

## **APA Petition to Amend WAC 390-18-050 (See RCW 34.05.330)**

### **Proposed Amendment**

#### **WAC 390-18-050 “Commercial advertisers – Public inspection of records”**

(1) Pursuant to RCW 42.17A.345, any person, without reference to or permission from the public disclosure commission, is entitled to inspect a commercial advertiser’s political advertising or electioneering communications documents and books of account.

(2) No commercial advertiser shall be required to make available for public inspection information regarding advertising or electioneering communications prior to the time when the advertisement or communication has initially received public distribution or broadcast.

(3) The documents and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345(1) are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) The name and address of the person who sponsored the advertising or electioneering communication;

(c) The total cost of the advertising or electioneering communication, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

(4) In addition to subsection (3) of this section and pursuant to RCW 42.17A.345 (1)(b), the documents and books of account open for public inspection must include a description of the major work components or tasks, as specified in (a) through (f) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For online advertising or social media companies: copy of the advertisement, targeting information, and any other preference, information, lists, or records provided by the person placing the advertisement. If the advertiser provides additional services, some type of record evidencing what additional services were provided must be available and accurately described.

(5) During an in-person inspection made pursuant to RCW 42.17A.345, the individual who has initiated the inspection is permitted to take notes and pictures of the material required to be made public under RCW 42.17A.345.

(6) The commercial advertiser may provide digital access or copies of the documents and books of account required to be disclosed per RCW 42.17A.345 in lieu of scheduling an appointment during business hours.

## Introduction

To Whom It May Concern –

I am writing to request that the Public Disclosure Commission accept my petition amending WAC 390-18-050, entitled "Commercial advertisers—Public inspection of records."

If amended into WAC 390-18-050, these changes will help clarify which records must be provided by internet advertising/social media companies under RCW 42.17A.345 and will reduce the ability of covert individuals to influence the outcome of our elections with dark money.

This formal request is being made pursuant to the Administrative Procedures Act, specifically, RCW 34.05.330(1). The PDC must respond to my petition within 60 days.

## Explanation

In 2016, our electoral process was illegally and inexcusably tampered with by foreign powers seeking to exploit our nation's political divisions. Our leaders and agencies stood by helplessly, unwilling or unable to help. To date, we still do not know the true extent of the electoral manipulation that occurred during 2016 and that continues to occur today.

Fortunately, Washington State already has a model law on the books that could drastically curtail dark money forces from gaining access to our electoral system.<sup>1</sup>

RCW 42.17A.345 allows any individual to inspect the books of account maintained by any commercial advertiser to see the political advertisement that was distributed and, importantly, **who** paid for it and **how** it was paid for, among other things.

Unfortunately, tech giants Facebook and Google are not currently in compliance with this law<sup>2</sup>, but are working towards it. Facebook and Google are among the same forms of media that foreign powers used to influence the 2016 election.

If approved by the Commission, these changes will accomplish the following: 1) clarify which records online advertising or social media companies have to provide in response to a request, 2) clarify that individuals inspecting records have a right to take notes and pictures of the material already required to be open to the public, and 3) provide all commercial advertising companies with the ability to provide responsive material via electronic methods in lieu of an in-person visit.

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<sup>1</sup> Please read: *Obama Appointee Who Predicted Russian Interference Says Seattle Election Law Should Be National Model*. **By Eli Sanders, The Stranger**: <https://www.thestranger.com/slog/2018/01/07/25684407/obama-appointee-who-predicted-russian-interference-says-seattle-election-law-should-be-national-model>

<sup>2</sup> Please read: *Complaint Alleges That Facebook and Google Have Failed to Follow Washington's Unique Ad Disclosure Law*. **By Eli Sanders, The Stranger**: <https://www.thestranger.com/slog/2018/04/16/26047655/complaint-alleges-that-facebook-and-google-have-failed-to-follow-washingtons-unique-ad-disclosure-law>

## Summary

### **1) Clarifying which records online advertising/social media companies have to provide in response to a request to view books of account made under RCW 42.17A.345.**

This petition would clarify that – in addition to the documents already required to be made public under RCW 42.17A.345 – that the company provide *“a copy of the advertisement, targeting information, and any other preference, information, lists, or records provided by the person placing the advertisement. If the advertiser provides additional services, some type of record evidencing what additional services were provided must be available and accurately described.”*

Clarifying that these records must be provided during public inspection will allow inspectors to determine “the exact nature and extent of the services rendered”, which is required under RCW 42.17A.345(1)(b). Explicitly requiring that these records be made available to the public will also allow journalists and other members of the public to determine how individuals are targeting ads and whether or not different conflicting messages are being targeted to different groups.

### **2) Clarifying that individuals inspecting records have a right to take notes and pictures of the material required to be open to the public.**

This petition would establish that *“[any] individual who has initiated [an] inspection is permitted to take notes and pictures of the material required to be made public under RCW 42.17A.345. “*

There are only two different statutes under which a member of the public can physically inspect books of account, RCW 42.17A.235 (allowing inspection of candidate/committee bank records) and RCW 42.17A.345 (allowing inspection of commercial advertisers book of account). Up until recently, RCW 42.17A.345 has not been regularly used by inspectors, while RCW 42.17A.235 has.

Unfortunately, the PDC has habitually given candidates and committees the advice that they don’t have to allow inspectors to take pictures during an inspection under RCW 42.17A.235. I believe that this advice is not only wrong, but in direct contradiction to the spirit and construction of RCW 42.17A.235, especially when weighed with RCW 42.17A.904. Given the similar construction of these two statutes, the PDC is likely to hold the same interpretation for RCW 42.17A.345.

Adopting this petition will explicitly establish that individuals **can** take pictures of records already available for public inspection under RCW 42.17A.345, allowing for quicker in-person visits and an accurate long-term representation of information that was viewed. Because in-person visits can directly lead to individuals filing PDC complaints, these pictures will also serve as documentary evidence to identify violations. There is simply no legitimate reason that individuals should not be allowed to take pictures of information already required to be made public.

### **3) Providing all commercial advertising companies with the ability to provide responsive materials via electronic methods in lieu of an in-person visit.**

This petition would establish that commercial advertisers *“may provide digital access or copies of the documents and books of account required to be disclosed per RCW 42.17A.345 in lieu of scheduling an appointment during business hours.”*

Allowing this as an option will give commercial advertisers an alternative modern option to comply with the requirements of RCW 42.17A.345.

It is worth noting that Facebook has already pledged to release a "public, searchable political ads archive" in June that would appear to fulfill all or most of the requirements laid out in my petition.<sup>3</sup>

I believe that the PDC should eventually undertake rule-making that allows for all digital inspection of records versus the archaic and sometimes tense method of viewing physical books. It is more convenient for all parties involved.

I urge the Commission to adopt my proposal at their next meeting.

Please don't hesitate to contact me if you have any questions.

Best,

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<sup>3</sup> <https://newsroom.fb.com/news/2018/04/transparent-ads-and-pages/>