

## Staff revised draft 9-06-17

WAC 480-07-160 – Confidential and Other Restricted Information

Several statutory provisions limit or prevent disclosure of information provided to the commission. These provisions include those exempting certain public records from disclosure, preventing the release of valuable commercial information until affected parties have an opportunity to seek an injunction forbidding the release, and protecting information from disclosure pursuant to a protective order issued by the commission. The commission will provide for special handling of, and restrict access to, information provided to the commission under these provisions. This rule addresses each of these types of information, including how to designate documents as containing exempt information, valuable commercial information, protected confidential information, or highly confidential information, and how the commission will respond to requests for such information.

### (1) **Implementation.**

~~(a)~~ *Designated official.* The commission's secretary is the designated official responsible for implementation of this rule. The secretary may designate one or more persons to assist in the implementation and application of this rule.

### (3) Definitions.

(a) Document means any writing as the legislature has defined that term in the Public Records Act, chapter 42.56 RCW.

(b) Exempt Information means information protected from inspection or copying under an exemption from disclosure under chapter 42.56 RCW or any other provisions of law providing an exemption from public disclosure.

(c) Highly Confidential Information means information protected under a commission-issued highly confidential protective order.

(d) ~~Protected~~ Confidential information means information protected under the terms of a commission-issued standard protective order.

(e) Provider means any person who submits information to the commission or commission staff under a claim that disclosure of the information is restricted pursuant to this rule.

(f) Redacted document means the version of a document submitted to the commission with restricted information masked. A provider may submit only electronic copies of the redacted version, unless the commission orders the provider to submit both electronic and paper copies.

(g) Requester means any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW.

(h) *Restricted Information* means exempt, valuable commercial, ~~protected~~confidential, or highly confidential information.

(i) *Unredacted document* means the version of a document submitted to the commission with all information unmasked and visible. A provider may submit only an electronic copy of the unredacted version, unless the commission orders the provider to submit both electronic and paper copies.

(j) *Valuable commercial information* means information whose disclosure the legislature has limited as valuable commercial information under RCW 80.04.095 and RCW 81.77.210.

**(23) Information or documents restricted for multiple reasons.** Information within a document may be restricted for multiple reasons, and documents submitted to the commission may contain multiple types of restricted information. For example, information may be both valuable commercial information and ~~protected~~confidential information ~~as those terms are used in this rule~~, or a document may contain exempt information ~~as that term is used in this rule~~ on one page and highly confidential information ~~as that term is used in this rule~~ on another page. Any provider submitting a document containing information restricted for multiple reasons or multiple types of restricted information must comply with the provisions of this rule for each type of restricted information, subject to the provisions of subsection (9) of this rule. When the commission receives a request for a document containing information restricted for multiple reasons or multiple types of restricted information, the commission will follow the procedures listed below for each relevant type of protected information.

~~(3) **Definitions.**~~

~~(a) *Document* means any writing as the legislature has defined that term in the Public Records Act, chapter 42.56 RCW.~~

~~(b) *Exempt Information* means information protected from inspection or copying under an exemption from disclosure under chapter 42.56 RCW.~~

~~(c) *Highly Confidential Information* means information protected under a commission-issued highly confidential protective order.~~

~~(d) *Protected information* means information protected under the terms of a commission-issued standard protective order. 2~~

~~(e) *Provider* means any person who submits information to the commission or commission staff under a claim that disclosure of the information is restricted pursuant to this rule.~~

~~(f) *Redacted document* means the version of a document submitted to the commission with restricted information masked. A provider may submit only electronic copies of the redacted version, unless the commission orders the provider to submit both electronic and paper copies.~~

~~(g) *Requester* means any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW.~~

~~(h) *Restricted Information* means exempt, valuable commercial, protected, or highly confidential information.~~

~~(i) *Unredacted document* means the version of a document submitted to the commission with all information unmasked and visible. A provider may submit only an electronic copy of the unredacted version, unless the commission orders the provider to submit both electronic and paper copies.~~

~~(j) *Valuable commercial information* means information whose disclosure the legislature has limited as valuable commercial information under RCW 80.04.095 and RCW 81.77.210.~~

(4) **Waiver.** A provider may claim that information is restricted under this rule only by strict compliance with the following requirements. The commission may refuse to accept for filing any document that fails to comply with these requirements. Failure to properly designate information as restricted may result in disclosure of the information in response to a public records request or in discovery.

(5) **Exempt information.**

(a) *Designating information as exempt from disclosure.* Any provider claiming that information provided to the Commission is exempt from disclosure must make that claim in writing at the time he or she submits the document containing the information. The provider must also state the basis for the claim of exemption at the time he or she submits information claimed to be exempt.

(b) *Provision of documents with information designated as exempt.* Any provider claiming that a document contains exempt information must submit both a redacted and an unredacted version to the commission.

(c) *Marking and submission.*

(i) The provider must clearly mark each copy of the unredacted version of the document with the designation, "Designated as exempt per WAC 480-07-160" on the first page of a multipage document and on each specific page which the provider claims contains exempt information. In the subject line of the email or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain information designated as exempt under WAC 480-07-160.

(ii) The provider must label the redacted version as redacted.

(iii) The provider must clearly designate information claimed to be exempt on each page of the unredacted version by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. The provider must print each such page of any paper copies required by the commission on yellow paper.

(iv) The provider must either completely black out the information claimed to be exempt or leave a blank space where that information is located in the redacted version. The redacted and unredacted versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is exempt, the provider may submit a single page in the redacted version for the contiguous exempt pages if that page identifies the pages claimed to contain exempt information.

(v) The provider must submit any required paper copy of the unredacted version, in its entirety, in a sealed envelope. If the commission requires submission of paper copies of more than one document containing exempt information, the provider must submit each set of unredacted versions in a separate envelope to the extent feasible.

(vi) The provider must submit the redacted and unredacted versions to the commission at the same time.

(d) *Procedures upon a request for information designated as exempt.* If a requester submits a public records request for information that a provider has designated exempt, the commission will follow the procedures outlined in chapter 480-04 WAC.

**(6) Valuable commercial information.**

(a) *Designating information as valuable commercial information.* Any provider claiming that information provided to the commission is valuable commercial information must make that claim in writing at the time he or she submits the document containing the information. The provider must also, at the time of submission, state the basis for the claim and, to the extent feasible, identify any person (other than the provider) who might be directly affected by disclosure of the valuable commercial information.

(b) *Provision of documents with information designated as valuable commercial information.* Any provider claiming that a document contains valuable commercial information must submit a redacted and an unredacted version to the commission.

(c) *Marking and submission.*

(i) The provider must clearly mark each copy of the unredacted version of the document with the designation, "Designated as valuable commercial information per WAC 480-07-160" on the first page of a multipage document and on each specific page the provider claims contains valuable commercial information. In the subject line of the email or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain information designated as valuable commercial information under WAC 480-07-160.

(ii) The provider must label the redacted version as redacted.

(iii) The provider must clearly designate information claimed to be valuable commercial information on each page of the unredacted 4 version by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. The provider must print on yellow paper each such page of any paper copies required by the commission.

(iv) The provider must either completely black out the information claimed to be valuable commercial information or leave a blank space where that information is located in the redacted version. The redacted and unredacted versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is valuable commercial information, the provider may submit a single page in the redacted version for the contiguous exempt pages if that page identifies the pages claimed to contain valuable commercial information.

(v) The provider must submit any required paper copy of the unredacted version, in its entirety, in a sealed envelope. If the commission requires submission of paper copies of more than one document containing valuable commercial information, the provider must submit each set of unredacted versions in a separate envelope to the extent feasible.

(vi) The provider must submit the redacted and unredacted versions to the commission at the same time.

(d) *Procedures upon a request for information designated as valuable commercial information.* Subject to the requirements of this subsection, the commission will release information designated as valuable commercial information in response to a written request for public records made in compliance with WAC 480-04-090.

(i) *Avoidance of disclosure.* If the public records officer and the requester agree that the commission can satisfy the request for information without disclosing information designated as valuable commercial information, the public records officer will provide or make available for review the publicly available information in the commission's possession that is responsive to the request.

(ii) *Notice of request for, and release of, information designated as valuable commercial information.* If the requester does not agree that the commission can satisfy the request without disclosing information designated as valuable commercial information, the commission will implement the following procedure:

A. Pursuant to RCW 80.04.095 or 81.77.210, as applicable, the commission will provide written notice of any request for information designated as valuable commercial information to the provider and any person that has been identified as a person who might be directly affected by release of the information. The commission will issue such notice not more than two business days after receiving confirmation that the requester requests information designated as valuable commercial information. The commission

will send a copy of the notice to the requester at the same time it sends a copy to the provider.

B. The commission need not assist any person in seeking or resisting judicial intervention to protect from disclosure any information designated as confidential or highly confidential, but the commission may participate in any such proceeding.

C. If the provider consents in writing to the release of the information designated as valuable commercial information or does not restrain disclosure of that information by obtaining a court order within ten days following the commission's notice of the request, the commission will consider the information public, remove the confidential or highly confidential designation from its files, and release the information to the requester.

~~If a requester submits a public records request for information that a provider has designated as valuable commercial information, the commission will:~~

~~(i) notify the provider or any person or persons identified by the provider as directly affected by the release of the information; and~~

~~(ii) release the information to the requester ten days after giving such notice unless the provider or any person or persons directly affected by the release of the information obtains a superior court order enjoining release of the information.~~

(7) **Protected Confidential information.**

(a) *Designating information as protected confidential.* Any provider claiming that information provided to the commission is confidential~~protected from disclosure~~ must make that claim in writing at the time he or she submits the document containing the information. The provider must identify the protective order providing the basis for the claim.

(b) *Provision of documents containing protected confidential information.* Any provider claiming that a document contains protected confidential information must submit a redacted and an unredacted version to the commission.

(c) *Marking and submission.*

(i) The provider must clearly mark each copy of the unredacted version of the document with the designation, "Designated as protected confidential per protective order in Docket [insert docket number]" on the first page of a multipage document and on each specific page the provider claims contains confidential~~protected~~ information. In the subject line of the email or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain confidential~~protected~~ information.

(ii) The provider must label the redacted version as redacted.

(iii) The provider must clearly designate on the unredacted version the information claimed to be ~~protected~~ confidential by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. The provider must print on yellow paper each such page of any paper copies required by the commission.

(iv) The provider must either completely black out the information claimed to be ~~protected~~ confidential or leave a blank space where that information is located in the redacted document. The redacted and unredacted versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is ~~protected~~ confidential, the provider may submit a single page in the redacted or partially redacted version for the contiguous ~~protected~~ confidential pages if that page identifies the pages claimed to be ~~protected~~ confidential.

(v) The provider must submit any required paper copy of the unredacted version, in its entirety, in a sealed envelope. If the commission requires submission of paper copies of more than one unredacted document containing ~~protected~~ confidential information, the provider must submit each set of unredacted versions in a separate envelope to the extent feasible.

(vi) The provider must submit the redacted and unredacted versions to the commission at the same time.

~~(d)~~ *Procedures upon receipt of a public records a request for information designated as ~~protected~~ confidential.* If a requester submits a public records request for information that a provider has designated as ~~protected~~ confidential, the commission will follow the procedures outlined in chapter 480-04 WAC.

~~(e)~~ *Challenges to claims that information is ~~protected~~ confidential.* The commission or a party to a proceeding in which a provider submits a document which the provider claims contains ~~protected~~ confidential information may challenge that designation. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. The provider of the ~~protected~~ confidential information bears the burden to show that a part or all of a document should be ~~protected~~ confidential from disclosure under the terms of a commission-issued protective order. The commission may express its ruling orally on the record in an adjudicative proceeding or in a written order. If the commission sustains a challenge to a ~~protected~~ confidential designation of a document, the provider must deliver or otherwise afford access to the document to the challenger.

#### **(8) Highly Confidential Information.**

(a) *Designating information as highly confidential.* Any provider claiming that information provided to the commission is highly confidential must make that claim in writing at the time he or she submits the document containing the information. The provider must identify the highly confidential protective order providing the basis for the claim. The provider may file a motion

for a highly confidential protective order prior to an initial filing if the provider believes that highly confidential information must be included in such a filing.

(b) *Provision of documents containing highly confidential information.* Any provider claiming that a document contains highly confidential information must submit a redacted and an unredacted version to the commission.

(c) *Marking and submission.*

(i) The provider must clearly mark each copy of the unredacted version of the document with the designation, “Designated as highly confidential per protective order in Docket [insert docket number]” on the first page of a multipage document and on each specific page the provider claims contains highly confidential information. In the subject line of the email or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain highly confidential information.

(ii) The provider must label the redacted version as redacted.

(iii) The provider must clearly designate on the unredacted version the information claimed to be highly confidential by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. The provider must print on blue paper each such page of any paper copies required by the commission.

(iv) The provider must either completely black out the information claimed to be highly confidential or leave a blank space where that information is located in the redacted document. The redacted and unredacted versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is highly confidential, the provider may submit a single page in the redacted version for the contiguous ~~protected~~highly confidential pages if that page identifies the pages claimed to be highly confidential.

(v) The provider must submit any required paper copy of the unredacted version, in its entirety, in a sealed envelope. If the commission requires submission of paper copies of more than one unredacted document containing highly confidential information, the provider must submit each set of unredacted versions in a separate envelope to the extent feasible.

(vi) The provider must submit the redacted and unredacted versions to the commission at the same time.

(e) *Procedures upon receipt of a public records request for information designated as highly confidential.* If a requester submits a public records request for information that a provider has designated as highly confidential, the commission will follow the procedures outlined in chapter 480-04 WAC.



(f) *Challenges to claims that information is highly confidential.* The commission or a party to a proceeding in which a provider submits a document which the provider claims contains **protected confidential** information may challenge that designation. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. The provider of the **protected confidential** information bears the burden to show that a part or all of a document should be protected from disclosure under the terms of a commission-issued protective order. The commission may express its ruling orally on the record in an adjudicative proceeding or in a written order. If the commission sustains the challenge to the designation for a document, the provider must deliver or otherwise afford access to the document to the challenger.

**(9) Procedures for marking and submitting documents containing multiple types of restricted information or information restricted for multiple reasons.**

(a) *Documents containing no highly confidential information.* Where the document contains multiple types of restricted information, but no highly confidential information, the provider must submit a single unredacted version with all restricted information marked in accordance with subsections 5(c)(iii), 6(c)(iii), and 7(c)(iii) of this rule. The provider must mark the unredacted pages of the document with all of the relevant marks described in subsections 5(c)(i), 6(c)(i), and 7(c)(i) of this rule. The providers should, to the extent feasible, submit a single redacted version with all restricted information masked.

(b) *Documents containing highly confidential information in addition to other types of restricted information.* Where the document contains highly confidential information in addition to other types of restricted information, the provider must submit a single unredacted version with all restricted information marked in accordance with subsections 5(c)(iii), 6(c)(iii), and 7(c)(iii) of this rule. The provider must mark the unredacted pages of the document with all of the relevant marks described in subsections 5(c)(i), 6(c)(i), and 7(c)(i) of this rule. The provider must submit at least two different redacted versions of the document. The first redacted version must mask all highly confidential information, but leave all other restricted information unmasked. The second must, to the extent feasible, mask all restricted information.

**(10) Designation or redesignation of exempt, valuable commercial, **protected confidential**, or highly confidential information.** No later than the time for filing briefs or, if no briefs are to be filed, within ten days after the close of the record in an adjudication in which a party has designated information as exempt, valuable commercial, **protected confidential**, or highly confidential information, that party must verify the accuracy of all such designations in the record and in the exhibit list for the proceeding, and submit to the commission any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final, and the commission will change those designations only if the provider voluntarily removes, or is required by law to remove, the designation.

(11): Failure to properly designate information as restricted or failure to comply with any requirement in WAC 480-07-160 may subject such provider to liability for damages and shall subject such provider or person to penalties as provided by the Commission or as generally provided by law.