

DOCKETED

Docket Number:	22-HERS-01
Project Title:	2022 HERS Provider Applications for the 2022 Building Energy Efficiency Standards
TN #:	260191
Document Title:	CEC Response Letter Golden State Registry's Application for Confidentiality
Description:	CEC Response to GSR's Application for Confidentiality- Additional Training Material
Filer:	Marianna Brewer
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/20/2024 2:18:23 PM
Docketed Date:	11/20/2024



November 20, 2024

Via Email

Jonathan Johnson
Golden State Registry
430 Villa Point Dr.
Newport Beach, CA 92660
jon@gsregistry.org

**Application for Confidential Designation: Golden State Registry 2022 HERS
Provider Applications for the 2022 Building Energy Efficiency Standards
Docket No. 22-HERS-01**

Dear Jonathan Johnson:

The California Energy Commission (CEC) has received the Golden State Registry's (applicant) application for confidential designation (TN 259819), docketed October 31, 2024. The application requests confidential designation for the following records:

- Ex C1 GSR Training Program Details 2022
- Ex C3 Rater Test Questions

The applicant requests that the above-referenced documents be kept confidential for a period of 6 years. The applicant notes the documents are part of its HERS Provider application and contain proprietary information and trade secrets. The applicant also notes that information for which confidential designation is sought is maintained as confidential by the applicant and has only been disclosed or shared with those directly employed or contracted by Golden State Registry.

Confidentiality Claims

An application for confidential designation 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 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, 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.

Discussion

The applications address 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 has heavily invested money and time to develop the training materials for its rater training program, as part of its application to become a HERS Provider.
- 2) *How the advantage would be lost* – If the information were to be made public, competitors could easily duplicate the training materials, which would result in the applicant losing their competitive advantage.
- 3) *The value of the information to the applicant* – No specific dollar amount is identified, but the information is required to become a HERS Provider.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information can only be accessed by Golden State Registry employees or contractors.

The applicant has made a reasonable showing that the information referenced above should be maintained as confidential as proprietary business information or trade secrets. The data contains information from applicant's HERS Provider application, training materials, testing documents and procedures, and software systems that is not public, and has the potential for economic advantage.

Executive Director's Determination

For the reasons stated, the applicant's request for confidential designation is granted. It will be kept confidential for a period of six years, or two additional code cycles, to be consistent with previous similar confidentiality determinations for the applicant (TN 249122). This period is appropriate because it ensures that Golden State Registry's HERS Provider application and testing and educational materials will be confidential while in use. After two additional code cycles, the risk of harm from these documents being publicly available is diminished since Golden State Registry will have submitted two new applications to be certified as a HERS Provider and refined or altered their testing/education material.

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 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 through 2508.

Related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

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

Sincerely,



Drew Bohan
Executive Director