

AUG -9 2004

Patrick M. Raher  
Hogan & Hartson, L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004-1109

Re: Request for Confidential Treatment of Information (PE03-058).

Dear Mr. Raher:

This is in response to your letter, dated April 13, 2004, in which you request confidential treatment for information submitted on behalf of Mercedes-Benz USA, LLC (Mercedes-Benz) regarding the above matter. These materials consist of three pages of graphics and test results relating to harmonic balancers installed on certain Mercedes-Benz engines. Mercedes-Benz requests that this information be withheld indefinitely or until the company releases them to the public.

For the reasons discussed further in this correspondence, I am granting your request.

The information at issue is described in your letter as a supplemental response to a formal agency Information Request. As such, the information described above was required to be submitted to the agency. I have therefore reviewed Mercedes-Benz'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.

Mercedes-Benz asserts that disclosure of the graphics and test data would be likely to cause substantial competitive harm. According to your letter, these graphics and accompanying test data contain an analysis of the failure mode of a particular component which, if revealed, would provide competitors with insight into the Mercedes-Benz's design choices, product assessment techniques and test methodologies. In your view, providing competitors access to this information would place Mercedes-Benz at a competitive disadvantage.

After reviewing the attachments I have determined that release of this information would be likely to cause Mercedes-Benz to suffer competitive harm. Your request is therefore granted and the materials will remain confidential for an indefinite period of time or until they are released by Mercedes-Benz.

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,

/s/

Otto G. Matheke, III  
Senior Attorney

OCC:OMatheke:65263:cyt:08/05/04  
NCC-111 subj/chron, ogm, pll NCC04-003225  
NVS-213: K. Bowker  
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