

[REDACTED]

Official

Sent via email only: [REDACTED]

Ref: FOI-299

11 August 2021

Dear [REDACTED]

1. We write in relation to your request for information under the Freedom of Information Act 2000 (the 'Act'), reference FOI-299.

Request for Information

2. In an email dated 9 February 2021, you requested the following information from UKAD (in relation to the anti-doping proceedings by UKAD against Mr Adam Carr):
 - “1. All evidence, with dates, times, strategies etc...and information that show the full extent of the RFL’s anti-doping education programme to community clubs since 2009, or since the RFL signed up to UKAD as an NGB, and how that was delivered to the community game as claimed by the RFL & Mr Barnes (other than the FOI response provided in September 2020).
 2. How UKAD audited and checked the truthfulness and accuracy of the RFL (as an organisation) evidence that formed part of the sanction process.
 3. How UKAD & Ms Dutt checked the truthfulness and accuracy of what was said in Mr Barnes (as their witness) witness statement dated 13th May 2020.
 4. How UKAD formulated and checked the validity and accuracy of the evidence set out in paragraph 48 (c) of their formal submission presented by Paul Renteurs on 19th June 2020.”

Response to part 1 of your request

3. UKAD has interpreted part 1 of your request as for information relating to the delivery of anti-doping education by the RFL to Community-level rugby league clubs and/or players.
4. In UKAD’s search for “evidence, with dates, times, strategies etc ... and information that show the full extent of the RFL’s anti-doping education programme to community clubs since 2009 ... and how that was delivered to the community game” we have identified **2,018** potentially relevant records which will

require review in order to enable us to respond to part 1 of your request for information. We estimate that it will around 2 – 3 minutes to review each record. This will take UKAD an estimated 67 – 101 hours.

5. Section 12 of the Act states that 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 Part 1 of Schedule 1 of the Act, which provides that the limit for the cost of compliance for UKAD (as a public authority not listed in Part 1 of Schedule 1 of the Act) is £450, or 18 hours at the flat rate of £25 per hour. Therefore, to comply with this part of your request would exceed the appropriate cost limit.
6. It may assist, however, to refer to UKAD's response to your previous request for information (reference FOI-286). Enclosed with the response to FOI-286 was a draft 'RFL Anti-Doping Education & Training Strategy for 2016-2021'. In addition to this document, UKAD holds a draft 'RFL Anti-Doping Education & Information Strategy 2010-2012'. A copy of the draft 'RFL Anti-Doping Education & Information Strategy 2010-2012' is enclosed with this response. Redactions have been applied to personal data that is exempt from disclosure, pursuant to section 40 of the Act.
7. Section 40(2) of the Act states:

Any information ... is 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.*
8. Section 40(3)(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.*
9. Personal data is defined in section 3(2) of the Data Protection Act 2018 ('DPA') and Article 4(1) of the retained EU law version of the General Data Protection Regulation ('UK GDPR'), and includes information relating to an identified living individual.
10. UKAD has assessed that the information you have requested contains personal data, that is personal information that relates to identified living individuals.

Therefore, UKAD has gone on to consider whether disclosure of the personal data would contravene any of the data protection principles set out in Chapter 2, Article 5(1)(a) of the UK GDPR. The first data protection principle states that personal data shall be processed lawfully, fairly and in a transparent manner.

11. The lawful basis on which UKAD processes personal data is contained in Chapter 1, Article 6(1)(e) of the UK GDPR and section 8 of the DPA, being that it is necessary for the performance of a task carried out in the public interest (i.e. eliminating doping in sport). However, pursuant to the Information Commissioner's Guidance Note on section 40 of the Act¹, UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.
12. Accordingly, UKAD may only lawfully disclose the personal data contained in the information you have requested on a different basis. The only two bases that may apply are consent (being consent to disclose that personal data under the Act) or if disclosure would be necessary for the purposes of legitimate interest. The individuals have not provided consent to this disclosure. Therefore, UKAD may only disclose this personal data 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 individuals.
13. UKAD acknowledges the legitimate public interest in transparency and accountability regarding the performance of its functions. However, it is UKAD's view that disclosing the personal data in the information you have requested would not be necessary to achieve those functions. Therefore, UKAD does not have a lawful basis to disclose this personal data to you and we are withholding it pursuant to the exemption in section 40 of the Act.

Response to parts 2, 3 and 4 of your request

14. UKAD does not hold any information responsive to parts 2, 3 or 4 of your request. Written evidence submitted to the National Anti-Doping Panel ('NADP') by UKAD will usually include a form of words from the relevant witness attesting to its truth.

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

Relevant witnesses often also give oral evidence before the NADP which can then be tested through cross-examination and may be the subject of further questioning from the NADP. This was the case, for example, with the evidence of Mr Barnes, who gave oral evidence before the NADP and was cross-examined by Counsel for Mr Carr.

Conclusion

15. 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 this response via email to foi@ukad.org.uk. Please remember to quote the reference number above in any further communications.
16. 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