

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 February 2017

**Public Authority:** South Central Ambulance Service NHS Foundation Trust

**Address:** Northern House  
7-8 Talisman Business Park  
Bicester  
Oxfordshire OX26 6HR

### Decision (including any steps ordered)

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1. Through seven requests, the complainant has requested information from South Central Ambulance Service NHS Foundation Trust ('the Trust') about its relationship with an organisation called Auxilium. The Trust says it does not hold the requested information.
2. The Commissioner's decision is that the Trust does not hold the requested information. However, she must find that the Trust did not fully comply with its obligation under section 1(1)(a) of the FOIA because, at the time of its original response, it did not clearly indicate that it does not hold any information with respect to each of the seven requests.
3. The Commissioner has found that the Trust also breached section 10(1) as it did not comply with section 1(1) within 20 working days.
4. The Commissioner does not require the public authority to take any steps.

### Request and response

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5. On 7 April 2016, the complainant wrote to the Trust and requested information in the following terms:
  1. *A copy of the privacy impact assessment carried out by the Trust on the use of the Auxilium system. If one was not carried out, please confirm this.*
  2. *Any information on the process of due diligence carried out to ensure that Auxilium and its officers are a suitable company for an NHS Body to recommend that patients submit their sensitive personal data to them. If due diligence was not carried out, please confirm this.*
  3. *Any information on the security of the information held by Auxilium. If an assessment of security was not carried out, please confirm this.*
  4. *Any payments made by the Trust to Auxilium.*
  5. *Any payments made by Auxilium to the Trust*
  6. *Any data sharing agreement or data sharing contract between the Trust and Auxilium. If no written agreement or contract exists, please confirm this.*
  7. *Any advice on the data protection and confidentiality implications of the use of the Auxilium systems received from the Trust's Caldecott Guardian, Information Governance Manager or Data Protection Officer and the Information Commissioner's Office. If no advice was sought or provided, please confirm this.*
6. The Trust responded on 18 May 2016. It gave a narrative response to the seven requests.
7. Following an internal review the Trust wrote to the complainant on 25 July 2016. It confirmed that it considered its response to have been adequate. The Trust acknowledged that the response was provided later than it should have been; explained why the delay had occurred and apologised. The Trust provided further explanation in regard to its relationship with Auxilium.

## Scope of the case

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8. The complainant contacted the Commissioner on 11 August 2016 to complain about the way his requests for information had been handled.
9. The Commissioner's investigation has focussed on whether the Trust has complied with section 1(1) and section 10(1) of the FOIA.

## Reasons for decision

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10. The Trust has provided a background to the request. Auxilium is an Oxfordshire based organisation which claimed to provide a service whereby users could choose to upload pertinent personal information to their own account, which would be referenced by a unique identification number. In the event that the individual needed emergency assistance, but was unable to communicate, their details could be accessed by the Emergency Services using the Auxilium database. Auxilium had approached the Trust and the Trust agreed to take part in a trial. The Trust says there was a fair amount of press coverage at the time but in the end no use was made of the system and the pilot was cancelled.
11. The Trust has told the Commissioner that the nature of its involvement with Auxilium was quite informal. There was no distinct project group formed to oversee its use and no formal decision making process required to track approvals for endorsing/using the product. The Trust says this is not unusual because there was no interoperability between its systems and Auxilium's, and Auxilium did not have access to its data.

### Section 1 – right of access to information

12. Section 1(1) of the FOIA says that anyone who submits a request for information to a public authority is entitled (a) to be told whether the authority holds the information (ie in recorded form) and (b) if it does, to have that information communicated to him or her.
13. In his request for an internal review, the complainant challenged the *"narrative answers"* SCAS had provided and suggested he should have been provided with *"recorded information"*. The complainant appeared to be most interested in the Trust's response to requests 2, 3 and 7.
14. In its submission to the Commissioner, the Trust has confirmed that it does not hold any of the information the complainant has requested. The Commissioner has reviewed the Trust's response and internal review. She notes that, no doubt in the interests of being helpful, the Trust addressed each of the seven requests and provided largely narrative responses to these and the complainant's subsequent queries. In the Commissioner's view however, the Trust did not clearly tell the

complainant, with regard to all of the seven requests, that it does not hold related information.

15. The Trust has now confirmed the following to the Commissioner:

- Request 1 – The Trust had not carried out a privacy impact assessment and therefore does not hold any related information.
- Request 2 – The Trust does not hold any related information.
- Request 3 – Auxilium's security was the responsibility of that company and therefore the Trust does not hold any related information.
- Request 4 and 5 – The Trust confirmed that no payments were paid to or received from Auxilium and therefore it does not hold any related information.
- Request 6 – The Trust confirmed that no such agreements were in place and therefore it does not hold any related information.
- Request 7 – The Trust confirmed that having reviewed its terms and conditions it required Auxilium to register as a Data Controller with the Information Commissioner's Office, which it did. The Trust also asked Auxilium to put disclaimers onto its website in respect of conditions of use.

16. The Trust has told the Commissioner that it did not consider it relevant to include a copy of 'the certificate' with its response to the complainant. The Commissioner is not clear what 'certificate' it is that the Trust is referring to but assumes it relates to Auxilium's registration as a Data Controller. Having reviewed request 7, the Commissioner agrees that any registration certificate would not constitute the 'advice' that the complainant is seeking. She is therefore satisfied that the Trust does not hold any information within the scope of request 7.

17. The Trust says that, due to an employee involved in the early stages of its relationship with Auxilium recently returning to its employment, it now has access to email records that confirm the Trust's position regarding its relationship with Auxilium. The Trust has provided these records to the Commissioner and she has reviewed them.

18. The email correspondence comprises emails between the Trust and Auxilium, and an internal email. These broadly discuss Auxilium's proposal. Reference is made to the fact that the Trust would not be conducting any technical testing of the system and the limits of the Trust's involvement with the proposal. The fact that an information

agreement would be needed in the future if the Trust decided to progress its involvement with Auxilium is also referred to.

19. The Trust has also provided the Commissioner with an internal news release which refers to the trial and the possible benefits for patients.
20. The Commissioner is satisfied that this material does not fall within the scope of the complainant's requests.
21. To further support its position that the Trust does not hold the information that the complainant has requested, the Trust has detailed the searched it has undertaken.
22. The Trust says that the requests relate to issues within its Emergency Control room. Initial enquiries therefore went to both the service Director and her local services lead. They in turn pointed the Trust to the company secretary to confirm that a formal decision to progress a relationship with Auxilium had not been taken.
23. The individuals above did not hold any information that is relevant to the complainant's requests. During the Commissioner's investigation, the Trust says it identified another individual who may have held relevant information. This is discussed at paragraphs 16 to 19.
24. The Trust has confirmed that it considers any information would be held electronically and that the relevant electronic records were searched, using the search terms 'Auxilium' and 'Moreton'. No relevant information was retrieved. The Trust does not consider that any information that would have been relevant to the complainant's requests has been deleted. This is because its position is that it has never held the requested information.
25. Having considered the Trust's submission and the accompanying material, the Commissioner is satisfied that, on the balance of probabilities, it does not hold any of the information that has been requested. Because the Trust did not clearly tell the complainant that it did not hold any of this information, the Commissioner must, however, find that the Trust breached section 1(1)(a) of the FOIA.
26. Finally, the Trust has repeated to the Commissioner what it has previously told the complainant, namely that it would be willing to discuss the matter with the complainant, if he would like to better understand the situation with Auxilium. The complainant may want to consider taking up this invitation.

## **Section 10 – time for compliance**

27. Section 10(1) of the FOIA says that a public authority must comply with section 1(1) within 20 working days. In this case, the complainant submitted his requests on 7 April 2016. The Trust provided a response on 18 May 2016, which was outside the 20 working day requirement, and specific confirmation that the information was not held, with respect to all seven requests, was not provided until the Commissioner's investigation was underway.

## Right of appeal

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28. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**