

[REDACTED]

By e-mail to: [REDACTED]

13 December 2017

Dear [REDACTED]

Thank you for your e-mail dated 13 November 2017 which requested information from UK Anti-Doping ('UKAD') pursuant to the Freedom of Information Act 2000 ('the Act'). You requested information as follows:

"Specifically, I'd be obliged if you could let me know the expenditure to date that UKAD has incurred since 24 June 2016 relating to the charges against Tyson and Hughie Fury for the presence of a Prohibited Substance. If possible could this information be split into expenditure on external legal fees and the in-house cost to UKAD that pursuing the case(s) has brought."

Please note that, for the purposes of this request, UKAD is treating your reference to "*the charges against Tyson and Hughie Fury for the presence of a Prohibited Substance*" as a request for information in respect of the associated cases of Tyson Fury and Hughie Fury in relation to adverse analytical findings which are being dealt with together and which were convened before the National Anti-Doping Panel for hearing in December 2017 (together the "Fury Cases").

Material held

1. In respect of your request for the expenditure to date of the Fury Cases, please note that as a matter of standard practice UKAD employees are not required to and do not record when and how much time they have spent on a particular matter, as is generally the case in private legal firms which charge for their time on an hourly rate. UKAD therefore does not hold a record of the total number of hours spent by UKAD staff dealing with this matter and is not able to calculate its internal legal, investigative or other costs incurred with any degree of accuracy. UKAD is therefore unable to provide a figure as to its in-house cost or the total cost of the Fury Cases.
2. UKAD confirms that it holds information regarding the external legal and other costs incurred in the Fury Cases, that is, of the *disbursements* incurred by UKAD. UKAD can confirm that it has incurred disbursements in regard to the following:
 - Costs for legal services provided, principally by Bird & Bird LLP; and

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- Costs of laboratory analysis and associated services provided by both the Drug Control Centre, King's College, London and the Laboratoire de contrôle du dopage INRS - Institut Armand-Frappier, Montreal.

Summary of Decision

3. After careful consideration of the applicable exemptions and the balance of public interest test (discussed further below), UKAD has concluded that the information you have requested is exempt from disclosure pursuant to the exemptions specified in sections 36(2)(c) and 31(1)(g) of the Act.
4. Accordingly, UKAD has determined not to disclose the information you have requested at this time.

Applicable exemptions

Section 36(2)(c) Prejudice to the effective conduct of public affairs

5. 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 -
(c) Would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
6. 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 the 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.
7. Further, pursuant to Article 14.3.5 of the Code (also enshrined in Article 14.1.3 of the UK Anti-Doping Rules (the "ADR")), UKAD is not permitted to comment publicly on the specific facts of any ongoing case except in prescribed circumstances, namely in response to public comments attributed to the Athlete charged or his representatives. This to protect the rights of all parties involved and to ensure that ongoing cases are not unnecessarily prejudiced, nor run the risk of being hampered by arguments concerning potential prejudice which would delay proceedings and increase costs.
8. In the reasonable opinion of the qualified person, Nicole Sapstead, disclosure of the requested costs information you have requested would, or would be likely to (see further explanation in the sub-paragraphs which follow), undermine the effective prosecution of anti-doping rule violations as it:
 - a. would place UKAD in breach of its obligations under the Code and the ADR not to comment publicly on the facts of the ongoing Fury Cases (we note that WADA and the British Boxing Board of Control have appeal rights in this matter and that the appeal window remains open); and/or

- b. would undermine UKAD’s efficacy as a prosecuting body by disclosing information during the currency of an ongoing prosecution which would be likely to prejudice UKAD’s case; for example, the information might be deployed by the Athletes charged to UKAD’s disadvantage, or encourage them to adopt strategies designed to impact on UKAD’s financial resources; and/or
 - c. would be likely to enable the Athletes to argue that their cases have been prejudiced as a consequence of disclosure of this information during the currency of their cases.
9. Accordingly, in the opinion of the qualified person, disclosure of this information would, and/or would be likely to, prejudice the effective conduct of public affairs. UKAD has therefore concluded that the information requested may be exempt from disclosure pursuant to section 36(2)(c) of the Act, subject to consideration of the public interest both for and against disclosure.
10. I can confirm that Ms Sapstead has given specific consideration to the weight of the various public interest arguments in favour and against maintaining the exemption. For completeness, I set out below the specific public interest arguments that were considered:

<i>Public Interest: In Favour</i>	<i>Public Interest: Against</i>
Increase public confidence by scrutiny and examination of decisions taken in particular cases.	Disclosure would prejudice the effective investigation and prosecution of anti-doping rule violations.
Provide the public with information about the costs of investigating and prosecuting allegations of doping.	Disclosure of information relating to an ongoing case would cause UKAD to violate its obligations under the Code and the ADR.
Provide the public with information about the use of public resources.	Disclosure would undermine UKAD’s efficacy as a prosecuting body by disclosing information during the currency of an ongoing case which would be likely to prejudice UKAD’s case.
	Disclosure would be likely to undermine the timely and efficient prosecution of the anti-doping rule violations by risking the possibility of the Athletes arguing that their cases have been prejudiced as a consequence of disclosure of this information during the currency of the cases.

11. UKAD recognises the general public interest in disclosure of information which would promote openness, transparency and clarity of decision-making; and recognises that there is a significant public interest in having oversight of government spending and knowing how much a particular public body may be spending on external legal costs. In UKAD’s view that interest is already served in an appropriate fashion by the information which UKAD publishes on its website.
12. In this regard, information regarding UKAD’s spending is made available each quarter on UKAD’s website (see the tab entitled “Our Organisation” and the sub-heading “Transparency”, also available via this link: <https://www.ukad.org.uk/our-organisation/transparency-data/>). At the date of writing, the most recent published spending data relates to the second quarter of the 2017/18 Financial Year and is entitled “UKAD Spending Report Q2 2017-18”. This document includes the details of payments made to Bird & Bird LLP with respect to UKAD’s external legal costs and

payments made to the Laboratory at King's College, London. UKAD appreciates that the amounts listed as paid to these entities do not contain a breakdown of the proportion of their costs which relate to the Fury Cases. UKAD also appreciates that these reports do not include payments for less than £25,000. The next quarterly update is to be published in January 2018 and previous quarterly reports dating from 2013 onwards are available at the link provided above.

13. However, UKAD considers that it would not be appropriate to provide the specific detail of the costs spent on any particular case, especially when that case is ongoing, in light of the following considerations.
14. UKAD strongly maintains that there is a much greater public interest in information pertaining to ongoing cases remaining confidential. Not only is confidentiality during live cases a specific requirement of the Code and ADR, but the Information Commissioner has recognised that such cases need private thinking space in order to fully explore all aspects of a case and that there is always likely to be a strong public interest in maintaining the Section 36 exemption whilst a case is ongoing. Furthermore, for the reasons stated above, disclosure of the information requested at this juncture would be likely to prejudice UKAD's position in the Fury Cases and potentially also UKAD's position in respect of future prosecutions; and further risk the possibility of the Athletes charged arguing that disclosure has in some way prejudiced their case.
15. Therefore, having weighed the public interest arguments for and against disclosure as set out above, it is the reasonable opinion of the qualified person that there is a stronger public interest in not disclosing the requested information than there is in disclosing it.

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

16. 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)...*

17. 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...*

18. One of UKAD's primary functions is to identify and prosecute any Athlete or other person who commits an anti-doping rule violation pursuant to the Code and the ADR, and thus uphold professional standards in the field of sport. Such conduct falls within the meaning of "improper" as prescribed in the Act. In UKAD's view, the disclosure of the costs incurred in a particular case would be likely to prejudice UKAD's ability to prosecute that person's improper conduct, in that it would enable the person being prosecuted to know how much their case has cost UKAD, and so enable the person charged to develop a case strategy which might be employed to UKAD's disadvantage. UKAD repeats its reasoning at paragraph 8 above in this respect. This information might also be used in a similar manner by other persons prosecuted under the ADR in the future.

19. In light of this, UKAD repeats its reasoning as regards the balancing of the public interest test in disclosing or withholding information set out at paragraphs 10 to 15 above.
20. Having weighed the public interest arguments for and against disclosure of the information requested, UKAD has decided that there is a stronger public interest in the need to protect UKAD's ability to effectively prosecute athletes and other persons under the ADR in respect of improper conduct than there is in disclosure of the total or particularised costs incurred in relation to any particular case.

Where to from here?

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 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.
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



UKAD