

NUS-212
C. Glass

MAY -7 2004

Received
18 May 04

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Maddox
Product Compliance Officer
Volkswagen of America, Inc.
3800 Hamlin Rd.
Auburn Hills, MI 48326

Re: Confidentiality Determination /EA03-025

Dear Mr. Maddox:

This is in response to your letter dated March 22, 2004, in which you request confidential treatment for the materials submitted by Volkswagen of America Inc. (VW) and enclosed with your letter. The materials consist of a 38-page powerpoint presentation concerning dashboard fires in Audi A6 vehicles that are the subject of the above-caption NHTSA defect investigation. VW contends that the information contained in the presentation contains confidential commercial information that, if released, would cause VW to suffer substantial harm because the presentation would provide competitors with insight into the evaluation methods it uses to address quality and performance issues. Your letter requests that the materials be granted confidential treatment for ten years.

I have decided to grant VW's request in part and deny it in part.

I note first that VW's request barely meets the minimum requirements of 49 CFR Part 512. Your request does not, other than to provide a conclusory allegation that disclosure of the material involved would cause substantial competitive harm, explain with any degree of specificity why the material involved should be granted confidential treatment.

The Freedom of Information Act (FOIA) provides that Federal agencies may not withhold information under their control unless that information is exempted from disclosure by a specific FOIA exemption or another Federal statute barring disclosure.

Any submitter requesting confidential treatment for whatever it submits bears the burden of demonstrating with sufficient particularity why the materials for which confidential treatment is requested are exempted from disclosure.

NHTSA's regulations implementing its FOIA responsibilities are set forth in 49 CFR Part 512, and were clarified recently. See 68 Fed. Reg. 44230 (July 28, 2003). In general, to satisfy FOIA requirements for confidentiality, manufacturers must demonstrate that the disclosure of their responses to Office of Defects Investigation information requests would be likely to result in substantial competitive harm. Manufacturers are required to justify their claims for confidentiality. They must state what the harmful effects of disclosure would be and why the effects should be viewed as substantial. See 49 CFR § 512.8 (2003); 49 CFR § 512.4(b)(3), (d) (2002). I note that the requirement of specificity and complete justification has been a major component of the Part 512 regulation since its inception in 1981. See 46 Fed. Reg. 2049, 2060 (January 8, 1981) and 49 CFR 512.4(b)(6) (1981). Among other things, it is based on a desire to reduce and discourage specious claims for confidential treatment, and to provide the agency the ability to make prompt determinations. See 43 Fed. Reg. 22412, 22413 (May 25, 1978).

I note first that some of the information on pages 6, 7, 10, 13, 14 and 17 of the presentation contains personally identifying information that either directly or indirectly reveals personal data relating to Audi owners. This personal information is entitled to confidential treatment under Exemption 6 (5 U.S.C. § 552(b)(6)). Therefore, I have decided to accord confidential protection to the information contained in the "Customer Name" and "VIN" columns on the aforementioned pages.

I have decided not to accord confidential treatment to the remainder of the materials contained in the presentation. VW has failed to articulate sufficient reasons for its request that these materials be granted confidential treatment. Moreover, your company's request is overly broad and, in some instances, clearly frivolous. In particular, I note that the final slide, which contains a picture of the Audi logo on a vehicle, the VW and Audi logos and the words "Thank You" has been stamped with the legend "Entire Page Confidential." Similarly, the first slide, which also contains the same graphics, the EA number and the title of the presentation, contains information that is obviously available to the public.

Other materials in your presentation are also in the public domain. Slides 11 and 12 and 20 through 32 simply contain photographs of the area under the A6 dashboard or components incorporated in the dashboard. Neither the photographs nor the text accompanying the photographs reveal any information that could not be discerned from examination of the vehicles themselves, service manuals for the vehicles, parts catalogs or other information that is widely available.

In other instances, VW has simply failed to provide, beyond a conclusory allegation of harm, sufficient support for its contention that release of the materials involved would cause it to suffer substantial competitive harm. Slides 15 and 16 depict a portion of the wiring harness and dashboard that have been damaged by fire. Because they are unique, these images of a damaged vehicle are not publicly available to the extent that the preceding materials are. Nonetheless, the photographs are not remarkable in any sense of the word and reveal nothing about the internal processes, proprietary methods or business practices of VW. VW has also failed to establish that release of slides 34 through 36 would provide competitors with meaningful insights into VW's internal processes. These slides contain screenshots of computer assisted design (CAD) drawings of a redesigned component. The software used to generate these drawings is commercially available and therefore is not proprietary to VW.¹ The drawings themselves reveal only that the shape of a single component has been altered and that VW considers this alteration to be a means of resolving a defect.

VW also requests that the warranty and claims information contained on slides 2, 4, 5, 6, 7, 10, 13, 14, and 18 be granted confidential treatment. However, the information contained on these slides reveals nothing about the internal business practices or production processes of the company. Disclosure of this data, due to its narrow focus, is not likely to result in cross-company comparisons or other use that might cause VW to suffer substantial competitive harm. I have therefore determined, with the exception of the removal of personal identifiers as discussed above, that the warranty and claims data will not be granted confidential treatment.

Your letter also requests confidential treatment for the recall and remedy information found on slide 37. Again, some of this data, such as the vehicles involved, the date of the defect (573) report, and the implementation date, is clearly available to the public. The remainder of the data contained on this slide describes various time periods that VW has allocated for the assessment, production and distribution of new parts needed for the recall. While this information might be of value to competitors, VW has not explained how or why competitors could benefit from having access to this schedule.

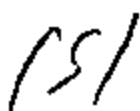
This partial grant of confidential treatment will remain in effect indefinitely. However, it is also subject to the various provisions of Part 512 that specify the circumstances under which otherwise confidential information can be disclosed. The information may be disclosed under 49 CFR § 512.22 based 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 to NHTSA's Chief Counsel with the certification required by 49 CFR § 512.18(b) within 20 working days after the receipt

¹ (<http://www.delcam.com/powershape/powershape.htm>)

of this letter. Such justification must show the particular competitive harm to your company from the disclosure of the information

Sincerely,



Otto G. Matheke, III
Staff Attorney

NHTSA:NCC-113:Matheke:3/12/04:61834:NCC-113:Subj/Chron
Info:NVS-212: Cynthia Glass w/enclos.
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U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

Memorandum

Subject: Audi A6 Dash Fire
Meeting with ODI and Audi

From: Cynthia Glass
Office of Defects Investigation

To: File for EA03-025

Date: March 11, 2004

Reply to
Attn of: NVS-212 cag

At the request of Audi, on March 11, 2004, representatives from Audi of America, Inc. and Volkswagen of America, Inc. met with ODI to discuss the status of investigation EA03-025. Audi presented an analysis of the defect, submitted their response to the RA Information Request and proposed a recall resolution. Audi's powerpoint presentation is attached to this Memorandum.

The meeting attendees:

Representing NHTSA ODI
Kathy DeMeter
Thomas Cooper
Cynthia Glass
Steve Chan
Andrew DiMarsico

Representing Audi of America, Inc.
Bernhard Grossmann
Christian Wode
Eckart Donner

Representing Volkswagen of America, Inc.
Kevin McDonald
John Maddox
Louis Brown



EA03-025:



NHTSA EA03-025 Presentation: Thursday, March 11, 2004:

Agenda:

- | | |
|--|--------------|
| > 1. Introduction | K. McDonald |
| > Personal Introductions | everybody |
| > 2. Overview | C. Wode |
| > 3. Discussion of Cases | B. Grossmann |
| > 24 Cases with "evidence of open flame " | |
| > 15 Cases with "smoke, smell, burned wires" | |
| > 4. Technical Details | E. Donner |
| > Part Demonstration | |
| > Assembly Demonstration | |
| > 5. Remedy Proposal | J. Maddox |



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NHTSA PE03-019: Wednesday, September 10, 2003:

Data Overview of Alleged Defects at Subject Vehicles (→ referring to Questions 1 through 6):

> Population of Subject Vehicles: A6, Model Years 1999-2000 :	51,091
> MY 1999:	24,803
> MY 2000:	26,288
> (Overall Population of AUDI A6, Model Years 1998-2004:	~ 182,000)
> VINs / # of Subject Cases that VW is aware of:	39
> Consumer Complaints:	31
> Field Reports:	22
> + Internal Notes:	+ 1
> # of documents related to Question 4 (Involving 32 vehicles):	73
> Warranty Claims w/o Buybacks:	15
> Buybacks:	5
> Fatalities, Injuries, Crashes, Accidents:	0
> Property Damage Claims:	1
> Third-party Arbitrations, Lawsuits:	0
> VOQs:	5
> "evidence of open flame"	24
> "smoke, smell, burned wires"	15

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SAFETY
COUNCIL
NHTSA

NHTSA EA03-025 Presentation; Thursday, March 11, 2004:

Action II: Manhelm Auction Site Vehicle Investigation, performed on February 11th, 2004:

- > **Thirty-nine A6 vehicles have been inspected at the auction center in Manhelm, PA (2x MY '99, 35 MY '00, 2x MY '01).**
- > **Findings:**
 - **There was no immediate danger of fire in any car.**
- > • **The cars from MY 2001 were observed as a reference.**
- > • **The mileage of the cars was between 22,000 and 69,000; average mileage was 43,550.**



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COUNCIL

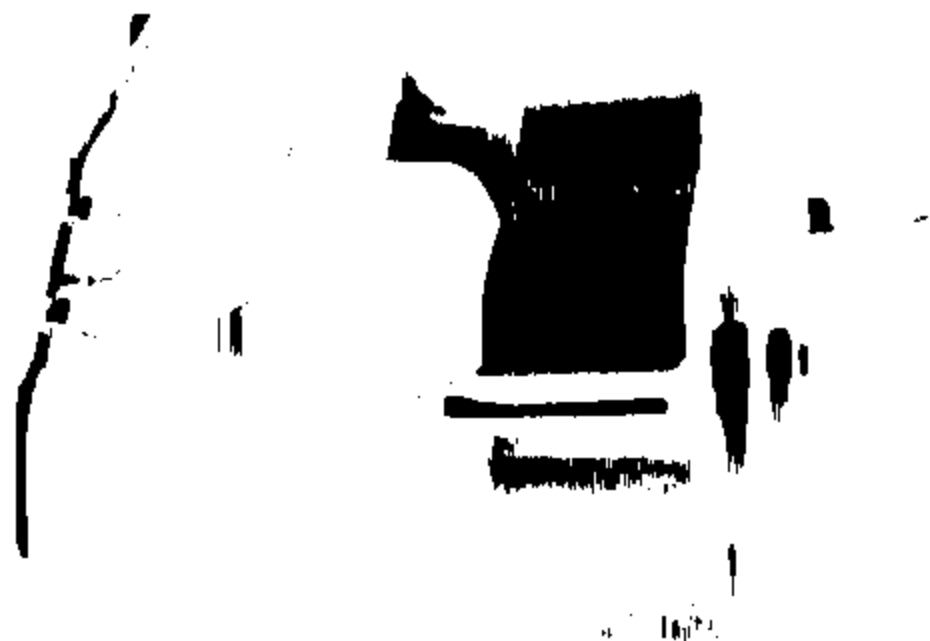
NHTSA EA03-025 Presentation: Thursday, March 11, 2004:

By: [REDACTED]



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NHTSA EA03-025 Presentation: Thursday, March 11, 2004:





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NHTSA EA03-025 Presentation; Thursday, March 11, 2004:





NHTSA EA03-025 Presentation: Thursday, March 11, 2004:





SAFETY
COUNCIL
OF
THE
UNITED
STATES

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NHTSA EA03-025 Presentation; Thursday, March 11, 2004:

Technical Details:

- > Detailed Explanation**
- > Demonstration of Parts**
- > Discussion of Selected Photographs**



NHTSA EA03-025 Presentation; Thursday, March 11, 2004:

1. Introduction

2. Summary

3. Findings

4. Recommendations





U.S. DEPARTMENT OF
TRANSPORTATION

NHTSA EA03-025 Presentation: Thursday, March 11, 2004:





AD-213

NHTSA EA03-025 Presentation: Thursday, March 11, 2004:



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SAFETY

NHTSA EA03-025 Presentation; Thursday, March 11, 2004:





NHTSA EA03-025 Presentation: Thursday, March 11, 2004:



NHTSA EA03-025 Presentation: Thursday, March 11, 2004:





NHTSA EA03-025 Presentation; Thursday, March 11, 2004:

1. The Department of Transportation (DOT) is proposing to





NHTSA EA03-025 Presentation: Thursday, March 11, 2004:

THE EFFECTS OF THE 2003-2004 MODEL YEAR SAFETY RECALLS ON THE 2003-2004 MODEL YEAR SAFETY RATES

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393

36



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NHTSA EA03-025 Presentation; Thursday, March 11, 2004:



NHTSA EA03-025 Presentation: Thursday, March 11, 2004:





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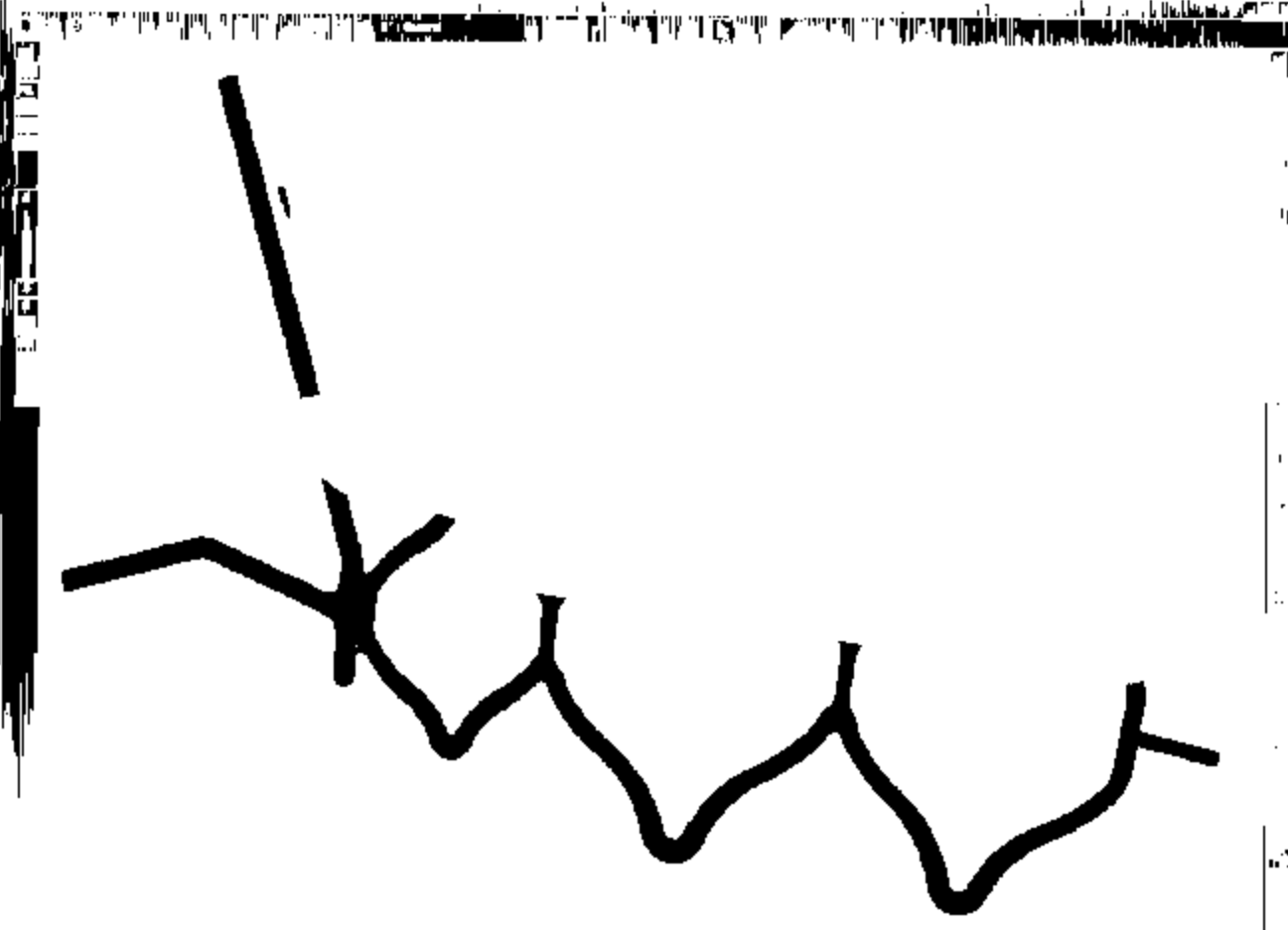
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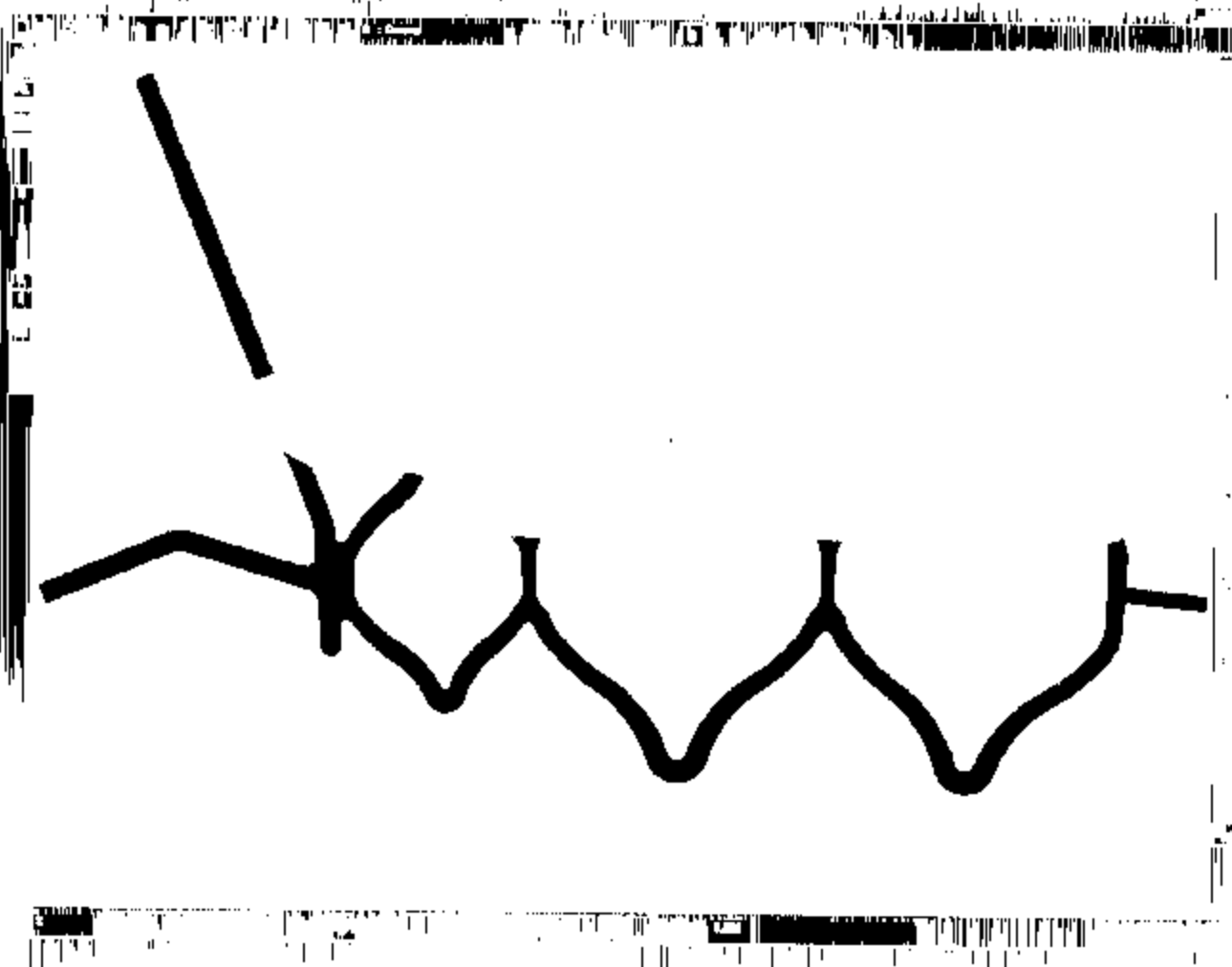
J. Maddox

NHTSA EA03-025 Presentation; Thursday, March 11, 2004:





NHTSA EA03-025 Presentation: Thursday, March 11, 2004:





NHTSA EA03-025 Presentation; Thursday, March 11, 2004:

1. Introduction

2. Summary of the Proceedings

3. Summary of the Comments

4. Summary of the Responses

5. Summary of the Final Decision

6. Summary of the Final Decision

7. Summary of the Final Decision

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23. Summary of the Final Decision

24. Summary of the Final Decision

25. Summary of the Final Decision



NHTSA PE03-019: Wednesday, September 10, 2003:

Proposed Remedy and Timeline:

- > **Filing of "573" Report:** **March 15, 2004**
- > **Affected group of vehicles: - 182,000 A6 vehicles (→ model years 1998 through 2004)**
- > **Temporary containment trial introduced in series production on February 12, 2004 (→ only one day after Action II).**
- > **Production design to be finalized by:** **March 31, 2004**
- > **Tooling:** **+ two months**
- > **Prove-out and initial production run:** **+ one month**
- > **System fill with parts:** **+ two weeks**
- > **→ Recall Implementation target:** **→ July 2004**

Black & White



Thank You!