

RCW 38.42.150 Civil investigative demands—Standards—Limitations

—Enforcement. (1) Whenever the attorney general believes that any person may: (a) Be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of this chapter, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce; or (b) have knowledge of any information that the attorney general believes relevant to the subject matter of such an investigation, he or she may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such a person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of these demands pertaining to the documentary material or information. Documents and information obtained under this section are not admissible in criminal prosecutions.

(2) Each demand must:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom the documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No demand may:

(a) Contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material that would be privileged or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of such a demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such a person is not a natural person, to any officer or managing agent of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if the person has no place of business in this state, to his or her principal office or place of business.

(5) (a) Documentary material demanded pursuant to the provisions of this section must be produced for inspection and copying during normal business hours at the principal office or place of business of

the person served, or at such other times and places as may be agreed upon by the person served and the attorney general.

(b) Written interrogatories in a demand served under this section must be answered in the same manner as provided in the civil rules for superior court.

(c) The oral testimony of any person obtained pursuant to a demand served under this section must be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken.

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel.

(e) The oral testimony of any person obtained pursuant to a demand served under this section must be taken in the county within which the person resides, is found, or transacts business, or in another place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it is a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the states to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced the material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section:
PROVIDED, That:

(a) Under the reasonable terms and conditions as the attorney general prescribes, the copies of the documentary material, answers to written interrogatories, or transcripts of oral testimony must be available for inspection and copying by the person who produced the material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such a person;

(b) The attorney general or any assistant attorney general may use the copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any material, answers to written interrogatories, or transcripts of oral testimony that contain trade secrets may not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing the material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to

modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in another county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court has jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender the material, the attorney general may file, in the trial court of general jurisdiction of the county in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of this section, except that if the person transacts business in more than one county the petition must be filed in the county in which the person maintains his or her principal place of business, or in another county as may be agreed upon by the parties to the petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, the court has jurisdiction to hear and determine the matter so presented and to enter such an order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [2014 c 65 § 6.]