

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

June 18, 2009

Greg Davis
California Building Performance Contractors Association
1000 Broadway
Oakland, CA 94607

DOCKET**09-HERS-1**

DATE June 05 2009

RECD. June 17 2009

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

Dear Mr. Davis:

On May 19, 2009, California Building Performance Contractors Association (CBPCA) filed an Application for Confidentiality with California Energy Commission (Commission) for information related to CBPCA Home Energy Efficiency Rating Services (HERS) Basic HERS "Update for Existing Raters" for the 2008 California Building Energy Efficiency Standards (Docket No.09-HERS-1). The application seeks confidentiality for the following information related to CBPCA HERS Provider Application:

1. Synopsis;
2. Course outline;
3. Power Point presentation;
4. 2008 Update reference chart;
5. Sample test questions.

CBPCA claims that disclosure of this information would cause a loss of trade secrets and competitive advantage of CBPCA's intellectual training program. CBPCA claims that the information is proprietary, and can only be acquired by a participating student enrolling in the HERS training. CBPCA's application cites to several sections of the California Public Records Act, Government Code sections "6254 (4) and (g), 6254.5(e), 6255," and states:

Items received in confidence can be held as confidential. The intellectual property, test questions and proprietary information is better served by non disclosure. Copyright law and the California Uniform Trade Secrets Act.

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 does allow 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.)

Furthermore, the Public Records Act also allows for the non-disclosure of test questions, scoring keys, and other examination data used to administer a licensing examination. Gov. Code § 6254(g).

Thus, although the justification provided by the application is extremely sparse, the application has made a reasonable claim that the Public Records Act allows the Commission to keep the information submitted by CBPCA confidential on the grounds that it is trade secret, proprietary information, and licensing examination materials. As such, your request for confidential determination is granted. The information listed above will remain confidential until July 1, 2012, for a period of three years, as requested.

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).

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Jones', written over a horizontal line.

Melissa Jones
Executive Director

cc: Docket Unit
Eurlayne Geizler, Energy Efficiency & Renewables Division