

[REDACTED]

By e-mail to: [REDACTED]

19 December 2017

Dear [REDACTED]

UK Anti-Doping  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8AE

T: +44 (0) 20 7842 3450  
F: +44 (0) 20 7842 3451  
E: ukad@ukad.org.uk  
W: www.ukad.org.uk

Official

Ref: FOI-163

1. Thank you for your e-mail dated 21 November 2017 which requested information from UK Anti-Doping ('UKAD') pursuant to the Freedom of Information Act 2000 ('the Act'). You requested information pertaining to the UKAD investigation into the package delivered to Team Sky in June 2011, specifically, your request was as follows:

*Within the scope of the UKAD investigation into Team Sky and British Cycling, I wish to know if UKAD have seen police reports or correspondence between Dr Richard Freeman [and] any insurance company, Team Sky and/or British Cycling relating to the alleged theft of a laptop belonging to Dr Freeman? Please provide the information in the form of a list of documents you have seen and/or obtained and scan/image of said documents.*

2. UKAD confirms that it has not seen nor does it hold copies of any such correspondence between Dr Freeman and the above listed bodies. UKAD can confirm that it has seen a copy of a police report in respect of the alleged theft of Dr Freeman's laptop in August 2014.
3. After consideration of your request, UKAD has concluded that the information you have requested is exempt from disclosure pursuant to the exemptions specified in sections 40 and 41 of the Act. Therefore, the information requested has not been disclosed pursuant to these exemptions.

**Section 41(1): Information provided in confidence**

4. 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.*

5. The information requested is therefore exempt if the following criteria are met:
  - It was obtained by the authority from any other person;
  - Its disclosure would constitute a breach of confidence;
  - A legal person could bring a court action for that breach of confidence;
  - That court action would be likely to succeed.
6. The information requested was provided to UKAD by the World Anti-Doping Agency ('WADA'), which is classified as a legal person for the purposes of the first criterion above.

*Would disclosure of the police report constitute a breach of confidence?*

7. The Information Commission has said that UKAD will need to consider the following when determining whether disclosure would constitute a breach of confidence:
  - whether the information has the necessary quality of confidence;
  - whether it was imparted in circumstances importing an obligation of confidence; and
  - whether disclosure would be an unauthorised use of the information to the detriment of the confider. However, where the information requested relates to a person's private life, there is no requirement to show detriment, as this is assumed.
8. The information requested was imparted in circumstances importing an obligation of confidence. The restrictions on use of the information were implicit from the circumstances in which the information was given: information received from WADA for the purposes of assisting with a confidential investigation into a possible violation or violations of the UK Anti-Doping Rules ('ADR'). We refer you to Article 5.9.2(b) of the ADR and Articles 12.3.1 and 11.2.2 of the WADA International Standard for Testing and Investigations, which make it clear that UKAD investigations are confidential.
9. The information requested possesses the necessary quality of confidence. This is because it is more than trivial (it relates to an alleged crime) and it is not otherwise accessible. While the fact that a report was made by Dr Freeman to the police is publicly known, the details of that report are not publicly available.
10. It is UKAD's view that the information requested relates to Dr Freeman's private life – it does not relate to commercial matters. On that basis, UKAD is not required to show detriment.
11. In light of the obligation of confidence that applies to the requested information UKAD has concluded that disclosure of the police report would constitute a breach of confidence.

*Could a legal person bring a court action for that breach and would that action be likely to succeed?*

12. WADA would have standing to bring a court action against UKAD for breach of confidence if UKAD were to disclose the information requested. In UKAD's view, that action would be likely to succeed.

13. In coming to this conclusion, UKAD has considered whether there is a public interest defence to the disclosure in the circumstances and concluded that there is not. The test to be applied in regard to the public interest defence is a test of proportionality: is there a public interest in disclosure that overrides the competing public interest in maintaining the duty of confidence? UKAD has considered the arguments in favour of disclosure, in particular the need to ensure that public authorities remain transparent, accountable and open to scrutiny, so as to enable individuals to understand how decisions affecting their lives are made and to ensure accountability for the spending of public monies. UKAD has also considered the arguments against disclosure, in particular the impact of that disclosure on Dr Freeman and the impact such disclosure would have on the willingness of individuals and organisations to assist UKAD with its investigations in future. Having considered these public interest arguments, UKAD is of the view that the public interest defence would not be successful in the circumstances.
14. UKAD has therefore decided that the information requested is exempt pursuant to Article 41(1) and is content that this decision complies with the overall purpose of the exemption, being to give those who provide confidential information to public authorities a degree of assurance that their confidences will continue to be respected should information fall within the scope of the Act.

#### **Section 40: personal information**

15. Section 40(2) states:

*“Any information...is exempt if it constitutes personal data...and...the disclosure otherwise than under this Act would contravene any of the data protection principles”.*

16. The information you have requested constitutes “personal data” under the definition of “data” in the Data Protection Act 1998 (‘DPA’). Pursuant to Schedule 1 Part 1.1 of the DPA, personal data shall be processed fairly and lawfully and in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met. The disclosure in this instance would contravene data protection principle one because none of the conditions in Schedule 2 of the DPA would be met, thus the exemption under section 40(2) applies to the information requested.
17. We note that this exemption is an absolute exemption, thus the public interest test is not required to be considered. Accordingly, the information has been withheld from disclosure.

#### **Where to from here?**

18. 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, Director of Business Services, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.
19. 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*

UKAD