

**Ref: FOI-416**

6 November 2023

Mr [REDACTED]

Sent via email only: [REDACTED]

Dear [REDACTED]

1. Thank you for your email of 3 August 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:

*"...I am interested in obtaining data related to out-of-competition drug testing conducted by the Football Association (FA) in partnership with UK Anti-Doping (UKAD). Specifically, I would like to request the following information:*

*> The total number of out-of-competition drug tests conducted on professional footballers during the last four seasons, including tests on players from the Premier League, Football Leagues (Championship, League One, and League Two), under-18 teams, under-21 teams, and players in the Women's Super Leagues. These results should be broken down by season, as well as league if possible. [Referred to as Part 1 below]*

*> The number of positive test results for recreational drugs, such as cocaine, heroin, marijuana, LSD, ecstasy, among others, and the specific substances for which players tested positive. [Referred to as*

Part 2 below]

*> Any disciplinary actions taken by the Football Association or relevant football authorities against players who tested positive for recreational drugs, including the number of suspensions imposed and their duration.*  
[Referred to as Part 3 below]

*> The number of Therapeutic Use Exemptions (TUEs) granted to players during the last season, specifying the medical conditions for which they were granted and the drugs permitted under each TUE.*  
[Referred to as Part 4 below]

*> Any educational, counselling, or treatment programs offered to players who tested positive for recreational drugs or who received TUEs.*  
[Referred to as Part 5 below]

...”

2. Following a request from UKAD for clarification, you clarified your request for information as follows:

*“...To clarify, the last four football seasons would refer to the following years:*

- > 2019*
- > 2020*
- > 2021*
- > 2022*
- > 2023 (YTD)*

*Please break the figures down by calendar year, financial year, or football season.*

*Also break this down by league of player if possible...”*

## **Response – Part 1**

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1. UKAD confirms that, subject to the clarifications explained below, it holds material relevant to your request at Part 1. Accordingly, it has completed the following table:

<b>Financial Year</b>	<b>No. of <u>Out-of-Competition</u> tests</b>
Apr 19 - Mar 20	2,733
Apr 20 - Mar 21	1,297*
Apr 21 - Mar 22	2,116
Apr 22 - Mar 23	2,006

\* Football testing impacted upon by Covid-19 pandemic.

2. The data contained in the table above includes all ‘Out-of-Competition’ (as that term is defined in The Football Association’s Anti-Doping Regulations) tests conducted within English Football and therefore may include tests beyond the scope of your original request, for example, tests carried out on players within the England national team squads.
3. The data in the table defines a ‘test’ as any test of a single player in a Sample collection session. Where multiple Samples (blood and/or urine) were collected from a player in a Sample collection session, this has been counted as one test.
4. With regard to your request at Part 1 for information broken down “by league of player”, UKAD does not “hold” information in the form requested per section 1 of the Act as we do not record the league a footballer competed in at the time of collecting or analysing a Sample within the Anti-Doping Administration and Management System (‘ADAMS’) or elsewhere.
5. To compile strands of information into the form requested (i.e. Samples collected and analysed by UKAD by year, with reference to individual leagues each player competed in, would comfortably exceed the costs of compliance limits per section 12 of the Act. We have conducted similar exercises previously and where they may be on the cusp of the costs of compliance limits or just over, but this is increasingly burdensome for UKAD, not least because these types of requests are also increasing. On this basis, UKAD has to rely on section 12 of the Act in order to ensure that it is following the relevant rules, purpose and spirit of the Act, but it is not unduly burdening colleagues and systems.

## **Response – Part 2**

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6. UKAD confirms that it holds limited material relevant to your request at Part 2.

7. However, as explained in more detail below, this limited information is not being disclosed because the information relates to Out-of-Competition testing reported in accordance with The FA's Social Drugs Regulations and UKAD withholds this information pursuant to section 41 of the Act.
8. It should be noted that within versions of the World Anti-Doping Agency's ('WADA') Prohibited List between 2019 and 2023, certain substances are only prohibited 'In-Competition' (as defined within the applicable anti-doping rules). However, The FA also prohibits some of these substances Out-of-Competition of its own accord under its Social Drugs Regulations.
9. At all material times relevant to your request, The FA has had conduct of, and has managed any breaches of its Social Drugs Regulations, including any "positive test results". However, due to the way The FA's Social Drugs programme operated between 2013 and 2020, Samples collected from players Out-of-Competition by UKAD would be screened for substances prohibited both In- and Out-of-Competition, in order to assist The FA in its detection of relevant breaches of its Social Drugs Regulations. When the presence of a substance prohibited under The FA's Social Drugs Regulations was detected by the laboratory, this would be shared with UKAD, so that this information could then in turn be provided to The FA for it to manage any applicable breach.
10. The limited information that UKAD holds regarding "positive test results" between 2019 and 2020 is therefore withheld pursuant to section 41 of the Act:

**Section 41 Information provided in confidence**

*(1) 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.*

11. The information was provided to UKAD by the Drug Control Centre at King's College London which, together with the FA, is a/are third party/ies for the purposes of section 41(1)(a) of the Act. The information has the quality of

confidence and was shared with UKAD in circumstances which imported an obligation of confidence.

12. Disclosure would be an unauthorised use of the information and would constitute a breach of confidence. This breach of confidence would be actionable by The FA and potentially also the players involved. Any such action would be likely to succeed, with the public interest in disclosure not outweighing UKAD's duty of confidence; therefore, the information is exempt from disclosure pursuant to section 41 of the Act. This exemption is an absolute exemption, and as such UKAD is not required to consider the public interest test any further in this context.

### **Response – Part 3**

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13. UKAD does not hold information in respect of Part 3 of your request.

### **Response – Part 4**

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14. UKAD confirms that, subject to the clarifications explained below, it holds material relevant to your request at Part 4.
15. There were 54 Therapeutic Use Exemptions ('TUEs') granted by UKAD to 49 players registered with professional men and women's football clubs under the jurisdiction of The FA during the 2022/23 season.
16. Please note the following considerations in relation to this data:
  - a. Five of these TUEs related to players who renewed their TUE at some point in the 2022/23 season to treat the same medical condition that their original TUE was granted for.
  - b. For the purposes of these statistics, the 2022/23 season is defined as starting on 1 July 2022 and ending on 30 June 2023.
  - c. The data relates to TUEs granted to players playing at one of the following levels within English football: Premier League (first and under-21 teams), Championship (first and under-21 teams), League One (first and under-21 teams), League Two (first and under-21 teams), registered scholars playing in the under-18 Premier League, Women's Super League (first team), and Women's Championship (first team).

- d. The data does not include information on TUEs granted to international-level players who are required to obtain TUEs through UEFA and/or FIFA. International-level players are typically players competing within UEFA (e.g., Champions League) or FIFA (e.g., World Cup) sanctioned competitions. These players are considered to be international level until their team is eliminated from the competition.
- e. TUEs are granted for specific time periods (for example, one-off, seven days, three months, six months, one year, two years, etc). This means that some TUEs may need renewing on more than one occasion during a season depending on the timing of when the TUE was granted and duration of approval.

## **Personal Data**

17. UKAD is withholding the requested detail regarding the medical conditions and substances for which TUEs have been granted because there is a real risk that, in so doing, UKAD may inadvertently identify relevant TUE applicants and/or disclose the personal data (and special category personal data) of the relevant TUE applicants. UKAD therefore withholds this information pursuant to section 40 of the Act, which provides:

### **Section 40 Personal information**

*(2) Any information... is also exempt information if—*

*(a) it constitutes personal data which does not fall within subsection (1) [personal data of which the applicant is the data subject], and*

*(b) the first, second or third condition below is satisfied.*

*(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act —*

*(a) would contravene any of the data protection principles,..*

18. UKAD has concluded that, in view of the typical number of TUE applications in football each year (as evidenced by the above response), there is a genuine risk that disclosure of the information requested may identify any individual making a TUE application. This would mean that any information relating to such an

application 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 (‘UK GDPR’). This is because it would be information relating to an identified living individual.

19. Moreover, given the obvious link between TUE applications and health, there is a risk that such disclosure would also constitute processing of special category (health) data (per section 10(1) DPA and Article 9 UK GDPR). There is a general prohibition on processing special category data, save for where relevant conditions apply.
20. As a starting point, having determined that the information you have requested is personal data, UKAD has gone on to consider whether disclosure would contravene any of the data protection principles as set out in Chapter 2, Article 5(1)(a) of the UK GDPR. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully.
21. The lawful basis on which UKAD generally processes this type of 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, as set out in the Information Commissioner’s (ICO) Guidance Note on section 40 of the Act, UKAD’s lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act<sup>1</sup>.
22. Therefore, UKAD may only lawfully disclose the information you have requested on a different basis. The only two bases that may apply are consent (being consent to disclose that information under the Act) or if disclosure would be necessary for the purposes of legitimate interests. Players applying for a TUE have an expectation that their application and the details associated with it will remain confidential. This means that UKAD may only lawfully disclose this information to you if it is necessary for the purposes of legitimate interests (which outweigh the corollary interests of the relevant player). To establish this lawful basis, 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 interests outweigh the interests and rights of the individual.

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<sup>1</sup> Available [here](#).

23. UKAD acknowledges the legitimate public interest in transparency and accountability regarding anti-doping matters. However, it is UKAD's view that disclosing the information you have requested would not be necessary to achieve that purpose, particularly given the information UKAD publishes pursuant to the Rules<sup>2</sup>. UKAD is also of the view that even if such disclosure was necessary, it would not outweigh an individual player's right to privacy when applying for a TUE. Therefore, UKAD does not have a lawful basis to disclose this information to you and we are withholding the information requested under the exemption in section 40 of the Act.
24. For completeness, UKAD's position is that, to the extent such disclosure may constitute processing of special category data, it also does not consider any of the relevant conditions (per Article 9 UK GDPR) to the prohibition generally on processing such data apply here. UKAD has a specific 'anti-doping derogation' for processing special category data in connection with its public purposes (paragraph 27, Schedule 1, Part 2 of DPA). In UKAD's view, the derogation does not extend to the type of processing which might be required in responding to your specific request.

## **Response – Part 5**

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11. UKAD does not hold information in respect of Part 5 of your request.

## **Conclusion**

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12. 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](mailto:foi@ukad.org.uk). Please remember to quote the reference number above in any future communications.
13. 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.

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<sup>2</sup> Information about UKAD's testing program, and current and historical ADRVs are contained on the UKAD website [here](#) and [here](#).



Yours sincerely

UK Anti-Doping

**UK Anti-Doping**