

NOV 13 2003

Michael J. McKale  
Manager  
Product Regulations and Investigations  
Delphi Automotive Systems  
5825 Delphi Dr.  
Troy, MI 48098

Re: Confidentiality Determination/EA03-007

Dear Mr. McKale:

This is in response to your letter dated August 28, 2003, in which you request confidential treatment for the materials submitted by General Motors Corporation (GM) in response to a National Highway Traffic Safety Administration (NHTSA) Information Request pertaining to the above-captioned matter. A portion of the response submitted by GM consisted of information provided by Delphi Automotive Systems at GM's request. You request that the materials be granted confidential treatment but do not indicate how long you wish the materials to remain confidential.

The materials for which you request confidential treatment are contained in four attachments to your letter. Attachment I consists of a test report and test procedures related to an electronic component manufactured by Delphi. Attachment II consists of schematic and block diagrams for this component. Attachment III consists of a photograph of the internal construction of one layer of the integrated circuit incorporated within the component and Attachment IV consists of a description of how the component obtains and processes certain information derived from signal sources within a vehicle. Delphi indicates release of the information contained in the submission would provide competitors with detailed insights into the design choices, system architecture and performance of powertrain management systems developed at significant cost to Delphi. Your letter also indicates that the aforementioned information, if disclosed, would cause Delphi to suffer substantial competitive harm.

I have decided to grant Delphi confidential treatment for these materials.

The information submitted was requested pursuant to 49 USC § 30166, which authorizes the agency to conduct investigations and require manufacturers to submit reports. Therefore, because the information was not submitted voluntarily, I have reviewed your submission under the competitive harm standard set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

I have decided to grant confidential protection for the information Delphi claims is entitled to confidential treatment. The materials at issue depict Delphi's hierarchy of design choices, system architecture, component design, design evaluation and product testing procedures. Release of this information would, as your letter suggests, provide Delphi's competitors with substantial insight into Delphi's design processes, design choices, design execution and system characteristics at little or no expense. This information, if revealed, could cause competitive harm to Delphi.

This grant of confidential treatment is indefinite. However, it is also subject to the various provisions of Part 512 that specify the circumstances under which otherwise confidential information can be disclosed.

This grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR § 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information (49 CFR § 512.10). If necessary, you will be notified prior to the release of any information under the procedures established by our regulations (49 CFR § 512.22(b)).

If you disagree with this determination, you may request reconsideration. To request reconsideration, you must submit additional written justification with the certification required by 49 CFR § 512.18(b) within 20 working days after the receipt of this letter. Such justification must show the particular competitive harm to your company from the disclosure of the information for which confidentiality has been denied and contain any legal arguments and citations upon which you rely (49 CFR § 512.8). Should we receive no justification within the required period of time, your submitted information will be placed in the public file.

Sincerely,

(S)  
Otto G. Matheke, III  
Staff Attorney

