

WAC 162-04-035 Protective orders to seal produced documents.

(1) **May be requested.** Any person who is asked or compelled to produce records may request a protective order to have a particular document or part of document that has been produced or will be produced kept confidential for official use only, without public access.

(2) **To whom addressed.** Prior to notice of hearing, a request for a protective order shall be made to the chairperson of the commission pursuant to the procedures established in WAC 162-08-020. After notice of hearing, a request for a protective order shall be made by motion to the administrative law judge, as provided in WAC 162-08-263(3).

(3) **Form of request.** Requests for a protective order shall be in written affidavit form and shall state the requestor's reasons why a protective order should be issued for the documents covered.

(4) **Grounds for issuance.** A protective order may be made only upon findings that:

(a) The document or part of document is exempt from public disclosure under RCW 42.17.260 and 42.17.310 (Initiative 276) and the commission's implementing regulation, WAC 162-04-030, and;

(b) The requestor has shown legitimate need for confidentiality of the document or part of document.

(5) **Form of order.** The protective order shall be in writing and shall bear the caption of the case, date of entry of the order, and signature of the executive director or other authorized staff person or the administrative law judge. The text of the order shall contain:

(a) A description in general terms of each document covered by the order. *Example:* "Report dated of Dr. to respondent on results of physical examination of the complainant, two pages."

(b) A statement of the specific exemption from the disclosure provisions of chapter 42.17 RCW authorizing the withholding of the record or part of record and a brief explanation of how the exemption applies to what is withheld. See RCW 42.17.310(4).

(c) A statement of why there is need for confidentiality of the document or part of document.

(6) **Filing of order.** The protective order shall be affixed to a sealed envelope containing the protected document and both shall be kept in the case file, or, alternatively, the original order and protected document may be kept at another place and a copy of the protective order placed in the case file along with a notation as to where the original order and protected document are kept.

(7) **Effect of order.** Except as may be provided in the protective order, documents covered by the protective order shall not be revealed to anyone other than commissioners, members of the commission's staff, and the commission's legal counsel for official purposes and shall not become public when the rest of the file becomes public as provided in WAC 162-04-030 (1)(a)(ii), but:

(a) Nothing shall prevent the use of a protected document in an administrative hearing or court case, including admission of the document into the public record of the hearing or case, and;

(b) Nothing herein is intended to prevent a court from ordering production of a protected document under RCW 42.17.310(3) or other authority.

(8) **Other protective orders.** Issuance of other kinds of protective orders concerning discovery is governed by WAC 162-08-096.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-019, § 162-04-035, filed 11/7/89, effective 12/8/89.]