

Official

Ref: FOI-225

[REDACTED]
Sent via email only:
[REDACTED]

18 April 2019

Dear [REDACTED]

1. Thank you for your email of 21 March 2019 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 testing of Anthony Joshua and his enrolment in any Athlete Biological Passport program. Specifically, your request was as follows:

"This freedom of information request asks for the disclosure of the testing record of boxing heavyweight world champion Anthony Joshua.

As outlined in the FOI request relating to Shanaze Dannielle Reade, FOI-197, as part of your retention policy UKAD hold details concerning unsuccessful tests for 18 months.

The retention of successful tests are dependent on the athletes enrolment in a passport programme or whether UKAD has stored samples for possible future re-testing. This request can therefore be broken in to three parts:

- a) *The disclosure of any unsuccessful (i.e. missed) tests*
- b) *Confirmation of Joshua's enrolment in a passport programme or whether samples have been stored*
- c) *Details of successful (i.e. completed) tests completed"*

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. Please note that this "neither confirm nor deny" response to your request should not be taken as an indication that the information you requested is or is not held by UKAD.
3. 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 individual 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.

Response

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. We set out below the application of these exemptions to your request for information. To contextualise that response, we explain briefly here the role of the testing process, in the anti-doping system that applies under the UK Anti-Doping Rules ('the Rules')¹.
5. The primary purpose of the anti-doping process is the elimination of doping in sport through the detection and prevention of Anti-Doping Rule Violations ('ADRVs'). UKAD identifies ADRVs in several ways, including the testing of athletes for substances contained in the World Anti-Doping Agency ('WADA') Prohibited List and through the Athlete Biological Passport ('ABP') program.
6. The ABP is used to detect changes in an athlete's body that may be caused using performance-enhancing drugs or methods. The ABP complements the direct testing approach outlined above, as the ABP can be used to identify doping patterns, even if the substance used to gain advantage is not detectable with current methods. Further information can be found in UKAD's ABP Fact Sheet² and on the WADA website³.
7. Pursuant to the Rules and WADA's International Standard for the Protection of Privacy and Personal Information ('ISPPPI')⁴, all stages of the anti-doping process are confidential and information relating to a specific athlete will only be published if it is determined that an ADRV has been proved (however, even in this instance an athlete's full testing record would not ordinarily be disclosed). Athletes who are subject to testing by UKAD or part of the ABP program therefore have an expectation that their information will only be processed in this manner.
8. The overall effect of this scheme is to balance athletes' rights to privacy and confidentiality and transparency in how UKAD detects and prevents ADRVs. If UKAD were to confirm or deny whether an individual athlete has been subject to testing or is part of the ABP program, this could lead to speculation about the use of prohibited substances by that athlete. However, in the interests of transparency

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

² <https://www.ukad.org.uk/resources/document/athlete-biological-passport>

³ <https://www.wada-ama.org/en/questions-answers/athlete-biological-passport>

⁴ https://www.wada-ama.org/sites/default/files/resources/files/ispppi-_final_-_en.pdf

UKAD publishes testing statistics every quarter, which can be found here: <https://www.ukad.org.uk/anti-doping-rule-violations/quarterlyreports-on-testing-programme>.

Section 31 – law enforcement

9. UKAD neither confirms nor denies that it holds the information requested under the exemption in section 31 of the Act.

10. 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) ...

11. 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...

12. As outlined at paragraph 6 above, one of UKAD's primary functions is to identify and prosecute any athlete or other person who commits an ADRV. This function falls within section 31(2)(b) of the Act.

13. It is UKAD's view that if it were to confirm or deny whether it tests an athlete, or whether a particular athlete is part of the ABP program, it would risk undermining the testing program. This is because a fundamental principle of drug testing is that it is conducted without advanced notice, and such information would indicate to an athlete at a similar level of competition the likelihood of being tested at any given time.

14. 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. Further to this, athletes may be less likely to cooperate with UKAD's testing program if the confidentiality of the process was not maintained.

15. Having determined that confirming or denying the existence of the information requested would prejudice the identification of ADRVs, UKAD has considered the public interest arguments in favour of doing so. UKAD recognises the importance

of transparency and accountability in general, and specifically in providing the public with more understanding of its anti-doping regime⁵.

16. 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. Confirming or denying whether an individual athlete is subject to testing 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.
17. UKAD has concluded that the public interest in knowing whether an individual athlete is subject to testing or part of the ABP program is outweighed by the public interest in ensuring the effectiveness of UKAD's testing program. UKAD therefore neither confirms nor denies whether it holds the information you have requested under section 31 of the Act.

Section 40 – personal information

18. UKAD also neither confirms nor denies that it holds the information requested under the exemption in section 40 of the Act.
19. 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.
20. 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

21. 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 or lawful – as explained below. Therefore, pursuant to Section 40(5B) of the Act, UKAD can neither confirm nor deny that it holds the information.

⁵ As referenced in paragraph 8 above, where a hyperlink is provided. UKAD does publish a significant amount of testing information.

22. In coming to this conclusion UKAD has considered the following factors:
- a. That information of the type sought (the outcome of testing) is not trivial personal data.
 - b. Further to this, any information contained in an ABP would be special category personal data as defined in Chapter 2, Article 9 of the GDPR, as it concerns a person's health. The disclosure of special category data is prohibited unless an exemption applies per Article 9(2)/ Schedule 1 DPA. We do not consider any of the requirements in these provisions are met in this case
 - c. The reasonable expectations of the data subject. We have set out above the confidentiality of the testing process – all athletes subject to the Rules have a reasonable expectation that UKAD would not release any information relating to that process, if it existed; and,
 - d. 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 testing program. On the other hand, UKAD has taken account of the fact that confirming or denying whether UKAD tests an athlete, or whether a particular athlete is part of the ABP, would contravene the rights of athletes to have the confidentiality of that information respected pursuant to the terms of the Rules and ISPPPI. In this particular case, UKAD does not consider that there is an overriding legitimate public interest in confirming or denying whether it holds the information requested.

Conclusion

23. 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.
24. 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