



SUMMIT
LAW GROUP

a professional limited liability company

POLLY L. MCNEILL
DID: (206) 676-7040
EMAIL: pollym@summitlaw.com

315 Fifth Ave S Suite 1000
Seattle, Washington 98104
phone · 206.676.7000
fax · 206.676.7001

September 29, 2017

SENT VIA EMAIL

records@utc.wa.gov

Steven V. King
Executive Director and Secretary
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Procedural Rulemaking (Docket A-130355) – Rulemaking to Consider Possible Corrections and Changes in Rules in WAC 480-07-160

Dear Secretary King:

On behalf of our solid waste collection clients regulated by the Washington Utilities and Transportation Commission (“the Commission”), Summit Law Group submits this comment letter with regard to Docket A-130355, specifically addressing WAC 480-07-160. As is evidenced by the proposed rule, the manner in which the Commission processes documents containing information that is appropriately withheld in response to a request for public records is a complicated and sensitive matter.

As you are aware, the statutory protection for valuable commercial information in RCW 81.77.210 is new to our industry. Listening to staff and practitioners for other industries discuss the nuances of working with RCW 80.04.095 has been enlightening. However, the differences in how our issues arise makes analogy to the other utilities experiences imperfect.

Specifically, in most cases (but not always) the solid waste industry files general rate case materials without a present expectation of going to adjudication. This puts solid waste company tariff filings in an “other” procedural category. It is nearly, but not quite, an adjudicative proceeding. There is no immediate means of securing a protective order, which can inject an intermediary procedure for handling requests for documents containing valuable commercial information, and affords a precursor to going to court. Our industry is uncomfortable with how a request made before adjudication commences would be handled. To complicate matters, most if not all of the valuable commercial formulae for which protections are sought are presented in excel spreadsheets, for which preparation of redacted and unredacted versions is particularly complicated and uncertain.

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Records Management
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Under the rules proposed, unless a compromise is negotiated between the provider and the requestor, the only means of protecting the information is to obtain a restraining order from a judge before the ten-day period expires. If there are any less obvious means of managing the process, we would welcome the input. In the only situation where this conundrum has arisen in my personal experience, the records center staff handled it with commendable diplomacy, and their experience and perspectives are the only reason the matter was addressed without unnecessary costs. For that, and for other matters involving the Commission's records center personnel, we cannot adequately express our appreciation. They are remarkable.

We are nonetheless appreciative of the manner in which this draft rule lays out how each of the various kinds of information will be processed. The fact that it distinguishes between information that is outright exempt under the Public Records Act and lays out the process for handling requests involving that information is a positive clarification. The ability to rely on any of those exemptions is probably rare, but it is helpful to have the procedures clearly and cleanly differentiated.

Thank you for severing this particular provision out from the other procedural rules, and handling it specifically. We support the Commission's efforts to comprehensively revise WAC 480-07-160, and we believe this rule provides a great deal of clarification to a complicated and sensitive process.

Sincerely,

SUMMIT LAW GROUP PLLC



Polly L. McNeill

cc: Clients