

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 filings will require information designated as confidential as defined in WAC 480-07-160 to be disclosed to other parties 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 claimed to be confidential. 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) *Protection for exempt information.* The commission may modify the standard protective order to include protection for exempt information 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.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-20-002 (Docket A-130355, General Order R-593), § 480-07-420, filed 9/19/18, effective 10/20/18; WSR 17-06-051 (General Order R-588), § 480-07-420, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-420, filed 11/24/03, effective 1/1/04.]