



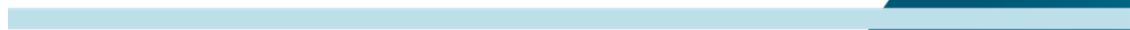
Australian Government

Clean Energy Regulator

**NATIONAL
GREENHOUSE AND
ENERGY REPORTING**

National Greenhouse and Energy Reporting Scheme

**Application for information not to be
published for 2013-14 reporting year
under section 25 of the National
Greenhouse and Energy Reporting
Act (2007)**



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Purpose

This guide has been designed to assist registered corporations or persons who report emissions and energy information to apply under Section 25 of the *National Greenhouse and Energy Reporting Act 2007* (the NGER Act) for their greenhouse and energy information not to be published.

A request can only be made for information which reveals or could reveal:

- a trade secret
- any other matter having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed, or information about a specific facility, technology or corporate initiative relating to the corporation or person.

A request for reported data not to be published must be made on the prescribed application form, which is available on the forms and calculators page on the Clean Energy Regulator website.

Such requests should be submitted by 31 December following the financial year for which the data was reported. So, applications regarding NGER data reported in 2013-2014 should be submitted by 31 December 2014.

Who can make an application for their information not to be published?

Data will only be published if the total amount of greenhouse gases attributed to a corporate group for their combined scope 1 and scope 2 emissions have a carbon dioxide equivalence of 50 kilotonnes or more.

A registered corporation or a person required to provide information under section 20, or a person required to provide a report under section 22A, 22AA, 22E, 22G or 22X should only make a section 25 application if it meets the publishing threshold.

For a Reporting Transfer Certificate (RTC) holder, the publication threshold is 25 kilotonnes or more of carbon dioxide equivalence, or 100 terajoules of energy production or consumption.

A contractor should only make a section 25 application if the registered corporation's group that the contractor's data is attributed to meets the corporate group publishing threshold.

Assessment of an application

To assess the application, the Clean Energy Regulator will consider whether there are real and substantial grounds that the act of publishing may reveal a trade secret or affect the commercial value. Grounds that are speculative, imaginable or theoretical will not be sufficient.

If the application is accepted, the Clean Energy Regulator may publish advice that the totals of greenhouse and energy information fall within a specified range of values.

An applicant has the right to appeal the Clean Energy Regulator’s decision to the Administrative Appeals Tribunal. In the event of an appeal, the information that is the subject of the application would be withheld from publication until the appeals process is completed.

If the application is accepted then this will be noted in the Clean Energy Regulator’s publication of the NGER data in a manner similar to the example below (fictional data used):

Registered Corporations	Total scope 1 greenhouse gas emissions(t CO ₂ -e)	Total scope 2 greenhouse gas emissions(t CO ₂ -e)	Net energy consumption (GJ)
Company A	80,400	59,500	7,111
Company B	40,404	3,700,767	15
Company C	2,134,500	14,290	444
Company D	320,000	500	3,500
Company E ²	345,000	-	-
Company F	13,000	135,999	2,756,340
Company G ¹	43,789	100,010	345,123
Company H ²	-	-	-

Footnotes

1. These corporations have voluntarily provided information to the Regulator concerning GreenPower renewable energy purchases, voluntarily surrendered Renewable Energy Certificates or offset scope 2 greenhouse gas emissions totals. This information has been published on the [Clean Energy Regulator website](#)¹.
2. These corporations have applications pending to have all or part of their greenhouse and energy information withheld from publication under section 25 of the NGER Act (which relates to matters having a commercial value or trade secrets).

¹ <http://www.cleanenergyregulator.gov.au/National-Greenhouse-and-Energy-Reporting/published-information/greenhouse-and-energy-information/Pages/default.aspx>

Part B- Information to be withheld

Part B must be completed for all applications.

Any documents related to Part B questions that you wish to submit with this form are to be listed in the attachment section at the end of Part E.

Part B of the application form allows you to provide details concerning what greenhouse and energy information you want the Clean Energy Regulator to withhold from publication.

When providing these details please consider the link between the information you wish to have withheld from publication and your organisation's trade secret and/or other matter of commercial value. A trade secret or a matter of commercial value is something which is not generally known or reasonably ascertainable and by which a business can obtain an economic advantage over competitors or customers.

Key points to remember are:

- the trade secret or other matter of value must belong to your organisation
- if you are seeking to protect a trade secret, the act of the Clean Energy Regulator publishing the greenhouse and energy information in question would reveal or be able to reveal the trade secret, and
- if you are seeking to protect a matter of commercial value, the act of the Clean Energy Regulator publishing the information in question would reveal or be able to reveal the matter.

Moreover, in regard to a matter of commercial value, you must also demonstrate that the making public of the greenhouse and energy information could reasonably expect to destroy or diminish the value of the other matter. Simply revealing the other matter is not enough.

The trade secret or other matter of commercial value must relate to:

- a specific facility
- a technology, or
- a corporate initiative.

These criteria must also relate to your business or undertaking. The term 'corporate initiative' is quite wide-ranging. For example, it would include actions provided for in a business or corporate plan.

In regard to the greenhouse and energy information itself:

- if you are a registered corporation, the information to be withheld must be part of the information published for your corporation's group

- if you are a person required to provide information, the information to be withheld must be part of the information published for the registered corporation's group that your data is included with, and
- if you are a RTC holder, the information to be withheld must be part of the information that will be published for the facility for which you hold the RTC.

Under the NGER Act the Clean Energy Regulator is obliged to publish aggregated totals for registered corporations. These totals are the:

- scope 1 greenhouse gas emissions
- scope 2 greenhouse gas emissions
- net energy consumption, and
- for the entire corporate group of each corporation.

You may nominate to have some or all of these totals withheld from publication. For example, you may apply to have the scope 1 emissions total withheld but agree to have the scope 2 emissions and energy consumption totals published.

Under the NGER Act, the Clean Energy Regulator has the discretion to also publish the same three aggregated totals for each group member and business unit level in a corporation's corporate group. This information would be in addition to the publishing of the aggregated totals for the corporate group as a whole.

If the Clean Energy Regulator decides to publish this discretionary information, you may apply to have one or more totals for only one or more group members or business units in your registered corporation's group be withheld from publication. For example, you may apply to have the scope 1 emissions for just one of your group members withheld, while agreeing to have the other totals for that group member, and all of the totals for the other group members and business units, be published.

Part C – Details of the trade secret

Only complete Part C if you are applying in regard to protecting a trade secret.

The purpose of Part C is to provide you with the opportunity to provide evidence in support of your application. The questions in this part are intended to assist you to show that:

- you are seeking to protect a genuine trade secret, and
- the act of the Clean Energy Regulator publishing the greenhouse and energy information that you want withheld would or could reveal the trade secret.

If the application concerns more than one trade secret, you should complete one Part C for each trade secret. This can be done by copying Part C and including one copy for each additional trade secret with the rest of the application. Do not duplicate the remainder of the application for each additional trade secret, ONLY Part C. Any documents related to Part C questions that are attached to this form are to be listed in the attachment section at the end of Part E.

Key issue

The key issue in making a section 25 application to safeguard a trade secret is to demonstrate to the Clean Energy Regulator that the trade secret would or could be revealed if the Clean Energy Regulator publishes the greenhouse and energy information in question.

It is crucial to remember that the greenhouse and energy information you wish to have withheld from publication is NOT NECESSARILY the same as the trade secret you wish to safeguard. The key issue is that in publishing the greenhouse and energy information your trade secret will or may be revealed.

In assessing your application to safeguard a trade secret, the Clean Energy Regulator will consider whether the matter the application relates to is, in fact, a trade secret and whether the trade secret will or may be revealed as a result of publication.

What is a trade secret?

A trade secret is any formula, pattern, device or composition of information that is used in a person's business or within an organisation, and which gives that person or organisation an opportunity to derive an advantage over other persons who do not know or use it. A trade secret is something that if it was revealed to a rival, would cause harm to the owner of the trade secret.

A trade secret should have the following characteristics:

- it is used or can be used in a trade or business
- it gives the person or persons who possess it an advantage over their competitors
- the owner of the trade secret has limited its dissemination to those who need to know it for the purposes of conducting their business, or to people who have pledged to observe the confidentiality of the trade secret, and
- the disclosure of the trade secret to a competitor would be liable to cause real (or significant) harm to the person in possession of the trade secret.

A matter that has been subject to public testing, reported in trade journals or revealed at seminars or conferences is unlikely to be a trade secret. Moreover, a matter that was originally secret may lose its secrecy over time. A trade secret does not have to be technical in nature. Many valuable trade secrets could be readily understood by a lay person.

Examples of trade secrets:

- recipes or formulas for the manufacture of products, and
- a confidential list of the names of customers or financial data.

In deciding whether a matter that you wish to protect is a trade secret there are two key considerations.

Who knows the matter?

- Is the matter known outside your business or organisation, in particular do others engaged in the same industry know it?
- Has your organisation taken steps to guard the secrecy of the matter? This would include such measures as limiting access to the information and/or having staff sign confidentiality agreements obligating them to protect the secrecy of the matter.

How valuable is the matter?

- Is the matter valuable to your organisation? For example, does possessing this matter give your organisation a competitive advantage, or would it benefit your competitors if they gained knowledge of this matter?
- Has your organisation gone to a significant effort and/or spent a large amount of money on developing this matter?
- Would it be easy for others who do not know your matter to acquire or duplicate it?
- Can it be used in an identifiable trade?
- Has your matter lost its secrecy over time?
- If the matter that is the subject of your application does not satisfy these considerations then it is probably not a trade secret.

Part D – Details of the other matter

Only complete Part D if you are applying in regard to protecting a matter of commercial value other than a trade secret.

Any documents related to Part D questions that are attached to this form are to be listed in the attachment section at the end of Part E.

The purpose of Part D is to provide you with the opportunity to provide evidence in support of your application. The questions in this part are intended to assist you to show that:

- you are seeking to protect a genuine matter of commercial value
- the act of the Clean Energy Regulator publishing the greenhouse and energy information that you want withheld would or could reveal, the matter, and
- if the data is published then this could reasonably be expected to have the effect of destroying or diminishing the commercial value of the matter.

If your application concerns more than one matter of commercial value other than a trade secret, you should complete one Part D for each of these other matters. This can be done by copying Part D and including one copy for each additional other matter with the rest of the application. Do not duplicate the remainder of the application for each additional other matter, ONLY Part D.

Key issues

In assessing your application to safeguard a matter of commercial value, the Clean Energy Regulator will determine whether you have demonstrated that you have a matter of commercial value that may be affected by the publication of greenhouse and energy information.

The key issues in making a section 25 application to safeguard a matter of commercial value are:

- can you demonstrate to the Clean Energy Regulator that the matter of commercial value could be revealed if the Clean Energy Regulator publishes the greenhouse and energy information in question?, and
- if the matter was revealed would this destroy or diminish the commercial value of the matter?

What is a matter of commercial value?

Something has 'commercial value' if it is valuable to you for the purposes of carrying on the commercial activity in which you are engaged.

A matter can have commercial value if it is:

- important for the profitability of the owner
- important for the viability of a continuing business operation
- important for the viability of a particular transaction or project, and
- something that would be of value to a competitor.

The investment of time and money in the matter is not in itself sufficient to give a matter commercial value. Something may be expensive to produce but does not necessarily have commercial value.

A matter may lose its commercial value over time. This is particularly so if it is concerned with a one-off commercial transaction and similar activities are not carried out in the future

Information may be valuable to your organisation because it is essential to your operations. But if this same information is fairly widely disseminated outside of your organisation then it is unlikely to have commercial value.

Examples of matters that usually DO have commercial value include:

- a method or procedure developed and employed in a business that enables it to provide a service more quickly than its competitors, or
- a list of customers with their specific requirements.


Information that is common knowledge in the applicant's industry is an example of a matter that is unlikely to have commercial value.

In asking yourself whether your organisation has a matter of commercial value consider the following questions:

- Is the information of value to your organisation in relation to its commercial operations?
- Is the information limited to your organisation or to a limited number of other parties?
- Would the information be of value to a competitor?

Destroying or diminishing the commercial value of the matter

Even if a matter has commercial value and the publishing of greenhouse and energy information would reveal the matter, this is not enough for the Clean Energy Regulator to accept an application not to publish the data. The Clean Energy Regulator must be satisfied that publishing the



greenhouse and energy information could reasonably be expected to destroy or diminish the commercial value of the matter.

If the greenhouse and energy information or the matter is already public knowledge in some form, the act of the Clean Energy Regulator publishing the greenhouse and energy information is unlikely to destroy or diminish the commercial value of the matter. The same would apply if either the greenhouse and energy information or the matter can be revealed using publicly available information when reasonable effort is applied.

In order to make a case that the commercial value of the matter could reasonably be expected to be destroyed or diminished by publication, you need to explain why there is a reasonable expectation of this happening. This must be more than merely possible, speculative or a conjectural expectation. Real and substantial grounds must exist to support the expectation of the loss of commercial value.

Will the value be destroyed or diminished?

- If the information was disclosed outside of your organisation would this destroy or diminish its commercial value?
- Is it reasonable to expect that if the greenhouse and energy information is published your other information will either lose its commercial value or have it reduced?
- What substantial grounds do you have for this expectation?