

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

### Section 36: Commercially Sensitive Information

Section	Information Required
	<b><u>NOTE: the word ‘person’ includes a company</u></b>
36(2)	<p>If the answer to <u>any</u> of the questions (a) to (e) below is <b>Yes</b>, 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 <b>No</b>, 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"> <li>• Explain the reasons why you concluded that the record contains <b>trade secrets</b> and provide details of the factors in this case which were deemed relevant to your decision in that regard.</li> </ul>

36(1)(b)	<ul style="list-style-type: none"> <li>Identify the relevant information (financial, commercial, scientific, or technical or other) contained in the record and identify the person to whom it relates</li> </ul> <p><u>and</u></p> <ul style="list-style-type: none"> <li>Please also answer either (1) or (2) below (or both, if in your opinion both aspects of 36(1)(b) apply)</li> </ul> <p>(1) 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> <p>AND / OR</p> <p>(2) Describe how the competitive position of the person to whom the information relates could be prejudiced by the disclosure of the relevant information</p>
36(1)(c)	<ul style="list-style-type: none"> <li>Describe the relevant contractual or other negotiations of the person concerned</li> </ul> <p><u>and</u></p> <ul style="list-style-type: none"> <li>Show how disclosure of the relevant information could prejudice the conduct or outcome of those negotiations</li> </ul>
36(3)	<ul style="list-style-type: none"> <li>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.</li> </ul> <p><u>and</u></p> <ul style="list-style-type: none"> <li>Explain why you concluded that, on balance, the public interest would not be better served by granting this request.</li> </ul>
36(4)	<p><u>To be asked only where section 36(4) is being relied on.</u></p> <ul style="list-style-type: none"> <li>Show that the FOI request relates to a record to which subsection (1) applies</li> <li>Show that subsections (2) and (3) do not apply to the record or would not, if the record existed, apply</li> <li>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).</li> </ul>