



8 February 2019

Michael

Via email only: [foi+request-5199-112badf7@righttoknow.org.au](mailto:foi+request-5199-112badf7@righttoknow.org.au)

Dear Michael

## Freedom of Information request 19-2

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982 (FOI Act)*.

### Background to Decision

On 2 January 2019 you requested access to search results from the database *GlobalDro*. Specifically you sought access to:

- a copy of all search results within *GlobalDro* (Or its equivalent at the time) between April 8-10 2013.

Your request was received on Wednesday 2 January 2019. An acknowledgment of your request was sent to you via email on 10 January 2019 clarifying that the search results would be drawn from the equivalent program known as 'Check your Substances'. An amendment to your request was received by email on Thursday 24 January 2019. You requested:

- the copy of the search results be expanded to include a broader date range 31 March 2013 to 10 April 2013

Your request was acknowledged by return email and your agreement sought to an extension under section 15AA FOI Act of seven (7) days to which you agreed. The correspondence informed you that a decision was due to be made by **Friday 8 February 2019**.

### Authority and Materials Considered

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

In reaching my decision I have taken into consideration:

- The relevant provisions of the FOI Act;
- Relevant guidelines issued by the Office of the Australian Information Commissioner; and
- Relevant Tribunal and Federal Court decisions concerning the operation of the FOI Act.

### Summary of Decision

I have identified one (1) document as being within the scope of your request. The document is outlined at **Annexure A**. I have refused your request for access to the document in full. A copy of the exemption provision relied on in reaching this decision is at **Annexure B**. A copy of the document with the exemption provision marked on it has also been provided to you.

## Reasons for Decision

### *Document 1*

Document 1 is an extract of search results covering the date range 31 March 2013 to 10 April 2013. It comprises approximately 250 pages and covers in excess of 8,000 searches.

I have determined that the material on that page identified as being within the scope of your request is exempt from release pursuant to section 47E(d) of the FOI Act for the reasons outlined below.

### *Section 47E(d) – Certain operations of agencies (adverse effect on proper and efficient conduct)*

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct on the operations of an agency. The exemption is subject to the public interest test.

The document forming this FOI request comprises a list of searches made by athletes and other associated personnel using the “*Check Your Substances*” program and undertaken on the days specified in the application (31 March 2013 to 10 April 2013 inclusive).

GlobalDro and before it “*Check Your Substances*” are important educational tools developed to support, encourage and assist Athletes to participate in anti-doping programs. “*Check Your Substances*” was replaced by GlobalDro in 2016 but the marketing to Athletes remained closely tied with the phrase “*Check Your Substances*”. As such, in the minds of Athletes the tools are interchangeable.

Athletes refer to the “*Check Your Substances*” - GlobalDro database to find out whether the most commonly prescribed over-the-counter and complementary medicines in Australia are permitted or prohibited in their sport. The effective operation of the current “*Check Your Substances*”/GlobalDro database relies on Athletes and other persons having the confidence to, albeit anonymously, undertake searches which may negatively impact on their reputations. ASADA has an obligation to allow these searches to be undertaken in confidence. Being able to provide those confidences gives users of the system a greater incentive to be truthful in their search queries resulting in a better overall service being provided as well as better educational inputs for ASADA.

ASADA’s capacity to effectively undertake its statutory functions is dependent on individuals and organisations having the confidence to provide information which could impact detrimentally on an individual’s career and/or have a significant adverse impact on employers. The effect of this loss of candour and cooperation between ASADA and key stakeholders would be a substantial prejudice to the Athletes and Support Personnel who are attempting to educate themselves about the prohibited status of specific medications and/or the active ingredient based on the current World Anti-Doping Agency (WADA) Prohibited List.

A reduction in the use of GlobalDRO would mean the loss in effectiveness of a significant educational / preventative tool used internationally. Such an outcome would have a substantial and adverse effect on the operations of ASADA.

### ***The Public Interest Test***

Section 47E(d) is a conditional exemption, meaning that it is subject to the application of the public interest test. The public interest test is required by section 11A(5) of the FOI Act.

I have determined that the following factors should be considered as weighing in favour of releasing the material identified as exempt pursuant to section 47E(d):

- promote the objects of the FOI Act; and
- inform debate on matters of public importance.

Additionally, I have determined that the following factors should be considered as weighting against the release of these documents request:

- disclosure could reasonably be expected to prejudice the effectiveness of the educational and preventative programs designed and used by ASADA in conjunction with International organisations;
- disclosure could reasonably be expected to prejudice the effectiveness of procedures or methods for the conduct of investigations by ASADA;
- disclosure could reasonably be expected to prejudice ASADA's ability to obtain similar information in the future; and
- disclosure could reasonably be expected to prejudice the effectiveness of Australia's anti-doping scheme.

Based on the above factors, I have determined that the material found to be conditionally exempt should remain exempt as, on balance, those factors against release should be given greater weight than those favouring access.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Inform 

### *Information Commissioner Review*

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>

email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

### **Questions about this decision**

If you wish to discuss this decision, please contact the following officer:

Susan Taylor

Lawyer

[foi@asada.gov.au](mailto:foi@asada.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian McDonald', with a stylized, flowing script.

Brian McDonald  
Deputy CEO – Operations

## ANNEXURE A

**FOI 19 -2**

| <u>Doc No.</u> | <u>Date</u>                      | <u>Full Name</u>  | <u>Release</u> | <u>Exemption</u> |
|----------------|----------------------------------|---|----------------|------------------|
| 1              | 31 March 2013<br>– 10 April 2013 | Results from Searches made in the ‘ <i>Check Your Substances</i> ’ program<br>between 31 March 2013 – 10 April 2013 | No             | 47E(d)           |





**ANNEXURE B**

**47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).