

DOCKETED

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June 10, 2024

Via Email

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**Application for Confidential Designation: CEC 2023 Data Request
Docket No. 22-HERS-01**

Dear Rod Tamayo:

The California Energy Commission (CEC) has reviewed CHEERS, Inc.'s (applicant) request to grant confidentiality for the 2023 CF1R, CF2R, CF3R, NRCV Compliance Files (files). The applicant originally requested these files be made confidential in an application dated April 5, 2024 (TN 255559), but the files were not included in the application. In the CEC's response letter dated May 28, 2024 (TN 256567), the CEC did not make a confidentiality determination on this portion of the applicant's request.

In an email with the applicant and CEC staff dated May 31, 2024, the applicant explained that the files contain 704 GB of data composed of registered title 24 compliance documents from the CHEERS Data Registry. The applicant stated the files were uploaded directly to a CEC server (CEC AWS S3 bucket).

Confidentiality Claims

The applicant asserts the following provisions apply: California Code of Regulations, title 20, sections 1674(b), 2505, and 2025; California Government Code sections 6254 and 7927.700. The applicant states the information to be protected contains proprietary business information, trade secrets, and personnel information and would otherwise cause a loss of competitive advantage.

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."

A trade secret may include, but is not limited to, any process, compound, production data, or compilation of data that meet the following requirements: "(1) it is not patented, (2) it is known to only certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and (3) it gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (Gov. Code, § 7924.510(f)).

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.

Further, Government Code section 7927.700 does not require disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

Discussion

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

1. *The specific nature of the advantage* – The applicant states it has invested a substantial amount of time, money, and resources into collecting, managing, and maintaining these programs and data.
2. *How the advantage would be lost* – The applicant states disclosure of this information would furnish valuable insights to any present or prospective competitor, enabling them to sidestep or minimize the significant investment required.
3. *The value of the information to the applicant* – The applicant states it has spent years and many hundreds of thousands of dollars developing, collecting, managing, and maintaining these programs and data.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – Per the applicant, acquiring or duplicating the data legitimately would present a significant challenge, requiring considerable time and financial investment for others.

Discussion by Document Description

2023 CF1R, CF2R, CF3R, NRCV Compliance Files

The applicant indicated in an email with CEC staff on May 31, 2024, that the confidentiality request is warranted for these files as they contain customer information and data that would be highly valuable to the applicant's competitors.

CEC staff stated the files were deemed confidential based on prior applications and that the files are protected by regulations under which the data was submitted. Under California Code of Regulations, title 20, section 1673(g) Data Submittal, "upon the Energy Commission's request, but not more frequently than annually, a Provider shall submit to the Energy Commission information recorded pursuant to Section 1673(e) and provide the Energy Commission ongoing access to the Provider's database. If the Energy Commission makes this information public, it will be in an aggregated form only."

Executive Director's Determination

For the reasons stated, confidentiality is granted for the 2023 CF1R, CF2R, CF3R, NRCV Compliance Files indefinitely.

Be advised that persons may petition to inspect or copy records that have been 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 the 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 through 2508.

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

Sincerely,



Drew Bohan
Executive Director