

DOCKETED	
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May 5, 2022

Via Email

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**Application for Confidential Designation: 2022 Quality Assurance Report
and Data Demand
Docket No. 19-HERS-01**

Dear Jennifer Brazell:

The California Energy Commission (CEC) has received CalCERTS' application for confidential designation, dated March 24, 2023 (TN 249432). The application seeks a confidential designation for the following documents related to CalCERTS' quality assurance program:

1. CalCERTS 2022 Quality Assurance Report
2. CalCERTS 2022 1673(d), 1673(f), Submission

CalCERTS states that these documents are part of their Home Energy Rating System (HERS) provider operation obligations and contain specific proprietary processes and trade secrets. The documents include information on quality assurance reviews on active raters, complaint reports, and the rater registry. The application states that information for which confidential designation is sought is maintained as confidential by the applicant and CalCERTS' employees.

CalCERTS requests that these documents be kept confidential in their entirety for a minimum of 10 years. Masked and aggregated data may be publicly disclosed. The application states that the documents contain proprietary information and trade secrets, personnel information, and should be kept confidential as a repeated application.

Confidentiality Claims

Proprietary Business Information and Trade Secrets

A properly filed application for confidential designation 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 Commission to keep the record confidential."

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 allows an agency to withhold personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy.

Discussion by Document Description

1. CalCERTS 2022 Quality Assurance Report (Report)

California Code of Regulations, title 20, section 1673(i) requires HERS providers to establish a quality assurance program that incorporates the specific requirements identified in the regulations. The Report describes the program and how it meets the regulatory requirements. The Report contains information on quality assurance reviews including a Quality Assurance Log, which documents efforts to review active raters through a combination of field and desktop review, and a summary of the complaints, resolutions, and associated rater discipline.

The application states that CalCERTS’ process of complying with regulatory requirements is a proprietary business practice. The application further asserts that CalCERTS has invested significant time and resources into the program, including retaining specialized experts to create the program. The applicant states that failure to find this information confidential would result in an unfair advantage in the marketplace.

However, page 1 of the Report states that the Report provides information on quality assurance reviews but does not detail the process that encompasses a

quality assurance review. Further, the Report does not contain discernable information that would constitute a trade secret. The quality assurance program itself may be confidential but not the information reported pursuant to the methods employed by the quality assurance program.

CalCERTS has not identified the independent economic value of the information within the Report. Hence, CalCERTS has not made a reasonable claim that the Report is exempt from disclosure as proprietary business information or trade secrets.

2. CalCERTS 2022 1673(d), 1673(f), Submission

California Code of Regulations, title 20, section 1673(d) requires HERS providers to create and maintain a registry of all raters. The registry contains the rater's name, status, home address, contact information, employer, and the types of rating services they are certified to perform.

CalCERTS requests that the document that contains rater registry information be kept as confidential to withhold disclosure of personnel information. However, the personal information of the raters has been redacted, leaving only the rater's name and the type(s) of rating services they are certified to perform. As such, this exhibit does not contain information that is confidential. Further, California Code of Regulations section 1673(d) requires HERS providers to make the registry available in written or electronic form upon written request. Therefore, the rater registry is not granted confidentiality.

Executive Director's Determination

For the reasons stated, the applicant has not made a reasonable showing that the documents related to CalCERTS' quality assurance program should be maintained as confidential. Please docket these documents within 14 days of receipt of this letter.

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 under the 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 the 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 in

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the California Code of Regulations, title 20, sections 2506-2507.

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

Sincerely,

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

Drew Bohan
Executive Director