

Official

Ref: FOI-314

Dear [REDACTED]

15 September 2021

1. Thank you for your email of 25 June 2021 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act').
2. Specifically, your request was as follows (UKAD has divided your request into Part 1 and Part 2 for ease of reference):

[Part 1]

"1. Please supply me with the number of current British Athletes (Track & Field) registered as allowed TUE medication?"

2. Please provide me with a list of the TUE medications currently allowed to British athletes (track & field) and the number of each specific medication?"

[Part 2]

UKAD published statement:

'We want to assure athletes and the general public that catching cheats and keeping sport clean is at the heart of what we do, and we have a wide number of robust programmes including testing, investigations and education to protect sport.'

'We comply with the World Anti-Doping Code, the international standards and the UK National Anti-Doping Policy and we do take action when evidence of wrongdoing comes to light.'

'Farah himself said on Tuesday he is happy for any of his previous samples to be re-tested.'

Given your above statements, please can you confirm if Mo Farah's previous, blood and urine samples have:

1. Been retested?
2. On what date?
3. Can you confirm if WADA has requested the release of Mo Farah's previous samples to be retested?

Response

Part 1

3. UKAD interpreted "the number of current Athletes (Track & Field) registered as allowed TUE medication" as the number of track and field athletes who currently hold an active TUE granted by UKAD.
4. Further, UKAD interpreted "a list of the TUE medications currently allowed to British Athletes (Track & Field) and the number of each specific medication" as a request for the medication for which the TUEs referenced at paragraph 3 were granted, and the number of TUEs for each medication.
5. The response to Part 1 of your request can be found in the table below:

Number of athletes who hold a current TUE with UKAD	Types of medication associated with current TUE(s)
1	Insulin (1)

6. Please note, the data above does not include information related to international-level athletes who are required to obtain a TUE through World Athletics or the International Paralympic Committee.
7. International-level athletes are typically:
 - a. Athletes who are included in the World Athletics Registered Testing Pool;
 - b. Athletes competing at a World Athletics recognised international competition; and/or
 - c. Athletes who appear on the International Paralympic Committee's list of international-level Athletes.

Part 2

Questions 1 and 2

8. UKAD neither confirms nor denies that it holds the information requested in questions 1 and 2 of Part 2 of your request. In doing so, UKAD relies on the exemptions in sections 31 and 40 of the Act. 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.
9. 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.

Section 31 – law enforcement

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. UKAD’s functions, including the sample testing process in the system that applies under the UK Anti-Doping Rules (‘the Rules’)¹, clearly fall within the scope of the exemption provided at 31(2)(b) of the Act.
13. Pursuant to the Rules and the World Anti-Doping Agency’s Code and International Standards², and to safeguard its effectiveness, all stages of the sample testing process are confidential, and so specific information generated by or derived from it, including whether or not any particular test took place and

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

² https://www.wada-ama.org/en/resources/search?f%5B0%5D=field_resource_collections%3A228

any test results (to the extent such exists) will only be published if it is determined that an Anti-Doping Rule Violation (or 'ADRV') has been proved.³

14. Further, it is UKAD's view that if it were to confirm or deny whether it tests an athlete, 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.
15. 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.
16. UKAD's position is that any disclosures, including confirmation as to the presence or otherwise of such information, would undermine the integrity and effectiveness of the testing programme and so prejudice the exercise of UKAD's functions.
17. 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 transparency⁴ and accountability in general and specifically in providing the public with more understanding of its regime.
18. However, to do otherwise in response to questions 1 and 2 of Part 2 would, in our view, genuinely risk undermining UKAD's ability to organise and operate its testing programme 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

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

³ See in particular Rules 5.9 and 8.5.

⁴ UKAD publishes its quarterly testing statistics and ADRV decisions: <https://www.ukad.org.uk/quarterly-reports-ukads-testing-programme>; and <https://www.ukad.org.uk/sanctions>.

20. 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.

21. 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.

22. Accordingly, UKAD may only disclose this information 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 principle states that personal data shall be processed transparently, fairly and lawfully.

23. 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,⁵ UKAD’s lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.

24. 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.

25. 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;

⁵ <https://ico.org.uk/media/for-organisations/documents/2614720/personal-information-section-40-and-regulation-13-version-21.pdf>

- b. Disclosure must be necessary for that purpose; and
 - c. The legitimate interest outweighs the interests and rights of the individuals.
26. 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.
27. In coming to this conclusion UKAD has considered the following factors:
- a. That information of the type sought (an Athlete’s test history) is not trivial personal data.
 - b. 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
 - 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 inspired 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 would contravene the rights of athletes to have the confidentiality of that information respected pursuant to the Rules and International Standards. 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.

Question 3

28. UKAD wishes to clarify that in relation to question 3 of Part 2, on 21 January 2020 UKAD published the following, as referenced in your request:

‘We want to assure athletes and the general athletes and general public that catching cheats and keeping sport clean is at the heart of what we do, and we

have a wide number of robust programmes including testing, investigations and education to protect sport.'

'We comply with the World Anti-Doping Code, the international standards and the UK National Anti-Doping Policy and we do take action when evidence of wrongdoing comes to light.'

[<https://www.ukad.org.uk/news/ukad-statement-regarding-reanalysis-athlete-samples-and-wada>]

29. The following sentence quoted in the request (*'Farah himself said on Tuesday he is happy for any of his previous samples to be re-tested'*) did not form part of the statement made by UKAD. This additional sentence appears in the following Sky Sports article on 22 January 2020:
<https://www.skysports.com/more-sports/football/news/29175/11915208/ukad-denies-withholding-mo-farah-blood-and-urine-samples-from-wada>.
30. UKAD considers the above statement, made on 21 January 2020, to be a full response to question 3 of Part 2 of your request.

Conclusion

31. 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 request and should be addressed via email to: foi@ukad.org.uk. Please remember to quote the reference number above in any further communications.
32. 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".