

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 March 2024

**Public Authority:** Supply Chain Coordination Ltd  
**Address:** Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG

#### **Decision (including any steps ordered)**

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1. The complainant has requested the unit cost paid to Supply Chain Coordination Ltd (SCCL) for the purchase of certain items. SCCL refused to provide the requested information, citing section 43(2) (commercial interests) of FOIA. Later SCCL also cited section 41(1) of FOIA (information provided in confidence).
2. The Commissioner's decision is that SCCL appropriately withheld the requested information under section 43(2) of FOIA.
3. The Commissioner does not require further steps.

#### **Background**

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4. SCCL explained to the Commissioner how it came into being as follows:

"Following Lord Carter's report into efficiency and productivity in the NHS published in 2015 which identified a need to improve operational efficiencies to transform a fragmented procurement landscape, a new NHS Supply Chain system was implemented to

help the NHS deliver clinically assured, quality products at the best value, through a range of specialist buying functions.

That new NHS Supply Chain seeks to negotiate the best deals from suppliers and deliver savings back into the NHS frontline services”,

in order to deliver key benefits to NHS Trusts and suppliers. SCCL was established in 2018 “as a limited company wholly owned by the Secretary of State for Health and Social Care”.

“Since 2021, SCCL has been owned by NHS England...[and] is the company at the heart of NHS Supply Chain. It provides oversight and operational management for NHS Supply Chain and its service providers...

SCCL is the legal entity through which NHS Supply Chain undertakes its procurement services and transacts with customers and suppliers. NHS Supply Chain manages the sourcing, delivery and supply of healthcare products, services and food for its customers, being NHS Trusts and healthcare organisations across England and Wales.”

## Request and response

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5. On 20 August 2023 the complainant wrote to SCCL and requested information in the following terms:

‘Please could you provide the unit cost paid to NHS Supply Chain for purchase of each of the following items listed below, currently available through the “Insulin Pumps and Associated Products / Insulin Pumps, Continuous Glucose Monitoring (CGM) and Associated Consumables” framework

[Insulin Pumps, Continuous Glucose Monitoring and Associated Products \(supplychain.nhs.uk\)](https://supplychain.nhs.uk)

For clarity the devices listed below are taken from the attached “ProductMatrix-Insulin-Pumps-14-2023- T1”.

Freestyle Libre 3 Continuous Monitoring System

Dexcom G6 Transmitter

Dexcom G6 Sensor

Dexcom G6 Receiver

mylifeLoop YpsoPump Starter Kit

Tandem t:slim X2 insulin pump with Control-IQ technology.'

6. On 22 August 2023 SCCL refused to provide the requested information, citing section 43(2) of FOIA - commercial interests.
7. The complainant asked for an internal review on 30 August 2023. In this review request, the complainant explained that the information was purely for their own personal use and that they "appreciate[d] the need for certain information not to be disclosed freely in regards to supplier pricing and tenders..." The complainant requested the cost of these items in order to understand the price difference between them and items currently being supplied.
8. On 3 October 2023 SCCL provided its internal review and maintained its position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 18 October 2023 to complain about the way their request for information had been handled.
10. On 21 February 2024 SCCL responded to the Commissioner's investigation letter and cited section 41 of FOIA – information provided in confidence - in addition to section 43(2).
11. The Commissioner considers that the scope of his investigation is to decide whether SCCL cited section 43(2) appropriately. If not, he will move on to consider section 41(1).

### **Reasons for decision**

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#### **Section 43(2) – commercial interests**

12. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
13. The Commissioner has defined the meaning of the term "commercial interests" in his guidance on the application of section 43 follows:

“A commercial interest relates to a legal person’s ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.”<sup>1</sup>

14. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.
15. The Commissioner’s guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests.
16. The public authority must demonstrate a clear link between disclosure and the commercial interests of either itself, a third party or both. There must also be a significant risk of the prejudice to commercial interests occurring and the prejudice must be real and of significance for it to be successfully engaged.
17. The actual harm that the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to commercial interests.
18. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.
19. SCCL has explained that - “Supplier pricing is derived either under tender conditions or subsequent price competitions (mini-competitions, e-auctions etc) and conducted under controlled, confidential processes”. It went on to say that it had -

“launched a new pricing policy (‘Buy Price = Sell Price’) meaning SCCL offers prices for certain aspects of its offering with no margin on the part of SCCL included, as a commitment to provide transparency to our Customers of the prices which SCCL negotiates with suppliers as part of the commercial arrangements”

it puts in place. The online “catalogue” that customers can purchase from restricts access solely to its customers. Suppliers clearly know their own products’ pricing but they are not “informed of other suppliers’ pricing under the same Price File”.

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<sup>1</sup> [Section 43 - Commercial interests | ICO](#)

20. The request was for unit costs paid to NHS Supply Chain for six products,

“within SCCL’s Product matrix. Under the Buy Price = Sell Price policy...the information in relation to the price paid by Customers is equivalent to the price agreed by suppliers to SCCL meaning...a range of interests arise from the information in question”.

21. SCCL’s view is that the requested information “entails both the price paid to SCCL by Customers for specific products and discloses the price agreed by suppliers for those items following competitive tenders”. Release would place “into the public domain commercially sensitive information which would be likely to result in real and significant prejudice to the commercial interests of...” SCCL, its suppliers and customers. Tendered pricing would be revealed which clearly relates to a commercial activity and it refers the Commissioner to paragraph 21 of decision notice [FS50886190](#). This would cause prejudice if “shared with a wider audience beyond the Customers” because it “would be likely to result in considerable pressure to SCCL’s suppliers from third parties with which they have existing contracts”. This could lead to “significant and unwelcome commercial and financially damaging consequences both legally and commercially across SCCL’s supplier relationships”.
22. Additionally, SCCL suggests that future tendering or offerings to third parties suppliers may wish to contract with would be likely to be impeded as the price agreed with SCCL, which is based on economies of scale/other advantages to suppliers, is likely to be ‘considered as the “starting point” for negotiations’. This would place them at a commercial disadvantage “compared to suppliers who had not agreed to participate in the new NHS Supply Chain”.
23. Release of this information would also “be likely to undermine the ability of SCCL to secure best value for money through future, or ongoing procurement exercises”. SCCL emphasises that it -

“does not disclose pricing agreed through tenders to other suppliers or third parties more broadly to ensure that tenders are competitive and to assure best value to its Customers (and therefore the public purse)”.

Disclosing supplier pricing “will act as a disincentive for them to continue to innovate by developing pricing models specifically for SCCL (for the benefit of its Customers)...” This is likely to result in prejudice to customers as “price savings which SCCL is able to offer would likely not be available”.

24. SCCL addresses the complainant's comments about the publication of the unit prices in the NHS Drug Tariff which is produced by the NHSBSA<sup>2</sup> on a monthly basis for the DHSC<sup>3</sup>:

"The Tariff is produced for the purpose of regulating services provided by pharmacists and GP practices. In particular, the Drug Tariff outlines:

- what will be paid to pharmacy contractors for NHS services provided either for reimbursement (eg. the cost of drugs and appliances supplied against an NHS Prescription form) or for remuneration (e.g. professional fees/allowances which are paid as part of the NHS pharmacy contract);
- rules to follow when dispensing;
- value of the fees and allowances; and
- drug and appliance prices."

It describes this as "...an entirely different concept to the framework...operated by SCCL".

25. When SCCL was in the process of providing its response to the Commissioner, it consulted with several suppliers to ascertain their views. These responses are confidential but the Commissioner has seen them and they confirm SCCL's view that disclosure of the requested information is likely to be commercially prejudicial.
26. The Commissioner accepts that disclosing this information would be likely to result in commercial prejudice to SCCL, its suppliers and customers at the lower level of prejudice. The prejudice though is real and significant. The exemption at section 43(2) is engaged.
27. The Commissioner will now consider the public interest factors in favour of disclosing this information or continuing to withhold it.

### **Public interest factors in favour of disclosing the requested information**

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<sup>2</sup> NHS Business Services Authority.

<sup>3</sup> Department of Health and Social Care.

28. "SCCL acknowledges that there is a general public interest in openness and transparency in both SCCL's operations and indirectly, the workings of its Customers in the public sector."
29. The complainant contends that the reasons they "have been given for not releasing the data are unjustified, as data of this nature has previously been released following other FOI requests to this organisation" and had given examples in their review request. Their view is that "information of this nature is freely disclosed" by the DHSC "through the NHS Drug Tariff". The complainant queries how release of the information could damage commercial relations in the way described by SCCL or adversely impact on its ability to manage its relationships with suppliers and NHS Trusts.
30. The complainant's opinion is that SCCL not disclosing the requested information "also suggest unit prices are not reflective of whole costs, referencing software and technologies costs".

### **Public interest factors in favour of maintaining the exemption**

31. SCCL believes that there are strong public interest factors in exempting this information. Referring to a previous decision of the Commissioner's (FS50886190) SCCL states that it is in the public interest for it to be able to negotiate effectively with its suppliers, save its customers money, and ultimately the public purse.
32. There is a public interest in withholding information that would be likely to reduce SCCL's "ability to negotiate or compete in a commercial environment". In this instance "SCCL's ability to maintain an effective procurement framework for the benefit of its Customers, with the considerations which prompted the new NHS Supply Chain framework... in mind".
33. SCCL states that there is a public interest in "protecting the commercial interests of individual companies and ensuring they are able to compete fairly without being commercially disadvantaged as a consequence".
34. Finally, "it is not in the public interest to lessen a competitive advantage held by the public authority or its suppliers".

### **Balance of the public interest**

35. Whilst the Commissioner accepts the importance of the request to the complainant it cannot, under FOI legislation, be provided solely to one individual and has to be available to everyone. From what he understands, exactly the same type of information has not been placed in the public domain by SCCL. The balance of the public interest is weighted in favour of non-disclosure as the Commissioner agrees that

the release of this information is likely to result in a reduction in SCCL's ability to negotiate, a reduction in its suppliers' competitiveness and an increase to the public purse. None of these factors are in the public interest.

36. As the Commissioner has decided that the information has been appropriately withheld under section 43(2) of FOIA, he has not gone on to consider SCCL's citing of section 41(1) of FOIA.



## Right of appeal

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37. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

38. 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.
39. 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 .....**

**Janine Gregory**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**