

RCW 74.66.120 Civil investigative demands. (1)(a) Whenever the attorney general, or a designee, for purposes of this section, has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims act investigation, the attorney general, or a designee, may, before commencing a civil proceeding under RCW 74.66.040 or making an election under RCW 74.66.050, issue in writing and serve upon the person, a civil investigative demand requiring the person:

- (i) To produce the documentary material for inspection and copying;
- (ii) To answer in writing written interrogatories with respect to the documentary material or information;
- (iii) To give oral testimony concerning the documentary material or information; or
- (iv) To furnish any combination of such material, answers, or testimony.

(b) The attorney general may delegate the authority to issue civil investigative demands under this subsection (1). Whenever a civil investigative demand is an express demand for any product of discovery, the attorney general, the deputy attorney general, or an assistant attorney general must serve, in any manner authorized by this section, a copy of the demand upon the person from whom the discovery was obtained and must notify the person to whom the demand is issued of the date on which the copy was served. Any information obtained by the attorney general or a designee of the attorney general under this section may be shared with any qui tam relator if the attorney general or designee determines it is necessary as part of any false claims act investigation.

(2)(a) Each civil investigative demand issued under subsection (1) of this section must state the nature of the conduct constituting the alleged violation of this chapter which is under investigation, and the applicable provision of law alleged to be violated.

(b) If the demand is for the production of documentary material, the demand must:

- (i) Describe each class of documentary material to be produced with such definiteness and certainty as to permit the material to be fairly identified;
- (ii) Prescribe a return date for each class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and
- (iii) Identify the false claims act investigator to whom such material must be made available.

(c) If the demand is for answers to written interrogatories, the demand must:

- (i) Set forth with specificity the written interrogatories to be answered;
- (ii) Prescribe dates at which time answers to written interrogatories must be submitted; and
- (iii) Identify the false claims law investigator to whom such answers must be submitted.

(d) If the demand is for the giving of oral testimony, the demand must:

- (i) Prescribe a date, time, and place at which oral testimony must be commenced;
- (ii) Identify a false claims act investigator who must conduct the examination and the custodian to whom the transcript of the examination must be submitted;

(iii) Specify that the attendance and testimony are necessary to the conduct of the investigation;

(iv) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(e) Any civil investigative demand issued under this section which is an express demand for any product of discovery is not due until thirty days after a copy of the demand has been served upon the person from whom the discovery was obtained.

(f) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section may not be sooner than six days after the date on which demand is received, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present which warrant the commencement of the testimony sooner.

(g) The attorney general may not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the attorney general, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(3) A civil investigative demand issued under subsection (1) or (2) of this section may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under:

(a) The standards applicable to subpoenas or subpoenas duces tecum issued by a court to aid in a special inquiry investigation; or

(b) The standards applicable to discovery requests under the superior court civil rules, to the extent that the application of these standards to any demand is appropriate and consistent with the provisions and purposes of this section.

(4) Any demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to any person. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(5) Any civil investigative demand issued under this section may be served by a false claims act investigator, or by a commissioned law enforcement official, at any place within the state of Washington.

(6) Service of any civil investigative demand issued under (a) of this subsection or of any petition filed under subsection (25) of this section may be made upon a partnership, corporation, association, or other legal entity by:

(a) Delivering an executed copy of the demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(b) Delivering an executed copy of the demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(c) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(7) Service of any demand or petition may be made upon any natural person by:

(a) Delivering an executed copy of the demand or petition to the person; or

(b) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(8) A verified return by the individual serving any civil investigative demand issued under subsection (1) or (2) of this section or any petition filed under subsection (25) of this section setting forth the manner of the service constitutes proof of the service. In the case of service by registered or certified mail, the return must be accompanied by the return post office receipt of delivery of the demand.

(9)(a) The production of documentary material in response to a civil investigative demand served under this section must be made under a sworn certificate, in the form as the demand designates, by:

(i) In the case of a natural person, the person to whom the demand is directed; or

(ii) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person.

(b) The certificate must state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims act investigator identified in the demand.

(10) Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims act investigator identified in the demand at the principal place of business of the person, or at another place as the false claims act investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (25) of this section. The material must be made available on the return date specified in the demand, or on a later date as the false claims act investigator may prescribe in writing. The person may, upon written agreement between the person and the false claims act investigator, substitute copies for originals of all or any part of the material.

(11)(a) Each interrogatory in a civil investigative demand served under this section must be answered separately and fully in writing under oath and must be submitted under a sworn certificate, in the form as the demand designates, by:

(i) In the case of a natural person, the person to whom the demand is directed; or

(ii) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

(b) If any interrogatory is objected to, the reasons for the objection must be stated in the certificate instead of an answer. The certificate must state that all information required by the demand and in the possession, custody, control, or knowledge of the person to

whom the demand is directed has been submitted. To the extent that any information is not furnished, the information must be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(12) The examination of any person pursuant to a civil investigative demand for oral testimony served under this section must be taken before an officer authorized to administer oaths and affirmations by the laws of the state of Washington or of the place where the examination is held. The officer before whom the testimony is to be taken must put the witness on oath or affirmation and must, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony must be recorded and must be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection does not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the superior court civil rules.

(13) The false claims act investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney general, any person who may be agreed upon by the attorney for the government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking the testimony.

(14) The oral testimony of any person taken pursuant to a civil investigative demand served under this section must be taken in the county within which such person resides, is found, or transacts business, or in another place as may be agreed upon by the false claims act investigator conducting the examination and the person.

(15) When the testimony is fully transcribed, the false claims act investigator or the officer before whom the testimony is taken must afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless the examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make must be entered and identified upon the transcript by the officer or the false claims act investigator, with a statement of the reasons given by the witness for making the changes. The transcript must then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after being afforded a reasonable opportunity to examine it, the officer or the false claims act investigator must sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons given.

(16) The officer before whom the testimony is taken must certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims act investigator must promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(17) Upon payment of reasonable charges therefor, the false claims act investigator must furnish a copy of the transcript to the witness only, except that the attorney general, the deputy attorney general, or an assistant attorney general may, for good cause, limit

the witness to inspection of the official transcript of the witness' testimony.

(18)(a) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (1) or (2) of this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and must briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. The person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If the person refuses to answer any question, a special injury proceeding petition may be filed in the superior court under subsection (25) of this section for an order compelling the person to answer the question.

(b) If the person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of the person may be compelled in accordance with the provisions of the superior court civil rules.

(19) Any person appearing for oral testimony under a civil investigative demand issued under subsection (1) or (2) of this section is entitled to the same fees and allowances which are paid to witnesses in the superior courts.

(20) The attorney general must designate a false claims act investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and must designate such additional false claims act investigators as the attorney general determines from time to time to be necessary to serve as deputies to the custodian.

(21)(a) A false claims act investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section must transmit them to the custodian. The custodian shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material under subsection (23) of this section.

(b) The custodian may cause the preparation of the copies of the documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims act investigator, or employee of the attorney general. The material, answers, and transcripts may be used by any authorized false claims act investigator or other officer or employee in connection with the taking of oral testimony under this section.

(c)(i) Except as otherwise provided in this subsection (21), no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, may be available for examination by any individual other than a false claims act investigator or other officer or employee of the attorney general authorized under (b) of this subsection.

(ii) The prohibition in (c)(i) of this subsection on the availability of material, answers, or transcripts does not apply if consent is given by the person who produced the material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for the material, consent is given by

the person from whom the discovery was obtained. Nothing in this subsection [(21)](c)(ii) is intended to prevent disclosure to the legislature, including any committee or subcommittee for use by such an agency in furtherance of its statutory responsibilities.

(d) While in the possession of the custodian and under the reasonable terms and conditions as the attorney general shall prescribe:

(i) Documentary material and answers to interrogatories must be available for examination by the person who produced the material or answers, or by a representative of that person authorized by that person to examine the material and answers; and

(ii) Transcripts of oral testimony must be available for examination by the person who produced the testimony, or by a representative of that person authorized by that person to examine the transcripts.

(22) Whenever any official has been designated to appear before any court, special inquiry judge, or state administrative judge in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to the official the material, answers, or transcripts for official use in connection with any case or proceeding as the official determines to be required. Upon the completion of such a case or proceeding, the official must return to the custodian any material, answers, or transcripts so delivered which have not passed into the control of any court, grand jury, or agency through introduction into the record of such a case or proceeding.

(23) If any documentary material has been produced by any person in the course of any false claims act investigation pursuant to a civil investigative demand under this section, and:

(a) Any case or proceeding before the court or special inquiry judge arising out of the investigation, or any proceeding before any administrative judge involving the material, has been completed; or

(b) No case or proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of the investigation:

Then, the custodian shall, upon written request of the person who produced the material, return to the person the material, other than copies furnished to the false claims act investigator under subsection (10) of this section or made for the attorney general under subsection (21)(b) of this section, which has not passed into the control of any court, grand jury, or agency through introduction into the record of the case or proceeding.

(24)(a) In the event of the death, disability, or separation from service of the attorney general or the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to civil investigative demand under this section, or in the event of the official relief of the custodian from responsibility for the custody and control of the material, answers, or transcripts, the attorney general must promptly:

(i) Designate another false claims act investigator to serve as custodian of the material, answers, or transcripts; and

(ii) Transmit in writing to the person who produced the material, answers, or testimony notice of the identity and address of the successor so designated.

(b) Any person who is designated to be a successor under this subsection (24) has, with regard to the material, answers, or

transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor may not be held responsible for any default or dereliction which occurred before that designation.

(25) Whenever any person fails to comply with any civil investigative demand issued under subsection (1) or (2) of this section, or whenever satisfactory copying or reproduction of any material requested in the demand cannot be done and the person refuses to surrender the material, the attorney general may file, in any superior court of the state of Washington for any 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 the civil investigative demand.

(26) (a) Any person who has received a civil investigative demand issued under subsection (1) or (2) of this section may file, in the superior court of the state of Washington for the county within which the person resides, is found, or transacts business, and serve upon the false claims act investigator identified in the demand a petition for an order of the court to modify or set aside the demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside the demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which the discovery was obtained is or was last pending. Any petition filed under this subsection (26) (a) must be filed:

(i) Within thirty days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within a longer period as may be prescribed in writing by any false claims act investigator identified in the demand.

(b) The petition must specify each ground upon which the petitioner relies in seeking relief under (a) of this subsection, and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(27) (a) In the case of any civil investigative demand issued under subsection (1) or (2) of this section which is an express demand for any product of discovery, the person from whom the discovery was obtained may file, in the superior court of the state of Washington for the county in which the proceeding in which the discovery was obtained is or was last pending, and serve upon any false claims act investigator identified in the demand and upon the recipient of the demand, a petition for an order of the court to modify or set aside those portions of the demand requiring production of any product of discovery. Any petition under this subsection (27) (a) must be filed:

(i) Within twenty days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within a longer period as may be prescribed in writing by any false claims act investigator identified in the demand.

(b) The petition must specify each ground upon which the petitioner relies in seeking relief under (a) of this subsection, and may be based upon any failure of the portions of the demand from which

relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(28) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (1) or (2) of this section, the person, and in the case of an express demand for any product of discovery, the person from whom the discovery was obtained, may file, in the superior court of the state of Washington for the county within which the office of the custodian is situated, and serve upon the custodian, a petition for an order of the court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(29) Whenever any petition is filed in any superior court of the state of Washington under this section, the court has jurisdiction to hear and determine the matter so presented, and to enter an order or orders as may be required to carry out the provisions of this section. Any final order so entered is subject to appeal under the rules of appellate procedure. Any disobedience of any final order entered under this section by any court must be punished as a contempt of the court.

(30) The superior court civil rules apply to any petition under this section, to the extent that the rules are not inconsistent with the provisions of this section.

(31) Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (1) or (2) of this section are exempt from disclosure under the public records act, chapter 42.56 RCW. [2012 c 241 s 212.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.