

Official

Ref: FOI-235

[REDACTED]  
Sent via email only:  
[REDACTED]

29 July 2019

Dear [REDACTED],

1. Thank you for your email of 23 May 2019 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 writing to make an open government request for all the information to which I am entitled under the Freedom of Information Act 2000.*

*Please send me:*

- a) *any information you have which relates to therapeutic use exemptions for Anthony Joshua MBE while competing as a boxer both as an amateur and professional;*
- b) *any information you may have which relates to any failed drug tests by Anthony Joshua MBE; and*
- c) *any information you have with regards to Anthony Joshua's relationship with Frances Akor.'*

## Summary of Response

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2. UKAD does not hold the information requested in part c) of your request.
3. UKAD neither confirms nor denies whether it holds the information in parts a) and b) of your request. The detail of the basis for this response is set out below.
4. Please note that this "neither confirm nor deny" response should not be taken as an indication that the information you requested is or is not held by UKAD, or as in any way indicative of the position of the individual in your request. It is simply an application of the relevant tests in the context of the wider framework, rules and procedures applicable to UKAD as an organisation subject to the Act.

## The anti-doping and TUE process under the UK Anti-Doping Rules

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5. We set out below responses in respect of parts a) and b) of your request for information. To contextualise those responses, we explain briefly here the anti-doping process, and the TUE process, that applies under the UK Anti-Doping Rules ('the Rules')<sup>1</sup>.
6. The primary purpose of the anti-doping process is the elimination of doping in sport through the prevention or detection and prosecution of Anti-Doping Rule Violations ('ADRVs'). UKAD identifies ADRVs in several ways, including the testing of athletes for substances contained in the World Anti-Doping Agency ('WADA') Prohibited List. All stages of the anti-doping process are confidential, subject to paragraph 9 below.
7. The question as to whether any particular athlete has provided a sample for analysis to UKAD (ie undergone a UKAD drugs test) at any particular time is confidential, as is the result of the analysis of that sample, whether it be positive (ie it reveals the presence of a prohibited substance in the sample) or negative.
8. Should a positive result lead to a charge being issued against an athlete, the prosecution will proceed on a private and confidential basis. This includes any correspondence between UKAD and the athlete, or any subsequent hearing before the tribunal that deals with such cases (the National Anti-Doping Panel or 'NADP').
9. At the end of the ADRV prosecution process information can be published by UKAD, pursuant to Articles 8.4 and 13.8 of the Rules as follows. Once a case has concluded fully (ie there is no further right of appeal), and it has been determined by UKAD (via an Issued Decision) or by a hearing or appeal panel of the NADP that an ADRV has been committed, UKAD is required by those Articles to publicly report the relevant decision. Information about current and historic ADRVs can be found on the UKAD website [here](#).
10. The TUE process is a means by which an athlete can obtain approval to use a prohibited substance or method for the treatment of a legitimate medical condition.
11. All information submitted as part of a TUE application is confidential, in keeping with the WADA International Standard for Therapeutic Use Exemptions ('ISTUE') and International Standard for the Protection of Privacy and Personal Information

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<sup>1</sup> 2015 UK Anti-Doping Rules, available here: <https://www.ukad.org.uk/resources/document/uk-anti-doping-rules>

(‘ISPPPI’). Athletes applying for a TUE have an expectation that their information will only be processed in this manner<sup>2</sup> and as such UKAD extends this confidentiality to the fact that a TUE application has or has not been made (as the case may be).

12. The overall effect of this scheme is to balance athletes’ rights to privacy and confidentiality and transparency in how UKAD detects and prevents ADRVs. Releasing any details of the anti-doping or TUE process outside of this scheme could be extremely damaging to the reputation of an athlete, because it would lead to speculation about the use of prohibited substances.
13. **It’s important to underline paragraph 4 above, to emphasise that the below responses are in no way indicative of the position of the individual referred to in your request.**

#### Part a) of your request

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14. UKAD neither confirms nor denies that it holds the information requested. In doing so, UKAD relies on the exemption in section 40(5B) of the Act.

#### Section 40 – personal information

15. If UKAD were to confirm or deny whether it held the information requested, it would disclose “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 such a confirmation or denial would be information relating to an identifiable living individual.
16. 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—*

*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*

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<sup>2</sup> See paragraph 6 of the UKAD standard TUE application form, available here: [https://www.ukad.org.uk/sites/default/files/2019-05/TUE\\_Application\\_Form.pdf](https://www.ukad.org.uk/sites/default/files/2019-05/TUE_Application_Form.pdf)

17. Having determined that to confirm or deny whether UKAD holds the information requested would disclose 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 GDPR. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully.
18. 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 (ie 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>3</sup>.
19. Accordingly, UKAD would only lawfully be able to disclose such information 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. As outlined in paragraph 11 above, if an athlete were to apply for a TUE, he or she would have an expectation that such information would remain confidential (including the fact of whether or not an application had been made); therefore, UKAD could reasonably infer that consent has not been provided to disclose whether or not an application has been made.
20. Therefore, UKAD may only lawfully disclose information of this nature to you if it is necessary for the purposes of legitimate interests. 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.
21. UKAD acknowledges the legitimate public interest in transparency and accountability regarding anti-doping matters. However, it is UKAD's view that disclosing whether or not an athlete has applied for a TUE would not be necessary to achieve that purpose, particularly given the information UKAD publishes about

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/2614720/personal-information-section-40-and-regulation-13-version-21.pdf>  
<https://ico.org.uk/media/for-organisations/documents/2614720/personal-information-section-40-and-regulation-13-version-21.pdf>

ADRVs under the Rules<sup>4</sup>. UKAD is also of the view that even if such disclosure was necessary, it would not outweigh an individual athlete's right to privacy in the TUE process. Therefore, UKAD does not have a lawful basis to disclose such information to you and we are neither confirming nor denying whether we hold the information requested under the exemption in section 40 of the Act.

22. As UKAD's view is that to confirm or deny whether it holds the information would not be lawful, it necessarily follows that should doing so disclose any information considered 'special category personal data' as defined in Chapter 2, Article 9 of the GDPR, UKAD would not have a lawful basis for disclosing such information to you either.
23. We emphasise 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.

### Part b) of your request

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24. 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.

### Section 31 – law enforcement

25. 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) ...*

26. 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...*

27. As outlined at paragraph 6 above, one of UKAD's primary functions is to identify and prosecute any athlete or other person who commits an ADRV. This function falls within section 31(2)(b) of the Act.

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<sup>4</sup> See paragraph 9 above.

28. Confirming or denying the existence of the information requested outside of the circumstances set out in paragraph 9 would risk undermining the testing program, as it would jeopardise UKAD's relationship with the sporting community to such an extent that it would be likely to lead to a lack of co-operation in the testing program by sports, teams and individuals, if not a refusal to participate in it at all.
29. It would also erode faith more generally in the confidentiality of UKAD's wider activities. This would be very likely to have a detrimental impact on the provision of intelligence to UKAD, which is vital for UKAD to carry out its functions falling within section 31(2)(b). This is particularly important as UKAD has no power to compel people to provide information to it or cooperate with it, and so is reliant on information provided voluntarily.
30. Having determined that confirming or denying the existence of the information requested would prejudice the detection and prosecution of ADRVs, UKAD has considered the public interest arguments in favour of doing so. UKAD recognises the importance of transparency and accountability in general, and specifically in providing the public with more understanding of its anti-doping regime.
31. Conversely, UKAD considers that the more important public interest lies in the maintenance of an effective anti-doping regime, so that UKAD can work towards its public policy objective of eliminating doping in sport.
32. UKAD has concluded that the public interest in knowing whether an individual athlete has failed a test is outweighed by the public interest in ensuring the effectiveness of UKAD's testing program. UKAD therefore neither confirms nor denies whether it holds the information you have requested under section 31 of the Act.

#### **Section 40 – personal information**

33. UKAD also neither confirms nor denies that it holds the information requested pursuant to section 40(5B) of the Act. This is because such a confirmation or denial is information relating to an identifiable living individual.
34. In this respect, UKAD adopts the reasoning in paragraphs 15 to 22 above to neither confirm nor deny whether it holds the information requested.
35. For the avoidance of doubt, please be reminded 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.

## Conclusion

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36. 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, Chief Operating Officer, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.
37. 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**