

Commercial information work sheet

Important note

This summary work sheet is about the most commonly used grounds for withholding commercial information:

- section 9(2)(b)(ii) OIA / 7(2)(b)(ii) LGOIMA which provides good reason to withhold official information (subject to a public interest test) if, and only if, it is necessary to *‘protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information’*; and
- section 9(2)(i) OIA / 7(2)(h) LGOIMA which provides good reason to withhold official information (subject to a public interest test) if, and only if, it is necessary to *‘enable a Minister [or agency] holding the information to carry out, without prejudice or disadvantage, commercial activities’*.

Other withholding grounds may also be relevant, including sections 9(2)(b)(i) OIA / 7(2)(b)(i) LGOIMA (trade secrets), 9(2)(ba) OIA / 7(2)(c) LGOIMA (confidentiality) and 9(2)(j) OIA / 7(2)(i) LGOIMA (negotiations). For more detailed guidance on the withholding grounds see our [official information legislation guides](#).

<p>1. Whose interests are at stake?</p>	<ul style="list-style-type: none"> • If you are concerned about the commercial position of a third party other than the agency, go to step 2. • If you are concerned about the commercial activities of the agency, go to step 3.
<p>2. Does section 9(2)(b)(ii) OIA / 7(2)(b)(ii) LGOIMA apply?</p>	<ul style="list-style-type: none"> • Was the information supplied by the third party, or is it about them? • Does the third party have a commercial position? To have a commercial position they must be engaged in commercial activities. Commercial activities are ones carried out for the predominant purpose of generating profit or gain. • Would release be likely unreasonably to prejudice their commercial position? <ul style="list-style-type: none"> - Identify the nature of the prejudice. - Consider the likelihood of the prejudice. There must be a serious or real and substantial risk. Relevant factors include the nature and content of the information, the extent to which the information is in the public domain, the age and currency of the information, and the commercial context.

	<ul style="list-style-type: none"> - Consider whether the prejudice would be unreasonable. Prejudice that is minor or insignificant may not be unreasonable. Prejudice that is warranted or justified may not be unreasonable. • Consider consulting the third party before making a decision. Find detailed advice and template letters in our Consulting third parties guide. • Consider whether it is possible to release the information in part. • If section 9(2)(b)(ii) OIA / 7(2)(b)(ii) LGOIMA applies, go to step 4. Otherwise release the information (unless another withholding ground applies).
<p>3. Does section 9(2)(i) OIA / 7(2)(h) LGOIMA apply?</p>	<ul style="list-style-type: none"> • Is the agency engaged in commercial activities? Commercial activities are ones carried out for the predominant purpose of generating profit or gain. • Would release of the information at issue prejudice or disadvantage them in carrying out those activities? <ul style="list-style-type: none"> - Identify the nature of the prejudice or disadvantage. - Consider the likelihood of the prejudice or disadvantage. It should be so likely that withholding is reasonably necessary. Relevant factors include the nature and content of the information, the extent to which the information is in the public domain, the age and currency of the information, and the commercial context. • Consider whether it is possible to release the information in part. • If section 9(2)(i) OIA / 7(2)(h) LGOIMA applies, go to step 4. Otherwise release the information (unless another withholding ground applies).
<p>4. Apply the public interest test</p>	<ul style="list-style-type: none"> • Identify any public interest considerations in favour of disclosure, for example, transparency in procurement processes, accountability for spending public money, accountability for performing regulatory functions, and promoting public safety and consumer protection. • Consider whether these outweigh the need to withhold. • See Public interest—A guide to the public interest test in section 9(1) of the OIA and section 7(1) of the LGOIMA for more information.

5. Make a decision on the request

- If the public interest in disclosure outweighs the need to withhold, the information must be released. If it doesn't, then it is open to the agency to refuse the request.
- Before refusing in full, consider partial release, release of summary information, or release of other information, in recognition of the public interest considerations discussed above.
- See our [Template letter 6: Letter communicating the decision on a request](#).