

**CALIFORNIA ENERGY COMMISSION**

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July 25, 2014

Max McKinney  
EACS Inc.  
PO Box 2233  
Orangevale, CA 95662

California Energy Commission <b>DOCKETED</b> 14-HERS-01
TN # 73502

**RE: Application for Designation of Confidential Records, Data Registry  
Application Materials  
Docket Number 14-HERS-01**

Dear Mr. McKinney:

The Energy Commission is in receipt of an application for confidentiality filed by EACS Inc. ("Applicant"). The application requests confidential designation for materials submitted as part of the Applicant's Data Registry Application materials. Specifically, Applicant requests confidential designation for the following documents:

1. The entire EACS Data Registry Application which includes: client training and education programs, training materials, descriptions of website operations and features, Quality Assurance programs, Document Registration Tests, Sample Compliance Documents, and Data Registry Check List.

The application states that the document is confidential because it contains proprietary trade secrets, disclosure of which would result in EACS Inc. losing a competitive advantage which could equal as much as \$750,000 per year in certificate and contractor fees. In addition, disclosing the EACS structure for developing future expansion into new markets could potentially result in lost revenue worth \$10 million per code cycle.

Disclosing the EACS Data Registry Information would give competitors detailed development objectives which would allow competitors to fast-track new designs and features which normally takes years to conceive and develop. While the application materials are of little interest to the public, they would be of interest to competitors who would seek monetary gain from EACS's innovation.

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.) California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the 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, 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.

In this case Applicant has developed a Data Registry, through cost and effort, which provides a business advantage over competitors. If the information were to be publically released competitors could utilize the data to copy and develop their own product without the upfront costs. The Applicant's business advantage would be lost.

In addition if test related materials were made public prospective students could cheat by obtaining testing materials, diminishing 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 § 6254(g))

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the above listed report confidential on the grounds that it is trade secret and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. Access to this information would allow competitors to derive a business advantage, as they could use this information in product development without the need to spend the time and resources that Applicant invested.

Applicant requests that the information be kept confidential for 5 years from the date of data registry approval. In addition, the Applicant does not believe the information can be aggregated to a level that would allow disclosure.

For the above reasons, the request for confidential designation for the EACS Data Registry Application which includes: client training and education programs, training materials, descriptions of website operations and features, Quality Assurance programs, Document Registration Tests, Sample Compliance Documents, and Data Registry


Max McKinney  
July 25, 2014  
Page 3

Check List is granted. The information/data will remain confidential for 5 years from the date of EACS' data registry approval.

Be advised that persons may petition to inspect or copy 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.

If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Joan Walter  
Lea Haro