

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512



May 15, 2009

Robert Scott  
California Home Energy Efficiency Rating Services  
20422 Beach Blvd., Suite 235  
Huntington Beach, CA 92648

**DOCKET**  
**09-HERS-1**DATE May 15 2009RECD. May 15 2009

RE: **Home Energy Rating System Rater Training Curriculum**  
**Application for Confidentiality**  
**California Home Energy Efficiency Rating Services**  
**Docket No. 09-HERS-1**

Dear Mr. Scott:

On April 15, 2009, California Home Energy Efficiency Rating Services (CHEERS) filed an Application for Confidentiality with the California Energy Commission (Energy Commission) for information related to CHEERS Home Energy Efficiency Rating Services (HERS) Rater Training Curriculum for the 2008 California Building Energy Efficiency Standards (Docket No.09-HERS-1). The application seeks confidentiality for the following information related to CHEERS HERS Provider Application:

1. Lesson plans
2. Competency lists
3. Test questions

CHEERS claims, as to the lesson plans and competency lists, that disclosure of this information would expose CHEERS' practices that are competitive assets, and thus are trade secrets. CHEERS relies upon California Public Records Act, Government Code section 6254(k) and Evidence Code section 1060, claiming:

the information has been developed over 10 years and is part of a unique approach to training this (sic) is synonymous with CEERS reputation and name recognition.

As to the test questions, CHEERS asserts that disclosure of the information would compromise the integrity of the HERS Rater Training program through exposure of the testing material. CHEERS cites to California Public Records Act section 6254(g). This section allow for test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination to be exempt from disclosure.

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 [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.) The 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, § 757, comments b, p.5.)

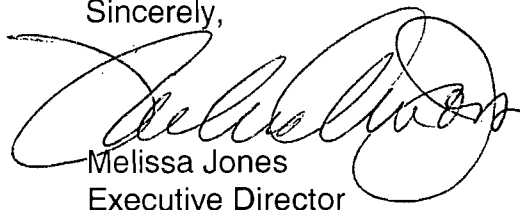
CHEERS has made a reasonable claim that the law allows the Energy Commission to keep the information submitted by CHEERS confidential on the grounds that it is trade secret and testing questions exempt from disclosure by law. As such, your request for confidential determination is granted. The information listed above will remain confidential until December 31, 2014.

Persons may petition to inspect or copy the records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

**Please note that subsequently submitted information can be deemed confidential as specified in this letter without the need for a new application if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination.** California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4).

If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,



Melissa Jones  
Executive Director

cc: Docket Unit  
Eurlayne Geiszler, Efficiency & Renewable Energy Division