

## Protection of Confidential Information at the Public Utilities Commission

**PLEASE NOTE:** The Commission cannot provide legal advice. This FAQ provides neutral general information to the public about how the Commission works. For example, we may provide information about Commission procedures, practices, rules, terminology, and forms, as well as community resources and services. If you have questions about how this general information applies to your situation, proceeding, or circumstance, please contact a lawyer for legal advice.

**[I need to provide some information to the Commission, but I don't want just anyone to see it. Can I limit access to my information?](#)**

**[What levels of confidentiality protection are there?](#)**

**[What is the difference between highly-confidential information and extraordinarily confidential information?](#)**

**[Who can access information filed subject to a claim of confidentiality?](#)**

**[How do I file information that I claim to be confidential?](#)**

**[How is information kept confidential?](#)**

**[Can I claim just any information is confidential?](#)**

**[What if confidential protection is not enough or is not permitted?](#)**

**[What happens to my information after a proceeding is over?](#)**

**[What if I wish to submit -- or am requested or required to submit -- information to the Commission outside of a proceeding, and I wish to have the information treated as confidential?](#)**

**I need to provide information to the Commission, but I don't want just anyone to see it. Can I limit access to my information?**

Generally, information on file with the Colorado Public Utilities Commission (Commission) is available to the public in accordance with the Colorado Open Records Act. However, there are exceptions to this general rule.

The Commission takes the protection of confidential information seriously. The Commission protects and preserves medical histories, financial records, trade secrets, personal information, and other sensitive information, principally by restricting their availability to a "need to know" basis.

Someone seeking to protect information, or access protected information, should review Rules 1100 – 1103 of the [Commission's Rules of Practice and Procedure](#). These Rules are available on the Commission's website.

The Standards of Conduct found in the Commission's rules apply to all persons filing or seeking information from the Commission as well as any person employed by the Commission.

[Back to Top](#)

### **What levels of confidentiality protection are there?**

There are two categories of confidential information protected by Commission rules.

First, there is confidential information. This information may be filed under seal based upon the filer's reasonable and good faith belief that the subject document or information is (1) not presumed to be open for inspection (see Rule 1100(n)), **and** (2) is, in fact, confidential under applicable law, including the Colorado Open Records Act. When filed in accordance with the Commission's rules, the Commission treats the information as confidential consistent with the claim unless and until the claim is challenged and the Commission determines that the information is not confidential.

Second, there is highly confidential information. If a person believes that information requires extraordinary protection beyond that provided for the first type of information, then the person must file a motion requesting highly confidential protection. One requirement of that motion is to propose appropriate protections based upon the specific circumstances. Rule 1101(b) describes the unique requirements for this type of motion.

[Back to Top](#)

### **What is the difference between highly-confidential information and extraordinarily confidential information?**

The Commission rules only recognize protection of confidential and highly confidential information. Highly confidential information is protected based upon a showing of extraordinary circumstances (e.g. this demonstration justifies protection under the rules as highly confidential information). The rules do not describe an extraordinarily confidential category.

[Back to Top](#)

### **Who can access information filed subject to a claim of confidentiality?**

Generally, access to confidential information is limited to those persons involved in the proceeding who have signed, served, and filed with the Commission nondisclosure agreements to maintain confidentiality of the information. However, the rules do not permit just anyone to sign a nondisclosure agreement to obtain access to information. Those working in marketing or strategic planning of competitive products and services of the provider of the information are not permitted to access confidential information. Except as specifically permitted, confidential information may only be used for the purpose of the proceeding in which the information is produced.

It is important to note that protection of confidential information does not affect whether that information will be admitted into evidence. Others may still question or challenge admissibility of information as evidence.

[Back to Top](#)

### **In a proceeding, how do I file information that I claim is confidential?**

If the information is filed in a proceeding, follow Rule 1101 of the Rules of Practice and Procedure. Someone claiming information being filed with the Commission is confidential must file a public version of the document redacting the confidential information.

The first page of each document containing the confidential information must be labeled as follows: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The cover page of each copy must list each page number of each document on which confidential material is found and must indicate the nature of the document.

Copies of the pages containing confidential information (e.g. unredacted) must be marked "confidential" and must be reproduced on lightly colored paper. The required number of copies must be filed in sealed letter-size envelopes (between 9" by 12" and 10" by 13"). The outside of the envelope must state:

- (A) the caption and proceeding number of the associated proceeding and the notation "CONFIDENTIAL -- SUBMITTED IN PROCEEDING NO. \_\_\_\_\_" or "HIGHLY CONFIDENTIAL – SUBMITTED IN PROCEEDING NO. \_\_\_\_\_", as applicable;
- (B) the name of the filing party;
- (C) the date of filing;
- (D) a description of the information (e.g., testimony or exhibits of \_\_\_\_\_ (name of witness), statement of position, motion);
- (E) the filing party's statement as to whether it prefers to retrieve the information following conclusion of Commission proceedings and any related court actions or it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; and
- (F) if the party chooses to retrieve the information in accordance with the statement contained in subparagraph (III)(E), the name and phone number of the person who will retrieve such information.

It is not the Commission's responsibility to wade through every page of materials to determine what information was intended to be confidential; therefore, please be as thorough as possible to ensure your information gets the protection you seek. Failure to follow the required procedure may result in rejection of your filing.

For information provided in a proceeding, Rule 1101 provides a complete explanation of the procedures for claiming information to be confidential.

[Back to Top](#)

### **How is Information Kept Confidential?**

Confidential information is sealed by the Director of the Commission and withheld from inspection by any person not bound by a confidentiality agreement. In practice, confidential information should always be obtained directly from the one who filed the confidential information.

Information will remain confidential, unless it is released from confidentiality (1) by an agreement of the parties and publication by the filing party, or (2) after opportunity for comment, pursuant to order of the Commission, the Director, or final order of a court having jurisdiction.

No one is permitted to access confidential information without first signing a nondisclosure agreement on a form approved by the Commission. Commission staff members sign a nondisclosure agreement annually.

[Back to Top](#)

### **Can I claim just any information is confidential?**

No.

Generally, information filed with the Commission is public record and is presumed to be open for inspection. The following documents are presumed to be publicly available and specifically cannot be claimed to be confidential information:

- (I) annual reports required under the Commission's rules;
- (II) rates, terms and conditions for regulated services;
- (III) tariffs and price lists;
- (IV) advice letters but not necessarily information filed in support of advice letters;
- (V) aggregate data regarding informal consumer complaint information;
- (VI) all compliance filings that the Commission has ordered to be filed as public record;
- (VII) insurance filings of motor carriers;
- (VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. Individual customer names, addresses and telephone numbers shall be presumed to be confidential;

(IX) to the extent ordered to be filed as public documents by the Commission, service quality performance reports required by the Commission from utilities regulated under an alternative form of regulation or performance based regulation, with the exception of individual customer names, addresses, and telephone numbers;

(X) safety inspection reports or information filed with the Commission or compiled by Commission staff pursuant to Commission decision or rule; and

(XI) any document or information that has been previously made public.

By making a claim of confidentiality, you represent that you have a reasonable and good faith belief that the subject document or information is (1) not presumed to be open for inspection (see Rule 1100(n), and (2) is, in fact, confidential under applicable law, including the Colorado Open Records Act.

If the Commission finds a claim of confidentiality was made in violation of the rule, an appropriate sanction may be imposed upon the claiming party. Possible sanctions include an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including reasonable attorney's fees.

[Back to Top](#)

### **What if confidential protection is not enough or is not permitted?**

If you believe that extraordinary circumstances require additional protections beyond those provided for confidential information and you are providing the information in a proceeding, you must file a motion requesting highly confidential protection. There are several requirements in Rule 1101(b) that must be met as part of a request for protection of highly confidential information.

A claim of confidentiality alone does not overcome the presumption of public availability under Rule 1100(n). A successful motion requesting highly confidential protection overcomes that presumption.

[Back to Top](#)

### **What happens to my information after a proceeding is over?**

At the conclusion of the proceedings, all documents and information subject to the standards of conduct, except the original and copies retained by Commission staff, must be retrieved by the party or person producing them. (The Commission retains the original as part of its archival files.) The filer also has the option to state on the outside of each sealed envelope served that it prefers to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. If the producing party does not retrieve the documents from the Commission within seven days of notification, the documents will be shredded or destroyed.

If the Commission or its staff intends to use confidential information in a subsequent proceeding, written notification will be provided to the party that produced the information. This will be done at least ten days prior to submission of the information in the subsequent proceeding. The same confidentiality standards of conduct apply in the subsequent proceeding.

If the Commission determines that protections for confidential or highly confidential information should be removed, any person has seven days to seek a stay, request that the information be removed from the record, or seek other relief. During these seven days, the information will still be protected as filed.

[Back to Top](#)

**What if I wish to submit -- or am requested or required to submit -- information to the Commission outside of a proceeding, and I wish to have the information treated as confidential?**

If you submit information outside of a docketed proceeding, follow Rule 1102 of the Rules of Practice and Procedure. Many (but not all) of the procedures that apply to the treatment of confidential information in a proceeding apply to the treatment of confidential information submitted outside of a proceeding.

[Back to Top](#)