

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET TE-151906
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 04
	)	
v.	)	
	)	ORDER DENYING MOTION FOR
RIDE THE DUCKS OF SEATTLE,	)	PROTECTIVE ORDER
L.L.C. d/b/a SEATTLE DUCK TOURS,	)	
	)	
Respondent.	)	
.....	)	

**BACKGROUND**

1 The Washington Utilities and Transportation Commission (Commission) initiated emergency adjudicative proceedings pursuant to RCW 34.05.479, as well as complaint proceedings, against Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours (Ride the Ducks or Company) arising from the incident on September 24, 2015, in Seattle involving a Ride the Ducks vehicle that resulted in the death of five people and serious injuries to many others. Pending Staff’s comprehensive investigation and inspection of the Company’s vehicles and operations, the Commission has suspended the Company’s Certificate No. ES-00146 to operate and provide excursion services to prevent or avoid immediate danger to the public health, safety, and welfare. Staff will file a report on its investigation on December 15, 2015, and the Commission has scheduled an evidentiary hearing for December 21, 2015, to determine whether to lift the suspension.

2 On November 20, 2015, Ride the Ducks filed a Motion of Respondent for Protective Order (Motion). The Company represents that during Staff’s investigation, it “came into possession of documents and records containing [Ride the Ducks’] private, closely held financial information” and that this “information has been, or may be, included in reports or documents that will be submitted in this proceeding.”<sup>1</sup> Ride the Ducks asserts that disclosure of this financial information would put the Company at a competitive disadvantage and would “adversely affect [Ride the Ducks’] ability to negotiate, maintain, and revise various agreements and contracts.”<sup>2</sup>

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<sup>1</sup> Motion ¶¶ 4-5.

<sup>2</sup> *Id.* ¶ 6.

- 3 Ride the Ducks offers three bases on which the Commission can and should enter a protective order preventing disclosure of the Company’s financial information. First, WAC 480-07-420(1) authorizes the Commission to enter a standard protective order “when parties reasonably anticipate that discovery in a proceeding will call for the production of confidential information.” Ride the Ducks claims that its financial information is “confidential information” as the Commission has defined that term.
- 4 Second, the Company claims that its financial information is exempt from disclosure under the privacy exemption in the Public Records Act (PRA or Act) because such disclosure “[w]ould be highly offensive to a reasonable person, and . . . is not of legitimate concern to the public.”<sup>3</sup> Ride the Ducks asserts that courts regularly enter orders that protect financial information from disclosure pursuant to this exemption.
- 5 Third, the Company contends that the Administrative Procedure Act (APA) “allows the presiding officer to enter protective orders under the superior court civil rules. Civil Rule 26(c) allows a protective order to be entered to protect a party from undue burden or expense including that ‘commercial information not be disclosed or be disclosed only in a designated way.’”<sup>4</sup> The Washington Supreme Court, according to Ride the Ducks, has “ruled that there has never been a question that commercial valuable information, such as financial information, warrants protection under CR 26(c).”<sup>5</sup>

### DISCUSSION AND DECISION

- 6 We deny the Motion. Washington law requires the Commission to “make available for public inspection and copying all public records, unless the record falls within the specific exemptions of [the PRA] or other statute which exempts or prohibits disclosure of specific information or records.”<sup>6</sup> The Act “shall be liberally construed and its exemptions narrowly construed to promote [its] public policy and to assure that the public interest will be fully protected.”<sup>7</sup> Washington courts have long emphasized that the PRA “is a strongly worded mandate for broad disclosure of public records.”<sup>8</sup>

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<sup>3</sup> RCW 42.56.050.

<sup>4</sup> Motion ¶ 16 (citations omitted).

<sup>5</sup> *Id.* ¶ 19.

<sup>6</sup> RCW 42.56.070(1).

<sup>7</sup> RCW 42.56.030.

<sup>8</sup> *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978).

- 7 Ride the Ducks has not identified any provision in statute that specifically exempts or prohibits disclosure of the Company's financial information. The Company misinterprets the Commission's procedural rules to provide such an exemption. WAC 480-07-420(1) authorizes the Commission to enter a standard protective order to prohibit disclosure of "confidential information," which WAC 480-07-160 defines as "any information submitted under a claim of confidentiality under RCW 80.04.095." However, this regulation applies only to companies regulated by the Commission under Title 80 RCW. Ride the Ducks cannot make any claim of confidentiality under our rules because the Commission regulates the Company under Title 81 RCW, not Title 80. Except for solid waste collection companies the Commission regulates, the legislature has not provided companies regulated under Title 81 any comparable process to shield confidential information from disclosure.<sup>9</sup> The Commission's procedural rules, therefore, do not authorize the Commission to enter its standard protective order in this docket.
- 8 Nor does the PRA's exemption protecting personal privacy apply in the circumstances presented here. Ride the Ducks cites no appellate court decision that has concluded RCW 42.56.050 exempts a company's financial information from disclosure.<sup>10</sup> To the contrary, the Washington Supreme Court has found that nothing in a taxpayer's financial data on file with a county assessor's office "reveals intimate details of anyone's private life" that this exemption protects.<sup>11</sup> As a regulated transportation company, Ride the Ducks has a statutory obligation to submit financial data to the Commission without the ability to designate that submission as confidential.<sup>12</sup> The Company thus has no reasonable expectation such information is exempt from public disclosure. Indeed, RCW 80.04.095 and RCW 81.77.210 would be superfluous if the PRA exempted the financial information that all public service companies provide to the Commission.<sup>13</sup>

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<sup>9</sup> The legislature recently enacted a confidentiality statute in Title 81, RCW 81.77.210, after the Commission had promulgated WAC 480-07-160, but that statute is specific to solid waste collection companies and thus is inapplicable here.

<sup>10</sup> Ride the Ducks cites only an unpublished superior court order as authority for this proposition. Such orders, however, are not precedential or binding on the Commission outside the context of cases in which the Commission is a party.

<sup>11</sup> *Hearst*, 90 Wn.2d at 138.

<sup>12</sup> *E.g.*, RCW 81.04.080.

<sup>13</sup> The legislature does provide a PRA exemption in RCW 42.56.330 for documents designated as confidential under RCW 80.04.095 and RCW 81.77.210, but as noted above, this exemption does not apply to any transportation companies subject to Commission jurisdiction except solid waste collection companies. Further, the exemptions for valuable commercial or financial information in RCW 42.56.270 do not include the information for which Ride the Ducks seeks protection.

9 The APA also does not authorize the Commission to enter the protective order the Company requests. RCW 34.05.446(3) provides that an agency’s “presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other *procedures* authorized by rules 26 through 36 of the superior court civil rules.” (Emphasis added.) By its terms, this statute is procedural and does not create any substantive authority. Civil Rule 26(c) on which the Company relies addresses protective orders as a means of limiting one party’s obligation to provide information to the other during discovery. Ride the Ducks, however, states that Staff already has the financial information the Company seeks to protect. Once provided to the Commission, the documents are public records subject to the PRA, and neither the APA nor the superior court civil rules confers any authority on the Commission to prevent disclosure of those public records.<sup>14</sup>

**ORDER**

10 THE COMMISSION ORDERS That the Motion of Respondent for a Protective Order is DENIED.

DATED at Olympia, Washington and effective November 30, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

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<sup>14</sup> We nevertheless note that pursuant to the APA and the Commission’s procedural rules, the Commission has the authority to enter an order permitting Ride the Ducks to withhold information that Staff or any other party has requested prior to disclosing that information. WAC 480-07-425.