

FOI-376

24 November 2023

By email only:

████████████████████

Dear ██████████

1. Thank you for your email dated 25 April 2023 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 (the 'Act'). Your request was as follows:

"Under the Freedom of Information Act 2000, I am writing to request information regarding the amount of money spent on drug testing professional golfers by UKAD since 2013.

Specifically, I would like to know:

The total amount of money spent on drug testing golfers by UKAD in GBP, from January 1, 2013, to the present date.

The names of the British golfers who have been tested the most by UKAD since January 1, 2013, and the number of times they have been tested during this period."

2. After seeking clarification regarding your request, you confirmed that the information you sought related to British professional golfers *Rory McIlroy, Tommy Fleetwood, Tyrrell Hatton, Justin Rose, Matt Fitzpatrick, Lee Westwood, Paul Casey, Ian Poulter and Danny Willett.*

Response Part 1

3. In relation to your request for information regarding *'the total amount of money spent on drug testing golfers by UKAD'*, we confirm that UKAD does not hold this information in the form you have requested.

4. UKAD uses its government grant in aid income ('GIA') to fund its operations. Testing is one of many different functions carried out by UKAD and the costs associated with testing cover a range of different operational processes, including (but not limited to) the cost of training Doping Control Personnel, the provision of testing equipment, staff costs, the transport of samples and the analysis of samples at a laboratory. Given the broad range of resources required to conduct testing across World Anti-Doping ('WAD') Code-compliant sport in the UK, UKAD does not record '*the total amount of money spent on drug testing golfers*', nor does it record this information for any other individual sport.
5. However, UKAD does record both the direct costs and the related staff costs of its entire testing programme in any given year. This information is publicly available in UKAD's Annual Report and Accounts, [here](#).
6. In addition, and to the extent that it assists, we have provided detail regarding UKAD's jurisdiction over British professional golfers in the paragraphs below.
7. First, it is important to note that UKAD's jurisdiction over British athletes arises where those athletes are bound by and required to comply with WAD Code-compliant anti-doping rules. In the UK, many national governing bodies of sport have adopted WAD Code-compliant anti-doping rules to which they bind their athletes. Such rules confer jurisdiction on UKAD to (amongst other things) conduct testing on those athletes.
8. Professional golf in the UK is not governed by a body that adopts WAD Code-compliant rules. Therefore, British professional golfers do not as a matter of course fall under UKAD's jurisdiction for the purpose of testing. However, British professional golfers participating in major world golf events may be subject to other rules concerning anti-doping, which are prescribed by the organisations running those events. Such rules do not confer jurisdiction on UKAD to conduct testing.
9. Notwithstanding the above, there may be occasions where British professional golfers temporarily fall within the scope of WAD Code-compliant anti-doping rules, such as in the build up to and during an Olympic Games event. UKAD may therefore, in some limited circumstances, have jurisdiction to conduct testing in professional golf.

Response Part 2

10. In relation to your request for information regarding testing conducted on British professional golfers, 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. 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.
11. 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 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

12. 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)...

13. 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...

14. UKAD’s functions, including the sample testing process in the system that applies under the UK Anti-Doping Rules (‘the ADR), clearly fall within the scope of the exemption provided at section 31(2)(b) of the Act.
15. Pursuant to the ADR and the WAD Code and International Standards, 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 any test results (to the extent

such exists) will only be published if it is determined that an Anti-Doping Rule Violation ('ADRV') has been proved.

16. Further, it is UKAD's view that if it were to confirm or deny whether it tests specific individual athletes, 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.
17. 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.
18. UKAD's position is that any disclosures, including confirmation as to the existence or otherwise of such information, would undermine the integrity and effectiveness of the testing programme and so prejudice the exercise of UKAD's functions.
19. 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 regime.
20. However, to do otherwise in response to your second question 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

21. UKAD also neither confirms nor denies that it holds the information requested under the exemption in section 40 of the Act.
22. 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.

23. 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. Therefore, 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)(f) 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 Act¹, 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. UKAD does not have consent to make 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;
- b. Disclosure must be necessary for that purpose; and
- c. The legitimate interest outweighs the interests and rights of the individuals.

¹ [ICO s40 Guidance Note](#)

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.

Conclusion

24. 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 future communications.
25. If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commission 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

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