

Official

Ref: FOI-227

Sent via email only: [REDACTED]

25 July 2019

Dear [REDACTED]

### Internal Review

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1. I write in reference to your email dated 22 May 2019 requesting an internal review of UKAD's response dated the same day ('the Response'), to your request for information under the Freedom of Information Act 2000 ('the Act') dated 7 April 2019. A copy of the Response is **enclosed**.
2. I can confirm that I have undertaken that review and am writing to notify you that my conclusion is to uphold the decision communicated to you in the Response, that is, to uphold the decision to withhold the information under the exemptions in sections 31, 40 and 41 of the Act.

### Original request

3. Your original request followed an earlier request, with reference FOI-219, a copy of which is **enclosed**.
4. Your original request was as follows:

*'Thank you for your response in the case that there was no correspondence with Mr Foote and his company, could you therefore please release under FOI correspondence with the two athletes re the testing of the supplement.'*

5. At UKAD's request, you subsequently provided clarification that the scope of your request extended to all letters and emails between the period 1 August 2014 to 12 January 2015. Further, UKAD interpreted your request as relating to correspondence with either Mr Gareth Warburton or Mr Rhys Williams (including their respective legal representatives) regarding the testing of any supplement produced by Mountain Fuel Limited.

### Request for internal review

6. Following receipt of the Response – in which UKAD withheld the information under the exemptions in sections 31, 40 and 41 of the Act – you requested an internal review of UKAD’s decision. Your request was as follows:

*‘Thank you for your reply firstly I wish to appeal your adjudication’.*

### Review undertaken and conclusion

7. In conducting this review, I have considered your original request for information afresh, along with the Response and the relevant guidance from the Information Commissioner’s Office on the application of the exemptions in sections 31, 40 and 41 of the Act<sup>1</sup>.
8. Having carried out the review, I have concluded that the exemptions originally cited in the Response – i.e. those contained within sections 31(1), 40(2) and 41(1) of the Act – were correctly relied upon for the reasons given in the Response. I therefore uphold UKAD’s decision to withhold the information you have requested.
9. 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



**Pat Myhill**

Director of Operations

[pat.myhill@ukad.org.uk](mailto:pat.myhill@ukad.org.uk)

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<sup>1</sup> Available here

Official

Ref: FOI-227

Sent via email only: [REDACTED]

21 May 2019

Dear [REDACTED],

1. Thank you for your email of 7 April 2018 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 any correspondence between UKAD and Mr Gareth Warburton or Mr Rhys Williams concerning the testing of supplements produced by Mountain Fuel Limited.
2. This request is related to your earlier request, with reference FOI-219, a copy of which is **enclosed**.
3. Specifically, your request was as follows:  
  
*'Thank you for your response in the case that there was no correspondence with Mr Foote and his company, could you therefore please release under FOI correspondence with the two athletes re the testing of the supplement.'*
4. On 1 May 2019, UKAD requested further clarification from you, namely:
  - i. whether, as per your previous request, your request related to correspondence by letter and email; and
  - ii. whether your request also related to the period 1 August 2014 to 12 January 2015.
5. By reply email of the same date, you confirmed that the scope of your request extended to all letters and emails between the period 1 August 2014 to 12 January 2015.
6. Further, your request refers to *'correspondence with the two athletes re the testing of the supplement'*. UKAD has interpreted your request as relating to correspondence with either Mr Warburton or Mr Williams (including their

respective legal representatives) regarding the testing of any supplement produced by Mountain Fuel Limited.

### Summary Response

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7. UKAD is not disclosing the information you have requested. The detail of the basis for this response is set out below.

### Response

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8. UKAD confirms that it holds the information you have requested. However, insofar as this information was provided by a third party to UKAD, or UKAD's own communications reproduce such information, we are withholding this information under the exemption in section 41 of the Act.
9. In addition, all the information covered by your request is also exempt from disclosure pursuant to the exemptions in sections 31 and 40 of the Act.

### Section 41 – Information provided in confidence

10. 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.*

11. The information you have requested was produced during arbitration for Anti-Doping Rule Violations ('ADRVs'). UKAD prosecutes ADRVs under the UK Anti-Doping Rules ('the Rules')<sup>1</sup>. Under Article 8.1 of the Rules, when an athlete disputes an ADRV or any of the applicable consequences, the matter is referred for arbitration to the National Anti-Doping Panel ('NADP') for resolution pursuant to the NADP Rules<sup>2</sup>.

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<sup>1</sup> <https://www.ukad.org.uk/sites/default/files/2019-05/UK%20Anti-Doping%20Rules.PDF>

<sup>2</sup> [https://www.sportresolutions.co.uk/uploads/related-documents/D\\_1\\_-\\_2019\\_NADP\\_Rules.pdf](https://www.sportresolutions.co.uk/uploads/related-documents/D_1_-_2019_NADP_Rules.pdf)

12. Article 11.4 of the NADP Rules states that such proceedings are confidential and prohibits any party involved from disclosing any facts or other information relating to those proceedings. It is only at the end of the ADRV arbitration process that information can be published by UKAD. Such publication is made pursuant to Articles 8.4 and 13.8 of the Rules; that is, once a case has concluded fully (ie there is no further right of appeal), and it has been determined by the NADP that an ADRV has been committed, UKAD is required by those Articles to publicly report the decision. UKAD does this by publishing relevant decisions on its website<sup>3</sup>.
13. Therefore, all of the information that you have requested is confidential pursuant to the NADP Rules, save insofar as it has been included in the issued decision that was published at the end of the arbitration process. That issued decision is **enclosed**.
14. All of the correspondence that you have requested that was sent to UKAD by a third party comes within section 41(1)(a) of the Act.
15. Furthermore, given the confidential context in which that correspondence took place, disclosure of it would constitute a breach of confidence actionable by the third parties who provided it. 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.
16. The same analysis applies to any of the correspondence that you have requested that was produced by UKAD and includes any confidential information provided by a third party; in this case, either one of the athletes or their representatives.
17. Insofar as there is any content within any of the correspondence that was produced by UKAD and does not contain any confidential information provided by a third party, this is nevertheless exempt from disclosure pursuant to sections 31 and 40 of the Act, exemptions which cover all of the material that you have requested.

### **Section 31 – law enforcement**

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<sup>3</sup> Details of current sanctions can be found on the UKAD website [here](#)



18. 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) ...*

19. 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...*

20. As outlined at paragraph 11 above, one of UKAD's main functions is the prosecution of ADRVs before the NADP. This function falls within section 31(2)(b) of the Act.
21. It is UKAD's view that disclosing the information you have requested would prejudice this function. This is because disclosing correspondence that took place during the confidential arbitration process would undermine that process. All parties to an arbitration conducted under the NADP Rules have a legitimate expectation that all facts and information pertaining to that arbitration will remain confidential, save to the extent that they are ultimately included in any decision published at the end of the proceedings.
22. Such confidentiality is a fundamental aspect of the arbitration process. Athletes subject to arbitration should be free to put forward anything that assists their case, no matter how personally sensitive, on a confidential basis. Athletes (and other parties) would be reluctant to cooperate fully and frankly in the arbitration process if that confidentiality was not respected. This would be unfair to athletes and jeopardise the effectiveness of the process as a mechanism for arriving at the truth, and ultimately a fair outcome, in any given case.
23. Having determined that disclosure of the information requested would prejudice the effective 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 and the arbitration process that operates within it.
24. 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. Disclosing the information you have requested would adversely affect the operation of the arbitration process and would not be fair to athletes, who have an expectation that proceedings will be conducted confidentially under both the Rules and the NADP Rules. There is also a general public interest in UKAD, as a public body, respecting any duties of confidentiality it is subject to.

25. UKAD has concluded that the public interest in being provided with correspondence between UKAD and athletes that took place during an NADP arbitration process is outweighed by the public interest in maintaining the confidentiality of that arbitration process, in accordance with the NADP Rules. UKAD is therefore withholding the information you have requested under section 31 of the Act. In coming to this decision, UKAD has considered the information that it makes publicly available under the Rules (as outlined at paragraph 12 above).

#### **Section 40 – Personal Information**

26. 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.*

27. 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.*

28. 'Personal data' is defined in Section 3(2) of the Data Protection Act 2018 ('DPA') and Article (4) and Article 4(1) of the General Data Protection Regulation (EU) 2016/679 ('GDPR'), and includes information relating to an identified living individual.

29. UKAD has assessed that the information you have requested is personal data, because it relates to identified living individuals. This is because it is information that was obtained during prosecution of an ADRV and processed for the purpose of deliberations and decisions regarding the disposition of arbitration proceedings; therefore, any processing of this information during the arbitration process had a direct impact on the athlete or athletes involved.
30. 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.
31. 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, pursuant to the Information Commissioner's (ICO) Guidance Note on section 40 of the Act<sup>4</sup>, UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.
32. 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. Neither athlete has provided consent to this disclosure. 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:
- 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.
33. As outlined in paragraphs 23 to 25 above, UKAD acknowledges the legitimate public interest in transparency and accountability regarding the prosecution of anti-doping matters. However, it is UKAD's view that disclosing the information

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/2614720/personal-information-section-40-and-regulation-13-version-21.pdf>



you have requested would not be necessary to achieve that purpose, particularly given the information UKAD publishes about ADRVs under the Rules and NADP Rules. 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 confidential arbitration proceedings. 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.

34. 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.

### Conclusion

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- a. 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.
- b. 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**

Official

Mr [REDACTED]

Ref: FOI-219

Sent via email only: [REDACTED]

02 April 2019

Dear [REDACTED],

1. Thank you for your email of 17 February 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 any correspondence between UKAD and Mr Darren Foote or Mountain Fuel Ltd, and UKAD and Cambridge Commodity Ltd. Specifically, your request was as follows:

*'With regard to this linked case:*

*[https://www.ukad.org.uk/assets/uploads/Files/2015/UKAD\\_vs\\_Warburton\\_Williams\\_351\\_352.pdf](https://www.ukad.org.uk/assets/uploads/Files/2015/UKAD_vs_Warburton_Williams_351_352.pdf), I'd like to request under freedom of information all correspondences between UKAD and Darren Foote and the company Mountain Fuel please.'*

2. By email dated 25 February 2019 UKAD requested further clarification from you, namely:
  - i. Whether your request related to correspondence between UKAD and Darren Foote, on behalf of Mountain Fuel Ltd;
  - ii. The form of correspondence requested; and
  - iii. The timeframe of the correspondence requested.
3. By email dated 02 March 2019 you clarified the scope of your request as follows:
  1. *Could you confirm whether you corresponded with Darren Foote/Mountain Fuel by letter or e-mail between 1 August 2014 and 12 January 2015;*
  2. *Could you confirm whether you corresponded with Cambridge Commodity Ltd, or a representative thereof, by letter or e-mail between 1 August 2014 and 12 January 2015;*

3. *If the answer to #1 is yes, then please could you provide me with the corresponding e-mails only under the terms of the Freedom of Information Act; and,*
4. *If the answer to #2 is yes, then please could you provide me with the corresponding e-mails only under the terms of the Freedom of Information Act.*

*If the volume of e-mails for either #3 or #4 is such that you need me to refine my request, then please let me know. My working assumption is that there should be very limited correspondence between yourselves (UKAD) and these two parties.'*

## Response

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4. UKAD confirms that it does not hold the information you have requested in points 1 to 4 of your request. That is, there was no correspondence by letter or email between UKAD and Darren Foote or Mountain Fuel Ltd, or UKAD and Cambridge Commodity Ltd, between 1 August 2014 and 12 January 2015.

## Conclusion

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5. 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.
6. 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*

**UK Anti-Doping**