

Official

Ref : FOI-198

25 June 2018

██████████  
Sent via email only to:  
██████████

Dear ██████████

1. Thank you for your email dated 18 May 2018 which requested information from UK Anti-Doping ('UKAD') pursuant to the Freedom of Information Act 2000 ('the Act'). Your request was as follows:

*"Could you please update me on the status of your investigation into the Linda McCartney cycling team. Is the investigation still on going."*

## Decision

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2. Pursuant to both Section 31(3) and Section 36(3) of the Act, UKAD refuses to confirm or deny whether it holds the information requested. The reasoning for this response is set out below.
3. 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.

## Reasoning

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### Section 31 – law enforcement

4. Section 31(1) of the Act 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 sub-section (2)..."*

5. The relevant purpose in Section 31(2) is the following:

*“(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,…”*

6. Section 31(3) further provides:

*“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).”*

7. UKAD refuses to confirm or deny whether it holds the information requested as to do so would be likely to prejudice UKAD’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’). This purpose comes within section 31(2)(b) of the Act.
8. All investigations by UKAD are confidential. In this respect please note Article 5.9(2)(b) of the ADR<sup>1</sup>. UKAD would not disclose the fact or details of any investigation publicly, unless such information fell to be disclosed pursuant to Article 8.4.1 of the ADR. This Article applies where the decision of a tribunal that an ADRV has been committed is publicly reported.
9. If UKAD were to confirm or deny whether it holds the information requested, that would reveal whether it was investigating or had ever investigated the Linda McCartney cycling team.
10. If UKAD were to confirm, on request, whether or not any particular investigation was being, or had been carried out, people (other than those who were party to any investigation) would be able to discover the existence of otherwise confidential investigations. This in turn would create the risk of any such investigation being prejudiced or interfered with.
11. Confidentiality is also necessary so that people are not discouraged from assisting UKAD with the exercise of its functions for the purpose identified in Section 31(2)(b), for fear that such assistance may become public and that they may be subject to reprisals. Without confidentiality, anybody who did assist would be inhibited from being fully frank, for the same reason.

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<sup>1</sup> *“...Any information furnished to UKAD shall be kept confidential except when it becomes necessary to disclose such information to further the investigation of and / or to bring proceedings relating to an Anti-Doping Rule Violation, or when such information is reported to administrative, professional, or judicial authorities pursuant to an investigation or prosecution of non-sporting laws or regulations.”*

12. Information provided voluntarily and confidentially is vital to UKAD's ability to carry out its functions. This is particularly the case as UKAD has no power to compel anybody to cooperate with it, or to provide information to it.
13. Having determined pursuant to Section 31 of the Act that to confirm or deny whether the information requested is held would be likely to prejudice UKAD's functions, UKAD has gone on to consider the public interest arguments in favour of confirming or denying whether we hold the information requested, and those in favour of maintaining the Section 31(3) exemption and so giving a "neither confirm nor deny" response to your request.
14. In favour of confirming or denying whether we hold the information, 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 its decisions.
15. Conversely, UKAD considers that there is a public interest inherent in a public body maintaining confidentiality in respect of any investigation into a potential ADRV. UKAD has also considered the likely prejudice to the exercise of its investigatory functions if the exemption were not maintained in this instance, and the effect this would have on its ability to further its important public policy objective of eliminating doping in sport.
16. UKAD has come to the conclusion that the public interest in knowing whether it has investigated or is investigating a particular cycling team is outweighed by the public interest in ensuring the effectiveness of UKAD in carrying out its functions for the purpose identified in Section 31(2)(b). It follows that UKAD refuses to confirm or deny whether it holds the information requested. This should not be taken as a confirmation or a denial that any investigation is being or has been carried out into the Linda McCartney cycling team.

### **Section 36 – prejudice to the effective conduct of public affairs**

17. Section 36(2)(c) of the Act 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 would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."*

18. Section 36(3) further provides:

*“The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).”*

19. In the opinion of the qualified person, Nicole Sapstead, to confirm or deny whether UKAD holds the information requested would be likely to prejudice the effective conduct of public affairs, in that it would be likely to prejudice UKAD’s ability to perform one of its core functions, being the investigation and prosecution of possible ADRVs. In coming to this view, Ms Sapstead confirms and adopts the reasoning set out above in respect of Section 31.
20. Given Ms Sapstead’s conclusion in respect of prejudice to the effective conduct of public affairs, UKAD has gone on to consider the public interest test. UKAD has reached the same view as it did in respect of Section 31 above i.e. that the public interest in UKAD confirming or denying whether it holds the information requested is outweighed, given the likely prejudice that would be caused to UKAD’s functions if it did so. To this end, UKAD confirms and adopts the reasoning applied above in respect of Section 31.

## Conclusion

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21. 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 request and should be addressed to: Pat Myhill, Director of Operations, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.
22. 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**