

[REDACTED]

By e-mail to:

[REDACTED]

20 December 2017

Dear

[REDACTED]

UK Anti-Doping
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Official

Ref: FOI-158

1. Thank you for your e-mail dated 15 November 2017 which requested information from UK Anti-Doping ('UKAD') pursuant to the Freedom of Information Act 2000 ('the Act'). You requested information pertaining to the UKAD investigation into the package delivered to Team Sky in June 2011, sometimes referred to as the "jiffy bag" investigation. Specifically, your request was as follows:

I am writing with a request for information relevant to today's announcement – embargoed until 11am - about the UKAD investigation into the Team Sky 'jiffy bag'. I understand UKAD have sent letters to both Team Sky and British Cycling and ask if it would be possible to disclose copies of those letters?

2. After consideration of your request, UKAD has concluded that the information you have requested is exempt from disclosure pursuant to the exemptions specified in sections 31, 41, 40 and 36 of the Act. Therefore, the information requested has not been disclosed, pursuant to these exemptions.

Section 31(1)(g): prejudice to the exercise of public functions for the purpose of ascertaining whether any person is responsible for any conduct which is improper

3. 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)...*

4. 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...*

5. By ratifying the UNESCO Convention, the UK Parliament has formally committed the UK Government to the pursuit of doping free sport based on the principles set out in the World Anti-Doping Code ('the Code'). To meet that commitment, the UK Government has established UKAD and has sought to satisfy the requirements of the UNESCO Convention by adopting the UK National Anti-Doping Policy, issued by the Secretary of State for Digital, Culture, Media and Sport, which sets out the specific requirements of the UK Government in the field of doping in sport and the roles and responsibilities of UKAD. This includes a duty on UKAD to properly investigate and prosecute all anti-doping rule violations set out in Article 2 of the Code.

6. In UKAD's view, disclosure of the requested information would (or at the very least, would be likely to) prejudice the exercise of UKAD's functions – both its ability to investigate and to prosecute anti-doping rule violations. The information requested contains and refers to material gathered by UKAD in confidence for the purpose of UKAD's investigation into possible breaches of the UK Anti-Doping Rules ("ADR") and its public disclosure would (or at least would be likely to) discourage individuals and organisations from sharing information with UKAD in future. This concern is particularly acute (and therefore the potential prejudice particularly severe) because (i) UKAD is an intelligence-led organisation that relies on information provided in confidence, (ii) failure to co-operate is not an anti-doping rule violation in relation to those bound by the ADR, and (iii) those not bound by the ADR fall outside UKAD's jurisdiction, and so it is particularly vital that such parties are not discouraged from providing information.

7. In light of the above prejudice and having weighed the public interest arguments for and against, UKAD has decided that, in this particular case, there is a stronger public interest in the need to protect UKAD's ability to effectively investigate and prosecute improper conduct than there is in disclosure of the requested information. In considering the public interest test, UKAD has considered the following arguments:

Public Interest In Favour	Public Interest Against
<p>Transparency and accountability: increase public confidence by scrutiny and examination of decisions taken in particular cases</p>	<p>Inhibit and impede current and future investigations by UKAD into possible anti-doping violations, not only in cycling but all sports. A key source of UKAD intelligence stems from the cooperation of persons involved within sport in providing information. If such persons understood that information they provided to UKAD for the purposes of investigating possible breaches of the ADR was likely to be made public, it would significantly impact on the likelihood of their future cooperation and therefore impact on UKAD's ability to perform its key functions of ensuring compliance with and enforcement of the ADR.</p>
<p>Provide the public with an understanding of the operation of the anti-doping regime and how UKAD handles its investigations</p>	<p>A significant proportion of the contents of both letters is already in the public domain. As such, the public interest in disclosure of the letters (as set out to the left) is less compelling than if that information were not already publicly available (noting also that section 21 would apply where information is already in the public domain).</p>

Section 41(1): Information provided in confidence

8. Section 41(1) states:

Information is exempt information if –

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

9. The significant majority of the information requested is information provided to UKAD during the course of its investigation, or is information created by UKAD which indicates the content of such information.

10. Insofar as any of the information you have requested was obtained by UKAD from third parties in pursuance of its investigation into possible anti-doping rule violations, this information was provided under the condition that it be kept confidential, and that it would only be publicly disclosed where an anti-doping rule violation had been committed and even then, only in accordance with the ADR (see ADR 5.9.2(b)). In this particular case, UKAD has determined that no proceedings in respect of an anti-doping rule violation will be pursued unless new and material information were to come to light. Therefore, disclosure of such information would breach UKAD's duty of confidentiality under the ADR. This exemption also applies to information created by UKAD, including UKAD's analysis, interpretation or comments, where that information reveals the content of information obtained from another person. With respect to any part of the requested information not covered by this exemption, the information is already largely in the public domain and therefore no public interest would be gained by disclosure (noting also that section 21 would apply to information already in the public domain).

11. This exemption applies in circumstances where disclosure to the public would constitute an actionable breach of confidence. UKAD is of the view that public disclosure would constitute a breach of confidence actionable by Team Sky and/or British Cycling.

12. This exemption is an absolute exemption and therefore the public interest test is not required to be considered. Nonetheless, UKAD has considered the public interest insofar as it has come to the view that a "public interest" defence would not be available to UKAD in the circumstances of this case, were UKAD to be subject to an action for breach of confidence, especially considering the public statement already made by UKAD regarding the investigation.

Section 40: personal information

13. Section 40(2) states:

"Any information...is exempt if it constitutes personal data...and...the disclosure otherwise than under this Act would contravene any of the data protection principles".

14. Some of the information you have requested constitutes “personal data” and “sensitive personal data” under the definitions in the Data Protection Act 1998 (‘DPA’). Pursuant to Schedule 1 Part 1.1 of the DPA, personal data shall be processed fairly and lawfully and in particular, shall not be processed unless (a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met. The disclosure in this instance would contravene data protection principle one because none of the conditions in Schedule 2 or 3 of the DPA would be met, thus the exemption under section 40(2) applies to some of the content of the information requested.
15. We note that this exemption is an absolute exemption, thus the public interest test is not required to be considered.

Section 36: Prejudice to the effective conduct of public affairs

16. UKAD considers that section 36(2) would also be engaged in this instance.
17. Section 36(2) provides as follows:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act:

(b) would, or would be likely to, inhibit

(i) the free and frank provision of advice, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

18. In the opinion of the qualified person, Nicole Sapstead, disclosure of the requested information would (or at least would be likely to) inhibit the free and frank provision of advice and would otherwise prejudice (or be likely to prejudice) the effective conduct of public affairs. The “prejudice” in this case is that disclosure of the requested information would undermine UKAD’s ability to effectively investigate and prosecute possible anti-doping rule violations and to ensure compliance by individuals and organisations with the ADR. UKAD repeats its reasoning at paragraphs 5 to 7 above in this respect.
19. Disclosure of the requested information would also inhibit the ability of UKAD to provide free and frank advice to individuals and sporting bodies in future, in regard to their obligations under the ADR and the Code and/or their compliance with the ADR and the Code.
20. In considering the public interest test, Nicole Sapstead has considered the following argument – in addition to those already set out at paragraph 7 above (regarding consideration of the section 31 exemption):

Public Interest In Favour	Public Interest Against
	UKAD would likely become engaged in legal disputes (e.g. in respect of breach(es) of confidence) that would divert UKAD’s limited resources (financial and labour) towards legal matters unrelated to its core functions

	(which functions include investigating and prosecuting potential anti-doping rule violations, educating athletes, and ensuring compliance by sporting bodies with the UK ADR).
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21. UKAD recognises the general public interest in disclosure of information which would promote openness, transparency and clarity of decision-making. There is a significant public interest in understanding how the National Anti-Doping Organisation proceeds with investigation of possible anti-doping rule violations reported by the media. In recognition and consideration of that interest, UKAD published a detailed statement regarding the outcome of its investigation. Ms Sapstead has also given evidence to the DCMS Select Committee and this information is publicly available. UKAD strongly maintains that there is a greater public interest in the information requested being withheld rather than disclosed, particularly in light of the fact that a significant proportion of the information requested is already in the public domain.

Where to from here?

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 the response to your original letter and should be addressed to: Philip Bunt, Director of Business Services, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. 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.

Yours sincerely



UKAD