

Official

Ref: FOI-254

[REDACTED]  
Sent via email only:  
[REDACTED]

28 February 2020

Dear [REDACTED]

1. Thank you for your letter of 7 December 2019 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act').
2. Specifically, your request was as follows:

***Re: Adverse anti-doping finding and connected processes related to professional boxer, Mr. Dillian Whyte between 1st June 2019 and 6th December 2019.***

*1.1. Please provide a list / schedule of files / documentation held by UKAD related to the investigation into an adverse anti-doping test result in 2019 following testing of Mr. Dillian Whyte, a professional boxer.*

*2.1. Please provide the laboratory / testing report(s) produced in the period of June – July 2019 which informed UKAD of an adverse finding following testing of an anti-doping test sample obtained on 20 June 2019 belonging to Mr. Dillian Whyte.*

*2.2. Please provide details of any further scientific testing conducted in the period of July 17 – December 6 2019 by UKAD, on UKAD's behalf or on Mr. Dillian Whyte's behalf on personal samples taken from Mr. Dillian Whyte.*

*2.3. Please confirm whether or not Mr. Dillian Whyte's "B sample" collected at the same time as his sample which produced an adverse finding in June 2019 was tested in the period of 20th June – 6th December 2019 for the purpose of detecting substances listed on WADA's prohibited list.*

*2.3.1. Please provide any report produced following this testing if it occurred.*

*2.4. UKAD issued a joint statement with Mr. Dillian Whyte on 6th December 2019 which referred to the acceptance of an explanation offered by Mr. Dillian Whyte for his adverse anti-doping finding. Please provide this explanation.*

*2.5. In the period of 2010 to 2019 inclusive please provide the total number of adverse anti-doping findings which were deemed to be consistent with an isolated contamination event and which resulted in an anti-doping rule violation charge being withdrawn.*

3.1. Please provide all written and electronic correspondence made between UKAD representatives / employees and representatives / employees of the British Boxing Board of Control in the period 17th July – December 6th 2019 concerning Mr. Dillian Whyte.

4.1. Please provide all written and electronic correspondence made between UKAD representatives / employees and representatives / employees of Matchroom Sport or Matchroom Boxing in the period 17th July – December 6th 2019 concerning Mr. Dillian Whyte.

5.1. Please provide the total number of non-disclosure / confidentiality agreements entered into by UKAD in the period 17th July – December 6th 2019 not related to employment with UKAD, provision of services by UKAD or provision of goods or services to UKAD.

5.1.1. If possible, please provide the dates on which non-disclosure agreements meeting the aforementioned criteria (if any) were entered into.

5.2. Please confirm the cost of professional legal services obtained by UKAD in the period 17th July – December 6th 2019.

5.2.1. If possible, please confirm the cost of professional legal services obtained by UKAD in the period 17th July – December 6th 2019 specifically related to the agency's continuing investigation of an adverse anti-doping finding related to Mr. Dillian Whyte and connected matters.

6.1. Please provide the minutes of any meeting held with UKAD representatives present between 1st June 2019 and 6th December 2019 at which the continuing investigation into Mr. Dillian Whyte's adverse finding was discussed or on the stated agenda.

6.2. Please provide any internal UKAD briefing documents / emails produced during the period of 1st June 2019 and 6th December 2019 related to the investigation into Mr. Dillian Whyte's adverse finding

6.3. Please provide any internal UKAD briefing documents / emails produced during the period of 1st June 2019 and 6th December 2019 specifically related to the risks posed to UKAD in continuing the investigation into Mr. Dillian Whyte's adverse finding.

## Summary of Response

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3. The item requested at 1.1 does not exist.
4. UKAD is disclosing some of the information you have requested, being items 2.5, 5.1, 5.2 and 5.2.1.
5. Items 2.1, 2.3, 2.4, 6.1, 6.2 and 6.3 are held by UKAD and are exempt from disclosure under section 31 of the Act. For the avoidance of doubt, item 2.3 is the answer to whether or not Mr Whyte's B sample was analysed. UKAD is not providing this answer.

6. UKAD neither confirms nor denies that it holds the information requested at 2.2, pursuant to section 31 of the Act.
7. The cost of complying with your request at 3.1 would exceed the applicable limit.
8. UKAD holds item 4.1, and it is exempt from disclosure under section 41 of the Act.
9. The detail of the basis for this response is set out below.

## **Response**

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### **Information disclosed**

#### *Item 2.5*

10. The total number is one.

#### *Item 5.1*

11. The total number is zero.

#### *Item 5.2 and 5.2.1*

12. The cost of professional legal services obtained by UKAD between July and December 2019 is £168,509.64 (please note for reasons only of practical expediency this figure is not confined to the exact dates specified in the request but encompasses all of July – December).
13. The cost figure requested at 5.2.1 is £84,544.70.

### **Information exempt from disclosure**

#### *Items 2.1, 2.3, 2.4, 6.1, 6.2 and 6.3*

### **Section 31 – law enforcement**

14. 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) ...*

15. 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...*

16. One of UKAD's main functions is the investigation and prosecution of anti-doping rule violations (ADRVs). This function falls within section 31(1)(g) of the Act, as it is exercised for the purpose set out in section 31(2)(b)<sup>1</sup>.

### **Context**

17. UKAD prosecutes ADRV's under the UK Anti-Doping Rules ('the Rules')<sup>2</sup>. Confidentiality is a fundamental characteristic of such prosecutions - all stages of the prosecution process are confidential, and information relating to a matter can only be published by UKAD pursuant to Articles 8.4 and 13.8 of the Rules as follows. Once a case has concluded fully (i.e. there is no further right of appeal), and it has been determined by UKAD (via an Issued Decision) or by a first instance or appeal panel of the National Anti-Doping Panel ('NADP') that an ADRV has been committed, UKAD is required by those Articles to publicly report the relevant decision. UKAD does this by publication on its website<sup>3</sup>.
18. The circumstances of Mr Whyte's case mean that, in accordance with the Rules, not only is UKAD not required to publish any details of it, all details of it are confidential, save for those provided in the statement posted on UKAD's website on 6 December 2019<sup>4</sup>.
19. As was set out in that statement, as the charge against Mr Whyte was withdrawn:

*"This would ordinarily mean that UKAD would not make any public statement, in accordance with the applicable confidentiality rules to which UKAD is subject. However, since certain confidential information relating to this matter (including the fact of the initial charge) has unfortunately made its way into the public domain, UKAD and Mr Whyte have agreed to take the unusual step of releasing the following limited information to put an end to speculation concerning Mr Whyte's status."*

### **Application of section 31 to items 2.1, 2.3, 2.4**

20. It is UKAD's view that disclosing any of these items would prejudice the exercise of its ADRV prosecution function.

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<sup>1</sup> For your information in this respect we enclose a decision of the Information Commissioner's Office from December 2018, reference FS50753154

<sup>2</sup> <https://www.ukad.org.uk/sites/default/files/2019-05/UK%20Anti-Doping%20Rules.PDF>

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

<sup>4</sup> <https://www.ukad.org.uk/news/ukad-and-mr-dillian-whyte-issue-joint-statement>

21. All athletes subject to the Rules have a legitimate expectation that UKAD will conduct any prosecution in accordance with the strict requirements of confidentiality contained in the Rules. Athletes subject to prosecution should be free to put forward anything that assists their case, on a confidential basis.
22. Releasing any details of the prosecution process outside of the circumstances set out in paragraph 17 could be extremely damaging to the reputation of an athlete, because it would lead to uninformed speculation and supposition.
23. Athletes (and other parties) would be reluctant to cooperate fully and frankly in the prosecution process if its confidentiality was not respected. This would jeopardise the effectiveness of the overall process as a mechanism for arriving at the truth, and ultimately a fair outcome, in any given case.
24. Furthermore, if UKAD were to disclose the information requested 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 with UKAD's ADRV prosecution process by sports, teams and athletes, if not a refusal to participate in it at all.
25. 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) of the Act. This is particularly important as UKAD has no power to compel people to provide information to it or co-operate with it, and so is reliant on information provided voluntarily.

#### **Application of section 31 to items 6.1, 6.2 and 6.3**

26. Items 6.1, 6.2 and 6.3 form part of UKAD's confidential internal prosecution process. Disclosing them would enable those subject or potentially subject to an ADRV prosecution to ascertain the detail of how UKAD investigates and prepares its cases, over and above any information such people would be entitled to pursuant to the rules governing the prosecution process.
27. It is UKAD's view that disclosing this information would therefore undermine and so prejudice the prosecution process.

#### **The public interest test**

28. 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 disclosure. UKAD recognises the importance of

transparency and accountability in general, and specifically in providing the public with more understanding of how it prosecutes ADRVs

29. Conversely, UKAD considers that the more important public interest lies in the maintenance of an effective prosecution process as part of the 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 prosecution process. There is also a general public interest in UKAD, as a public body, respecting any duties of confidentiality it is subject to.
30. UKAD also notes that the Rules provide for publication of information about ADRV cases, as set out in paragraph 17, and so effectively provides for transparency in appropriate circumstances.
31. UKAD has concluded that the public interest in providing the information requested is outweighed by the public interest in maintaining the confidentiality of the prosecution process. 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 has made publicly available in relation to this case.

#### **Other exemptions**

32. It should be noted that UKAD considers that other exemptions are likely to apply to items 2.1, 2.3, 2.4, 6.1, 6.2 and 6.3, including in relation to personal information (section 40 of the Act), confidentiality (section 41) and legal professional privilege (section 42). For the sake of expediency we have not set out a full analysis of these exemptions, given the application of section 31.

#### *Item 2.2*

33. Any such further scientific testing, were any undertaken, would have arisen in the context of an ADRV prosecution and so as part of a function within section 31(1)(g) of the Act, for the purpose set out at section 31(2)(b) of the Act, as detailed above. As also set out above, UKAD would not disclose details of a prosecution save to the extent that they fell to be published as described in paragraph 17. Whether or not further scientific testing was conducted is a confidential detail of a prosecution.
34. Accordingly, pursuant to section 31(3) of the Act UKAD can neither confirm nor deny whether it holds the information requested as to do so would prejudice its prosecution function, for the reasons set out in paragraphs 21 – 25 above.



35. Section 31(3) provides:

*“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”*

36. Having determined pursuant to Section 31 that to confirm or deny whether the information requested is held would prejudice UKAD’s functions, UKAD has gone on to consider the public interest arguments in favour of confirming or denying whether we hold the information requested, and those in favour of maintaining the Section 31(3) exemption and so giving a “neither confirm nor deny” response to your request.

37. In this respect, UKAD has performed the same analysis and reached the same conclusion as set out at paragraphs 28 – 31 above.

#### *Item 3.1*

38. In our preliminary search for this information we have identified 664 potentially relevant records which will require review in order to enable us to respond to your request. We estimate that it will take around 2 – 3 minutes on average to review each record. The whole exercise will therefore take an estimated 22 – 33 hours.

39. Pursuant to section 12 of the Act a public authority is not obliged to comply with a request for information if the authority estimates that the costs of compliance would exceed the appropriate limit. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and fees) Regulations 2004 and Schedule 1(1) of the Act, which provide that the limit for the costs of compliance is £450, or 18 hours at the flat rate of £25 per hour.

40. You therefore may wish to reconsider part 3.1 of your request. For example, you may wish to request copies of correspondence between certain persons only and / or for a shorter period of time.

41. However, as correspondence with the British Boxing Board of Control may well be exempt from disclosure by virtue of, for example, its confidential nature, you may alternatively wish to indicate to us what specific information it is you are looking for. We may then be able to provide you with more particular advice and assistance in refining your request.

#### *Item 4.1*

42. The correspondence requested is confidential and exempt from disclosure under section 41.

## Section 41 – Information provided in confidence

43. 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.*

44. Disclosure of this correspondence would constitute a breach of confidence actionable by Matchroom Boxing Limited. 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 any further in this context.

## Conclusion

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45. 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.

46. 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**