

[Redacted]

Official

Sent via email only to:

[Redacted]

Ref : FOI-201

24 August 2018

Dear [Redacted]

1. Thank you for your email of 25 July 2018 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 Therapeutic Use Exemption ('TUE') applications. Specifically, your request was as follows:

[Redacted]

*I would therefore be most grateful if I could be supplied with the anonymized data regarding all TUE requests to UKAD between 2014 to 2018 (1st Jan 2014 to 31st Dec 2017). I recognize that such requests involve considerable work by your administration team and apologize for this.*

2. We then wrote to you on 25 July 2018 to clarify the date range you were requesting, given your reference to 2018, to which you replied the same day confirming that your request was only for the period 1 January 2014 to 31 December 2017.

## Decision

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3. UKAD confirms that it holds the information requested, being details of all TUE applications received in the period 1 January 2014 to 31 December 2017. The details that we hold with respect to each application is as follows: name and contact details of the applicant, date the application was received, the medical condition requiring treatment, the medical category within which the medical condition falls, the relevant prohibited substance, the applicant's sport and the outcome of the application (processed/non-processed and the reasons for why and, if processed, the decision to grant or refuse the TUE). We note that you have requested anonymised data, therefore we have not considered the applicant's name or contact details as relevant to your request.
4. With respect to the period 1 January 2014 to 2 November 2016, this information is largely exempt pursuant to section 21 of the Act, as the information is reasonably accessible to you by other means. The information is available, free of charge, on our website [here](#) (refer FOI reference 117). We have however provided information as to the number of reviewed and non-reviewed applications for the period 2014-2017 inclusive, together with the outcome of the reviewed applications and the reason why particular applications were not reviewed, at table 1 of Annex 1.
5. With respect to the period 2 November 2016 to 31 December 2017, UKAD has decided to disclose – with some exceptions – the information requested by you.
6. In relation to the period 2 November to 31 December 2017, we have withheld the following details:
  - a. the date of each application;
  - b. the medical condition to which the TUE application relates; and
  - c. where the number of applicants for the relevant period in a particular sport was 4 or less, the sport,which are exempt pursuant to section 40 of the Act (personal information).
7. UKAD's reasoning for the application of the section 40 exemption is discussed further below. However, we note that, in lieu of providing you with the specific medical condition, we have provided details of the "medical category" into which the medical condition would fall. In lieu of providing the specific date, we have provided you with the relevant year (and in the case of 2016 data, the two-month time period).

**Section 40 exemption: personal data**

8. Section 40(2) of the Act states:

*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.*

Section 40(3A)(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 would contravene any of the data protection principles.*

9. The date of the TUE application, the medical condition and in certain circumstances discussed further below, the sport, constitute “personal data” as defined under the Data Protection Act 2018 (‘DPA’), as disclosure of this information, together with details of the year, medical category and medicine to which that information corresponds, may enable you to identify to whom a particular TUE application relates or the fact that a particular individual has made a TUE application. Both the fact that a TUE application has been made and the details of that application constitute both personal data and special category data (as defined in the DPA).
10. You will notice that we have provided greater detail for certain sports only (refer to tables 9 to 13 of Annex 1), being football, rugby union, rugby league, athletics and cycling. These five sports are all sports where UKAD received five or more TUE applications for the relevant period. For all other sports – where the number of TUE applications was four or less – UKAD has withheld the number of TUEs in those sports (though has provided a total figure for those remaining sports) and therefore what prohibited substances and medical categories those sports received TUE applications for. To illustrate, this means that we have withheld that X sport received two TUE applications, one for Y medical category and Z prohibited substance, the second for A medical category and B prohibited substance. The reason being that there is a significant risk that, by providing that level of detail for sports with very few TUE applications, UKAD may identify an individual to whom a particular TUE application relates. It may assist you in understanding UKAD’s rationale if you read the Information Commissioner’s (ICO) Guidance Note on what constitutes personal data. This is available on the ICO’s website [here](#).

11. Having determined that the date of the application, the medical condition and, depending on the number of TUE applications in a particular sport, the sport, constitute personal data, UKAD has gone on to consider if disclosure of that personal data would contravene one of the data protection principles. In so doing UKAD has focused on the first data protection principle as set out in Chapter 2, Article 5(a) of the General Data Protection Regulation ('the GDPR'), which is as follows:

*Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency').*

12. UKAD has focused on the first data protection principle, but notes that disclosure of the above information would also contravene the second data protection principle, set out in Article 5(b) of the GDPR, which provides as follows:

*Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes....'*

13. Additionally, UKAD has considered the general prohibition against processing of special category personal data and the appropriate exemptions to that general prohibition as set out in Chapter 2, Article 9 of the GDPR.
14. In determining whether or not disclosure of the date of the application and/or the medical condition and/or the sport (where there are four or less applications in that sport) would contravene the first data protection principle, UKAD has first considered whether disclosure would be fair to the athletes who have applied for and/or been granted a TUE. If disclosure would not be fair, the exemption under section 40(2) of the Act would be satisfied and the requested information could not be disclosed. After considering the various factors applicable in this matter, UKAD has concluded that disclosure of the date of the application and/or the medical condition and/or the sport would not be fair to the data subjects, being the athletes who have applied for and/or been granted a TUE. In coming to this conclusion UKAD has considered the following factors:
  - a. That the information sought is special category data, as it concerns a person's health. The starting point is therefore that this data should not be disclosed.
  - b. The reasonable expectations of the data subject. Under the UK Anti-Doping Rules ('ADR') and the World Anti-Doping Code ('the Code') the fact of and details of a TUE application are confidential.<sup>1</sup> The reasonable expectation of any athlete applying to UKAD for a TUE would therefore have been that the

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<sup>1</sup> Refer Article 9 of the WADA International Standard for Therapeutic Use Exemptions, in particular Article 9.5.

requested information would not be disclosed, except as necessary as part of the TUE application (or to ensure recognition of the TUE by other Code Signatories) and on a strictly confidential basis in accordance with the International Standard for Therapeutic Use Exemptions ('ISTUE').

- c. The principle of data minimisation. UKAD is under an obligation to process personal data i) only to the extent that it is relevant and necessary and ii) only for a purpose for which that personal data was obtained – in this instance, the purpose of processing an application for a TUE. The processing of personal data beyond a purpose for which it was collected – without a legal basis for that further processing, such as an individual's consent – would offend the general principles of the GDPR, in that it would not be fair or transparent. For the reasons set out at paragraphs 9 and 10, if UKAD was to disclose further data (the date, medical condition and/or sport (where there are four or less applications for a particular sport)) there would be a significant risk that an individual who had applied for and/or been granted a TUE would be identifiable. To disclose that personal data would go beyond what is necessary and be contrary to the purpose for which that personal data was originally obtained.
- d. The consequences of disclosure to the data subject. Disclosure could be distressing to the data subject given that it would contravene their legitimate right to confidentiality in respect of the requested information.
- e. Whether there is a legitimate public interest in the disclosure. UKAD recognises the importance of transparency and accountability in general, both in terms of the public confidence that this inspires and also in providing the public with the ability to examine decisions taken in particular cases. On the other hand, UKAD has taken account of the fact that disclosure would contravene the rights of those who have applied for a TUE to have the confidentiality of that information respected pursuant to the terms of the Code, the ISTUE and the International Standard for the Protection of Privacy and Personal Information ('ISPPPI'). In this particular case, UKAD does not consider that there is an overriding legitimate public interest in providing the information such as to make its disclosure fair. In coming to this conclusion UKAD has also taken account of the details that *are* being disclosed, in particular the relevant time period in which the TUE was applied for, the relevant medical category and the greater detail provided for those sports for which UKAD receives the most TUE applications.

15. Having concluded that disclosure of the date of the application and/or the medical condition and/or the sport (in the circumstances described above) would not be fair, to disclose that information would contravene the first data protection principle. Therefore, the exemption under section 40(2) (and 40(3A)) of the Act applies to the date of the application, the medical condition and, in the circumstances described above, the sport.
16. UKAD otherwise provides the information requested at **Annex 1**.

## Conclusion

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17. 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: Pat Myhill, Director of Operations, UK Anti-Doping, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8AE. Please remember to quote the reference number above in any further communications.
18. 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

A handwritten signature in blue ink that reads "UK Anti-Doping".

UK Anti-Doping