

AUG 25 2004

Don Bearden
Director, Governmental Affairs Department
Subaru of America Inc.
Subaru Plaza
P.O. Box 6000
Cherry Hill, NJ 08034-6000

Re: Request for Confidential Treatment of Information - EA03-024

Dear Mr. Bearden:

This responds to your April 7, 2004 request for confidential treatment for information concerning provided by Subaru of America (Subaru). Subaru requests confidential treatment for information contained in its response to the above matter. Specifically, you seek confidential treatment for three appendices that contain a series of graphs (Appendix 9d -- Parts 1 and 2), a hydraulic circuit diagram (Appendix 9e), and an electronic control unit (ECU) internal circuit diagram (Appendix 9g). You request that these materials be protected for an indefinite period of time.

Your letter states that this information is closely guarded and that its disclosure would aid competitors in learning the details of Subaru's brake system designs. Subaru's supporting certificate describes this information as proprietary data.

I am granting your request for confidential treatment.

Because the information described above was required to be submitted to the agency under the above matter, the agency reviewed Subaru's claim for confidential treatment under the test announced in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) and its progeny. Under that test, information is confidential under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), if its disclosure is likely to cause substantial competitive harm to the submitter or to impair the government's ability to collect the information in the future.

In order for NHTSA to withhold the submitted information from disclosure under Exemption 4, Subaru must show that the disclosure likely would cause substantial competitive harm or that disclosure is likely to impair the agency's ability to obtain similar data in the future. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Subaru's submission contains two graphs that illustrate a particular braking condition (Appendix 9d), a circuit diagram for the hydraulic brake unit (Appendix 9e), and an ECU internal circuit diagram (Appendix 9g). These items show the technical details of how Subaru's system operates. Further, the diagrams in Appendices 9e and 9g also fall within 49 CFR Part 512, Appendix B, which treats certain information as presumptively confidential. Specifically, these diagrams fall under the first class, which covers blueprints and engineering drawings. In addition to not being readily available to the public, the agency believes that the disclosure of Subaru's appendices would be likely to cause substantial competitive harm. Accordingly, Appendices 9d, 9e, and 9g will be withheld under Exemption 4.

Notwithstanding this grant of confidential treatment, the information may be disclosed under the various provisions set forth in 49 U.S.C. § 30167 and 49 C.F.R. Part 512. You will be notified prior to any such release of information.

Sincerely,

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Otto G. Matheke, III
Senior Attorney

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