

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions.

(1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17A.120 are considered to be a public record. However, if a modification of reporting requirements is requested by a filer because of a concern for personal safety that is caused by the potential disclosure of information required to be reported, upon request by the filer, the information submitted for that modification request regarding that safety concern will not be made public prior to, or at the hearing on the request for modification. In accordance with RCW 42.17A.120, any information provided or prepared for the modification hearing will remain exempt from public disclosure under chapters 42.17A and 42.56 RCW to the extent it is determined at the hearing that disclosure of such information would reasonably present a personal safety risk to the applicant or a member of their family. If no written order is entered based on findings pursuant to this section, then the exempted information will become available for public disclosure.

(2) Except as otherwise provided in subsection (1) of this section, there is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17A.120, the commission or presiding officer may close the hearing or a portion of the hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17A.120; or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(3)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission or presiding officer must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (2)(a) or (b) of this section;

(ii) An open hearing or record to report the information would present a manifestly unreasonable hardship, or personal safety risk, to the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission or presiding officer has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17A RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a closed session identifying the matters for which the applicant requests modification under these rules will be considered confidential by the commission or

presiding officer pursuant to a protective order which will be entered by the commission or presiding officer unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge, acting as the presiding officer, determines that testimony in private may be necessary, the judge will immediately adjourn the hearing and refer the matter to the commission.

(4) Any decision or order rendered by the commission or presiding officer must be in writing or stated in the record, however any dispositive order accompanied by findings of fact and conclusions of law must be in writing. The full commission may review any order rendered by a presiding officer, pursuant to WAC 390-37-144.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-080, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-080, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-14-117, § 390-28-080, filed 7/3/07, effective 8/3/07; WSR 91-22-083, § 390-28-080, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-080, filed 10/31/85; Order 62, § 390-28-080, filed 8/26/75; Order 24, § 390-28-080, filed 2/21/74. Formerly WAC 390-28-070.]