

Official

Ref: FOI-237

[REDACTED]  
Sent via email only:  
[REDACTED]

17 September 2019

Dear [REDACTED]

1. Thank you for your email of 14 June 2019 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act'). Your request was for information relating to testing in Scottish professional football.
2. Specifically, your request for the following information for the period 1 July 2018 to 31 May 2019 and the preceding five seasons (2013/14, 2014/15, 2015/16, 2016/17 and 2017/18):
  - a. the number of players tested in each of the following leagues;
    - Scottish Premiership
    - Scottish Championship
    - Scottish League One
    - Scottish League 2
  - b. the number of 'failed tests'; and
  - c. the substances which led to failed tests.

### Summary of Response

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3. UKAD is disclosing all of the information in part a) of your request.
4. UKAD is not disclosing some of the information in parts b) and c) of your request. The detail of the basis for this response is set out below.

### **Number of players tested - part a) of your request**

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5. UKAD confirms that it holds the information in your request and provides its response to your request via the table in Annex 1.
6. We note that UKAD has previously provided some of the information requested for the period 1 July 2018 to 31 May 2019, being the number of players tested during the period 1 July 2018 to 1 January 2019 (refer FOI-228). However, for transparency we have included in Annex 1 the number of players tested for the whole period of 1 July 2018 to 31 May 2019.
7. In regards to your request for the number of players tested in the five seasons preceding that period, please note that for the purposes of its testing program, UKAD defines a SFA season as the period from 1 June to 31 May the following year. This approach is reflected in Annex 1.
8. Please also note that, as per your request, the figures in Annex 1 indicate the number of individual players tested rather than the number of samples (blood or urine) provided by each player. Therefore, if an individual player had both a urine and blood sample collected when tested, this would be counted as one. Furthermore, the figures do not account for players being tested multiple times during this period. Therefore, if a player was tested twice during this period, this would be counted as one in the table.
9. Further to the above, please be advised that the figures in Annex 1 relate to tests conducted by UKAD and any sub-contracted sample collection agency on its own behalf (which includes contracted testing for the Scottish Football Association or 'SFA'); they do not include tests conducted by UEFA, FIFA and/or any other Anti-Doping Organisation. Please also note that the figures include only those players participating in the leagues you have specified or in a cup match; they do not include players tested during their participation in a national squad system.

### **Number of Adverse Analytical Findings - part b) of your request**

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10. UKAD confirms that it holds the information you have requested and is disclosing the number of 'failed tests' for the 2013/14 to 2017/18 seasons in the table at Annex 2. However, we are withholding the information for the period 1 July 2018 to 31 May 2019 under the exemption provided in section 31 of the Act.
11. UKAD has interpreted your request for 'failed tests' as any test which record an Adverse Analytical Finding ('AAF'). Pursuant to the SFA Anti-Doping Regulations

(the 'SFA Rules'), an AAF includes the presence of a Prohibited Substance, or evidence of the use of Prohibited Method, contained in the World Anti-Doping Agency ('WADA') Prohibited List ('the Prohibited List')<sup>1</sup>.

12. For the purposes of the table in Annex 2, please note that the detection of an AAF in a sample does not automatically lead to an Anti-Doping Rule Violation ('ADRV') under the SFA Rules for a number of reasons. For example, an athlete who returns an AAF may have a Therapeutic Use Exemption ('TUE') which permits athletes to use a prohibited substance or prohibited method on Prohibited List when such use or administration is necessary to address a legitimate medical requirement<sup>2</sup>. Alternatively, an athlete may be able to show that a prohibited substance was ingested through a permitted route (as outlined in the Prohibited List) or derived from the ingestion of a substance that is itself permitted (for example, morphine derived from the ingestion of codeine).

### **Section 31 – law enforcement**

13. 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) ...*

14. 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...*

15. One of UKAD's core functions is to identify and prosecute any athlete or other person who commits an ADRV contrary to the anti-doping rules of national governing bodies for sport in the United Kingdom, such as the SFA Rules. This function falls within section 31(2)(b) of the Act.
16. It is UKAD's view that publishing the number of AAFs for the period 31 July 2018 to 1 May 2019 would prejudice this function. This is because the currency of this

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<sup>1</sup> [https://www.wada-ama.org/sites/default/files/wada\\_2019\\_english\\_prohibited\\_list.pdf](https://www.wada-ama.org/sites/default/files/wada_2019_english_prohibited_list.pdf)

<sup>2</sup> Further information about the TUE system is available on the UKAD website [here](#).

information means that it remains relevant to any current or potential investigations and/or prosecutions.

17. All parts of UKAD's investigation and prosecution processes are confidential, subject only to the publication provisions of the relevant sporting body's rules. Once a case has concluded fully (ie there is no further right of appeal), and it has been determined by UKAD (via an Issued Decision) or by a hearing or appeal panel of the National Anti-Doping Panel that an ADRV has been committed, UKAD is required by Articles 8.4 and 13.8 to publicly report the relevant decision<sup>3</sup>.
18. If UKAD were to disclose information which remains relevant to any current or potential investigations or prosecutions, this would undermine the confidentiality of the anti-doping process. To do so 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 in the testing program and any subsequent investigations or prosecutions by sports, teams or athletes, if not a refusal to participate in it at all.
19. 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). 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.
20. Having determined that disclosing the information requested for the period 1 July 2018 to 31 May 2019 would prejudice the detection, investigation and prosecution of ADRVs, UKAD has considered the public interest arguments in favour of doing so. UKAD recognises the importance of transparency and accountability in general, and specifically in providing the public with more understanding of its anti-doping regime.
21. Conversely, UKAD considers that the more important public interest lies in the maintenance of an effective anti-doping regime, so that UKAD can work towards its public policy objective of eliminating doping in sport. Disclosing the information requested would reduce the effectiveness of UKAD's investigation and prosecution of ADRVs as it would undermine the confidentiality of the process and

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<sup>3</sup> There are very limited circumstances where a decision may be made not to publish pursuant to these Rules, including where the World Anti-Doping Agency decides this is appropriate due to information amounting to "substantial assistance" under the Rules being provided to UKAD by an athlete – but these are very rare, exceptional cases

mean athletes and sports are less likely to cooperate with UKAD. UKAD also notes that all final decisions arising from AAFs are required to be published, as set out in paragraph 17.

22. As such, UKAD has concluded that the public interest in knowing the number of AAFs for the period 1 July 2018 to 31 May 2019 is outweighed by the public interests in ensuring the effectiveness of UKAD's investigatory and prosecutorial functions. UKAD therefore withholds the information under section 31 of the Act.

### **Substances that caused Adverse Analytical Findings - part c) of your request**

23. UKAD confirms that it holds the information you have requested and is disclosing the substances which were the cause of AAFs for the 2013/14 to 2017/18 seasons in the table at Annex 3. However, we are also withholding the information for the period 1 July 2018 to 31 May 2019 under the exemption provided in section 31 of the Act.
24. In this respect, UKAD adopts the same reasoning as is set out above in paragraphs 15 to 19 in identifying the prejudice that disclosure would have to UKAD's investigative and prosecutorial functions. In relation to the public interest test, we adopt the reasoning set out in paragraphs 20 to 22 above.

### **Conclusion**

25. 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.
26. 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**

**Annex 1 – Number of players tested in Scottish professional football from 1 June 2013 to 31 May 2019**

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League	2013/14*	2014/15*	2015/16*	2016/17*	2017/18*	1 July 2018 – 31 May 2019
Scottish Premiership	26	17	14	29	87	66
Scottish Championship	18	14	6	34	19	14
Scottish League One	0	0	0	28	12	18
Scottish League Two	0	0	0	4	0	29
<b>Total</b>	<b>44</b>	<b>31</b>	<b>20</b>	<b>95</b>	<b>118</b>	<b>127</b>

*\*Please note that for the purposes of its testing program, UKAD defines a SFA season as the period from 1 June to 31 May the following year.*

**Annex 2 – Number of Adverse Analytical Findings from players in Scottish professional football from the 2013/14 to 2017/18 seasons**

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<b>League</b>	<b>2013/14*</b>	<b>2014/15*</b>	<b>2015/16*</b>	<b>2016/17*</b>	<b>2017/18*</b>
Scottish Premiership	0	1	0	0	0
Scottish Championship	0	0	0	1	0
Scottish League One	0	0	0	1	0
Scottish League Two	0	0	0	0	0
<b>Total</b>	0	1	0	2	0

*\*Please note that for the purposes of its testing program, UKAD defines a SFA season as the period from 1 June to 31 May the following year.*

**Annex 3 – Substances which caused Adverse Analytical Findings from players in Scottish professional football from the 2013/14 to 2017/18 seasons**

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<b>League</b>	<b>2013/14*</b>	<b>2014/15*</b>	<b>2015/16*</b>	<b>2016/17*</b>	<b>2017/18*</b>	<b>Total</b>
Benzoyllecgonine	0	1	0	1	0	2
Metabolites of metandienone	0	0	0	1	0	1

*\*Please note that for the purposes of its testing program, UKAD defines a SFA season as the period from 1 June to 31 May the following year.*