

# Decision Notice

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**Decision 098/2015: John Middleton and West Lothian Council**

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**Social work report: failure to respond within statutory timescales**

Reference No: 201501038

Decision Date: 26 June 2015



Scottish Information  
Commissioner

## Summary

On 26 January 2015, Mr Middleton asked West Lothian Council (the Council) for information about a social work report carried out in 2014. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Mr Middleton's requirement for review within the timescale set down by FOISA.

## Background

Date	Action
26 January 2015	Mr Middleton made an information request to the Council.
	The Council did not respond to the information request.
4 March 2015	Mr Middleton wrote to the Council requiring a review of its decision in respect of its failure to respond.
	Mr Middleton did not receive a response to his requirement for review.
3 June 2015	Mr Middleton wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15 June 2015	The Council was notified in writing that an application had been received from Mr Middleton and was invited to comment on the application.
24 June 2015	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

1. In its submissions, the Council acknowledged that it failed to provide Mr Middleton with a response to his information request within 20 working days. The Council submitted that as Mr Middleton was seeking his own personal data, it had handled his request under the terms of the Data Protection Act 1998 which permits 40 working days to provide a response.
2. The Council noted that it provided Mr Middleton with a response to his request on 18 March 2015, but it conceded that as well as breaching the timescales set out in FOISA, its response failed to indicate that the information he had requested was exempt from disclosure under section 38(1)(a) of FOISA. (Section 38(1)(a) of FOISA exempts information from disclosure if it is the applicant's own personal data.)
3. The Council indicated that its response had been sent by recorded delivery and it appears that Mr Middleton failed to collect the letter. The Council submitted that it has had some difficulties in communicating with Mr Middleton and in some instances he has refused to accept correspondence from the Council.

4. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
5. It is a matter of fact that the Council did not provide a response to Mr Middleton's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
6. The Council acknowledged that it had received Mr Middleton's request for review but, unfortunately, it was overlooked. The Council apologised to Mr Middleton about this oversight in the review outcome it provided on 24 June 2015. The Council also acknowledged that its responses to Mr Middleton breached the timescales in FOISA, but submitted that it has procedures in place for dealing with information requests, including a target response date.
7. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
8. It is a matter of fact that the Council did not provide a response to Mr Middleton's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
9. The Council responded to Mr Middleton's requirement for review on 24 June 2015, so the Commissioner does not require it to take any further action in relation to Mr Middleton's application.

## Decision

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The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Middleton. In particular, the Council failed to respond to Mr Middleton's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr Middleton's application, given that it provided a review outcome on 24 June 2015.

## Appeal

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Should either Mr Middleton or West Lothian Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Alison Davies**  
**Deputy Head of Enforcement**

**26 June 2015**

**Scottish Information Commissioner**

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