

# Guidelines on Access to Evidence

Rule No. 356 of the Korea Fair Trade Commission  
Established on Dec. 3, 2020

## Chapter 1 General Provisions

Article 1 (Purpose) These guidelines are aimed at ensuring the respondent's right to defense and protecting the trade secrets of the person who submitted evidence to the Korea Fair Trade Commission (hereinafter referred to as the "KFTC"), while also securing fairness and transparency in the KFTC's deliberation process by specifying the procedures for accessing evidence pursuant to Article 52-2 of the "Monopoly Regulation and Fair Trade Act" (hereinafter referred to as the "Act").

Article 2 (Definitions) The terms used in these guidelines are defined as follows:

1. The term "evidence provider" means a person who submits evidence related to the case in writing, or by electronic file, audio recording, or any other manner to the KFTC during the investigation process.
2. The term "trade secrets" means secrets specified in subparagraph 2 of Article 2 of the "Unfair Competition Prevention and Trade Secret Protection Act."
3. The term "leniency documents" means materials associated with the leniency application under paragraph 3 of Article 22-2 of the Act.
4. The term "confidential information under other laws" means information subject to non-disclosure under the "Personal Information Protection Act," the "Official Information Disclosure Act," the "Protection of Public Interest Reporters Act," the "Act on Prevention of Divulgence and Protection of Industrial Technology," and other laws.
5. The term "public official in charge of access" means a person designated by the General Counsel among the public officials in the Office of General Counsel entrusted with tasks related to the access to evidence.
6. The term "restricted access to evidence" means the manner in which the KFTC

grants access to trade secrets under restricted conditions by determining the details such as the person, date and place for accessing evidence.

7. The term “chief commissioner” means a designated chief commissioner of the plenary session or the chair of the sub-committee meeting related to the relevant case.

Article 3 (Computing the Period of Time) Computing the period of time shall be governed by the provisions of Article 156 (Starting Point of Computing Period) to Article 161 (Holidays and Maturity Point of Period) of the Civil Act.

## **Chapter 2 The Respondent’s Request for Access to Evidence and the KFTC’s Decision**

Article 4 (Requests for Access) (1) Under Article 52-2 of the Act, the respondent may request access to evidence that the examiner did not disclose in the examiner’s report. In such cases, the respondent shall submit a request for access using Attachment 1, including the following information, to the General Counsel.

1. Case name, case number
2. The name (i.e. name of the corporation), address and telephone number of the respondent
3. Specific evidence that needs to be accessed
4. Reasons for requiring access
5. The period of time needed for restricted access to evidence
6. The name, affiliation, and relationship with the respondent of the person who will obtain access to evidence in the event of restricted access to evidence

(2) The chief commissioner may request supplementary information if the content of the document submitted by the respondent, pursuant to paragraph 1 above, is insufficient. The respondent may be denied access to evidence if they do not provide the required supplementary information within 5 days after the date of the request.

Article 5 (Opinions of the Evidence Provider) (1) The General Counsel shall allow the examiner to give the evidence provider an opportunity to submit an opinion letter with

Attachment 2 to the examiner.

(2) The examiner shall attach the opinion of the evidence provider and send their review to the General Counsel.

Article 6 (Permission for Access) (1) The KFTC shall allow the access to evidence when the respondent requests in accordance with paragraph 1 of Article 4 above, except for evidence falling under any of the following:

1. Trade secrets
2. Leniency documents
3. Confidential information under other laws

(2) The KFTC shall allow access to evidence if there is consent from the evidence provider except for evidence mentioned above in subparagraph 3 of paragraph 1.

(3) The KFTC may allow restricted access to evidence in cases where the evidence requested by the respondent pursuant to paragraph 1 of Article 4 falls under subparagraph 1 of paragraph 1.

(4) The chief commissioner shall make a decision as specified in paragraph 1 to 3, within 30 days of the date when the respondent requests access to evidence in reference to the examiner's review submitted pursuant to paragraph 2 of Article 5. If necessary, the chief commissioner may have the examiner, the respondent, or the evidence provider be present by designating a date and place or hear their opinions through written statements.

(5) When the chief commissioner is unable to reach a decision as described in the aforementioned paragraph, within the period specified in paragraph 4, due to unavoidable circumstances, the period can be extended within 10 days from the next day after the period ends. In this instance, the General Counsel shall promptly notify the respondent (limited to the respondent requesting access to evidence pursuant to Article 4; hereinafter the same shall apply) of the extension of period and the reason in writing.

(6) In the event that the chief commissioner reaches a decision pursuant to paragraph 4 above, the General Counsel shall promptly notify the respondent and the evidence provider of the decision.

### **Chapter 3 Restricted Access to Evidence**

Article 7 (Commencement of Restricted Access to Evidence) (1) A person granted restricted access to evidence pursuant to paragraph 3 of Article 6 (hereinafter referred to as the “person accessing evidence”) is limited to the respondent’s legal counsel excluding the respondent’s in-house counsel. When the respondent intends to change or add a person eligible to access evidence following notification pursuant to paragraph 6 of Article 6, the respondent shall submit a written statement to the General Counsel stating the reason, name, affiliation, and relationship with the respondent, of the person to be replaced or added and shall obtain permission from the chief commissioner.

(2) The date and time for restricted access to evidence shall be determined by the chief commissioner. The restricted access to evidence must commence within 10 days from the date of the decision made under paragraph 4 of Article 6 (the date of obtaining permission from the chief commissioner in the case of the latter part of paragraph 1). The period of access shall be determined by the chief commissioner within 2 weeks depending on the amount of evidence and difficulty of the analysis.

(3) The restricted access to evidence shall be conducted at a place determined by the chief commissioner. The KFTC may establish an evidence room for restricted access to evidence (hereinafter referred to as the “Evidence Room”) within the KFTC.

Article 8 (Operation of the Evidence Room) (1) The person accessing evidence shall submit the following documents to the public official in charge of access before entering the Evidence Room :

1. Pledge to Comply with the Rules of the Evidence Room (see Attachment 3)
2. Confidentiality pledge (with the consent letter and confirmation letter written and signed by the respondent, see Attachment 4)
3. A copy of the Non-Disclosure Agreement (only if the person accessing evidence has entered into a Non-Disclosure Agreement with the evidence provider)
4. Consent to the Collection and Use of Personal information (see Attachment 5)

(2) The public official in charge of access may request the person accessing evidence

to provide supplementary documentation pursuant to paragraph 1 above, if the public official in charge of access finds it inconsistent or insufficient. The chief commissioner may not allow for restricted access to evidence if the person accessing evidence fails to provide supplementary documents within 5 days of the date.

(3) The person accessing evidence shall submit a list of people who access evidence containing the following information daily to the public official in charge of access when entering the Evidence Room :

1. The access date and time
2. The name, phone number, and e-mail address of the person accessing evidence

(4) When entering the Evidence Room, the person accessing evidence shall present their ID to the public official in charge of access to confirm whether the person entering the Evidence Room is on the list of approved people pursuant to paragraph 3 above.

(5) The evidence can be made available in electronic form through a PC where communications with the outside is blocked.

Article 9 (Rules of the Evidence Room) (1) The person accessing evidence may not bring a mobile phone, laptop, camera, or any other electronic device into the Evidence Room.

(2) If necessary, the person accessing evidence may bring a copy of the examiner's report and other materials, in either paper or electronic files, necessary for reviewing evidence in the Evidence Room with the prior approval of the public official in charge of access. Such materials may not, under any circumstances, be taken out of the Evidence Room and shall be destroyed at the end of the access period.

(3) The person accessing evidence can take notes or print out the necessary evidence on numbered sheets of paper supplied by the KFTC. However, all the memos and printouts cannot be taken outside the Evidence Room and must be destroyed at the end of the access period.

(4) The person accessing evidence shall not take out any evidence in the Evidence Room or disclose any content thereof during the evidence access period (including any time they leave the Evidence Room).

(5) The Evidence Room will be operated at all times in the presence of the public official in charge of access, and the person accessing evidence must follow the instructions of the public official in charge of access.

Article 10 (Request to Move Out) In the event that any of the rules stipulated in Article 9 are not adhered to by any of the persons accessing evidence, all of those with access to evidence will be immediately requested to leave the Evidence Room, and the chief commissioner may terminate restricted access to evidence.

Article 11 (Preparation of a Report) (1) The person accessing evidence will be able to verify the existence, validity, appropriateness of evidence adopted by the examiner, or the accuracy of the analysis conducted by the examiner, and prepare a report with their findings derived from the assessment of the evidence.

(2) The person accessing evidence shall not enter trade secrets in the report specified in paragraph 1.

(3) The person accessing evidence shall submit their report to the chief commissioner following the conclusion of their access.

(4) The chief commissioner will review and approve the report written by the person accessing evidence to ensure that it does not contain any trade secrets. When it is determined that the report contains trade secrets, the chief commissioner can request that the relevant content be deleted or modified with appropriate expressions.

(5) The public official in charge of access shall send the report approved by the chief commissioner to the respondent within 7 days of the end of the access period.

(6) The person accessing evidence may prepare a separate, confidential version of the report stating trade secrets for the purpose of raising a dispute regarding the trade secrets themselves or explaining in more detail at the KFTC court. If the report is prepared, the chief commissioner may hear the opinions of the examiner, the person accessing evidence, or the evidence provider at a designated date and place. The confidential version of the report shall be disclosed only to the commissioners and public officials of the KFTC, and disclosure to any other party including the respondent is prohibited.

## **Chapter 4 Confidentiality and Sanctions for Violations**

Article 12 (Confidentiality) (1) The person accessing evidence shall not disclose or divulge trade secrets obtained through restricted access to evidence to the respondent or a third party.

(2) The respondent must never request nor receive any trade secrets derived from the Evidence Room by the person accessing evidence.

Article 13 (Sanctions for Violation of Confidentiality) (1) The chairperson of the KFTC shall request the Korean Bar Association to take disciplinary actions against those who violate Article 12.

(2) The chairperson of the KFTC shall order public officials to refrain from contacting a person who has violated Article 12 for 5 years.

Article 14 (Non-Disclosure Agreement) The chairperson of the KFTC may recommend that the person accessing evidence and the evidence provider sign a Non-Disclosure Agreement and use the relevant form (see Attachment 6).

## **Chapter 5 Administrative Matters**

Article 15 (Period of Validity) These guidelines are effective until December 31, 2023, when changes in laws or actual conditions after the issuance of these guidelines must be reviewed in accordance with the “Regulations on Issuance and Management of Ordinances and Rules, etc.”

Addenda <Act No. 356, Dec. 3, 2020>

These guidelines shall be effective as of December 3, 2020.

## Request for Access

<b>Respondent</b>	Name of Business Entity		Business Registration No.	
	Name of Representative		Corporation No.	(corporations Only)
	Address			
	Phone No.			
<b>Case Concerned</b>	Case name		Case No.	
<b>Requesting evidence</b>				
<b>Reason(s) for Request</b>				
<b>Restricted Access to evidence</b>	Period of time needed for Access		Name of the person who will access evidence	
	Affiliation of the person who will access evidence		Relationship between the person who will access evidence and the respondent	

I would like to request the access to evidence based on Article 52-2 of the “Monopoly Regulation and Fair Trade Act” and Article 4 of the “Guidelines on Access to Evidence.”

Date: \_\_\_\_ (Month) \_\_\_\_ (Day) \_\_\_\_\_ (Year)

Respondent : (signature or seal)  
Counsel : (signature or seal)

To: **Chairperson of the Korea Fair Trade Commission**

Enclosure: 1 copy of Power of Attorney



## Opinion of Evidence Provider

<b>Evidence Provider</b>	Business Name		Business Registration No.		
	Representative's Name		Corporation No.	(Only corporations)	
	Address				
	Contact Info	Name		Phone No. (Mobile Phone)	
Department			E-mail Address		
<b>Consent</b>	<p>Indicate whether you consent to the respondent's access to evidence for each piece of the evidence requested.</p> <p>If the evidence contains mixed information in which you consent to or disapprove of disclosure, please indicate so separately.</p>				
<b>Reason(s) for Disapproval</b>	<p>If the evidence belongs to either trade secrets, leniency documents, or confidential information under other laws, specifically indicate whether the evidence meets the conditions for non-disclosure.</p> <p>Fill out this form only for the evidence that you disapprove of access by the respondent.</p>				

I hereby submit an opinion on accessing the evidence requested by ( respondent's name ) with reference to ( case name ) in accordance with Article 52-2 of the "Monopoly Regulation and Fair Trade Act" and the "Guidelines on Access to Evidence."

Date: \_\_\_\_ (Month) \_\_\_\_ (Day) \_\_\_\_\_ (Year)

Evidence Provider: (signature or seal)  
Counsel: (signature or seal)

To: **Chairperson of the Korea Fair Trade Commission**

Enclosure: 1 copy of Power of Attorney

**Pledge to Comply with the Rules of the Evidence Room**

Case name :

Respondent Concerned :

Date and time of Access :

As a person who has been given permission for restricted access to evidence from the Korea Fair Trade Commission, I pledge to comply with the rules of the Evidence Room as specified in Article 9 of the “Guidelines on Access to Evidence” when using the Evidence Room.

Date: \_\_\_\_ (Month) \_\_\_\_ (Day) \_\_\_\_\_ (Year)

Affiliation:

Name: \_\_\_\_\_ (signature)

To: **Chairperson of the Korea Fair Trade Commission**

## Confidentiality Pledge

Case name :

Respondent Concerned :

Date and time of Access :

As a person who has been given a permission to restricted access to evidence from the Korea Fair Trade Commission, I do solemnly pledge that:

1. Having understood the trade secrets that I access contain important matters related to the business activities, technologies, and management of the business entity that has submitted the evidence, I will not disclose or divulge any of the trade secrets obtained during restricted access to anyone, including the respondent.
  
2. If I disclose or divulge any of the trade secrets I obtained during restricted access to evidence after signing the Non-Disclosure Agreement, I pledge to accept the Korea Fair Trade Commission's sanctions, such as restricting contact with public officials of the KFTC for five years, and to accept all penalties in accordance with the relevant laws.

Date: \_\_\_\_ (Month) \_\_\_\_ (Day) \_\_\_\_\_ (Year)

Affiliation:

Name: \_\_\_\_\_ (signature)

To: **Chairperson of the Korea Fair Trade Commission**

[Attachment 1] **Consent of Respondent**

The respondent ( ) agrees that the respondent's legal counsel pledges to maintain confidentiality in order to be granted restricted access to evidence and will not request or receive trade secrets of other business entities obtained through the restricted access.

Date: \_\_\_\_ (Month) \_\_\_\_ (Day) \_\_\_\_\_ (Year)

Company Name:

Phone No.:

Address:

Representative's Name:

(signature)

Business registration number/corporation number:

To: **Chairperson of the Korea Fair Trade Commission**

Enclosure: 1 copy of Power of Attorney

[Attachment 2] **Confirmation of Respondent**

The respondent ( ) confirms notification by the Korea Fair Trade Commission that if the respondent acquires, uses, or divulges trade secrets or takes them out of the designated area without authorization for the purpose of gaining unfair benefits or causing harm to the owner of trade secrets, the respondent can be punished with imprisonment not exceeding 10 years or a fine not exceeding 500 million won (a fine of not less than two to not more than ten times the amount of proprietary benefits received will be imposed, if the amount that equals to ten times the amount of proprietary benefits acquired through the violation exceeds 500 million won) pursuant to paragraph 2 of Article 18 of the "Unfair Competition Prevention and Trade Secrets Protection Act."

Date: \_\_\_\_ (Month) \_\_\_\_ (Day) \_\_\_\_\_ (Year)

Company Name:

Phone No.:

Address:

Representative's Name: (signature)

Business registration number/corporation number:

To: **Chairperson of the Korea Fair Trade Commission**

Enclosure: 1 copy of Power of Attorney

Plain paper (80g/m<sup>2</sup>) or medium quality paper (80g/m<sup>2</sup>)

## Consent to Collection and Use of Personal Information

Case name:  
Respondent concerned:  
Date and time of Access :

■ Collection of Personal Information

- Required information: The name, phone number, e-mail address, affiliation and position, footage and photographic images recorded by devices used to monitor the evidence room, etc.
- Collection purposes: To check the identity of the person who access evidence under restrict conditions and prevent the leakage of confidential business evidence outside the Evidence Room

■ Submission of Personal Information to a Third Party

- Recipient: Those who have submitted the relevant evidence to the Korea Fair Trade Commission
- Information: The name, phone number, e-mail address, affiliation and position of the person accessing evidence
- Purpose: To take measures to prevent the infringement of trade secrets

■ The Right to Refuse to Consent to the Provision of Personal Information and Disadvantages or Restrictions due to Refusal to Consent

You have the right to refuse to consent to the provision of personal information, and there is no penalty for refusing to consent. However, please be advised that admission to the Evidence Room may be restricted.

■ Period of Retention and Use of Personal Information

The retention period of collected personal information is five(5) years after entering the Evidence Room or until request for deletion is made. Upon request for deletion, the Korea Fair Trade Commission immediately destroys the personal information of the person accessing evidence in a way that it cannot be recovered.

Do you agree to the collection, use and provision of personal information to a third party?	<input type="checkbox"/> Agree <input type="checkbox"/> Disagree
---	--

Date: \_\_\_\_\_ (Month) \_\_\_\_\_ (Day) \_\_\_\_\_ (Year)

Affiliation:

Name: \_\_\_\_\_ (signature)

To: **Chairperson of the Korea Fair Trade Commission**

---

The personal information will not be used for purposes other than those agreed by the personal information provider, and if he/she wishes to refuse the use of the provided personal information, he/she may request to view, correct, or delete it through the public official in charge of access.

Plain paper (80g/m<sup>2</sup>) or medium quality paper (80g/m<sup>2</sup>)

## Standard Non-Disclosure Agreement

**Article 1 (Purpose of the Agreement)** This agreement is concluded for the purpose of stipulating all necessary matters required to protect relevant evidence as trade secrets between a person who views evidence on behalf of the respondent ( ) (hereinafter referred to as the “person accessing evidence”) and a person who has submitted related evidence to the Korea Fair Trade Commission ( ) (hereinafter referred to as the “evidence provider”) in relation to the ( ) case to be deliberated by the Korea Fair Trade Commission.

**Article 2 (Obligation to Maintain Confidentiality)** The person accessing evidence shall not disclose or divulge the evidence provider’s trade secrets obtained through restricted access to evidence to anyone other than those who have legally viewed them (including the respondent).

**Article 3 (Attribution of Rights)** ① All rights related to trade secrets reviewed through restricted access to evidence belong to the evidence provider.  
② This agreement shall not be construed as granting any right to trade secrets or their licenses to the person accessing evidence in any circumstances.

**Article 4 (Compensation for Damage)** In the event that the person accessing evidence leaks trade secrets in violation of this agreement, the person shall indemnify the evidence provider within the range of three times the amount recognized as damage pursuant to the Unfair Competition Prevention and Trade Secret Protection Act. However, this provision shall not apply if the person accessing evidence has proven that there was no intention to do so or that negligence was involved.

**Article 5 (Settlement of Disputes)** When a dispute arises in connection with this agreement, a settlement is sought through mutual consultation between the parties to the agreement. If an agreement is not reached on a dispute, a lawsuit may be brought to the competent court.

The person accessing evidence and the evidence provider prepare two copies of this agreement, sign (or seal) each of them, and retain one copy each to prove the existence of this agreement.

Date: \_\_\_\_ (Month) \_\_\_\_ (Day) \_\_\_\_\_ (Year)

---

Case Name:	
Access Period:	
Person accessing evidence	Evidence provider
Name: (signature) Phone No.: Address: Affiliation and Position: Date of Birth:	Corporation Company Name: Phone No.: Address: Representative's Name: (signature) Business Registration No. Corporation No.:
	Natural Person Name: (signature) Phone No.: Address: Affiliation and Position: Date of Birth:

Plain paper (80g/m<sup>2</sup>) or medium quality paper (80g/m<sup>2</sup>)