

Official

Ref: FOI-236

[REDACTED]
Sent via email only:
[REDACTED]

29 July 2019

Dear [REDACTED],

1. Thank you for your email of 4 June 2019 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Your request was for information relating to Therapeutic Use Exemptions ('TUEs'). Specifically, your request was as follows:

'I would like records of all Therapeutic Use Exemption ('TUE') applications between 2013 and 2018 from the UK's professional boxers. I would like:

- a) records of the application (the medicine involved and the reasons for application);*
- b) dates of applications; and*
- c) the decision.'*

Summary of Response

2. UKAD has previously published information about TUE applications (refer FOI-117 and FOI-201, available [here](#)).
3. UKAD is not disclosing the information requested in this case for the reasons set out below.

Response

4. UKAD confirms that it holds the information you have requested in parts a) to c) of your request. However, we are withholding this information under the exemptions in sections 40 and 41 of the Act. To contextualise this response, we explain briefly

here the role of the TUE process in the anti-doping system that applies under the UK Anti-Doping Rules ('the Rules')¹.

5. 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.
6. As required by the World Anti-Doping Agency ('WADA') International Standard for Therapeutic Use Exemptions ('ISTUE')², UKAD has established the UK Therapeutic Use Exemption Committee ('TUEC') to consider TUE applications. UKAD has also established the UK TUE Appeal Panel to consider appeals against TUEC decisions. Information outlining the TUE application process is publicly available on the UKAD website [here](#). Further information about which athletes are required to submit TUE applications, including in advance of being tested, is also outlined on the UKAD website³.
7. All parts of the TUE application process are confidential, in accordance with the WADA ISTUE and International Standard for the Protection of Privacy and Personal Information ('ISPPPI')⁴. Athletes applying for a TUE have an expectation that their information will only be processed in this manner.
8. If UKAD were to release certain information about TUE applications (such as the date of applications, details of the substance approved and the medicine involved) for sports (such as professional boxing) with a relatively low number of athletes required to make TUE applications, this could identify athletes who have applied for a TUE and/or information around the TUE applied for/ granted.

Section 40 – personal information

9. Section 40(2) of the Act states:

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.*

¹ 2015 UK Anti-Doping Rules, available [here](#)

² https://www.wada-ama.org/sites/default/files/resources/files/istue_2019_en_new.pdf

³ See the section 'When to apply for a TUE', available [here](#)

⁴ https://www.wada-ama.org/sites/default/files/resources/files/ispppi-_final_-_en.pdf

10. Section 40(3A)(a) of the Act states:

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.

11. UKAD has concluded that, in view of the typical number of TUE applications in the sport to which your request relates, 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 (‘GDPR’). This is because it would be information relating to an identified living individual.
12. 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 GDPR. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully.
13. 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 Act⁵.
14. Accordingly, 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. As outlined at paragraph 6 above, athletes applying for a TUE have an expectation that their application and the details associated with it will remain confidential. Therefore, UKAD may only lawfully disclose this information 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:

⁵ Available [here](#)

- 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.
15. 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 Rules⁶. UKAD is also of the view that even if such disclosure was necessary, it would not outweigh an individual athlete'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.
16. As UKAD's view is that disclosure of any personal data would not be lawful, it necessarily follows that, should any of the information you have requested be 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.

Section 41 – Information provided in confidence

17. Section 41(1) states:

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.

18. Any part of the information you have requested that is information obtained from a third party (i.e. an athlete) comes within section 41(1)(a) of the Act, as (as set out above) all parts of the TUE application process (including the medicine involved and the reasons for the application) are confidential.

⁶ Information about UKAD's testing program, and current and historical Anti-Doping Rule Violations ('ADRVs') are contained on the UKAD website [here](#) and [here](#)

19. If UKAD were to disclose this information to you, in circumstances where there is a genuine risk that individual athletes could thereby be identified, it would constitute a breach of confidence actionable by those athletes. 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.
20. The same analysis applies to decisions of the TUEC and the TUE Appeal Panel, insofar as they reproduce information contained in the TUE application (which would form all, or a substantial part of, the decision).
21. In regard to any parts of decisions by the TUEC or TUE Appeal Panel which do not contain confidential information provided by a third party, and the dates of TUE applications, these are nevertheless exempt from disclosure pursuant to the exemption in section 40 of the Act, which covers all of the material that you have requested.

Conclusion

22. 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.
23. 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



UK Anti-Doping