

DOCKETED	
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March 14, 2022

Via Email

Austin Grove
CHEERS
1610 R Street, Suite 200
Sacramento, California 95811
agrove@cheers.org

Application for Confidential Designation:
CHEERS HERS Provider Application Amendment, Docket 19-HERS-01

Dear Austin Grove:

The California Energy Commission (CEC) has received the California Home Energy Efficiency Rating System's (CHEERS) application for confidential designation, dated February 7, 2022, covering information related to the CEC's Home Energy Rating System (HERS) certification. Confidential designation is sought for the following document (CHEERS Data Documents):

A letter dated February 7, 2022, and received February 8, 2022, to CEC Deputy Director Michael Sokol and an attachment concerning EDDS security and interactions between the Compass system and various CHEERS data registries.

The application states that the CHEERS Data Documents should be kept confidential in their entirety for 10 years. The application identifies two primary bases for confidentiality: trade secret and corporate proprietary information, citing Government Code section 6254.

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

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 section 3426.1(d); See also Gov. Code sections 6254(k), 6276, 6276.44; Evid. Code section 1061(a); *Uribe v. Howie* (1971) 19 Cal. App. 3d 194, 207.)

The application states that the CHEERS Data Documents contain trade secret and proprietary information that is not available to the general public. The application states the applicant has spent hundreds of thousands of dollars to create the information. The application further states that the trade secret and proprietary information is such that aggregation would not be enough protection for the CHEERS Data Documents, and that, if the CHEERS Data Documents were to be released, it likely would reveal confidential information.

The CHEERS Data Documents contain detailed information about the EDDS security and interactions between the Compass system and various CHEERS data registries. Based on the applicant’s claims and a review of the CHEERS Data Documents, the applicant has made a reasonable claim under the law that authorizes the granting of confidentiality status. Thus, the CEC agrees to keep the CHEERS Data Documents confidential as trade secret and proprietary information. The applicant's request for confidential designation for the CHEERS Data Documents is granted for 10 years, consistent with previous grants of confidentiality for HERS providers, and will be maintained until February 8, 2032.

Be advised that under California Code of Regulations, Title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC’s Chief Counsel. Under California Code of Regulations, Title 20, section 2507, 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 for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in California Code of Regulations, Title 20, sections 2506-2507.

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You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the executive director 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 Jennifer Baldwin, senior attorney, at jennifer.baldwin@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director