

Office of the Information Commissioner

Sample Questions for FOI Bodies

Freedom of Information Act
2014

April 2017

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Introduction

This document, entitled *Questions for FOI Bodies*, sets out a list of questions which may be relevant when the Information Commissioner is reviewing a decision made by an FOI body under the Freedom of Information (FOI) Act 2014.

The document is primarily intended for use by the Office of the Information Commissioner (OIC) when seeking submissions from an FOI body in the course of a review of the body's decision.

The questions listed in this document are not exhaustive; further or other questions may be asked. Equally, every question relating to a particular provision which is listed may not necessarily be relevant in a review of a decision pursuant to that provision. In some cases, for example, the information may be apparent from the records, from the decisions of the FOI body or from other information provided to the OIC.

The Information Commissioner has published a set of Guidance Notes on various provisions of the FOI Act 2014. Where an FOI body is relying on a particular provision of the FOI Act for its decision and where a Guidance Note has been published on that provision, the FOI body should have regard to that Guidance Note in the preparation of its submission to the Commissioner and in its replies to any questions asked by the OIC. In doing so, the FOI body should ensure that the Guidance Note concerned is the current version available on the website of the OIC at the time.

The questions set out in this document are intended to provide general guidance only and are not legally binding.

Request for Access to a Record - Burden of Proof

Section 22(12) of the FOI Act 2014 provides that, in a review by the Commissioner of a decision of an FOI body, a decision to refuse to grant an FOI request (for access to a record under section 12 of the Act) shall be presumed not to have been justified unless the FOI body shows to the satisfaction of the Commissioner that the decision was justified. Thus, the onus rests with the FOI body to show to the satisfaction of the Commissioner that such a decision to refuse to grant an FOI request for access to a record was justified. It is important that FOI bodies bear this in mind where their decision was to refuse access to records.

The particular requirements to be met or the test to be applied for the application of any exemption may be found in the language of the exemption itself. Where any of the questions set out in this document relate to a decision of an FOI body to refuse to grant an FOI request for access to a record and the question(s) ask an FOI body to explain something or show something to the Commissioner, such matters should be explained or shown "to the satisfaction of the Commissioner" (section 22(12) of the FOI Act refers).

Please read the Introduction – See [Introduction](#)

Section 9: Amendment of Records Relating to Personal Information

Section	Information Required
9(1)	<ul style="list-style-type: none"> • Please provide details of the information which you understand the applicant is seeking to amend. • In your view, is the information personal information relating to the applicant? Explain the reasons for your view. (In doing so, please have regard to the definition of personal information in section 2 of the Act.) • If the information concerned is personal information relating to the applicant, has the applicant shown that such personal information is, on the balance of probabilities, incomplete, incorrect or misleading? If not, please explain the reasons for your view (including your view on any information provided by the applicant in support of the application in this case). • If you have refused the application, has the application or a copy of the application (or a notation indicating that the application has been made) been attached to the record which the applicant sought to amend (section 9(4) of the FOI Act refers)? If not, why not? • [To be asked <u>only</u> where the FOI body decided to amend the record, but not in the manner sought by the applicant] – <ul style="list-style-type: none"> ○ Confirm the form of amendment of the record which you understand the applicant sought in this case ○ Explain the reasons why you refused to amend the record in the form or manner sought by the applicant.
9(6)(a)	<p>[To be asked <u>only</u> where the application has been made by the parent or guardian of the individual and only where relevant / appropriate.]</p> <ul style="list-style-type: none"> • Provide the information sought at either A) or B), as appropriate: <ul style="list-style-type: none"> A) If the individual to whom the information relates has not attained full age, confirm his/her date of birth. <p>OR</p> B) If the individual to whom the information relates is an individual of full age who is incapable of exercising his/her rights under the FOI Act as specified in the Regulations*, please show that the individual falls within the class specified in Regulation 6(2)(b) (i.e. at the time of the application, the individual has, or is subject to, a psychiatric condition, mental

<p>9(6)(a) contd.</p>	<p>incapacity or severe physical disability, the incidence and nature of which are certified by a registered medical practitioner and who, by reason of that condition, incapacity or disability, is incapable of exercising his/her rights under the FOI Act).</p> <ul style="list-style-type: none"> • Explain the basis on which you concluded that the applicant is the parent or guardian of the individual to whom the information relates. • Please explain the reason for your decision by reference to the relevant Regulations* and furnish any information provided by the applicant in connection with this application. • If you concluded that granting the application would not be in the best interests of the minor / individual concerned, please explain the reasons for this conclusion and provide details of any circumstances and any other matters which were considered relevant in making your decision in this regard. • Confirm whether, during the course of your decision-making in this case, it was considered appropriate to consult with any person regarding this application and explain the reasons for your view in this regard. If any consultations took place, provide details of the consultations and provide copies of the relevant communications. <p>*Freedom of Information Act 2014 (Sections 9(6), 10(6) and 37(8)) Regulations 2017. S.I. 53 of 2017. (Note: If the application was made prior to 10 November 2016, please refer to the relevant provision(s) of the Freedom of Information Act 1997 (Section 17(6)) Regulations, 2009. S.I. 385 of 2009.)</p>
<p>9(6)(b)</p>	<p>[To be asked <u>only</u> where the information in the record concerned relates to an individual who is dead and only where relevant/ appropriate.]</p> <ul style="list-style-type: none"> • If not apparent from the records, please show the basis on which it was claimed, or on which you concluded, that the individual is dead • Furnish any information provided by the applicant in connection with this application • Provide the information sought at (a) or (b) or (c) below, as appropriate to the circumstances of this case. <p>(a) Is the applicant a personal representative of the individual to whom the information relates (or someone acting with the consent of a personal representative)?</p> <ul style="list-style-type: none"> ○ If so, is the personal representative acting in due course of administration of the estate? ○ Explain the basis for your conclusions in this regard and provide copies of any relevant information. <p style="text-align: right;">See 9(6)(b) contd. over/</p>

<p>9(6)(b) contd.</p>	<p>OR</p> <p>(b) Is the applicant a person on whom a function is conferred by law in relation to the individual to whom the information relates or his or her estate?</p> <ul style="list-style-type: none"> ○ If so, is s/he acting in the course of the performance of that function? ○ Explain the basis for your conclusions in this regard and provide any relevant information. <p>OR</p> <p>(c) Is the applicant the spouse or the next of kin of the individual to whom the information relates as defined in the Regulations*?</p> <ul style="list-style-type: none"> ○ If so, explain the basis for your conclusions in this regard. ○ If relevant, explain why you concluded that the public interest (including the public interest in the confidentiality of personal information) would not, on balance, be better served by granting the application than by refusing it. Provide details of the public interest factors taken into account in making your decision and provide details of any circumstances and/or any other matters to which you had regard in this respect. ○ If relevant, provide details of any consultations which took place in relation to this application and provide copies of any relevant communications in this regard. <p>*Freedom of Information Act 2014 (Sections 9(6), 10(6) and 37(8)) Regulations 2017. S.I. 53 of 2017. (Note: If the application was made prior to 10 November 2016, please refer to the Freedom of Information Act 1997 (Section 17(6)) Regulations, 2009. S.I. 385 of 2009.)</p>
<p>9(7)</p>	<p>[To be asked where relevant and <u>only</u> if the application has been refused under section 9(7).]</p> <ul style="list-style-type: none"> ● If you have refused the application under section 9(7) of the Act - <ul style="list-style-type: none"> ○ Please explain the reasons why you concluded that the application/ request in this case is frivolous or vexatious or forms part of a pattern of manifestly unreasonable requests/applications ○ Provide details of the information relied on by you in reaching this conclusion ○ Also provide the following information : <ul style="list-style-type: none"> – the number of requests/ applications made by the requester /applicant (or anyone with whom, in your view, s/he was acting in concert) – details of the dates, nature and scope of the requests/ applications concerned – if relevant, provide your view regarding the purpose of the requests/applications made and/ or the intent of the requester/ applicant

Please read the Introduction – See [Introduction](#).

Section 10: Right of Person to Information Regarding Acts of FOI Bodies Affecting the Person

Section	Information Required
10(1)	<p>[To be asked only where relevant or where, for example, the position is not clear]</p> <ul style="list-style-type: none"> • Does the application in this case seek a statement of reasons for an act or decision of your body (i.e. your Department, Office, organisation etc.) within the meaning of section 10? <ul style="list-style-type: none"> ○ If so, what is the act or decision concerned? ○ If, in your opinion, the application does not relate to such an act/decision, explain the reasons for your view in this regard. • If you have not given a written statement of reasons to the applicant, please explain the reasons for this. <ul style="list-style-type: none"> ○ Is the applicant affected by the act/decision concerned and does s/he have a material interest in a matter affected by the act/decision or to which the act/decision relates? Explain the reasons for your view in this regard. (In doing so, please have regard to the definition of ‘material interest’ in section 10(5) and of ‘benefit’ in section 10(13) where relevant.) • If you have given the applicant a statement of reasons in this case, confirm that it meets the criteria set out below and provide your comments as to how it does so. <ul style="list-style-type: none"> ○ A statement of reasons must include the reasons for the act and any findings on any material issues of fact made for the purposes of the act concerned. ○ You should also note that the Commissioner takes the following view with regard to the principal features of a statement of reasons – Generally speaking, it should be intelligible and adequate. It should be sufficiently clear to enable the applicant to understand without undue difficulty why the public body acted as it did. It should identify the criteria relevant to the act and explain how each of the criteria affected the act. However, it does not necessarily have to contain a detailed clarification of all issues identified by an applicant as relevant to a particular act or decision.

10(2)	<p><u>To be asked only if section 10(2) has been relied on and only as relevant:</u></p> <ul style="list-style-type: none"> • Please explain why, in your view, the relevant information is contained in a record which would fall to be refused as an exempt record. <ul style="list-style-type: none"> ○ Explain the basis for your view that the record is an exempt record (by reference to the relevant provisions of the FOI Act) and provide details of your findings on any material issues relevant to that view and on any relevant public interest considerations. <p>AND / OR</p> <ul style="list-style-type: none"> • Please explain why the giving of the statement of reasons in this case would require the disclosure of the existence or non-existence of a record, the non-disclosure of the existence or non-existence of which is required by the Act. <ul style="list-style-type: none"> ○ Provide details of the provision of the Act which requires the non-disclosure of the existence or non-existence of the record in this case and explain why disclosure of the existence or non-existence of a record (as opposed to the content of the record) would have the effect required by that provision • Has notice of the decision not to provide a statement of reasons been given to the applicant as provided for in section 10(4)? If so, please provide a copy of the notice (if not already provided).
10(3)	<p><u>To be asked if relevant and only if section 10(3) has been relied on:</u></p> <ul style="list-style-type: none"> • Please show that the decision for which the statement of reasons has been sought is <ul style="list-style-type: none"> ○ a decision of the Public Appointments Service or other relevant licence holder not to accept a person as qualified for a position or ○ a decision of the Chief Executive of the Public Appointments Service not to recommend a person to a local authority for appointment • Explain why, in your opinion, the giving of a statement of reasons would be likely to prejudice the effectiveness of the process for selecting a person for appointment to the position or office. • Has notice of the decision not to provide a statement of reasons been given to the applicant as provided for in section 10(4)? If so, please provide a copy of the notice (if not already provided).

10(6)(a)	<p><u>[To be asked only where the application is made by the parent or guardian of the individual affected by the act and only where relevant / appropriate.]</u></p> <ul style="list-style-type: none"> • Provide the information sought at either A) <u>or</u> B), as appropriate: <ul style="list-style-type: none"> A) If the individual affected by the act has not attained full age, confirm his/her date of birth. OR B) If the individual affected by the act is an individual of full age who is incapable of exercising his/her rights under the FOI Act as specified in the Regulations*, please show that the individual falls within the class specified in Regulation 6(2)(b) (i.e. at the time of the application, the individual has, or is subject to, a psychiatric condition, mental incapacity or severe physical disability, the incidence and nature of which are certified by a registered medical practitioner and who, by reason of that condition, incapacity or disability, is incapable of exercising his/her rights under the FOI Act) • Explain the basis on which you concluded that the applicant is the parent or guardian of the individual to whom the information relates. • Please explain the reason for your decision by reference to the relevant Regulations* and furnish any information provided by the applicant in connection with this application. • If you concluded that granting the application would not be in the best interests of the minor / individual concerned, please explain the reasons for this conclusion and provide details of any circumstances and any other matters which were considered relevant in making your decision in this regard. • Confirm whether, during the course of your decision-making in this case, it was considered appropriate to consult with any person regarding this application and explain the reasons for your view in this regard. If any consultations took place, provide details of the consultations and provide copies of the relevant communications. <p>*Freedom of Information Act 2014 (Sections 9(6), 10(6) and 37(8)) Regulations 2017. S.I. 53 of 2017. (Note: If the application was made prior to 10 November 2016, please refer to the relevant provision(s) of the Freedom of Information Act 1997 (Section 18(5A)) Regulations 2009 (S.I. 386 of 2009)).</p>
10(6)(b)	<p>To be asked <u>only</u> where the individual affected by the act of an FOI body is dead and only where relevant / appropriate.]</p> <ul style="list-style-type: none"> • If not apparent from the records, please show the basis on which it was claimed, or on which you concluded, that the individual is dead • Furnish any information provided by the applicant in connection with this application. <p style="text-align: right;">See 10(6)(b) contd. over/</p>

<p>10(6)(b) contd.</p>	<ul style="list-style-type: none"> • Provide the information sought at (a) or (b) or (c) below, as appropriate to the circumstances of this case. <ul style="list-style-type: none"> (a) Is the applicant a personal representative of the individual affected by the act (or someone acting with the consent of a personal representative)? <ul style="list-style-type: none"> ○ If so, is the personal representative acting in due course of administration of the estate? ○ Explain the basis for your conclusions in this regard and provide any relevant information. <p>OR</p> <ul style="list-style-type: none"> (b) Is the applicant a person on whom a function is conferred by law in relation to the individual affected by the act or his/her estate? <ul style="list-style-type: none"> ○ If so, is s/he acting in the course of the performance of that function? ○ Explain the basis for your conclusions in this regard and provide any relevant information. <p>OR</p> <ul style="list-style-type: none"> (c) Is the applicant the spouse or the next of kin of the individual affected by the act as defined in the Regulations*? <ul style="list-style-type: none"> ○ If so, explain the basis for your conclusions in this regard. ○ If relevant, explain why you concluded that the public interest (including the public interest in the confidentiality of personal information) would not, on balance, be better served by granting the application than by refusing it. Provide details of the public interest factors taken into account in making your decision and provide details of any circumstances and/or any other matters to which you had regard in this respect. ○ If relevant, provide details of any consultations which took place in relation to this application and provide copies of any relevant communications in this regard. <p>*Freedom of Information Act 2014 (Sections 9(6), 10(6) and 37(8)) Regulations 2017. S.I. 53 of 2017. (Note: If the application was made prior to 10 November 2016, please refer to the Freedom of Information Act 1997 (Section 18(5A)) Regulations 2009 (S.I. 386 of 2009)).</p>
<p>10(7)</p>	<p><u>To be asked if relevant and only where section 10(7) has been relied on.</u></p> <ul style="list-style-type: none"> • Please explain the reasons why you concluded that the application/request in this case is frivolous or vexatious or forms part of a pattern of manifestly unreasonable requests / applications. • Provide details of the information relied on by you in reaching this conclusion <p style="text-align: right;">See 10(7) contd. over/</p>

10(7) contd.	<ul style="list-style-type: none">• Also provide the following information:<ul style="list-style-type: none">○ the number of requests / applications made by the requester /applicant (or anyone with whom, in your view, the s/he was acting in concert)○ details of the dates, nature and scope of the requests/ applications concerned○ if relevant, please provide your view regarding the purpose of the requests/applications made and/ or the intent of the requester / applicant.

Please read the Introduction – See [Introduction](#).

Section 15(1)(b) to (i) Refusal on Administrative Ground to Grant FOI Requests

Section	Information Required
15(1)(b)	<ul style="list-style-type: none"> • Have you assisted, or offered to assist, the requester with a view to amending the request for re-submission so that it no longer falls within section 15(1)(b)? If so, please show how such assistance was offered or provided and provide copies of the relevant communications. Please note that an FOI body cannot rely on section 15(1)(b) where it has not complied with this requirement. [Section 15(4) refers] • Please explain why in your view the request does not contain sufficient particulars to enable the record to be identified by the taking of reasonable steps.
15(1)(c)	<ul style="list-style-type: none"> • Have you assisted, or offered to assist, the requester with a view to amending the request for re-submission so that it no longer falls within section 15(1)(c)? If so, please show how such assistance was offered or provided and provide copies of the relevant communications. Please note that an FOI body cannot rely on section 15(1)(c) where it has not complied with this requirement. [Section 15(4) refers] • Describe the number or nature of the records/files that would have to be retrieved and/or examined in order to grant this request and the work needed (e.g. the hours of work and personnel involved) to do so. • Explain the basis on which you concluded that the retrieval and/or examination of records required would cause a substantial and unreasonable interference with or disruption of work of the FOI body (or of a particular functional area of the FOI body). • Describe how and where the records sought are stored or filed. Please also describe the relevant record management system or filing system concerned (including e.g. how the records are filed and retrieved). • Are the relevant records held electronically? If so, describe the computer/information system. Is there a facility on the system which enables electronic search or extraction of the records relevant to this request? • Describe the size, staffing level and work of your FOI body (or, where relevant, the functional area of the FOI body).

15(1)(d)	<ul style="list-style-type: none"> • Show how the information is already in the public domain.
15(1)(e)	<ul style="list-style-type: none"> • Explain the basis for concluding that publication of the record is required by law. • Show how it is intended that publication will be effected no later than 12 weeks after receipt of the request by the FOI body
15(1)(f)	<ul style="list-style-type: none"> • Show how it is intended that publication will be effected no later than 6 weeks after receipt of the request by the FOI body.
15(1)(g)	<ul style="list-style-type: none"> • Explain the reasons why you concluded that the request in this case is frivolous or vexatious or forms part of a pattern of manifestly unreasonable requests Provide details of the information relied on by you in reaching this conclusion. • Please also provide the following information : <ul style="list-style-type: none"> ○ the number of requests made by the requester (or anyone with whom, in your view, the requester was acting in concert) ○ details of the dates, nature and scope of the requests concerned ○ if relevant, please provide your view regarding the purpose of the requests made, the sequencing of the requests and/ or the intent of the requester.
15(1)(h)	<ul style="list-style-type: none"> • Provide details of the fee or deposit charged in this case or any previous case which has not been paid and include a copy of the notification(s) which was/ were given to the requester. • Confirm that the requester has not paid the fee(s) or deposit(s) charged. • Has the requester applied for a review of the decision to charge the fee(s) or deposit(s) or to charge the fee(s) or deposit(s) of that/those particular amount(s)? • Provide copies of any communications with the requester concerning the matter of the fee(s) or deposit(s) concerned.

15(1)(i)	<ul style="list-style-type: none">• Show how the records were already released to the requester or to a previous requester • Please<ul style="list-style-type: none">○ show that the records are available to the requesteror○ explain the basis on which you concluded that the requester is acting in concert with a previous requester.
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Please read the Introduction – See [Introduction](#).

Section 27: Fees and Charges

<u>Search, Retrieval and Copying (SRC) Charge</u>	
(NOTE: 'Up-front' fees for applications for internal review are dealt with at section 27(13) below)	
27(5)/ 27(1)	<p><u>To be asked in a review of a decision to charge a deposit or a SRC charge</u></p> <ul style="list-style-type: none"> • Is / was the estimated cost of the search for and retrieval and copying of the records likely to exceed the appropriate minimum amount (currently €101)? If so: <ul style="list-style-type: none"> ○ Was notice in writing for payment of a deposit given to the requester not later than two weeks after receipt of the request? ○ Did the requester ask for your assistance in amending or limiting the request in order to reduce or eliminate the deposit? If so, please provide details of any amendments specified, agreed and/ or made. ○ Provide copies of all relevant communications with the requester including, in particular, a copy of any notice of the deposit charged. • Please explain clearly how the deposit / charge in this case was calculated. In doing so, please provide the relevant details and a breakdown of the figure concerned having regard to the relevant Fees Regulations* and the rates prescribed. • Confirm that the estimated time does not include time for the examination of the records with a view to deciding on whether they may be released. • Has the search and retrieval process already taken place? If so, please answer the questions at section 27(1) below.
27(1)	<p><u>Additional question to be asked where search / retrieval / copying has taken place</u></p> <ul style="list-style-type: none"> • If the charge relates to the search for and retrieval of the record(s): <ul style="list-style-type: none"> ○ Outline the time spent on and personnel involved in each of the following tasks (answering NIL, where appropriate, if no time was spent on the particular task): <ul style="list-style-type: none"> - determining whether you hold the information requested - locating the information or documents containing the information - retrieving such information or documents - extracting the information from the files, documents, electronic or other information sources containing both it and other material not relevant to the request - preparing a schedule specifying the records for consideration for release ○ Provide a description of the number and/or nature of the records in this request; how and where the records are stored/filed; and the relevant record management system or filing system concerned. Please also clarify whether the records are held electronically. <p style="text-align: right;">s27(1) contd. over/</p>

27(1) Contd	<ul style="list-style-type: none"> ○ Describe the search and retrieval process in this case and explain why, in the circumstances, you consider that the time was spent in carrying out the search and retrieval efficiently. ○ Confirm that the charge does not include time taken to examine the records with a view to deciding on whether they were to be released. ● Confirm whether the SRC charge is proportionate to those records released or to be released. In doing so, please confirm the total number of records and the number of records released or to be released. ● Please confirm that the amount of the charge does not exceed or is not likely to exceed the appropriate maximum amount prescribed (currently €500)? If, however, the amount charged exceeds or is likely to exceed the overall ceiling limit prescribed (currently €700), confirm that section 27(12) was applied and provide the information sought at section 27(12) below.
27(12)	<p><u>To be asked only where the charge exceeds or is likely to exceed the overall ceiling limit prescribed (currently €700). Please also refer to the questions regarding s27(5)/27(1) above.</u></p> <ul style="list-style-type: none"> ● Have you informed the requester that the amount of the SRC charge exceeds or is likely to exceed the overall ceiling limit? If so: <ul style="list-style-type: none"> ○ when was the requester informed? ○ what was the requester's response? ○ have you assisted (or offered to assist) him/her if s/he wishes to amend or limit the request in order to reduce the charges to an amount less than or equal to the overall ceiling limit? ○ did the requester amend or limit his / her request? ○ how did the matter proceed? ● Was notification under section 27(12) given to the requester not later than two weeks after receipt of the request? ● Please provide copies of all relevant communications.
27(4)	<ul style="list-style-type: none"> ● Do the records concerned contain only personal information relating to the requester? <ul style="list-style-type: none"> ○ If the answer to this question is NO, please explain the basis upon which you decided that they contain other information. ○ If the answer to this question is YES, i.e. the records contain only personal information relating to the requester: <ul style="list-style-type: none"> – please provide details of the number of records concerned and explain the reasons why the grant concerned was considered to relate to a significant number of records – clarify whether the means of the requester were taken into account and, if so, the conclusion reached in that regard.

27(6)	<ul style="list-style-type: none"> In your view, would some or all of the information contained in the record(s) be of particular assistance to the understanding of an issue of national importance? If so, have you considered reducing the amount of, or waiving, the charge or deposit in this case?
<p><u>' Up-front' Fees</u></p> <p>Section 27(13) provides for the charging of a fee in respect of an application for internal review (often referred to as an 'up-front fee'). [Note: no 'up-front' fee is charged in respect of an initial request.]</p>	
27(13)	<ul style="list-style-type: none"> Do the records in this case contain only personal information <ul style="list-style-type: none"> - relating to the requester? or <ul style="list-style-type: none"> - relating to minors, incapacitated persons or deceased persons requested pursuant to section 37(8) of the Act and the relevant Regulations **? Is the requester/ applicant a medical card holder or a dependant of a medical card holder? If so, has the fee been reduced by the amount specified in the Regulations?
<p>*S.I. No. 531/2014 - Freedom of Information Act 2014 (Fees) (No. 2) Regulations 2014. ** S.I. 218 of 2016 – Freedom of Information Act 2014 (Section 37(8)) Regulations 2016.</p>	

Please read the Introduction – See [Introduction](#).

Section 28: Meetings of the Government

Section	Information sought
28 (all subsections)	<ul style="list-style-type: none"> • Please state clearly which subsection and (where relevant) paragraph of section 28 is being relied on for the refusal to grant access to each record, e.g. 28(1)(a), 28(1)(b), 28(1)(c), or 28(2). • If you are relying on the definition of “Government” at section 28(6) for the purpose of applying this exemption, provide the information sought at section 28(6) below.
28(1)(a)	<ul style="list-style-type: none"> • Please show that the record has been, or is/was proposed to be, submitted to the Government for its consideration. • If it is not evident from the record, show that the record has been, or is/was proposed to be, submitted by a Minister of the Government or the Attorney General. • Show that record was created for the purpose of submission to the Government for their consideration? • Was the record, or any part of it (including any Appendices), created for any other purpose? If so, provide details. • Please also provide the information sought at 28(3) below.
28(1)(b)	<ul style="list-style-type: none"> • Please show that the record is a record of the Government. • Show that it is not a record by which a decision of the Government is published to the general public by or on behalf of the Government. • Please also provide the information sought at 28(3) below.
28(1)(c)	<ul style="list-style-type: none"> • If it is not evident from the record, please identify who the information in the record is for. • Show that the information is/was for use by that person solely for the purpose of the transaction of any business of the Government at a meeting of the Government. • Please also provide the information sought at 28(3) below.
Section 28 contd. over/	

28(2)	<ul style="list-style-type: none"> • Does the record contain the whole or part of a statement made at a meeting of the Government? <ul style="list-style-type: none"> ○ If so, please identify the details of the statement concerned and, if not evident from the record, show that it was a statement made at such a meeting. • Does the record contain information that reveals, or from which may be inferred, the substance of the whole or part of such a statement? <ul style="list-style-type: none"> ○ If so, identify the information concerned and explain how the substance of the statement (or part of the statement) could be revealed or inferred. ○ Also, if not evident from the record, show that the statement concerned was made at a meeting of the Government • Show that the record is not a record by which a decision of the Government is published to the general public by or on behalf of the Government. • Show that the record is not a record referred to in paragraph (a) or (c) of section 28(1)
28(3)	<ul style="list-style-type: none"> • Does the record contain factual information relating to a decision of the Government that has been published to the general public? If so, has the factual information been identified and released? If the factual information has not been released, explain the reasons for this. • Does the record relate to a decision of Government made more than 5 years before receipt of the request? If so, why has section 28(1) been applied?
28(5)	<p>To be asked <u>only</u> where subsection (5) has been relied on.</p> <ul style="list-style-type: none"> • Please ensure that the information sought in relation to the application of section 28(1)(a) or 28(1)(b) or 28(1)(c) above, as appropriate, has been provided. • Explain clearly how disclosure of the existence or non-existence of the record (as opposed to disclosure of the actual contents of the record) would be contrary to the public interest.
28(6)	<p>If, in referring to the “Government” for the purpose of this exemption, you are including a committee of the Government, please -</p> <ul style="list-style-type: none"> - show that it is a committee appointed by the Government, and - provide details of the membership of the committee.

Please read the Introduction – See [Introduction](#).

Section 29: Deliberations of Public Bodies

Section	Information Required
29	<ul style="list-style-type: none"> • Please describe the deliberative processes to which the matter or information in the record relates. • Please identify any FOI body engaged in the deliberative processes concerned. • Does the record contain - <ul style="list-style-type: none"> ○ matter for use by an FOI body for the purpose of decisions, determinations or recommendations? ○ factual information? ○ the reasons for the making of a decision by an FOI body? ○ a report of an investigation or analysis of the performance, efficiency or effectiveness of an FOI body in relation to its functions (or a particular function)? ○ a report etc. of a scientific or technical expert or containing his/ her opinions or advice as described in section 29(2)(e)? <p>If so, has section 29(1) been applied in relation to that information? If section 29(1) has been applied in relation to that information, explain the reasons for this.</p> • If applicable, explain why you consider that release of the record concerned would lead to the requester becoming aware of a significant decision that the body proposes to make, and how this would be contrary to the public interest • What public interest factors in favour of release of the record were considered? • What public interest factors against release of the record were considered? • Explain why you concluded that the granting of this request would be <u>contrary</u> to the public interest.

Please read the Introduction – See [Introduction](#).

Section 30: Functions and Negotiations of FOI Bodies

Section	Information Required
30(1)(a)	<ul style="list-style-type: none"> • Please identify the particular <u>function</u> specified in section 30(1)(a) the effectiveness of which you expect to be prejudiced, or the relevant <u>procedures / methods</u> used for its conduct which you expect to be prejudiced. • Describe the prejudice or harm expected. • Explain <u>how</u> the release of the particular record is expected to result in the harm identified. • Explain why you consider that the harm identified could reasonably be expected to occur. • See also section 30(2).
30(1)(b)	<ul style="list-style-type: none"> • Please identify the function relating to management the performance of which you expect to be adversely affected • Describe the adverse effect on the performance of that function which you expect to arise and explain why you expect that adverse effect to be significant. • Explain <u>how</u> the release of the particular record is expected to result in the harm identified. • Explain why you consider that the harm identified could reasonably be expected to occur. • See also section 30(2).
30(1)(c)	<ul style="list-style-type: none"> • Please identify and provide details of the <u>negotiations</u> which are being, were or are to be, carried on • Confirm whether such negotiations are, were or will be on behalf of the Government or on behalf of an FOI body. And, if on behalf of an FOI body, please identify the FOI body concerned. • Provide details of the positions etc. (described in section 30(1)(c)) which you expect to be disclosed by granting access to the record • If not evident from the record, explain how the disclosure of such positions etc could reasonably be expected to occur • See also section 30(2)
30(2)	<p>Please provide details of the public interest factors in favour of release of the record and the public interest factors against release of the record which were considered. Explain why you concluded that, on balance, the public interest would not be better served by granting this request.</p>

Please read the Introduction – See [Introduction](#).

Section 31: Parliamentary, Court and certain other Matters

Section	Information Required
31(1)(a)	<p>Legal professional privilege enables the client to maintain the confidentiality of two types of communication:</p> <ol style="list-style-type: none"> 1. confidential communications made between the client and his/her professional legal adviser for the purpose of obtaining and/or giving legal advice (legal advice privilege) <p>and</p> <ol style="list-style-type: none"> 2. confidential communications made between the client and a professional legal adviser or the professional legal adviser and a third party or between the client and a third party, the dominant purpose of which is the preparation for contemplated/pending litigation (litigation privilege) <ul style="list-style-type: none"> • Confirm whether exemption is claimed on the basis of legal advice privilege (the first type of privilege outlined above) or litigation privilege (the second type of privileged outlined above) or both. • If both forms of privilege are claimed in this case, identify the particular records in respect of which legal advice privilege is claimed, the particular records in respect of which litigation privilege is claimed and, if relevant, the particular records in respect of which both forms of privilege is claimed. • Confirm the identity of the client, the legal adviser and/or third party, as appropriate, and explain the basis on which you consider that the communication(s) concerned were confidential <hr/> <p><u>Legal Advice Privilege</u> If exemption is claimed on the basis of legal advice privilege,</p> <ul style="list-style-type: none"> • If not immediately evident, show that the communication(s) were for the purpose of obtaining and/ or giving legal advice.

<p>31(1)(a) contd.</p>	<p><u>Litigation Privilege</u> If exemption is claimed on the basis of litigation privilege :</p> <ul style="list-style-type: none"> • Provide details of the litigation which is contemplated or pending • Was the dominant purpose for the creation of the record the preparation for such litigation? If so, show the basis for your view in this regard. • Was the record created for any other purpose (i.e. as well as the preparation for the litigation)? If so, explain the basis on which you consider that the dominant purpose for the creation of the record was the preparation for the contemplated/ pending litigation, as opposed to any other purpose for which the record was created. <p>Please answer A or B :</p> <p>A. Show that the litigation (in preparation for which the record was created) is still contemplated or pending</p> <p>OR</p> <p>B. If the litigation did not proceed or has concluded, your attention is drawn to the High Court judgement of Finlay Geoghegan J in <i>University College Cork – National University of Ireland –v- Electricity Supply Board</i> [2014] IEHC 135 (available on the courts.ie website). In that case the Court found that where a party is entitled to claim litigation privilege, the privilege does not automatically continue beyond the final determination of the proceedings in which it originally applied. If the litigation (in preparation for which the record was created) did not proceed or has concluded :</p> <ul style="list-style-type: none"> • Show how, in the circumstances, litigation privilege continues to apply in this case. • Provide details of any other related proceedings in being, or contemplated, and explain whether, in your view, those proceedings have a substantive or close connection with the earlier proceedings (whether by way of the subject matter of the proceedings, the parties to the proceedings or otherwise) and, if so, explain the basis for your view. <p><u>To be asked only where the FOI body has relied on section 31(4)</u></p> <p>Explain clearly how disclosure of the existence or non-existence of the record (as opposed to disclosure of the actual contents of the record) would be contrary to the public interest.</p>
<p>31(1)(b)</p>	<ul style="list-style-type: none"> • Provide a detailed explanation for your conclusion that disclosure of the record would constitute contempt of court

31(1)(c)(i)	<ul style="list-style-type: none"> • Explain why you have concluded that the record consists of the private papers of a member of the European Parliament (MEP) or a member of a local authority
31(1)(c)(ii)	<ul style="list-style-type: none"> • Show that the record consists of opinions, advice, recommendations or the results of consultations • Identify the House of the Oireachtas, the person or the committee listed in sub-paragraphs (I) or (II) that considered such information in the record • Show that the information in the record was considered for the purposes of : <ul style="list-style-type: none"> ○ the proceedings at a sitting of the House of the Oireachtas (sub-paragraph (I)) or ○ the proceedings at a meeting of the committee (sub-paragraph (II))
31(2)	<ul style="list-style-type: none"> • Identify the relevant tribunal, body or individual • Show how the record relates to - <ul style="list-style-type: none"> a) the appointment / proposed appointment of the tribunal, body or individual or b) the business or proceedings of the tribunal, body or individual • Show that the request has been made at a time when <ul style="list-style-type: none"> ○ it is proposed to appoint the tribunal, body or individual or ○ the performance of the functions of the tribunal, body or individual has not been completed • Does the record relate to the general administration of, or of any offices of, the tribunal, body or individual concerned? If so, why has section 31(2) been applied?

Please read the Introduction – See [Introduction](#).

Section 32: Law Enforcement and Public Safety

Section	Information Required
32(1)(a)	<p>Section 32(1)(a) applies where access to the record could reasonably be expected to prejudice or impair the matters specified in sub-paragraphs (i) to (x) – thus, this is a ‘harm’ based exemption.</p> <p>In arriving at a decision to claim exemption under subsection (1)(a), a decision maker must, firstly, identify the potential harm to the functions covered by the exemption that might arise from disclosure and, having identified that harm, consider the reasonableness of any expectation that the harm will occur.</p> <ul style="list-style-type: none"> • State which sub-paragraph of section 32(1)(a) is being relied on for the refusal to grant access to each record, i.e. sub-paragraph (i), (ii), (iii), (iv), (v), (vi), (vii),(viii), (ix) or (x). • In respect of the relevant sub-paragraph being relied on, please provide the details requested below in relation to each record : <ul style="list-style-type: none"> (i) identify: <ul style="list-style-type: none"> - the particular function or - the particular lawful methods, systems, plans or procedures concerned; (ii) identify the relevant law and clarify whether it is the enforcement of, the compliance with or the administration of that law that is concerned (iii) describe the lawful methods, systems, plans or procedures concerned (iv) identify the proceedings and the court or tribunal concerned (v) if not evident from the record, identify the penal institution concerned (see also section 32(4)) (vi) if not evident from the record, identify the children detention school concerned (vii) if not evident from the record, identify the remand centre concerned (viii) n/a (ix) identify the building, structure, vehicle, ship, boat or aircraft concerned (x) identify the system of communications concerned. • Describe the nature of the prejudice or impairment expected (the harm). • Explain <u>how</u> the release of the particular record is expected to cause the harm identified. • Explain why you consider that the harm identified could reasonably be expected to occur. • Please also answer the question at section 32(3) below.

32(1)(b)	<ul style="list-style-type: none"> • Explain how the release of the particular record is expected to cause the life or safety of any person to be endangered. • Explain why you consider that such endangerment could reasonably be expected to occur. • Please also answer the question at section 32(3) below
32(1)(c)	<ul style="list-style-type: none"> • Show <u>how</u> the release of the record is expected to facilitate the commission of an offence. • Indicate the nature of the relevant offence concerned. • Explain why you consider such facilitation could reasonably be expected to occur. • Please also answer the question at section 32(3) below.
32(2)	<p><u>To be asked only where section 32(2) has been relied on</u></p> <ul style="list-style-type: none"> • Explain how disclosure of the existence or non-existence of the record (as opposed to disclosure of the actual contents of the record) would have an effect specified in paragraph (a),(b) or (c) of subsection (1).
32(3)	<ul style="list-style-type: none"> • Does the record disclose that an investigation for the purpose of the enforcement of any law, or anything done in the course of such an investigation or for the purposes of the prevention or detection of offences or the apprehension or prosecution of offenders, is not authorised by law or contravenes any law? • Does the record contain information concerning the performance of the functions of an FOI body whose functions include functions relating to the enforcement of law or the ensuring of the safety of the public? • Does the record contain information concerning the merits/success or otherwise of any programme, scheme or policy of an FOI body for preventing, detecting or investigating contraventions of the law or the effectiveness or efficiency of the implementation of any such programme, scheme or policy by an FOI body? <p>If the answer to any of these questions is Yes:</p> <ul style="list-style-type: none"> - what public interest factors in favour of release of the record were considered and what public interest factors against release of the record were considered? - explain why you concluded that, on balance, the public interest would not be better served by granting this request.

Please read the Introduction – See [Introduction](#).

Section 33: Security, Defence and International Relations

Section	Information Required
Section 33(1)	<ul style="list-style-type: none"> • State which paragraph of section 33(1) is being relied on for the refusal to grant access to each record, i.e. paragraph (a), (b), (c) or (d) • In respect of the relevant paragraph relied on (and listed below), identify the adverse effect expected on : <ol style="list-style-type: none"> a) the security of the State b) the defence of the State c) matters relating to Northern Ireland d) the international relations of the State • Explain <u>how</u> the release of the particular record is expected to cause the adverse effect (harm) identified. • Explain why you consider that this adverse effect (harm) could reasonably be expected to occur. <p style="text-align: center;"><u>To be asked only where section 33(4) has been relied on:</u></p> <ul style="list-style-type: none"> • Explain how disclosure of the existence or non-existence of the record (as opposed to disclosure of the actual contents of the record) would prejudice a matter referred to in subsection (1).
33(2)	<p>If, in your view, the record falls within section 33(2), but <u>does not fall within section 33(2)(b)(i) or (ii)</u>, please provide the information sought below. Please also ensure that you have answered the questions at section 33(1) above.</p> <p>A. Show that the information contained in the record relates to the tactics, strategy or operations of the Defence Forces</p> <p>OR</p> <p>B. Show that the record contains:</p> <ul style="list-style-type: none"> • a communication between a Minister of the Government or his or her Department or Office and a diplomatic mission or consular post in the State, or of the State, or • a communication between the Government or an officer of a Minister of the Government (or another person acting on behalf of such a Minister) and another government (or a person acting on behalf of another government) <p style="text-align: right;">Section 33(2) contd. over/</p>

<p>33(2)(b)(i) and (ii)</p>	<p>If, in your view, the record falls within section <u>33(2)(b)(i) or (ii)</u> identify the relevant provision and -</p> <ul style="list-style-type: none"> • Show that the record contains: <ul style="list-style-type: none"> ○ a communication between a Minister of the Government or his or her Department or Office and a diplomatic mission or consular post in the State, or of the State, or ○ a communication between the Government or an officer of a Minister of the Government (or another person acting on behalf of such a Minister) and another government (or a person acting on behalf of another government) <p><u>AND</u></p> <ul style="list-style-type: none"> • Show that the information: <ul style="list-style-type: none"> ○ was communicated in confidence, or ○ relates to negotiations between the State and the other state in question, or ○ relates to negotiations in relation to such a state, or ○ is a record of that other state containing information the disclosure of which is prohibited by that state, <p><u>or</u></p> <ul style="list-style-type: none"> • Show that the record contains analysis, opinions, advice, recommendations and the results of consultations or is information the release of which could reasonably be expected to affect adversely the international relations of the State
<p>33(3)</p>	<ul style="list-style-type: none"> • State which paragraph of section 33(3) is being relied on for the refusal to grant access to each record and (where applicable) state the relevant sub-paragraph, i.e. paragraph (a), (b), (c)(i), (c)(ii) or (c)(iii) • Please also provide the information sought below with regard to that paragraph/sub-paragraph
<p>33(3)(a)</p>	<ul style="list-style-type: none"> • Show that the information in the record was obtained or prepared for the purpose of intelligence in respect of the security or defence of the State
<p>33(3)(b)</p>	<ul style="list-style-type: none"> • Show that the information contained in the record relates to the detection, prevention or suppression of activities calculated or tending to undermine the public order or the authority of the State (see section 2 of the Offences against the State Act 1939)

33(3)(c)(i)	<ul style="list-style-type: none"> • Show that the record contains information communicated in confidence • If not evident from the record, clarify the person(s) to whom and from whom the information was communicated and whether such person was in or outside the State • Show that the information relates to <ul style="list-style-type: none"> ○ the security of the State, or ○ the defence of the State, or ○ matters relating to Northern Ireland, or ○ the international relations of the State, or ○ the protection of human rights • Show that the information was expressed to be confidential or to be communicated in confidence by the person from whom it was communicated
33(3)(c)(ii)	<ul style="list-style-type: none"> • Show that the record contains information communicated in confidence, <u>and</u> <p>Show either A <u>or</u> B <u>or</u> C:</p> <p>A.</p> <ul style="list-style-type: none"> • Show that the information was communicated from, to or within an international organisation of states (or a subsidiary organ of such an organisation) or an institution or body of the European Union • If not evident from the record concerned, please identify the organisation, organ, institution or body concerned <p style="text-align: center;">OR</p> <p>B.</p> <ul style="list-style-type: none"> • Show that the information relates to negotiations between the State and such an organisation, organ, institution or within or in relation to such an organisation, organ, institution or body • If not evident from the record concerned, please identify the organisation, organ, institution or body concerned <p style="text-align: center;">OR</p> <p>C.</p> <ul style="list-style-type: none"> • Show that the record concerned is a record of such a body and show that the information contained in the record is prohibited from disclosure by the organisation, organ, institution or body • If not evident from the record concerned, please identify the organisation, organ, institution or body concerned

33(3)(c)(iii)	<ul style="list-style-type: none">• Show that the record contains information communicated in confidence.• Show that the information concerned relates to planning for, responses to, threats or incidents in respect of network and information security.

Please read the Introduction – See [Introduction](#).

Section 35: Information Obtained in Confidence

Section	Information Required
35(2)	<p>Section 35(2) states that the exemption at 35(1) does not apply to certain records prepared by a member of staff of an FOI body or a service provider. Please therefore answer these questions related to section 35(2).</p> <ul style="list-style-type: none"> • Was the record prepared by a head, director or member of staff of an FOI body or a service provider in the course of the performance of his/her functions? <p>If the answer to the Question above is No – please proceed to the relevant Question below relating to the paragraph of section 35(1) being relied on in this case.</p> <p>If the answer to the Question above is Yes –</p> <ul style="list-style-type: none"> • Show (having regard to the relevant questions at section 35(1)(b) below) that disclosure of the information contained in the record would constitute a breach of a duty of confidence that is provided for by: <ul style="list-style-type: none"> ○ an agreement or ○ statute or ○ otherwise by law <p>AND</p> <ul style="list-style-type: none"> • Identify the person to whom the duty of confidence is owed and show that such person is not : <ul style="list-style-type: none"> ○ an FOI body, head or director or member of staff of an FOI body or ○ a service provider as defined in section 2 <p>Please now proceed to the relevant Question below relating to the paragraph of section 35(1) being relied on in this case.</p>
35(1)(a)	<ul style="list-style-type: none"> • Show <u>all</u> of the following – <ul style="list-style-type: none"> ○ that the information contained in the record was given to an FOI body in confidence, and ○ that it was given on the understanding that it would be treated by the FOI body as confidential, and ○ that the disclosure of the information would be likely to prejudice the giving to the FOI body of further similar information from the same person or other persons, and ○ that it is of importance to the body that such further similar information should continue to be given to it. • What public interest factors in favour of release of the record and what public interest factors against release of the record were considered? • Explain why you concluded that, on balance, the public interest would not be better served by granting this request.

35(1)(b)	<ul style="list-style-type: none"> • Clarify whether, in your view, disclosure of the information contained in the record would constitute a breach of a duty of confidence provided for by: <ul style="list-style-type: none"> ○ a provision of an agreement or ○ a provision of an enactment or ○ otherwise by law. • If the duty of confidence concerned is provided for by a provision of an agreement, <ul style="list-style-type: none"> ○ provide details of the agreement and the particular provision concerned and furnish a copy of the agreement or other relevant supporting information as appropriate and ○ explain how disclosure of the information would constitute a breach of that duty of confidence. • If the duty of confidence concerned is provided for by a provision of an enactment, <ul style="list-style-type: none"> ○ identify the legislation and the particular provision concerned ○ confirm that it is not a provision specified in column (3) in Part 1 or 2 of Schedule 3 of the FOI Act and ○ explain how disclosure of the information would constitute a breach of that duty of confidence. • If the duty of confidence concerned is provided for otherwise by law, please note that the Commissioner accepts that an equitable duty of confidence is comprehended by this provision and that the necessary elements required to establish a breach of an equitable duty of confidence in most cases are: <ul style="list-style-type: none"> a) the information has the necessary quality of confidence, b) it was imparted in circumstances imposing a duty of confidence and c) disclosure would be an unauthorised use of that information to the detriment of the party communicating it. <ul style="list-style-type: none"> ○ Show that each of the elements at a), b) and c) above are met
35(4)	<p><u>To be asked only where section 35(4) has been relied on</u></p> <ul style="list-style-type: none"> • Please show that the request relates to a record to which subsection (1) applies • Show that subsections (2) and (3) do not apply to the record, or would not, if the record existed, apply • Explain clearly how disclosure of the existence or non-existence of the record (as opposed to disclosure of the actual contents of the record) would have an effect specified in subsection (1).

Please read the Introduction – See [Introduction](#).

Section 36: Commercially Sensitive Information

Section	Information Required
	<u>NOTE: the word ‘person’ includes a company</u>
36(2)	<p>If the answer to <u>any</u> of the questions (a) to (e) below is Yes, please note that an FOI body shall grant the request (section 36(2) refers).</p> <p>If the answer to <u>all</u> of the questions (a) to (e) below is No, please confirm your response to each question and then proceed and answer those further question(s) below which relate to the provision relied on in this case.</p> <p>(a) Has the person to whom the record relates consented to the record being released to the requester in this case? If so, has the identity of the requester and the consent of the person to whom the information relates been established to your satisfaction?</p> <p>(b) Is information of the same kind as the information in the record in respect of persons generally (or in respect of a class of persons of a significant size) available to the general public?</p> <p>(c) Does the record relate only to the requester? If so, has the identity of the requester been established to your satisfaction?</p> <p>(d) Was the information in the record given to you by the person to whom it relates? If so, was the person informed on your behalf, before the information was given, that the information belongs to a class of information that would, or might be, made available to the general public?</p> <p>(e) Is disclosure of the information necessary in order to avoid a serious and imminent danger to the life or health of an individual or to the environment?</p>
36(1)(a)	<ul style="list-style-type: none"> Explain the reasons why you concluded that the record contains trade secrets and provide details of the factors in this case which were deemed relevant to your decision in that regard.

36(1)(b)	<ul style="list-style-type: none"> Identify the relevant information (financial, commercial, scientific, or technical or other) contained in the record and identify the person to whom it relates <p><u>and</u></p> <ul style="list-style-type: none"> Please also answer either (1) or (2) below (or both, if in your opinion both aspects of 36(1)(b) apply) <ol style="list-style-type: none"> Identify the material financial loss or gain which is expected to result to the person to whom the information relates <u>and</u> show how disclosure of the relevant information in the record could reasonably be expected to cause that result <p style="text-align: center;">AND / OR</p> <ol style="list-style-type: none"> Describe how the competitive position of the person to whom the information relates could be prejudiced by the disclosure of the relevant information
36(1)(c)	<ul style="list-style-type: none"> Describe the relevant contractual or other negotiations of the person concerned <p><u>and</u></p> <ul style="list-style-type: none"> Show how disclosure of the relevant information could prejudice the conduct or outcome of those negotiations
36(3)	<ul style="list-style-type: none"> Provide details of the public interest factors in favour of release of the record and the public interest factors against its release which you considered in this case. <p><u>and</u></p> <ul style="list-style-type: none"> Explain why you concluded that, on balance, the public interest would not be better served by granting this request.
36(4)	<p><u>To be asked only where section 36(4) is being relied on.</u></p> <ul style="list-style-type: none"> Show that the FOI request relates to a record to which subsection (1) applies Show that subsections (2) and (3) do not apply to the record or would not, if the record existed, apply Explain clearly how disclosure of the existence or non-existence of the record (as opposed to disclosure of the actual contents of the record) would have an effect specified in subsection (1).

Please read the Introduction – See [Introduction](#).

Section 37: Personal Information

Section	Information Required
37(2)	<p>Please satisfy yourself that the answer to all the questions (a) to (e) below is NO before proceeding to consider section 37(1).</p> <p>(a) Does the information relate <u>solely</u> to the requester in this case? If so, has the identity of the requester been established to your satisfaction? [Note : If the information relates to the requester but also relates to one or more other individuals, please answer the question at section 37(7) below and also provide the information sought at paragraphs (b) to (e) and sections 37(5) and 37(8) below in relation to the other individual(s) concerned.]</p> <p>(b) Has any individual to whom the information relates consented to the disclosure of the information to the requester in this case? If so, has the identity of the requester and the consent of the person to whom the information relates been established to your satisfaction?</p> <p>(c) Is information of the same kind as the information in the record in respect of individuals generally (or in respect of a class of individuals of significant size) available to the general public?</p> <p>(d) Was the information given to you by the individual to whom it relates? If so, was the individual informed on your behalf before giving the information that it belongs to a class of information that would, or might be, made available to the general public? (Where the individual was so informed, please provide the relevant details)</p> <p>(e) Is disclosure of the information necessary in order to avoid a serious and imminent danger to the life or health of an individual? If so, please provide details.</p>
37(1)	<ul style="list-style-type: none"> • Specify the information in the record which, in your view, is personal information and identify the individual(s) to whom it relates • Explain why you concluded that the information is personal information (In doing so, please have regard to the definition of personal information in section 2 of the Act).

<p>37(3)/ 37(4)</p>	<p><u>This question is only to be asked where section 37(3) has been relied on:</u></p> <ul style="list-style-type: none"> • If it is not apparent from the record itself, explain the basis on which you have concluded that the record is of a medical or psychiatric nature or is a social work record relating to the requester • Explain the basis on which you have concluded that disclosure of the information to the requester might be prejudicial to his/her physical or mental health, well-being or emotional condition • Does the decision which issued to the requester offer access to the record to such health professional having the relevant expertise as the requester may specify as required by subsection (4)? • Has the requester asked that access be given to such a health professional and, if so, has such access been offered? Please provide copies of the relevant communications in this regard.
<p>37(5)(a)</p>	<ul style="list-style-type: none"> • Please provide details of the public interest factors in favour of release and the public interest factors against release considered in this case • Explain the basis on which you decided that the public interest that the request should be granted does not outweigh the public interest that the right to privacy of the individual to whom the information relates should be upheld
<p>37(5)(b)</p>	<ul style="list-style-type: none"> • Please explain why, in your opinion, granting access to the record would not benefit the individual to whom the record relates.
<p>37(6)</p>	<p><u>To be asked only where section 37(6) has been relied on :</u></p> <ul style="list-style-type: none"> • Explain the basis on which it was concluded that the record sought is of a type which discloses personal information of a third party and which, on the face of it, is exempt from release by virtue of section 37(1) • Please ensure that you have answered the questions concerning s37(2) and s37(5) above in relation to the record or, where the relevant records do not exist, show that none of the exceptions to section 37(1), contained in section 37(2) or (5) of section 37, would apply if such a record did exist. • Explain how disclosure of the existence or non-existence of the record (as opposed to disclosure of the actual contents of the record) would involve the disclosure of personal information

37(7)	<p><u>To be asked only where the record discloses joint personal information.</u></p> <ul style="list-style-type: none"> • Please ensure that questions relating to section 37(2)(b) to (e) and 37(5) above and, where relevant, section 37(8) below are also addressed in relation to the information which relates to individual(s) other than the requester. • Specify the information in the record which, in your view, is personal information about an individual or individuals other than the requester and identify, in so far as possible, the individual(s) concerned • Explain why you concluded that such information is personal information (In doing so, please have regard to the definition of personal information in section 2 of the Act).
<p><u>The following questions are to be asked only where the record discloses personal information relating to a minor or an incapacitated or deceased person (Section 37(8)).</u></p>	
37(8)(a)	<p>[To be asked <u>only</u> where the request has been made by the parent/ guardian of the individual and only where relevant / appropriate].</p> <ul style="list-style-type: none"> • Provide the information at either A) or B) below, as appropriate: A) If the individual to whom the information relates has not attained full age, please confirm his/her date of birth. OR B) If the individual to whom the record relates is an individual of full age who is incapable of exercising his/her rights under the FOI Act as specified in the Regulations*, please show that the individual falls within the class specified at Regulation 5(b)* (i.e. that s/he has, or is subject to, a psychiatric condition, mental incapacity or severe physical disability, the incidence and nature of which are certified by a registered medical practitioner and that, by reason of that condition, incapacity or disability, the individual is incapable of exercising his/her rights under the Act). • Please explain the basis on which you concluded that the requester is the parent or guardian of the individual to whom the record relates. • Explain the reason for your decision by reference to the relevant Regulations* and furnish any information provided by the requester in connection with this request. • If you concluded that granting the request would not be in the best interests of the minor / individual concerned, please explain the reasons for this conclusion and provide details of

	<p>any circumstances and any other matters which were considered relevant in making your decision in this regard.</p> <ul style="list-style-type: none"> • Confirm whether, during the course of your decision-making in this case, it was considered appropriate to consult with any person regarding the release of the record and explain the reasons for your view in this regard. If any consultations took place, please provide details of the consultations and provide copies of any relevant communication. <p>*(Freedom of Information Act 2014 (Section 37(8)) Regulations 2016, S.I. 218 of 2016.)</p>
37(8)(b)	<p><u>[To be asked only where the individual to whom the record relates is dead and only where relevant / appropriate.]</u></p> <ul style="list-style-type: none"> • If not apparent from the records, please show the basis on which it was claimed or you concluded that the individual is dead • Furnish any information provided by the applicant in connection with this request. • Please provide the information sought at (a) or (b) or (c) below, as appropriate to the circumstances of this case. <ul style="list-style-type: none"> (a) Is the requester a personal representative of the individual (or someone acting with the consent of a personal representative)? <ul style="list-style-type: none"> - If so, is the personal representative acting in due course of administration of the estate? - Please explain the basis for your conclusions in this regard and provide any relevant information. <p>OR</p> <ul style="list-style-type: none"> (b) Is the requester a person on whom a function is conferred by law in relation to the deceased individual or his/her estate? <ul style="list-style-type: none"> - If so, is s/he acting in the course of the performance of that function? - Please explain the basis for your conclusions in this regard and provide any relevant information. <p>OR</p> <ul style="list-style-type: none"> (c) Is the requester the spouse or the next of kin of the individual as defined in the Regulations*? <ul style="list-style-type: none"> - If so, please explain the basis for your conclusion in this regard. <p style="text-align: right;">Section 37(8)(b) contd. see over/</p>

	<ul style="list-style-type: none">- If relevant, explain why you concluded that the public interest (including the public interest in the confidentiality of personal information) would not, on balance, be better served by granting the request than by refusing it. Provide details of the public interest factors taken into account in making your decision and provide details of any circumstances and/or any other matters to which you had regard in this respect. - If relevant, provide details of any consultations which took place in relation to the release of the record(s) and provide copies of any relevant communications in this regard. <p>*(Freedom of Information Act 2014 (Section 37(8)) Regulations 2016, S.I. 218 of 2016 as amended by the Freedom of Information Act 2014 (Sections 9(6), 10(6) and 37(8)) Regulations 2016, S.I. 558 of 2016.)</p>

Please read the Introduction – See [Introduction](#).

Section 39: Research and Natural Resources

Section	Information Required
39(1)(a)	<ul style="list-style-type: none"> • Please show that the record contains information in relation to research and identify the relevant research concerned • Show that such research is being or is to be carried out by or on behalf of an FOI body • Is such research completed? If not, please indicate when such research is expected to be completed • Identify and describe the serious disadvantage to which the body, researcher or subject matter is, in your view, likely to be exposed by disclosure of the information • Identify the body, researcher or subject matter which, in your view, is likely to be exposed to such serious disadvantage • Show how disclosure of the information in the record (or its disclosure before completion of the research) would be likely to result in that serious disadvantage. What is it about the information which, if disclosed, would be likely to cause that harm? • Explain why, in your opinion, such serious disadvantage would be likely to occur.
39(1)(b)	<ul style="list-style-type: none"> • Please identify the relevant cultural, heritage or natural resource or the species, or habitat of a species, of flora or fauna whose well-being is expected to be prejudiced • Identify and describe the prejudice expected • Show how disclosure of the information in the record is expected to result in that prejudice? • Explain clearly why, in your opinion, the harm could reasonably be expected to occur.
39(2)	<ul style="list-style-type: none"> • Provide details of the public interest factors in favour of release of the record and the public interest factors against its release which you considered. • Explain why you concluded that, on balance, the public interest would not be better served by granting this request.

Please read the Introduction – See [Introduction](#).

Section 40: Financial and Economic Interests of the State

Section	Information Required
40(1)(a)	<ul style="list-style-type: none"> • Describe the <u>adverse effect</u> on the ability of the Government to manage the <u>national economy</u> or on the financial interests of the State which is expected • Explain why you expect the adverse effect to be serious • Explain <u>how</u> access to the particular record in this case is expected to cause the serious adverse effect expected • Explain why you consider that the serious adverse effect identified could reasonably be expected to occur.
40(1)(b)	<ul style="list-style-type: none"> • Please describe the undue disturbance of the ordinary course of business generally, or any particular class of business, in the State expected • Explain why access to the record would involve the disclosure of information contained in the record which would be <u>premature</u> • Explain <u>how</u> such premature disclosure of the information in the record is expected to result in the undue disturbance concerned • Explain why you consider that the undue disturbance could reasonably be expected to occur
40(1)(c)	<ul style="list-style-type: none"> • Please specify which of the following is expected to be negatively impacted: <ul style="list-style-type: none"> ○ decisions by enterprises to invest or expand in the State, or ○ the research activities of those enterprises, or ○ the effectiveness of the industrial development strategy of the State, particularly in relation to the strategies of other states • Describe the negative impact expected • Explain <u>how</u> access to the record is expected to result in the negative impact expected • Explain why you consider that the negative impact identified could reasonably be expected to occur

Section 40(1) contd. over/

40(1)(d)	<ul style="list-style-type: none"> • Please describe the unwarranted benefit or loss to a person or class of persons expected • Explain <u>how</u> access to the particular record in this case is expected to result in the unwarranted benefit or loss concerned • Explain why you consider that the unwarranted benefit or loss could reasonably be expected to occur
40(2)	<ul style="list-style-type: none"> • Does the record relate to any of the matters listed in paragraphs (a) to (r) of subsection (2)? If so, please identify the relevant matter and paragraph of subsection (2) and, if not readily apparent, please explain how the record relates to the particular matter concerned. <p>(Please note that even if the record relates to a matter listed in subsection (2), an FOI body may invoke section 40(2) only in conjunction with section 40(1). Thus, the FOI body must still show that section 40(1) applies. Please also note that, even if the record does not relate to a matter listed in subsection (2), section 40 may still apply provided that the requirements of subsection (1) are met.)</p>
40(3)	<ul style="list-style-type: none"> • What public interest factors in favour of release of the record were considered? • What public interest factors against release of the record were considered? • Please explain why you concluded that, on balance, the public interest would not be better served by granting this request

Please read the Introduction – See [Introduction](#).

Section 41: Enactments relating to Non-Disclosure of Records

Section	Information Required
41(1)(a)	<ul style="list-style-type: none">• Please specify the law of the European Union or the enactment (by name, year etc), including its relevant provision(s), which, in your view, prohibits the disclosure of the record• Confirm that the provision is not referred to in column (3) of Part 1 or 2 of Schedule 3 of the FOI Act• Explain how, in your view, the disclosure of the record in this case is prohibited by the law or enactment concerned (i.e. explain how the provision encompasses the record in this case)
41(1)(b)	<ul style="list-style-type: none">• Please specify the relevant enactment which, in your view, authorises non-disclosure of the record in certain circumstances• Confirm that the relevant provision is not referred to in column (3) of Part 1 or 2 of Schedule 3 of the FOI Act• Please explain why, in your view, this is a case where the non-disclosure of the record is authorised by that enactment in certain circumstances and that the case is one in which the FOI body would refuse to disclose the record pursuant to the enactment.

Please read the Introduction – See [Introduction](#).

Section 42: Restriction of Act

Section	Information Required
42(a)	<ul style="list-style-type: none"> • If not evident from the record, please show that the record is held by the courts, or by a service tribunal within the meaning of section 161 of the Defence Act 1954 • Show that the record relates to, or to proceedings in, a court or such a tribunal • Does the record relate to proceedings held in a court or such a tribunal in public? If so show- <ul style="list-style-type: none"> ○ that the record was created by the court or tribunal, or ○ that disclosure of the record to the general public is prohibited by the court or tribunal Provide any relevant supporting information available in this regard. • Explain why, in your view, the record does not relate to the general administration of the courts or the tribunal or their respective offices
42(b)	<ul style="list-style-type: none"> • If it is not evident from the record, please show that the record is held or was created by the Garda Síochána and relates to any of the matters listed in sub- paragraphs (i) to (x) of section 42(b)
42(c)	<ul style="list-style-type: none"> • If it is not evident from the record, please show that the record is : <ul style="list-style-type: none"> ○ held by the Criminal Assets Bureau, or ○ held by the Defence Forces, and relates to one of the provisions listed at (I) to (VII) of section 42(c)(ii), or ○ held by the Independent Commission for the Location of Victims' Remains, or ○ held by the Independent Monitoring Commission
42(d)	<ul style="list-style-type: none"> • Please show that the record relates to an inquiry within the meaning of section 42 of the Garda Síochána Act 2005 • Confirm who holds the record at this point in time- <ul style="list-style-type: none"> ○ Is it held by the persons conducting the inquiry? ○ If the inquiry has been dissolved, is it held by any other body having custody of the record? • Show that the record is not a record relating to: <ul style="list-style-type: none"> ○ the appointment of a person to conduct an inquiry under section 42 of the Garda Síochána Act 2005, and ○ the expenses or other matters concerning the general administration of such an inquiry.

42(e)	<p>Please provide the information sought at</p> <ul style="list-style-type: none"> - either A <u>or</u> B, as appropriate, <u>and</u> - please also provide the information sought at 1), 2) and 3) below. <p>A.</p> <ul style="list-style-type: none"> ○ If it is not evident from the record, please show that the record relates to an inquiry into any matter by a tribunal to which the Tribunals of Inquiry (Evidence) Act 1921, applies ○ Show that the record <ul style="list-style-type: none"> - is held by the tribunal of inquiry, or - is deposited with a person, or at a place, in compliance with the requirements of a notice under section 46(1) of the Civil Law (Miscellaneous Provision) Act 2011 given to the chairman or former chairman of the tribunal of inquiry <p style="text-align: center;"><u>OR</u></p> <p>B.</p> <ul style="list-style-type: none"> ○ If it is not evident from the record, please show that the record relates to an investigation by a commission of investigation within the meaning of the Commissions of Investigation Act 2004 ○ Show that the record is held by <ul style="list-style-type: none"> - the commission of investigation, - the specified Minister after being deposited with him or her under section 43(2) of the Commissions of Investigation Act 2004, - a tribunal of inquiry after being made available to it under section 45 of that Act, or - a body after being transferred to it on the dissolution of a tribunal of inquiry to which the record was made available under section 45 of that Act, <p><u>AND</u></p> <ol style="list-style-type: none"> 1) If not evident from the record, please show that the record was not created before the appointment of the tribunal or the establishment of the commission, 2) Explain why, in your view, the record does not relate to the expenses of, or other matters concerning, the general administration of the tribunal or commission 3) Show that the record does not relate to the appointment of persons under section 7 or 8 of the Commissions of Investigation Act 2004
42(f)	<ul style="list-style-type: none"> • Please show that the record is held or was created by the Attorney General, the Director of Public Prosecutions (DPP), the Office of the Attorney General or the Office of the DPP • Explain why, in your view, the record does not relate to general administration

42(g)	<ul style="list-style-type: none"> • Please show that the record relates to an audit, inspection, investigation or examination carried out by the Comptroller and Auditor General (C&AG) under the relevant legislation referred to in paragraph (g) • If not evident from the record, please show that it was not created before the commencement of the investigation, audit, inspection or examination • Explain why, in your view, the record does not relate to the general administration of the Office of the C&AG
42(h)	<ul style="list-style-type: none"> • Please show that the record relates to the President
42(i)	<ul style="list-style-type: none"> • Please show that the record is held by the Central Bank of Ireland and • Show that the disclosure of the record is prohibited by the following (and specify the relevant provision concerned): <ul style="list-style-type: none"> ○ the Rome Treaty, ○ the ESCB Statute, or ○ any of the Supervisory Directives within the meaning of the Central Bank Act 1942
42(j)	<ul style="list-style-type: none"> • Please show that the record was given to a member of the Government or a Minister for State • Show that it was given to such a person by an FOI body • Show that it was given for the purposes of proceedings in either House of the Oireachtas, or any committee (or any subcommittee of a committee) of either or both Houses. In doing so, please identify the relevant proceedings concerned and, where the proceedings relate to Parliamentary Questions, please identify the relevant Parliamentary Question(s) concerned.
42(k)	<ul style="list-style-type: none"> • Please show that: <ul style="list-style-type: none"> ○ the record relates to the private papers (see Article 15.10 of the Constitution) of a member of either House of the Oireachtas and that it is required by the rules or standing orders of either or both such Houses to be treated as confidential OR <ul style="list-style-type: none"> ○ the record is an official document of either or both Houses of the Oireachtas and that it is required by the rules or standing orders of either or both such Houses to be treated as confidential AND <ul style="list-style-type: none"> • Identify the rule or standing order that you are relying on which requires the record to be treated as confidential.

42(l)	<ul style="list-style-type: none"> • Please show that the record relates to any private paper or confidential communication within the meaning of Part 10, or official document within the meaning of Part 11, of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 • Has any consent been lawfully given for the disclosure of the record?
42(m)	<p>Please show that the record relates to information which could reveal, or lead to the revelation of, the identity of a person, who provided information to an FOI body, or any other source of information provided to an FOI body, or where such information is otherwise in its possession</p> <ul style="list-style-type: none"> • Explain why you consider that the revelation of that identity or source could reasonably be expected to occur. • Show that the information was provided to the FOI body in confidence • Show that the information provided related to the enforcement or administration of the law (in doing so please identify the law concerned)