

**DOCKETED**

<b>Docket Number:</b>	13-ATTCP-01
<b>Project Title:</b>	Acceptance and Training Certification
<b>TN #:</b>	237252
<b>Document Title:</b>	Response Letter to NLCAA's Confidential Designation Application
<b>Description:</b>	Application for Confidential Designation for Request for 2020 Annual Report
<b>Filer:</b>	Ngoc Tran
<b>Organization:</b>	California Energy Commission/Michael Scalzo
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	3/22/2021 11:55:15 AM
<b>Docketed Date:</b>	3/22/2021



March 22, 2021

**Via email**

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**RE: Application for Confidential Designation for Request for 2020 Annual Report Docket No. 13-ATTCP-01**

Dear Mr. Scalzo:

The California Energy Commission (CEC) received the Confidentiality Application filed on January 27, 2021, which was resubmitted on February 12, 2021, on behalf of National Lighting Contractors Association of America (NLCAA). The application seeks confidential designation for Attachment 3 of NLCAA's 2020 Annual Report, which comprises testing and oversight data for NLCAA's individual acceptance test technicians (ATTs):

- 1) *Attachment 3 of NLCAA's 2020 Annual Report, January 26, 2021 – 9 pages (pages 10-18) of 32 total pages in NLCAA's 2020 Annual Report*

Confidential designation was requested of Attachment 3 in its entirety, pursuant to California Code of Regulations, Title 20, section 2505, on the grounds that some of NLCAA's ATTs could be put at a competitive disadvantage if the data is released.

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 [CEC] to keep the record confidential." The California Public Records Act (CPRA) allows for the non-disclosure of: personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy; information protected by the privacy provisions of Article I, Section 1 of the California Constitution; as well as when the public interest served in not disclosing the information clearly outweighs the public interest served by disclosure. (Gov. Code, sections 6254(c), 6254(k), and 6255; see AG Opinion No. 80-705 (1981) 64 Ops.Cal.Atty.Gen. 575, 1981 WL 126785.)

California Code of Regulations, Title 20, section 2505(a)(1)(D), states that if an applicant 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.

Here, the application states that public disclosure of the document could cause loss of competitive advantage to some of NLCAA's ATTs because the public could use the individual testing and oversight data to decide whether to hire an ATT. The application states NLCAA keeps this information confidential by disclosing it only to approved volunteers, its board of directors, and the CEC. The application states that public access of the document may be allowed if ATT names and certification numbers are concealed.

NLCAA's application implicitly asserts the privacy interests of its ATTs in their individual testing and oversight data. Courts recognize that private information in personnel files commonly include results of examinations and evaluations of work performance. (See *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 819.) Courts also recognize that disclosure of comments or information about an employee on these subjects could be embarrassing and painful to the employee. (*Id.* at 820.) Here, the testing and oversight data is like what would be kept in a personnel file. Further, not only could dissemination be embarrassing but could also harm the business of some of the ATTs. There is a strong private interest in keeping the document confidential.

Beyond the private interest asserted in NLCAA's application, there is also a strong public interest in maintaining confidentiality of the document to maintain the integrity of the CEC's acceptance test technician certification providers (ATTCP) program. The CEC's acceptance testing program was included in the 2005 Building Energy Efficiency Standards (Energy Code) to help ensure that the installed equipment in nonresidential buildings operates as designed and in compliance with the Energy Code. As such, the public has an interest in the CEC's ability to collect accurate information from ATTCPs. Respecting the private nature of data encourages full disclosure. (See AG Opinion No. 80-705, *supra*, 1981 WL 126785, at p. 9.) Further, subjecting ATTs to intrusive or embarrassing disclosures that could harm their competitive advantage may discourage people from seeking certification to become ATTs, which could harm the CEC's program. The public interest in maintaining confidentiality is strong. The private and public interests in maintaining confidentiality of the document outweigh the public interest served by disclosure. The ATTs are not government

employees where the public's legitimate interest in disclosure would be greater. (See AG Opinion No. 80-705, *supra*, 1981 WL 126785, at p. 6.) The ATTs are private citizens engaged in private enterprise, even though ATTs are certified by an ATTCP approved by the CEC. Further, the ATTs' fitness to hold their certification is not in question by the information in the document, so the relationship of the information in the document to the qualifications or performance of ATTs is speculative. (Cf. *Ibid.*) Finally, the public's interest in reviewing the subject document is preserved except for the ability to link the testing and oversight data to individual ATTs because the application provides that disclosure may be allowed if masking is used to conceal the ATT names and certification numbers. The application also did not object to release of aggregated data. The balance of interests weighs in favor of confidentiality.

Based on the discussion above, the confidentiality application is granted. The information subject to this designation will be kept confidential until the ATTCP ends.

Be advised that persons may petition to inspect or copy records that the CEC has 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 its 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 2506-2508.

In the future, you may request confidentiality for any similar document without applying by following the procedures set forth in California Code of Regulations, Title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Ralph Lee, attorney, at [ralph.lee@energy.ca.gov](mailto:ralph.lee@energy.ca.gov) or (916) 776-3408.

Sincerely,



Drew Bohan  
Executive Director

cc: Ralph Lee, Attorney  
California Energy Commission