

Ref: FOI-431

FAO: [REDACTED]

17 June 2024

Sent via email only:
[REDACTED]

Dear [REDACTED]

1. Thank you again for your email of 18 April 2024 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:
 1. *Please can UKAD provide the exact total amount (in GBP Sterling) incurred on external legal counsel [sic], external legal representation, external legal opinions, external providers and external court providers by UKAD throughout all instances of the Freedom of Information case FOI-343 (initial response, internal review, case before the ICO and case before the First Tier Tribunal of the General Regulatory Chamber) between 16th June 2022 and Present. I ask that the total figure includes any amounts incurred from invoices that have yet to be paid.*
 2. *Please can UKAD provide how many athlete ABP passports [sic] have been marked "likely doping" by the three person "Expert Panel" (Adverse Passport Findings) of UKAD's ABP programme between 16th June 2022 and present. Please provide a breakdown by year and sport.*
 3. *How many athletes have been charged, not sanctioned, with ADRVs for abnormalities in their Athlete Biological passports by UKAD since 16th June 2022?*
 4. *In the decision notice "EA/2023/0149: Edmund Willison vs Information Commissioner and UK Anti-Doping" it states:*

- a. 17. *We also observe, in any event, that the opinion of WADA in their letter of 17 October 2023 is subject to some qualifications. First, we have not seen any letter from UKAD by which WADA's opinion was sought, or how that was framed.*
6. *[sic] Please can UKAD provide all correspondence, whether in the form of emails or letters, between UKAD and WADA during which FOI-343 was discussed - before WADA sent the letter dated 17th October 2023 to UKAD.*

Requests 1 to 3

2. We wrote to you on 17 May 2024 regarding requests one (1) to three (3). We explained then that we held information pertaining to question six (6) of your request but required further time to consider the application of one or more exemptions of the Act relating to the same. This is our response to your request at question six (6).

Correspondence request

3. UKAD is withholding the information pertaining to question six (6) pursuant to section 42 of the Act, on the basis that the relevant information is subject to legal professional privilege ('LPP').
4. Section 42(1) of the Act provides as follows:

Section 42 Legal professional privilege

(1) Information in respect of which a claim to legal professional privilege... could be maintained in legal proceedings is exempt information...

5. The type of LPP applicable in this case is litigation privilege. Litigation privilege attaches to confidential written or oral communications between client or lawyer (on the one hand) and third parties (on the other), or other documents created by or on behalf of the client or their lawyer, which come into existence once litigation is in contemplation or has commenced and which is/are for the dominant purpose(s) of the litigation.
6. The relevant litigation in the current context is/was proceedings before the First-tier Tribunal, so referred to in question one (1) of your request. Communications were exchanged between legal counsel for UKAD and legal counsel for WADA, connected to FOI-343 and WADA's position in connection with certain matters pertaining to the same. At the time, litigation was 'live', and the relevant

confidential exchanges had the dominant purpose of (1) exchange of views relevant to the litigation and/or (2) provision of material which might be deployed in the litigation. UKAD's position is that LPP is plainly applicable in this context and the principle can be maintained given the nature of the parties engaging in the communication, the timing and the nature of the relevant communications and their purpose(s).

7. Having determined that section 42 of the Act applies to this information, UKAD has considered the public interest arguments in favour of disclosure of the data. UKAD recognises the importance of transparency and accountability in general, in terms of the public confidence that this inspires. The letter from WADA dated 17 October 2023 was deployed in the proceedings and UKAD notes the requester might argue that he should be able to see the communications between WADA and UKAD which preceded it. UKAD would advance that because something such as a statement or relevant communication is deployed in litigation does not mean parties to litigation are entitled to see communications which occurred behind it/them – in fact, generally it is quite the contrary.
8. There is a general public interest in maintaining the exemption, inherent in the application of section 42. This public interest is strong, due to the importance of the principle behind LPP: safeguarding openness in all communications between lawyers and third parties, to ensure access to full and frank legal advice and discussion, which in turn is fundamental to the administration of justice. The relevant litigation was concluded only recently. The relevant case law indicates that there needs to be strong countervailing considerations against the general public interest in withholding this information, inherent in this exemption, in order to permit disclosure. It is UKAD's assessment that such considerations are not applicable here.
9. UKAD further notes that it ought to be permitted to engage with third parties confidentially with a view to obtaining relevant evidence in support of litigation proceedings of whatever nature, without concern by either party that the relevant information might be disclosed to the world in the near future.
10. UKAD has therefore concluded that the public interest in balance is in favour of maintaining the relevant LPP attaching to the information. UKAD therefore withholds this information under section 42 of the Act.

Conclusion

11. 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 and should be addressed via email to foi@ukad.org.uk. Please remember to quote the reference number above in any further communications.

12. 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