

**WAC 480-07-160 Confidential and other restricted information** (~~(under RCW 80.04.095 or 81.77.210)~~). Several statutory provisions limit or prevent disclosure of certain information provided to the commission, including provisions exempting specified public records from disclosure or preventing the release of confidential information until affected parties have an opportunity to obtain a court order forbidding the release. The commission will provide special handling of, and ((will limit)) restrict access to, ((confidential)) information ((submitted in compliance with this rule or WAC 480-07-423)) provided to the commission under these statutory provisions. This rule ((applies to any information the provider claims to be confidential under RCW 80.04.095 or 81.77.210. Title 81 RCW, other than RCW 81.77.210, does not contain a similar statute, and the commission will not accept documents marked as confidential pursuant to this rule and submitted on behalf of companies regulated under Title 81 RCW other than solid waste collection companies.

~~(1) Implementation.~~

~~(a) Designated official.)~~ addresses each of these types of restricted information, including how to designate documents as containing exempt information, confidential information, or highly confidential information. Chapter 480-04 WAC governs the commission's specific process for responding to requests for public records that seek restricted information. WAC 480-07-420 governs access to, and exchange of, restricted information by parties in commission adjudicative proceedings.

(1) Designated official. The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.56 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

~~((b) Provider. Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule or a commission protective order is a provider, as that term is used in this rule.~~

~~(c) Requester. Any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW, or a data request in an adjudicative proceeding is a requester, as that term is used in this rule.~~

~~(2) Confidential information defined.~~ Confidential information is information that meets any of the following criteria:

~~(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.56 RCW.~~

~~(b) Information protected under the terms of a protective order in an adjudicative proceeding.~~

~~(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095 or 81.77.210. Only information that satisfies this definition may be designated as confidential.~~

~~(3) Highly confidential information.~~ The commission may authorize protection of information as highly confidential only pursuant to a

protective order. Highly confidential information is confidential information to which even more restricted access is necessary to ensure the information is not disclosed to the detriment of the provider (or the party designating the information as confidential, if not the provider). Highly confidential information remains subject to the requirements in RCW 80.04.095 or 81.77.210, and the provisions of this section apply to highly confidential information as well as confidential information unless this rule or the protective order authorizing highly confidential treatment of information states otherwise.

~~(4) How to designate and seek protection of confidential information under this section.~~) (2) **Definitions.**

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

(b) Confidential information means valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095 and 81.77.210.

(c) 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.

(d) Highly confidential information means confidential information subject to heightened protection pursuant to a commission-issued protective order with provisions governing such information.

(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; provided that for purposes of complying with subsection (5) of this section, "provider" does not include individuals who provide their own financial or personally identifiable information to the commission.

(f) Redacted version means the version of a document submitted to the commission with restricted information masked.

(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, confidential, or highly confidential information.

(i) Unredacted version means the version of a document submitted to the commission with all information unmasked and visible.

**(3) Waiver.** A provider may claim the protection of this rule only by strict compliance with ~~((the following))~~ its requirements. The commission may refuse to accept for filing any document that fails to comply with these requirements. Failure to properly designate confidential or highly confidential information as ~~((confidential also))~~ required in this rule, WAC 480-07-420, or a commission protective order may result in disclosure of the information ~~((not being treated as confidential.))~~ in response to a request for public records or in discovery. If a provider fails to properly designate, or otherwise does not properly treat, exempt, confidential, or highly confidential information that belongs to another person, that person may petition or file a motion with the commission seeking to protect the information and requesting any other appropriate relief.

**(4) 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 the provider submits the document containing the information. The provider

must also state the basis for the claim of exemption at the time the provider 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 designate information claimed to be exempt on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the document with the designation, "Shaded information is designated as exempt per WAC 480-07-160" on the first page of a multipage document and on each specific page that the provider claims contains exempt information, except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 and except as provided in subsection (8) of this section.

(ii) The provider must print on yellow paper any required paper copy of the pages of the unredacted version of a document that contain information designated as exempt and submit that document, in its entirety, in a sealed envelope. A provider submitting more than one document containing information designated as exempt as part of the same filing must collate all of these documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be submitted, the provider must submit each set of documents containing information designated as exempt in a separate envelope to the extent feasible.

(iii) The provider must label the redacted version of the document as redacted. 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.

(iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as exempt under this section.

(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 as exempt, the commission will follow the procedures outlined in chapter 480-04 WAC.

(e) *Challenges to designations of information as exempt.* The commission or a party to a proceeding in which a provider submits a document with information designated as exempt may challenge that designation. The commission will provide an opportunity to the provider and the parties to any adjudication to respond before ruling on the chal-

lenge. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

(5) Confidential information.

(a) (~~Contents. The~~) Designating information as confidential information. Any provider (~~must submit the claim of confidentiality~~) claiming that information provided to the commission is confidential must make that claim in writing at the same time the provider submits the document containing the information (~~claimed to be confidential is submitted. The provider~~) and must state the basis (~~on which the information is claimed to be confidential, and if the document is not submitted pursuant to a protective order in an adjudicative proceeding,~~) for the claim. To the extent feasible, the provider also must identify any person (other than the provider) who might be directly affected by disclosure of the confidential information.

(b) Provision of documents with information designated as confidential (~~or information designated as highly confidential~~). (~~The~~) Any provider claiming that a document contains confidential information must submit (~~two versions of all documents claimed to include either (but not both) confidential or highly confidential information:~~

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential (confidential version) or highly confidential (highly confidential version); and

(ii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks the information claimed to be confidential or highly confidential (redacted version).

(c) Documents with information designated as confidential and information designated as highly confidential. The provider must submit three versions of all documents claimed to include both highly confidential and confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as highly confidential or confidential (highly confidential version);

(ii) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential and masks all information designated as highly confidential (confidential version); and

(iii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks all information claimed to be highly confidential or confidential (redacted version).

(d)) both a redacted and an unredacted version to the commission.

(c) Marking and submission.

(i) (~~Documents containing information designated as confidential or highly confidential must be marked as follows:~~

(A)) The provider must clearly designate information claimed to be confidential on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the (~~confidential~~) unredacted version of the document with the designation, "~~(Designated)~~ Shaded information is designated as confidential (~~per protective order in Docket [insert docket number]~~" if the provider submits confidential informa-

~~tion under the provisions of a protective order, or "Designated information is confidential)) per WAC 480-07-160" ((if not submitted under the terms of a protective order. The provider must clearly mark each copy of the highly confidential version of the document with the designation "Designated information is highly confidential per protective order in Docket [insert docket number]." The provider must place the applicable mark)) on the first page of a multipage document and on each specific page ((on which)) the provider claims ((there is confidential or highly)) contains 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 information designated as confidential or highly confidential under a protective order or WAC 480-07-160, as applicable.~~

~~(B) Each page of the electronic document and any required paper copies of the confidential version that includes information claimed to be confidential must clearly designate that information on each page by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on yellow paper.~~

~~(C) Each page of the electronic document and any required paper copies of the highly confidential version that contains information designated as highly confidential under a protective order must clearly designate the highly confidential information by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on light blue paper.~~

~~(D) If a document includes both confidential and highly confidential information, each page of any paper copies of the confidential version that contains only information designated as confidential must be printed on yellow paper, and pages containing information designated as highly confidential must be printed on light blue paper, including pages that contain both highly confidential and confidential information. The provider is responsible for ensuring that highly confidential information is clearly distinguished from confidential information when a document includes both highly confidential and confidential information.~~

~~(E)) except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 with respect to confidential information provided pursuant to a protective order and except as provided in subsection (8) of this section.~~

~~(ii) The provider must print on yellow paper any required paper copy of the ((confidential or highly confidential)) pages of the unredacted version of a document that contain information designated as confidential and submit that document, in its entirety, ((must be submitted)) in a sealed envelope. A ((person)) provider submitting more than one ((confidential or highly confidential document in a single submission)) document containing information designated as confidential as part of the same filing must collate all of ((the confidential documents into a set and all of the highly confidential)) these documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be submitted, the provider must submit each set of documents containing information designated as confidential ((or highly confidential documents must be submitted)) in a separate envelope to the extent feasible.~~

~~((F))~~ (iii) The provider must label the redacted version of the document (must be labeled) as redacted (and submitted simultaneously with the corresponding confidential or highly confidential document). The ~~(redacted version)~~ provider must either completely black out the information claimed to be confidential (or highly confidential) or leave a blank space where that information is located in the document. The redacted and (confidential or highly confidential) 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 confidential (or highly confidential), the provider may submit a single page in the redacted version for the contiguous confidential pages if that page identifies the pages claimed to (be confidential or highly) contain confidential information.

~~((ii) Documents containing information designated as confidential or highly confidential must be submitted as follows:~~

~~(A) All documents containing information designated as confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as highly confidential or that do not include any information designated as confidential.~~

~~(B) All documents containing information designated as highly confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as confidential or that do not include any such information.~~

~~(C) The fully redacted versions of all documents containing information designated as confidential or highly confidential, along with any other nonconfidential documents that are part of the filing, must be submitted separately from the documents containing information designated as confidential or highly confidential, and all of the nonconfidential documents must be submitted in a single message or on the same electronic storage medium.~~

~~(D) If the volume of documents of any type exceeds the size constraints of the commission's web portal or email system for a single submission, those documents may be submitted in multiple submissions as provided in WAC 480-07-140 (6)(c).~~

~~(E) All submissions comprising a single filing must be made as close to simultaneously as practicable.~~

~~(5))~~ (iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as confidential under this section.

(d) Request for information designated as confidential. If a requester submits a public records request for information that a provider has designated as confidential, the commission will follow the applicable process in chapter 480-04 WAC, WAC 480-07-420, or applicable protective order.

(e) Challenges to ((claims of confidentiality)) designations of information as confidential. The commission or a party to a proceeding in which a provider submits a document with ~~((a claim of confidentiality may challenge the claim. When a challenge is made,))~~ information designated as confidential may challenge that designation. The commission will provide an opportunity to the provider and the parties to any adjudication to respond before ruling on the challenge. ~~((If a confidential designation is challenged,))~~ The provider of the ((confidential)) information designated as confidential bears the burden to show that part or all of ((a document)) that information should be protected from disclosure ((under chapter 42.56 RCW, RCW 80.04.095, 81.77.210, or a protective order)). The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

~~(6) ((Requests for information designated as confidential. Subject to the requirements of this subsection, the commission will release information designated as confidential or highly confidential in response to a written request for public records made in compliance with WAC 480-04-090.~~

~~(a) 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 confidential or highly confidential, 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.~~

~~(b) Notice of request for, and release of, information designated confidential. If the requester does not agree that the commission can satisfy the request without disclosing information designated as confidential or highly confidential, the commission will implement the following procedure:~~

~~(i) 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 confidential or highly confidential 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 confidential or highly confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.~~

~~(ii) 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.~~

~~(iii) If the provider consents in writing to the release of the information designated as confidential or highly confidential 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.~~

~~(7))~~ 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 the provider submits the document containing the information. The provider also must identify the highly confidential protective order providing the basis for the claim.

(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 designate information claimed to be highly confidential on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the document with the designation, "Shaded information 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 which the provider claims contains highly confidential information, except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 and except as provided in subsection (8) of this section.

(ii) The provider must print on blue paper any required paper copy of the pages of the unredacted version of a document that contain information designated as highly confidential and submit that document, in its entirety, in a sealed envelope. A provider submitting more than one document containing information designated as highly confidential as part of the same filing must collate all of these documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be filed, the provider must submit each set of documents containing information designated as highly confidential in a separate envelope to the extent feasible.

(iii) The provider must label the redacted version of the document as redacted. 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 restricted pages if that page identifies the pages claimed to be highly confidential.

(iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as highly confidential under the applicable protective order.

(d) 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 applicable procedures in chapter 480-04 WAC, WAC 480-07-420, or the applicable protective order.

(e) Challenges to designations of information as highly confidential. The commission or a party to a proceeding in which a provider submits a document that the provider claims contains highly confidential information may challenge that designation. The commission will provide an opportunity to the provider and the parties to respond be-



fore ruling on any challenge. The provider of the information designated as highly confidential bears the burden to show that a part or all of that information should be protected from disclosure under the terms of the protective order. The commission may express its ruling orally on the record or in a written order.

(f) *Initial filing.* A provider may withhold information from an initial filing that the provider intends to designate as highly confidential after the commission enters a protective order under the following conditions:

(i) The provider describes the withheld information with reasonable particularity;

(ii) The provider files and serves complete unredacted and redacted versions of all documents that contain information designated as highly confidential as soon as practicable after the commission enters a protective order; and

(iii) The initial filing otherwise complies with all filing requirements in these rules including, but not limited to, the general rate proceeding filing requirements in subpart B. The commission may reject an initial filing if the withheld information is necessary for the commission to determine whether the filing complies with applicable filing requirements.

(7) **Procedures for documents containing multiple types of restricted information.** Documents submitted to the commission may contain more than one type of restricted information. For example, a document may contain exempt information on one page and highly confidential information on another page. Any provider submitting a document containing more than one type of restricted information must comply with the provisions of this rule for each type of restricted information, subject to the provisions of this subsection. When the commission receives a request for a document containing more than one type of restricted information, the commission will also follow the procedures listed above for each relevant type of restricted information.

(a) *Differentiating types of restricted information.* The provider is responsible for distinguishing each type of restricted information from another when a document contains more than one type of restricted information. Possible methods for doing so include, but are not limited to, underlining or bracketing one type of information. The provider must identify the method used on each page of the document that contains that type of restricted information, e.g., by modifying the required designations to state, "Underlined and shaded information designated as highly confidential per protective order in Docket (insert docket number)," and "Shaded only information designated as exempt under WAC 480-07-160." The method used must be visible on both the redacted and unredacted versions of the document.

(b) *Documents containing no highly confidential information.* When a document contains both exempt and confidential information but no highly confidential information, the provider must submit a single unredacted version with all restricted information marked in accordance with subsections (4)(c), (5)(c), and (7)(a) of this section except as provided in subsection (8) of this section. The provider must submit a single redacted version with all restricted information masked.

(c) *Documents containing highly confidential information in addition to other types of restricted information.* When the document contains highly confidential information in addition to one or more other types of restricted information, the provider must submit a single unredacted version with all restricted information marked in accordance

with subsections (4)(c), (5)(c), (6)(c), and 7(a) of this section, as applicable, except as provided in subsection (8) of this section. 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 mask all highly confidential information and all other restricted information.

(8) **Spreadsheets.** If the cells in a spreadsheet or other tabular document include information that has been designated as exempt, confidential, or highly confidential and that would be impractical or unduly burdensome to mark as required in subsections (4) through (7) of this section, the provider need not comply with those requirements but must identify that information in a way that reasonably provides the commission with sufficient identification of the information to be protected and the basis for that protection.

(9) **Designation or redesignation of exempt, confidential, or highly confidential information.** No later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record in an adjudication in which a party has designated information as exempt, confidential, or highly confidential, that party must verify the accuracy of all ~~((confidential))~~ 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 ~~((or the party that has designated the information as confidential or highly confidential, if different))~~ voluntarily removes, or is required by law to remove, ~~((a confidential))~~ the designation. ~~((If there is conflict between designations, the commission will adopt the designation that is least restrictive to public access.))~~

AMENDATORY SECTION (Amending WSR 17-06-051, filed 2/28/17, effective 3/31/17)

**WAC 480-07-420 Discovery—Protective orders.** (1) **Standard form.** The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when the commission finds that parties reasonably anticipate that discovery or evidentiary ~~((submissions))~~ filings will require ~~((the disclosure of))~~ information designated as confidential as defined in WAC 480-07-160 ~~((Parties must strictly limit the information they designate as confidential to information that is or may be exempt from public disclosure under RCW 80.04.095, 81.77.210, or the Public Records Act, chapter 42.56 RCW, including RCW 42.56.330))~~ to be disclosed to other parties in the adjudication. Parties must ~~((follow the instructions))~~ comply with the requirements in the protective order and in WAC 480-07-160 for ~~((properly))~~ designating, marking, and ~~((submitting))~~ filing documents ~~((with the commission))~~ containing information ~~((designated as))~~ claimed to be confidential ~~((in a proceeding governed by a protective order)).~~ In addition, parties must modify the designation required in WAC 480-07-160 (5)(c)(1) to state, "Shaded information designated as confidential per

protective order in Docket (insert docket number)." When submitting the electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as confidential under the protective order.

(2) **Amendment.** The commission may, upon motion by a party, or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases.

(a) Protection for highly confidential information. A party that wishes to designate information as highly confidential must make a motion, orally at the prehearing conference or in writing, for an amendment to the standard protective order, supported by a declaration, testimony, or representations of counsel that set forth the specific factual and legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and declaration or testimony must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions. If the commission amends its standard protective order to include protections for highly confidential information, parties must comply with the requirements in the protective order and in WAC 480-07-160 for designating, marking, and filing documents containing information designated as highly confidential.

(b) ~~((Limitations.—If))~~ Protection for exempt information. The commission ~~((modifies))~~ may modify the standard protective order to include protection for ~~((highly confidential))~~ exempt information~~((, parties must strictly limit the information they designate as highly confidential to the information identified in the amendment to the protective order and must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission as highly confidential))~~ if the commission finds that parties' access to information designated as exempt as defined in WAC 480-07-160 is necessary for development of the factual record in the adjudication. Parties must comply with the requirements in the protective order and in WAC 480-07-160 for designating, marking, and filing documents containing information designated as exempt. In addition, parties must modify the designation required in WAC 480-07-160 (4)(c)(i) to state, "Shaded information designated as exempt per protective order in Docket (insert docket number)." When submitting the electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as exempt under the protective order.

(c) Other information. The commission reserves the right to restrict access to other types of information on a case-by-case basis through the use of a protective order.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may order appropriate limitations on discovery including, but not necessarily limited to, one or more of the following:

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery; or

(d) Certain matters may not be inquired into, or the scope of the discovery will be limited to certain matters.

(4) **Denial of motion for protective order.** The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just if the commission denies a motion for a protective order in whole or in part.

(5) **Challenges to designations.** The commission or a party to a proceeding may challenge a designation of information as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order. The commission will provide an opportunity for the provider of the information and other interested parties to respond before ruling on any challenge. The provider bears the burden to show that a part or all of the information should be protected from disclosure under the terms of the protective order. The commission may render its ruling orally on the record or in a written order. If the commission sustains the challenge to the designation, the commission will determine how and when the designated information must be disclosed.

(6) **Public record request for protected information.** If a requester submits a public records request during the pendency of an adjudicative proceeding, including any judicial review, for information that a provider has designated as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order, the commission will review that request pursuant to the procedures in subsection (5) of this section. If a requester submits a public records request after an adjudicative proceeding has concluded, including any judicial review, for information that a provider has designated as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order, the commission will follow the procedures in WAC 480-04-095.