



15 March 2019

Michael

Via email only: foi+request-5199-112badf7@righttoknow.org.au

Dear Michael

Re: Internal review of Freedom of Information request 19-2 under the *Freedom of Information Act 1982* (Cth)

The purpose of this letter is to advise you of my decision following your request for internal review of the Australian Sports Anti-Doping Authority's (**ASADA**) decision dated 8 February 2019 to refuse access to a document you requested under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Summary

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".

As a result of subsequent correspondence with ASADA, the request was ultimately refined to the search results of the program known as 'Check Your Substances' and the date range amended to be from 31/03/2013 to 10/04/2013.

You were advised of a decision in relation to your request on 8 February 2019. That decision determined that the one (1) document found to be within the scope of your request was conditionally exempt pursuant to section 47E(d) of the FOI Act.

You requested an internal review of that decision on 12 February 2019. You raised four (4) contentions in your internal review request. Each of these contentions are dealt with in this letter.

On 14 February 2019 ASADA advised you via email that a decision on your internal review request was due by 15 March 2019. This is that decision.

Decision and reasons for decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests. I completed the internal review on 15 March 2019. I was not involved in, or consulted with, in the making of the decision under review.

I have considered the one (1) document within the scope of your Request, the contentions raised by you in your email of 12 February 2019 and the requirements of the FOI Act. I am satisfied that no further searches for additional documents were necessary as the document already identified was the only one that could fall within the scope of your request. I have determined to grant partial access to this document pursuant to section 47E(d) of the FOI Act. I provide my reasons and deal with each of your contentions below.

Contention 1: Searching the database for a substance is not an admission of the use, or intended use.

I have reviewed the reasons for refusal and affirm the reasoning contained within ASADA's letter dated 8 February 2019. I recognise that searching the database for a substance is indeed not an admission of the use, or intended use of that substance. I have considered the possible consequences of the release of this document as required by the FOI Act, and the reasons for my determination do not include any suggestion that searching the database is an admission of use or intended use.

Contention 2: The search function is anonymous and there are no identifying details contained in the log which can trace back a search to a specific user.

I note your statement that *"there are no identifying details contained in the log which can trace back a search to a specific user"*. I have determined to grant partial access to the document, redacting information that in my view if released, would or could reasonably undermine a user's confidence in the anonymity of their searches, or that may impact upon the ongoing viability of ASADA's working relationship with Sporting Administration Bodies, both national and international.

Contention 3: The GlobalDRO Australian website lists the "Top 5 Searches" and publication of this suggests that disclosure would not be detrimental to ASADA's functions and would not impact on the willingness of athlete's to use the database with candour.

I disagree with this statement. I note that the "Top 5 Searches" you refer to list only the substances/products searched for. They do not list the roles, sports, reference numbers, the dates of searches or volume of searches. For the reasons set out below, I am of the view that release of the document in full, which includes the roles, sports, reference numbers, dates of searches or volume of searches is detrimental to ASADA's functions and would impact on the willingness of user's to use the Check Your Substances/GlobalDro tool with candour.

Contention 4: There is a precedent for release of this information.

I note that you have referred to a previous FOI request in which 2,143 search results for a specific search term from the Check Your Substances/GlobalDRO database for the period June 2011 - September 2013 was released. I note that I am not bound by previous FOI decisions of this agency. However, I have differentiated this decision on the basis that the previous request was for a specific search item, and, that decision was made prior to ASADA adopting its Future Operating model, which sets out ASADA's key priorities which underpin its operating model. Two of these priorities are enhancing education and enhancing intelligence. It is my view that both education and intelligence functions of this agency would be substantially adversely affected from disclosure of the document in full, as set out below.

Certain operations of agencies (section 47E(d))

I consider that certain aspects of the document within the scope of your request are exempt under section 47E(d) of the FOI Act. Subsection 47E(d) conditionally exempts documents where

disclosure would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I agree with the reasoning contained in ASADA's decision letter dated 8 February 2019. However, in light of the contentions raised by you, I provide the reasoning for my partial release of the document pursuant to section 47E(d) of the FOI Act.

I have determined to partially release the document, redacting the Reference Number, Sport and Role under section 47E(d) for the reasons set out below.

I am of the view that it is a reasonable expectation that if the document was released in full, that this would compromise the effective use of the Check Your Substances/GlobalDro. As a result, the volume of searches, and the volume of accurate searches, would or could decrease in the future.

Users of Check Your Substances/GlobalDro have an expectation that the information they provide will be used in a discreet manner and/or is confidential. In this regard I note that the current platform, GlobalDro, states that the search is an "anonymous process"¹. Users do not have to provide any personal information to use the tool, and indeed the input of a person's role, sport and gender may not necessarily be accurate (ASADA does not corroborate this information). However, I do not consider that it would be impossible to identify individuals' search results if the role, sport and reference number, as appears on the document, is released. This is due to the uniqueness of some of the sports and roles in certain searches. I therefore have determined to redact this information pursuant to section 47E(d).

Whether or not an individual's search data is successfully identified is one issue. How the tool is perceived by users and potential users is another. If the document is released in full, users may (rightfully) perceive that their search data could be subject to public disclosure and public scrutiny, and would fear the potential negative inferences that could be drawn for that user and/or that user's Sporting Administration Body. If the document in question is released in full, regardless of whether an individual could be identified, it is not farfetched or fanciful that a user may misrepresent themselves on the tool by putting the incorrect sport or role in an attempt to further anonymize themselves, or, may not use the tool at all.

If this were to occur it would hinder the effectiveness of the Check Your Substances/GlobalDro tool both in terms of its education functions and its intelligence functions, with wider implications for ASADA's effective cooperation with Sporting Administration Bodies (whose reputations may also be comprised as a result of the release of the document). It is my view that the following operations of ASADA which would be substantially adversely affected include:

- the ability for ASADA to effectively deliver education and to target and tailor this education to the needs of its recipients;
- the ability for ASADA to support, encourage and assist Athletes to participate in Anti-Doping programs;
- the ability for ASADA to perform its investigative functions effectively; and

¹ Refer the GlobalDro Australia portal page: <https://www.globaldro.com/AU/search/help>.

- the ability for ASADA to effectively engage and cooperate with Sporting Administration Bodies, in the implementation of the NAD scheme.

I determine that these adverse effects are substantial, especially in light of the future operating model of ASADA. I note that since May 2018, enhanced intelligence capabilities, as well as enhanced education and awareness have been at the forefront of ASADA's operating model.

The future operating model of ASADA for the next four years and beyond is underpinned by three fundamental pillars:

1. enhanced engagement and partnerships,
2. enhanced intelligence, and
3. enhanced education and awareness.²

It is noted that the functions which would be adversely affected, listed above, fall directly within these fundamental pillars. With the importance of these functions to ASADA's current and future operating model, coupled with the increased use of the tool over the years (with as many as 410,106 searches having occurred in 2017-18 (as outlined in the 2017-18 ASADA Annual Report), and the importance of this tool in informing education and intelligence strategies, both currently and into the future, I am satisfied that release of the document in full would have a substantial and adverse effect on the operations of ASADA.

Accordingly, the identified document containing the information provided to ASADA by the users of Check Your Substances/GlobalDro is conditionally exempt under section 47E(d) of the FOI Act.

Public Interest test (sections 47E)

In making my decision in relation to the conditional exemption under sections 47E of the FOI Act, I consider that in the circumstances, providing access to parts of the document would, on balance, be contrary to the public interest.

I consider that the following factors are in favour of the release of the document in full:

- it promotes the objects of the FOI Act; and
- it may inform debate on matters of public importance.

The factors above are weighed against those factors which indicate it is against the public interest to fully release the document, being:

- disclosure could reasonably be expected to prejudice the effectiveness of the education 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;

² Refer ASADA 'The Future' 21 May 2018 and ASADA's Corporate Plan 2018-2022.

- disclosure could reasonably be expected to hinder openness and frankness between ASADA and Sporting Administration Bodies in the future;
- disclosure could reasonably be expected to hinder ASADA's ability to manage relationships with external stakeholders;
- 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 on balance, those factors against releasing the redacted material (the reference number, sport and role) should be given greater weight than those favouring access, and accordingly I have determined to redact this material.

Material taken into account

I have taken the following material into account in making my decision:

- the searches conducted by ASADA staff (including further searches for additional materials);
- the content of the document that fell within the scope of your request;
- your email dated 12 February 2019;
- the FOI Act (specifically sections 47E(d) and Part VI); and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. 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
 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.

Questions about this decision

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

Peta Rogers

Lawyer

foi@asada.gov.au

Yours sincerely



Darren Mullaly

Chief Executive Officer (A/g)