

DOCKETED	
Docket Number:	25-BSTD-01
Project Title:	2025 Energy Code Compliance Provider Applications
TN #:	265206
Document Title:	CEC Response to CHEERS, Inc Application(s) for Confidentiality
Description:	Response for applications submitted on July 1, 2025 (TN 264537), July 8, 2025 (TN 264569), and July 14, 2025 (TN 264807).
Filer:	Marianna Brewer
Organization:	California Energy Commission
Submitter Role:	Commission Staff
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August 01, 2025

Via Email

Rod Tamayo
CHEERS, Inc.
1610 R Street, Suite 200
Sacramento, CA 95811
rtamayo@cheers.org

**Applications for Confidential Designation
Docket No. 25-BTSD-01**

Dear Rod Tamayo:

The California Energy Commission (CEC) has received CHEERS, Inc.'s (applicant) Applications for Confidentiality, submitted in parts, docketed July 1, 2025 (TN 264537), July 8, 2025 (TN 264569), and July 14, 2025 (TN 264807). The applications cover the following documents submitted for the 2025 Energy Code Compliance Program Provider Application and Residential Data Registry Application:

- Ex. H: ECC Rater Training & Certification
- Ex. H. 1: Training Program Laboratory
- Ex. H. 2: Training Program Classroom
- Ex. H.2.a: ECC Rater Classroom Course
- Ex. H.2.b: ECC Rater Classroom Exam
- Ex. H. 3: Training Program Proctoring
- Ex. H. 4: Training Program Challenge Exam
- Ex. H. 5: Training Program Rater Agreement

The applicant states that the above documents should be kept confidential in their entirety for a minimum of 6 years. The applicant states that this time designation is consistent with the CEC's prior approval of substantially similar application materials for HERS providers.

Confidentiality Claims

The applicant argues the following provisions apply: Title 20 CCR Section 1674(b); Title 20 CCR Section 2505; Title 20 CCR Section 2025; CA Government code section 7927.700. The applicant states the information to be protected contains proprietary business information, trade secrets and Personnel information and would otherwise cause a loss of competitive advantage.

A properly filed application for confidentiality shall be granted under California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim

that the Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential.”

Trade Secrets

A trade secret may include, but is not limited to, any process, compound, production data, or compilation of data that meet the following requirements: “(1) it is not patented, (2) it is known to only certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and (3) it gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Gov. Code, § 7924.510(f)).

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines “trade secret” as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Personnel Information

Government code section 7927.700 does not require disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

Discussion

The application addresses the four elements of trade secrets in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

1. *The specific nature of the advantage* – The applicant states it has invested a substantial amount of time, money, and resources into collecting, managing, and maintaining these programs and data.
2. *How the advantage would be lost* – The applicant states disclosure of this information would furnish valuable insights to any present or prospective

competitor, enabling them to sidestep or minimize the significant investment required.

3. *The value of the information to the applicant* – The applicant states it has spent years and many hundreds of thousands of dollars developing, collecting, managing, and maintaining these programs and data.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – Per the applicant, acquiring or duplicating the data legitimately would present a significant challenge, requiring considerable time and financial investment for others.

Discussion by Document Description

Ex. H: ECC Rater Training & Certification

Exhibit H is a cover letter describing the rest of the documents included. This document does not contain proprietary information. Confidentiality is denied for Exhibit H.

Ex. H. 1: Training Program Laboratory

Exhibit H.1 contains a rater field guide, practical exercises, as well as an exam rubric and example exam. These documents qualify as proprietary information. Confidentiality is granted for Exhibit H.1.

Ex. H. 2: Training Program Classroom

Exhibit H.2 is a cover letter describing Ex. H.2.a and Ex. H.2.b. This document does not contain any confidential information. Confidentiality is denied for Exhibit H.2.

Ex. H.2.a: ECC Rater Classroom Course

Exhibit H.2.a covers training for the 2025 ECC Rater Training classroom course. This training is proprietary information. Confidentiality is granted for Exhibit H.2.a.

Ex. H.2.b: ECC Rater Classroom Exam

This exhibit lists the applicant's test questions for the 2025 ECC New Rater Training Final Exam. The test questions are proprietary information. Confidentiality is granted for Ex. H.2.b.

Ex. H. 3: Training Program Proctoring

Exhibit H.3 explains the proctoring system. This exhibit notes that a copy of the proctoring instructions will be provided to the test takers. This exhibit does not contain any CHEERS proprietary information. Confidentiality is denied for Ex. H.3.

Ex. H. 4: Training Program Challenge Exam

Exhibit H.4 does not include a training program exam but rather explains that the applicant will offer an exam. The information included in this document is not proprietary. The website of the CHEERS LMS is already public. Confidentiality is denied for Ex. H.4.

Ex. H. 5: Training Program Rater Agreement

Exhibit H.5. is the applicant's ECC Rater Certification Agreement and could be considered a trade secret. Confidentiality is granted for Exhibit H.5.

Executive Director's Determination

For the reasons stated, confidentiality is granted for Exhibits: H.1, H.2.a, H.2.b, and H.5 for a period of six years. Confidentiality is denied for Exhibits: H, H.2, H.3, and H.4.

You may request that the CEC determine the confidentiality of records for which the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of the records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director