doping Rules ('ADR')¹ (and/or any other applicable anti-doping rules at the relevant times). This purpose comes within section 31(2)(b) of the Act.
10. UKAD's position is that any disclosure, including confirmation as to the presence or otherwise of such information, would undermine the integrity and effectiveness of (its) investigatory functions and so prejudice the ability to ascertain whether any person is responsible for committing an ADRV.
11. For similar reasons, UKAD considers that the public interest lies in not confirming or denying whether we hold the information responsive to your request. UKAD of course recognises the important of transparency and accountability in general and specifically in providing the public with more understanding of its responsibilities.
12. However, to do otherwise in response to your request would, in our view, genuinely risk undermining UKAD's investigatory function across sport. There is an important public interest in the maintenance of an effective anti-doping regime – so that UKAD can work towards its public policy objective of eliminating doping in sport.

Section 40 – Personal information

13. UKAD also neither confirms nor denies that it holds the information requested under the exemption in section 40 of the Act.
14. If the requested information 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

¹ <https://www.ukad.org.uk/sites/default/files/2020-11/2021%20UK%20Anti-Doping%20Rules%20v1.0%20FINAL.pdf>

General Data Protection Regulation (EU) 2016/679 ('GDPR'). This is because it would be information relating to identifiable living individuals.

15. 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,

16. Accordingly, UKAD may only disclose this information you have requested if to do so would not contravene the data protection principles, as set out in Chapter 2, Article 5(1)(a) of the GDPR. The first data protection principles states that personal data shall be processed transparently, fairly, and lawfully.

17. The lawful basis on which UKAD processes 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, pursuant to the Information Commissioner's ('ICO') Guidance Note on section 40 of the Act,² UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.

18. Accordingly, UKAD may only lawfully process (i.e., disclose) this personal data on a different basis. The only two bases that may apply are consent, or if disclosure would be necessary for the purposes of legitimate interests. Consent has not been given for this disclosure.

19. For UKAD to lawfully process this data on the basis that it is necessary for the purposes of legitimate interests, 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 interest outweighs the interest and rights of the individuals.

² <https://ico.org.uk/for-organisations/foi/section-40-and-regulation-13-personal-information/>

20. UKAD has concluded that to confirm or deny if it holds the information requested would not be fair or lawful, as explained below. Therefore, pursuant to section 40(5B) of the Act, UKAD neither confirms nor denies that it holds the information requested.
21. In coming to this conclusion, UKAD has considered the following factors:
- (a) that information of the type sought (documentation relating to any investigation into whether or not an athlete had committed an ADRV) is not trivial personal data;
 - (b) the reasonable expectations of the data subject. We have set out above the confidentiality of UKAD's investigatory function – all persons subject to the ADR have a reasonable expectation that UKAD would not release any information relating to that function, if it existed; and
 - (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 evaluate UKAD's investigatory function. On the other hand, UKAD has taken account of the fact that confirming or denying that there was an investigation into whether or not an athlete had committed an ADRV would contravene their right to have the confidentiality of that information respected pursuant to the ADR and the World Anti-Doping Agency's Code and International Standards.³ UKAD does not consider that there is an overriding legitimate public interest in confirming or denying whether it holds the information requested.

Conclusion

22. 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 this response and should be addressed via email to foi@ukad.org.uk. Please remember to quote the reference number above in any further communications.
23. 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.

³ <https://www.wada-ama.org/en/resources/world-anti-doping-code-and-international-standards>

Yours sincerely

UK Anti-Doping

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