

[REDACTED]  
Sent via email only to: [REDACTED]

Ref: FOI-358

2 February 2023

Dear [REDACTED],

1. Thank you for your email of 24 November 2022, in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Specifically, your request was as follows:

- a. *'How many footballers at clubs playing in the Premier League, Championship, League One and League Two were tested and returned an Adverse Analytical Finding (AAF) over the past four years (2018/19, 2019/20, 2020/21 and 21/22 to present date)?*

*Please could the information be broken down by year (football season). In each case, please could it be specified which of the four leagues the footballer played in at the time, the type of substance which they returned an AAF for, what the conclusion of the case was (i.e. whether there was a sanction), and – where applicable – what the length of the sanction was. Please could it be noted in any case where the same player has returned an AAF [sic] more than once/for different substances.'*

- b. *'How many footballers at clubs playing in the Premier League, Championship, League One and League Two were granted Therapeutic Use Exemptions (TUE) over the past four years (2018/19, 2019/20, 2020/21 and 21/22 to present date)?*

*Please could the information be broken down by year (football season). In each case, please could it be specified which of the four leagues the footballer played in at the time, the type of substance which they were granted a TUE for. Please could it be noted in any case where the same player has been granted more than one TUE exemption. If any of the footballers specified were granted TUEs after they returned an AAF please could this be specified.'*

## Summary of Response

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2. UKAD confirms that, subject to the clarifications explained below, it holds material relevant to your request at part a. Accordingly, it has completed a table in the Annex enclosed with this letter.
3. As more particularly explained below, certain information is not being disclosed. The information not disclosed falls into two categories: (1) we are withholding this information pursuant to section 31 of the Act on the basis that disclosure of this information would be likely to prejudice the exercise by UKAD of its regulatory function and (2) there is some other exceptional reason why the results (and information relating to them) is not in the public domain.
4. UKAD discloses some of the data at part b. of your request, being the number of TUEs granted to footballers playing in the Premier League, Championship, League One and League Two during each football season from 2018/19 to 9 December 2022. We have set this information out in a table at paragraph 14 below.
5. UKAD withholds the type of substance for which TUEs have been granted (pursuant to the data at paragraph 14 below) on the basis of section 40 of the Act (i.e., personal data).

## Adverse Analytical Findings returned by footballers (part a.)

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6. With regard to part a. of your request regarding the Adverse Analytical Findings ('AAFs') (as that term is defined within the applicable World Anti-Doping Code) returned by footballers at clubs in seasons 2018/19, 2019/20, 2020/21, 2021/22 and to the date of your request, UKAD confirms that it holds the material relevant to your request. UKAD has disclosed this information within the enclosed Annex and also included details of the substance the AAF was returned for, whether there was a sanction upon conclusion of the matter and the length of any sanction, where applicable.
7. UKAD does not hold information relating to the particular league each and every Player's club belonged to at the date of Sample collection. However, UKAD has answered this part of your request in good faith, by cross-referencing the information it holds, with information that is otherwise available in the public domain.
8. UKAD confirms that it holds information as to whether Player(s) have returned AAFs more than once and/or for different substances, however this information is not being disclosed to you. There are also a small number of other results not

disclosed because the relevant information is not already in the public domain for good (albeit exceptional) reasons. See for example, the exceptions to the public disclosure of decisions per The FA's Anti-Doping Regulations, Regulation 138.

9. UKAD considers section 31 of the Act to be engaged in this context because it (and/or any delegated third party on its behalf) must be in a position to make determinations about the applicability of these relevant rules in each case (without disclosures or prospective disclosures under the Act or otherwise potentially compromising this function or the considerations behind the exercise of it):

**Section 31 Law enforcement**

*(1) 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),*

...

*(2) 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 ...*

10. One of UKAD's core 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) of the Act.
11. The considerations behind UKAD's decisions of the kind discussed here are a crucial part of UKAD's regulatory functions. Releasing information which has been protected from disclosure for appropriate and important reasons in this context may prejudice these functions.
12. Having determined that there is a risk of prejudice on this basis, UKAD has considered the public interest arguments in favour of disclosure. UKAD recognises the importance of transparency and accountability in general and specifically in relation to the progress of matters from AAF to ADRV and relevant substances. However, UKAD considers the more important public interest lies in the maintenance of effective investigation and prosecution processes, engagement with stakeholders, and maintenance of UKAD's position of non-disclosure. All of

these factors are vital in connection with UKAD’s public policy objective of eliminating doping in sport. Disclosing the relevant information here would likely harm or undermine the relevant processes connected to this objective.

## AAFs and ADRVs

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13. It is worth underlining in the context of your request that there may be various reasons why the detection of an AAF in a Sample does not automatically lead to an ADRV. For example, a Player who returns an AAF may have a TUE which permits them to use a Prohibited Substance or Prohibited Method contained in the Prohibited List when such use or administration is necessary to address a legitimate medical requirement<sup>1</sup>. Alternatively, a Player may be able to show that a Prohibited Substance was ingested via a permitted route (as outlined in the Prohibited List) or that it was derived from the ingestion of a substance that is itself permitted (for example, morphine derived from the ingestion of codeine). The application of relevant Technical Documents and Technical Letters issued by WADA may also mean that an AAF in a Sample does not necessarily lead to an ADRV.

## TUEs granted by UKAD to footballers (part b.)

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14. The number of TUEs granted by UKAD to footballers per your request at part b. above is as follows:

### Overview of the number of TUEs granted by UKAD to players affiliated to English football clubs since the 2018/19 season

Competition	2018/19	2019/20	2020/21	2021/22	2022/23 <sup>^</sup>
Premier League	3	2	1	4	4
Championship	4	6	8	5	3
League One	6	2	9	5	2
League Two	5	2	2	5	2
<b>Total</b>	<b>18</b>	<b>12</b>	<b>20</b>	<b>19</b>	<b>11</b>

<sup>^</sup> Includes TUEs granted up to and including 9 December 2022.

## Considerations

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15. For the purposes of these TUE statistics, each season is defined as starting on 1 July and ending on 30 June in the following year.

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<sup>1</sup> Further information about the TUE system is available on the UKAD website [here](#).

16. The data does not include TUEs granted by the Union of European Football Associations ('UEFA') or the Fédération Internationale de Football Association ('FIFA') because players who, at the time of their TUE application, are competing in a UEFA or FIFA competition are required to apply for a TUE directly to UEFA or FIFA.
17. The data does not include information on TUEs granted to U21 players registered to Premier League or English Football League clubs, or scholars registered to Premier League clubs.
18. TUEs are granted for specific time periods (e.g. one-off, seven days, three months, six months, one year, two years, etc). This means that some TUEs may be valid across multiple seasons or need renewing on more than one occasion during a season depending on the timing of when the TUE was granted and duration of approval.
19. The competition level of each player was assigned at the point that they applied for a TUE. This means that any player who was required to renew their TUE may be counted within two different leagues in two different seasons if they had been transferred/loaned to a club in a different league or their playing status had changed due to promotion/relegation.
20. During the reporting period, there were no retroactive TUEs granted by UKAD to players who had returned an AAF.

## Personal data

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21. UKAD is withholding the requested detail regarding substances for which TUEs have been granted (per your request at part b.) because there is a real risk that, in so doing, UKAD may inadvertently identify relevant TUE applicants and/or disclose the personal data (and special category personal data) of the relevant TUE applicants. UKAD withholds this data pursuant to s40 of the Act, which provides:

### **Section 40 Personal information**

*(2) 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.*

*(3A) 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,...*

22. UKAD has concluded that, in view of the typical number of TUE applications in football each year (as evidenced by the above response), 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 (‘UK GDPR’). This is because it would be information relating to an identified living individual.
23. Moreover, given the obvious link between TUE applications and health, there is a risk that such disclosure would also constitute processing of special category (health) data (per section 10(1) DPA and Article 9 UK GDPR). There is a general prohibition on processing special category data, save for where relevant conditions apply.
24. As a starting point, 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 UK GDPR. The first data protection principle states that personal data shall be processed transparently, fairly and lawfully.
25. The lawful basis on which UKAD generally processes this type of 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 (i.e., 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>2</sup>.
26. 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. Athletes applying for a TUE

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<sup>2</sup> Available [here](#).

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 (which outweigh the corollary interests of the relevant athlete). 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.

27. 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 Rules<sup>3</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 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.

28. For completeness, UKAD's position is that, to the extent such disclosure may constitute processing of special category data, it also does not consider any of the relevant conditions (per Article 9 UK GDPR) to the prohibition generally on processing such data apply here. UKAD has a specific 'anti-doping derogation' for processing special category data in connection with its public purposes (paragraph 27, Schedule 1, Part 2 of DPA). In UKAD's view, the derogation does not extend to the type of processing which might be required in responding to your specific request.

## Conclusion

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29. 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 request and should be addressed via email to: [foi@ukad.org.uk](mailto:foi@ukad.org.uk). Please remember to quote the reference number above in any further communications.

30. 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

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<sup>3</sup> Information about UKAD's testing program, and current and historical ADRVs are contained on the UKAD website [here](#) and [here](#).

Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely



**UK Anti-Doping**

Enc: Annex to FOI-358