

DOCKETED	
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July 22, 2022

Mike Hartley
California State Pipe Trades Council
1121 L Street, Suite 207
Sacramento, California 95814

**Application for Confidential Designation: ATTCP –
Docket No. 13-ATTCP-01**

Dear Mike Hartley:

The California Energy Commission (CEC) has received California State Pipe Trades Council's (CSPTC or applicant) application for confidential designation, dated July 1, 2022, docketed July 1, 2022, covering:

Cover Letter, Application and Appendix, Technician Manual, and Examinations in their entirety

The applicant asserts that these materials should be considered not subject to public disclosure pursuant to Government Code section 6254(g) as test questions and materials designed for licensing programs, and Government Code section 6276.44 regarding distribution of proprietary trade secrets.

The materials include the application for participation in the program submitted to the CEC, which describes how CSPTC has required its member Locals and signatory contractors to provide a variety of training through third-party training providers; a cover letter to the CEC regarding the application, which includes a summary list of changes from the prior application; two lengthy "MATT Instructor Manuals" (one has tracked changes); and two Recertification Examinations containing only test questions. Confidentiality is requested for "the entirety" of the documents, and so all of them must meet the requirements of the applicable laws to receive this designation within the CEC's records.

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." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); 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, §§ 6254(k), 6276, 6276.44; 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), further 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 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 documents include proprietary training and trade information that was developed at the expense of the council and the training programs of UA California Locals. It is intended for, and distributed only to, United Association Members and their signatory contractors for training."

How the advantage would be lost – No statement of loss of advantage.

The value of the information to the applicant – No dollar value, but the "proprietary training and trade information" ... "was developed at the expense of the [applicant]."

The ease or difficulty with which the information could be legitimately acquired or duplicated by others – The proprietary training and trade information "is intended for and distributed only to United Association members and their signatory contractors for training."

The applicant has not made a reasonable claim that the documents contain trade secrets, as defined, and that the Public Records Act authorizes the CEC to keep the record confidential pursuant to California Code Regulations, title 20, section 2505(a)(3)(A). There is no statement claiming any loss of advantage from the disclosure of all parts of these documents.

Second, the application asserts the materials constitute test questions. These can be designated as confidential pursuant to Public Records Act, Government Code section 6254(g). Portions of the MATT Instructions Manuals submitted with this application for confidentiality are test questions and likely qualify for confidentiality under the Public Records Act. However, California Code of Regulations, title 20, section 2502(a)(1)(B) requires an applicant for confidentiality to "specifically indicate those parts of the record that should be kept confidential," and the general assertion that some test questions appearing in a 343-page document meet the statutory standard for confidentiality fails to specifically indicate those parts of the record qualifying for confidentiality as a test record. Indeed, most of the document is not comprised of test questions. A list of page numbers containing "test questions" would satisfy the requirement to "specifically indicate those parts of the record that should be kept confidential." For this reason, the second basis for confidentiality, that is, test questions, has not been established in accordance with governing regulations for the MATT Instruction Manuals. There are no test questions in the Cover Letter or Application.

Two documents, MATT Recertification Examination and ATE Recertification Examination, contain only test questions and answers, and are specially indicated as such, and thus satisfy the requirements of California Code of Regulations, title 20, section 2505.

Executive Director's Determination

For the reasons stated, the applicant's confidentiality application is **denied** regarding the Cover Letter, Application, and two MATT Instruction Manuals; and **approved** for the MATT Recertification Examination and ATE Recertification Examination.

The records for which the application is denied shall be deemed confidential for 14 days from the date of this letter, permitting the applicant to resubmit a request that satisfies all requirements. (Cal. Code Regs., tit. 20, § 2505(3)(B).) When resubmitting, specifically indicate the portions of the record that contain "proprietary training and trade information.

Mike Hartley
July 22, 2022
Page 4

Regarding the two records that will be designated as confidential, be advised that under California Code of Regulations, title 20, section 2506, a member of the public may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy confidential records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose records, or release records previously designated as confidential, in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in the California Code of Regulations, title 20, sections 2506-2508.

You may request confidentiality for similar data in a future annual report without applying by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any procedural questions concerning this application for confidential designation, please contact Kari Anderson, Staff Counsel, at kari.anderson@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'Drew Bohan', written in a cursive style.

Drew Bohan
Executive Director