

Confidentiality work sheet

Important note

This summary work sheet will help you to decide whether there is good reason to withhold 'confidential information' under section 9(2)(ba) of the OIA / 7(2)(c) of the LGOIMA, because release would be likely to (i) prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied, or (ii) otherwise damage the public interest. More information on this withholding ground can be found in our [Confidentiality](#) guide.

1. Is the information 'confidential'?

- This section can only apply to 'confidential' information—meaning:
 - information that is subject to an obligation of confidence; or
 - information that has or could have been compelled under the authority of an enactment.
- **Subject to an obligation of confidence** means the information:
 - is confidential in nature—secret or known only to a limited group of people; not common knowledge or information in the public domain;
 - was communicated or generated in confidence—there was a shared understanding between the parties that the information would be kept confidential; this may be express or implied from the circumstances.
- **Compelled under the authority of an enactment** means the person had no choice, under the law, but to provide the information to the agency.
- If the information at issue is 'confidential', go on to consider whether release would be likely to:
 - prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied ([step 2](#)); and/or
 - otherwise damage the public interest ([step 3](#)).
- If the information at issue is not 'confidential', section 9(2)(ba) of the OIA (section 7(2)(c) of the LGOIMA) cannot apply. Either release the information, or consider whether another withholding ground applies. Guidance on other withholding grounds can be found [here](#).

<p>2. Section 9(2)(ba)(i): Would release prejudice the future supply of information in the public interest?</p>	<ul style="list-style-type: none"> • Would release be likely to prejudice the future supply of similar information, or information from the same source? There must be a serious or real and substantial risk—not one that is purely speculative. Consider: <ul style="list-style-type: none"> - The nature and content of the information - The third party’s views - Potential detriment to the third party - The impact on the relationship between the parties - Requirements for continued supply - Incentives for continued supply - The passage of time • Is the future supply of the information in the public interest? It will be in the public interest if it materially enhances the agency’s ability to carry out its statutory function or some other lawful public purpose. • If release would be likely to prejudice the future supply of confidential information and the future supply is in the public interest, section 9(2)(ba)(i) of the OIA (section 7(2)(c)(i) of the LGOIMA) will apply. Go on to consider the public interest in release (step 4).
<p>3. Section 9(2)(ba)(ii): Would release damage the public interest in some other way?</p>	<ul style="list-style-type: none"> • Would release be likely to damage the public interest in a way that doesn’t relate to the ongoing supply of information, or one of the other withholding grounds in the OIA? There must be a serious or real and substantial risk—not one that is purely speculative. • The public interest is broadly equivalent to the concept of the public good, or what is in the best interests of society. For examples of how the Ombudsman has accepted the public interest may be damaged through disclosure of confidential information see our Confidentiality guide. • If release would be likely to damage the public interest, section 9(2)(ba)(ii) of the OIA (section 7(2)(c)(ii) of the LGOIMA) will apply. Go on to consider the public interest in release (step 4).

4. Public interest	<ul style="list-style-type: none"> • Identify any public interest considerations in favour of disclosure, for example accountability for how agencies have made decisions and performed their functions, spent public money, and taken appropriate action when things go wrong. • Consider whether these outweigh the need to withhold the information at issue. If they do, the information must be released. Otherwise go to step 5.
5. Other ways of getting the balance right	<ul style="list-style-type: none"> • Consider whether there are any other ways to strike the right balance between the need to withhold and the public interest in release, including: <ul style="list-style-type: none"> - Releasing key documents e.g. final reports or executive summaries. - Release in part e.g redacting names and information that could be attributed to confidential sources. - Releasing a full and accurate summary of the information. • If this is not possible, go to step 6.
6. Consider whether to refuse the request	<ul style="list-style-type: none"> • If release would be likely to prejudice the future supply of confidential information or damage the public interest in some other way, and the need to withhold is not outweighed by the public interest in release, then it is open to the agency to refuse the request. • See our template Letter communicating the decision on a request.