

Ref: FOI-451

Sent via email only: [REDACTED]

07 November 2024

Dear [REDACTED]

1. Thank you for your email of 10 October 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 am looking for confirmation of an historic doping offence on record regarding Mr Inderjit Singh Kheela (Indy Kheela) between 2001-2002 governed by BAWLA (British Amateur Weightlifting).

The dope test was recorded at The British Weightlifting Championships ahead of the Commonwealth games, detailed below.

*British Championships
2002-01-19 Manchester (GBR)*

Inderjit (Indy) was suspended from Weightlifting for a period of two years from 2002-2004 alongside Mark Clegg. Both routinely became ineligible from future Olympic and Commonwealth Games.

I have contacted UK Sport and they have referred me to contact UKAD as you would have been passed historic data, this is likely to be archived and still remain on record.

Summary of Response

2. UKAD neither confirms nor denies that it holds the information requested. The detail of the basis for this response is set out below.
3. 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.
4. 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 individuals named 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.

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

5. We set out below UKAD's response to your request for information. To contextualise UKAD's response, we explain briefly here the anti-doping process that applies under the UK Anti-Doping Rules ('the ADR').
6. By way of background, 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 the anti-doping process within the UK from UK Sport. Whilst UK Sport's responsibilities for anti-doping stemmed from a different version of the World Anti-Doping Code ('the Code') and under the applicable anti-doping rules at the time (rather than the current version of the ADR), the key provisions and processes at that time were broadly similar to those under the current version of the Code and the ADR that apply to UKAD.
7. The primary purpose of the anti-doping process is the elimination of doping in sport through the prevention or detection and prosecution of Anti-Doping Rule Violations ('ADRVs'). ADRVs are identified in several ways, including the testing of athletes for substances contained in the World Anti-Doping Agency ('WADA') Prohibited List. All stages of the anti-doping process are confidential, subject to paragraph 9 below.
8. The question as to whether analysis of a sample collected from any particular athlete has revealed the presence of a prohibited substance (i.e., a positive result) is confidential. Should a positive result lead to a charge being issued against an athlete, the prosecution will proceed on a private and confidential basis. This includes any correspondence between UKAD and the athlete, or any subsequent hearing before the tribunal that deals with such cases, such as the UK National Anti-Doping Panel ('the NADP').
9. At the end of the ADRV prosecution process information can be published by UKAD, pursuant to Articles 8.4 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 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 in specific circumstances. Information about current and historic ADRVs can be found on the UKAD website here.

Response

10. 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.

Section 31 – Law enforcement

11. 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,

12. 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).

13. 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 ADRV contrary to the ADR¹ (and/or any other applicable anti-doping rules at the relevant times). This purpose comes within section 31(2)(b) of the Act.

14. 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) functions and so prejudice the ability to ascertain whether any person is responsible for committing an ADRV.

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

15. 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 importance of transparency and accountability in general and specifically in providing the public with more understanding of its responsibilities.
16. However, to do otherwise in response to your request would, in our view, genuinely risk undermining UKAD's regulatory function across sport, including its responsibility to ensure anti-doping matters are handled confidentially until such time that they can be publicly disclosed in accordance with the ADR. 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

17. UKAD also neither confirms nor denies that it holds the information requested under the exemption in section 40 of the Act.
18. 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 retained EU law version of the General Data Protection Regulation ('UK GDPR'). This is because it would be information relating to identifiable living individuals.
19. 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,

20. Accordingly, UKAD may only disclose the information you have requested if to do so would not contravene the data protection principles, as set out in Chapter 2, Article 5(1) of the UK GDPR. The first data protection principles states that personal data shall be processed transparently, fairly, and lawfully.
21. The lawful basis on which UKAD processes personal data is contained in Chapter 2, Article 6(1)(e) of the UK 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.

22. 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.
23. 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.
24. 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.
25. In coming to this conclusion, UKAD has considered the following factors:
 - (a) that information of the type sought (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 anti-doping functions – all persons subject to the ADR have a reasonable expectation that UKAD would not release any information relating to that function, if it existed unless in accordance with the ADR; 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 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 website³ in respect of its cases. UKAD is also of the view that there

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

³ <https://www.ukad.org.uk/sanctions>

is a general public interest in UKAD, as a public body, adhering to any duty of confidentiality that it is subject to.

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

Conclusion

27. 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.
28. 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