



Olympic Region Clean Air Agency

Confidential Business Information

Fact Sheet

Certain categories of information are exempt from mandatory public disclosure under the Public Disclosure Act as confidential, proprietary or private (confidential Information). The Public Disclosure Act allows protection of confidential information by requiring the agency with custody over such information to deny its disclosure. In addition, the state Clean Air Act specifically prohibits public disclosure of confidential information.

What information can be declared confidential?

Any records or other information, except ambient air quality data or emission data, furnished to or obtained by Olympic Region Clean Air Agency (ORCAA) under the Washington Clean Air Act that the owner or operator certifies relate to processes or production unique to the owner or operator or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor. The following classes of information are not entitled to confidential status: emissions data, publicly available information and information that is "common knowledge". It is your responsibility to substantiate your determination in the case of a challenge. (See EPA's 40 CFR Part 2.204(e)(4)(i)-(ix))

How do I request a record be declared confidential?

A formal request for confidentiality under RCW 46.56.271(1) and RCW 70A.15.2510 must be made at the time of submittal. Information submitted to the Agency that has not been identified as confidential at the time of submittal is subject to release in response to a public records request without further notice to the business. Records containing confidential information must clearly identify the precise information in the records that are confidential and must state the citation under which each piece of confidential information is exempt. The owner of the record must also provide a public version of the document that contain confidential information with the confidential information redacted. Confidential records shall be clearly marked as confidential by stamping CONFIDENTIAL in red on both the page containing the confidential information and on the cover page of the document or submittal. See

ORCAA's form "Request for Confidentiality of Records" for specific instructions.

What happens after I submit my request for confidentiality?

ORCAA's Public Records Officer shall review confidentiality requests and determine whether the information is exempt under Chapter 42.56 RCW and RCW 70A.15.2510, or other exemption. Certain information like air pollutant emissions rates are not exempt from mandatory public disclosure and must be provided to the public when requested. The company shall be notified if the agency determines that some or all of the information is not subject to confidentiality and be given opportunity to request reconsideration from the Executive Director.

What if I have information from a corporate or a 3rd party that contains confidential disclaimers?

Review any documents that have been prepared by corporate or by a 3rd party (i.e., consultants, laboratory, source testing firms) prior to submission to ORCAA. If the documents contain confidential disclaimers, it is your responsibility to confirm the validity of those disclaimers and, if valid, prepare a Request for Confidentiality of Records. If the disclaimers are not valid, they must be removed prior to submission to ORCAA.

Can I submit electronic records confidentially? Yes.

However, ORCAA strongly discourages submittal of any confidential information via email. Electronic files such as spreadsheets and other documents that must be submitted electronically should be submitted on a CD or other media and be accompanied by the citation for the exemption and a public version. If extenuating circumstances exist that require the submittal of confidential information via email, the submittee should include the word "CONFIDENTIAL" in the subject line of the email and include the citation for the exemption and public version of all confidential documents. If the email itself (and not the attachment) is confidential, a public version of the email MUST be included. The submittee may choose

to submit this information in paper copy within 5 working days of the email.

Do I need to submit a Request for Confidentiality of Records for every document I submit?

You only need to complete the form if the document you are submitting contains information that is confidential. A separate request is required for each document. If you submit the same type of data routinely, you must complete a Request of Confidentiality of Records for each document, but if the substantiation has not changed, you may reference previous confidentiality determinations as substantiation for the determination.

How long are records kept confidential?

When you submit your request for confidentiality, you must specify the duration of the claim. As long as records continue to meet the exemption claimed, they will be kept confidential indefinitely (except for records exempt under RCW 42.56.270(1)). If, in the future, the information is no longer considered confidential by your company, it is your company's responsibility to inform ORCAA in writing of such changes. The exemption under RCW 42.56.270(1) is only valid for 5 years from the date of submittal.

Who can access confidential records?

Public records exempt from mandatory public disclosure that are declared confidential, proprietary or private (confidential information), may not be copied, mailed, e-mailed, faxed, or otherwise allowed to be inspected by anyone except those employed by ORCAA. Any requests for public records exempt from mandatory disclosure will be fulfilled with the public (redacted) version of the document.

References

RCW 42.56.270(1): Financial, commercial, and proprietary information.

Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

RCW 70A.15.2510: Confidentiality of records and information.

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority under this chapter, relate to processes or production unique to the owner or operator, or is likely to

affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, that such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, that emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board.

40 CFR 2.204(e)(4)(i)-(ix): EPA Substantiation Points

- (i) The portions of the information which are alleged to be entitled to confidential treatment;*
- (ii) The period of time for which confidential treatment is desired by the business (e.g., until a certain date, until the occurrence of a specified event, or permanently);*
- (iii) The purpose for which the information was furnished to EPA and the approximate date of submission, if known;*
- (iv) Whether a business confidentiality claim accompanied the information when it was received by EPA;*
- (v) Measures taken by the business to guard against undesired disclosure of the information to others;*
- (vi) The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;*
- (vii) Pertinent confidentiality determinations, if any, by EPA or other Federal agencies, and a copy of any such determination, or reference to it, if available;*
- (viii) Whether the business asserts that disclosure of the information would be likely to result in substantial harmful effects on the business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects; and*
- (ix) Whether the business asserts that the information is voluntarily submitted information as defined in Sec. 2.201(i), and if so, whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.*

Questions?

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