

DOCKETED

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Document Title:	Letter to Mark Ouellette re Application for Confidentiality for ICF International
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July 16, 2019

Mark V. Ouellette
ICF International
555 W. 5th Street, Suite 3100
Los Angeles, CA 90013

**RE: Application for Confidential Designation for 2019 CALCTP
Acceptance Test Curriculum Materials and Test Questions
Docket No. 13-ATTCP-01**

Dear Mr. Ouellette:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of ICF International (Applicant), a program administrator for the California Advanced Lighting Controls Training Program (CALCTP). The application seeks confidential designation for the following documents comprising the CALCTP 2016 ATTCP Curriculum Update (Confidential Records):

- 1) *CALCTP Acceptance Technician Curriculum*, 1,140 pages, 6/20/19
- 2) *CALCTP Test Questions Bank*, 82 pages, 6/20/19
- 3) *CALCTP On-line acceptance forms*
- 4) *CALCTP overview of changes to 2019 acceptance test forms*, 25 pages, 12/14/18

The application states that confidentiality is sought for CALCTP's training materials and tests as part of CALCTP's application to become a Lighting Control Acceptance Test Technician Certification Provider (24 Cal. Code Regs., § 10-103-A). Applicant submitted a summary of the Confidential Records titled, "Public Summary of Confidential Application," which aggregates and masks its content. Applicant agreed the Energy Commission may disclose this information to the public. However, further disclosure beyond such a summary would compromise the integrity of the certification process and reveal trade secrets. Neither a summary nor the Confidential Records themselves have been disclosed to the public.

A properly filed Application for Confidentiality shall be granted under the 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.” The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(*Uribe v. Howe* (1971) 19 Cal. App. 3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comment b, p. 5.)

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, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: (1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses each of these four requirements by stating:

The specific nature of the advantage—The confidential record is of a technical nature which provides a business advantage over parties without access to the information. The CALCTP curriculum and test was developed for individuals interested in becoming certified as Lighting Control Acceptance Test Technicians. [Public disclosure of this information would impact the CALCTP’s competitive advantage because other entities can become acceptance technician certification providers.]

How the advantage would be lost—Time and resources have been spent compiling the information within the confidential record and the value of the information could be significantly impaired if made available to the public.

The value of the information to the applicant—The confidential record is valuable to the [CALCTP] because of: (1) the time and resources expended to compile the information; (2) the efforts to maintain the confidentiality of the confidential record; and (3) the use of the information to facilitate ongoing business activities.

The ease or difficulty with which the information could be legitimately acquired or duplicated by others —The confidential record is not readily available on the marketplace and can only be obtained with a significant investment of time and money. Thus, others could not easily acquire or duplicate this information.

Government Code section 6254(g) exempts from disclosure under the California Public Records Act “test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination. . . .” Here, Applicant states:

If the attached documents are released to the public, the integrity and effectiveness of the certification process will be compromised, resulting in less reliable and effective acceptance tests. Reliable and effective acceptance tests are critical to ensure that buildings perform as designed and that the public receive the expected cost savings in energy efficiency.

Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the materials confidential. The Confidential Records were developed exclusively by Applicant, contain information that is not public, offer potential economic advantage, and public release of the materials could compromise the training and technician certification program.

Based on the discussion above, the Applicant's confidentiality application is granted. The information subject to this confidentiality designation will be kept confidential until the Acceptance Test Technician Certification Program ends.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

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If you have any questions concerning this matter, please contact Ralph Lee, Staff Counsel, at (916) 645-3953.

Sincerely,

ORIGINAL SIGNED BY:

Drew Bohan
Executive Director

cc: Ralph Lee, Staff Counsel