

SEP 19 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Gay Kent
Director, Product Investigations
General Motors North America
30200 Mound Road
Mail Code 480-111-E18
Warren, MI 48090-9010

PE03-050

Re: Confidentiality Determination

Dear Ms. Kent:

This responds to your letter of August 11, 2005, requesting confidential treatment for certain materials General Motors North America (GM) submitted in response to an information request NHTSA's Office of Defects Investigation (ODI) sent to GM in relation to its investigation into alleged engine fuel rail assembly leaks in certain model year 1995-1997 Oldsmobile Aurora and Cadillac DeVille, Seville, and Eldorado vehicles.

The materials for which GM requests confidential treatment are contained on a CD disk labeled "Attachment 2." GM asserts that these materials contain information that is confidential, proprietary, and available only to authorized GM personnel and suppliers. The company further asserts that the materials contain trade secrets, disclosure of which would cause GM to suffer substantial competitive harm. GM requests these materials be accorded confidential treatment for an indefinite period of time.

The information was requested pursuant to 49 USC § 30166, which authorizes the agency to conduct investigations and to require manufacturers to submit reports. Therefore, because this data was not submitted voluntarily, I have reviewed the submissions under the competitive harm standard set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Under that standard, information is confidential under Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), if disclosure would be likely to cause substantial competitive harm to the submitter or to impair the government's ability to collect the information in the future.

I have decided to grant GM's request.

The materials in question include design and test procedure information and data relating to pre-production and performance testing. I agree that this information, if disclosed, would give GM's competitors valuable insights into GM's methodologies without those competitors having to expend their own resources to develop this information. I therefore find that GM would likely suffer substantial competitive harm if the materials in Attachment 2 were released. Those materials will be protected from disclosure.

Additional materials in GM's submission for which confidential treatment was not requested

Included in the package containing GM's submission was a CD disk labeled "Attachment 3" and "Delphi Confidential." Neither your letter, nor the certificate requesting confidential treatment, addressed this CD or requested confidential treatment for the materials on it, and no explanatory letter or request for confidential treatment was provided from Delphi. To the extent GM may have intended to request confidential treatment for the information on this Delphi CD, that request is denied.

In accordance with your request, this grant will remain in effect indefinitely. However, 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. Also, GM must inform the agency of any changed circumstances that may affect the protection of the information each company submitted (49 CFR § 512.10). If necessary, GM will be notified prior to the release of any information under the procedures established by our regulations (49 CFR § 512.22(b)).

With respect to the Delphi CD, GM may request reconsideration pursuant to the requirements set forth in 49 CFR § 512.19, bearing in mind that any such request must include the appropriate certification from Delphi. Any request for such reconsideration must be submitted within 20 working days after GM's receipt of this letter, and should show the particular competitive harm to the company in question from the disclosure of the information for which confidentiality has been denied and contain any legal arguments and citations relied upon (49 CFR § 512.8). If no written request is submitted pursuant to 49 CFR § 512.19 within the required period of time, the information located in Attachment 3 will be placed in the public file.

Sincerely,

Otto G. Matheke, III
Senior Attorney

