

DOCKETED

Docket Number:	13-ATTCP-01
Project Title:	Acceptance and Training Certification
TN #:	232747
Document Title:	CSPTC Confidentiality Approval
Description:	N/A
Filer:	Pamela A Fredieu
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	4/15/2020 2:19:40 PM
Docketed Date:	4/15/2020



April 15, 2020

Mr. Aaron Stockwell
California State Pipe Trades Council
1121 L Street, Suite 207
Sacramento, California 95814

RE: Application for Confidential Designation for Updated Application, Training,
and Study Materials, Docket No. 13-ATTCP-01

Dear Mr. Stockwell:

The California Energy Commission (CEC) received your Confidentiality Application (Application) that you filed on February 14, 2020 on behalf of California State Pipe Trades Council (CSPTC) (Applicant). You seek confidential designation for the following documents that you submitted comprising updated training, testing, and application materials (Documents):

- 1) 2019 CSPTC ATCP Update Cover Letter, 2020 – 3 pages
- 2) 2019 CSPTC Application Update and Appendices, 2020 – 40 pages
- 3) 2019 CSPTC MATT Instructor Training Manual, 2020 – 432 pages
- 4) 2019 CSPTC ATE Training Manual, 2020 – 62 pages
- 5) 2019 MATT Certification Examination, 2020 – 27 pages
- 6) 2019 MATT Recertification Examination, 2020 – 3 pages

You requested confidential designation of the Documents in their entirety, pursuant to California Code of Regulations, title 20, section 2505, on the grounds that they include proprietary training and trade information distributed only to United Association members and signatory contractors.

A properly filed Application for Confidentiality 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 [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.)

California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(*Uribe v. Howe* (1971) 19 Cal. App. 3d 194, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

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, or its disclosure would otherwise cause loss of a 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.

Your Application states the Documents include proprietary training and trade information, and were developed at the expense of the Applicant and the Training Programs of United Association (UA) California locals. Your Application also states that the Documents are provided only to UA members and their signatory contractors for training and not otherwise distributed or disclosed. You state that the information cannot be aggregated. Your Application requested that the Documents remain confidential until the Acceptance Test Technician Certification Program ends.

Beyond the bases you identified, it also appears that the Documents could allow prospective students to cheat by obtaining testing materials which would diminish the effectiveness of the entire program. The Public Records Act specifically allows for the non-disclosure of test questions, scoring keys, and other examination data used to administer various types of examinations. (Gov. Code, section 6254(g).)

You have made a reasonable claim that the law allows the CEC to grant your Application. The Applicant developed the testing forms, which contain information that is not public. There is no information to suggest that release of the information would serve a greater public benefit than its protection.

Based on the discussion above, the Applicant's confidentiality Application is granted. The information subject to this confidentiality designation will be kept confidential until the Acceptance Test Technician Certification Program ends.

Be advised that persons may petition to inspect or copy records that the CEC has 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 2506-2508.

In the future, you may request confidentiality for any similar document without submitting an application 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 Ralph Lee, attorney, at ralph.lee@energy.ca.gov or (916) 645-3953.

Sincerely,

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

Drew Bohan
Executive Director