

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?