

Classified  
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OCT 28 2004

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Patrick M. Rahe  
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. Rahe:

This is in response to your letter, dated March 12, 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 are located in Mercedes-Benz's response to questions 1-4, 6 and 7 of the information request made by NHTSA's Office of Defects Investigation on April 13, 2004. Your response to the information request was submitted both on hardcopy and on two CD-ROM disks labeled "Disk 1" and "Disk 2 Confidential." Your letter states that the materials at Appendix A and on "Disk 2 Confidential" contain information related to customer complaints. Mercedes-Benz requests that this information be withheld indefinitely.

**Consumer Complaints:**

Citing various portions of the Confidential Business Information (CBI) final rule's preamble that justified the withholding of early warning reporting (EWR) warranty data, 68 Fed. Reg. 44209 (July 28, 2003), Mercedes-Benz argues that consumer complaint information, if disclosed, would be likely to cause substantial competitive harm. Similarly, Mercedes-Benz states that its consumer complaint information can be used to create cross-company comparisons, which would be based on raw and unverified data.

Pointing to the agency's reasoning in the CBI final rule's preamble, Mercedes-Benz also argues that disclosing its information would impair the government's ability to collect this information in the future. The company asserts that disclosure would likely discourage manufacturer efforts to collect data or to invest the resources needed to expand consumer complaint information collection efforts.



I have decided to deny your request for confidential treatment in part and grant it in part.

### **NHTSA's Response**

Because the information described above was required to be submitted by a formal agency information request, I 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.

In order for NHTSA to withhold the submitted information from disclosure under Exemption 4, Mercedes-Benz 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).

The agency disagrees with Mercedes-Benz's characterizations that its consumer complaint data are analogous to EWR data. As indicated within the preambles to both the final rule and response to petitions for reconsideration, the agency explained that defect investigation information is both "qualitatively and quantitatively different" from EWR information. 68 Fed. Reg. at 44219. In particular, the agency emphasized in the rule that EWR information, which applies across a manufacturer's entire product line, would have competitive impact while the more proscribed data collected in defect investigations would not.

Further, the agency does not agree with Mercedes-Benz's argument that the disclosure of consumer complaint information would impair governmental interests. The assertion that Mercedes-Benz would stop maintaining complaint data to keep them from NHTSA is not credible. I do not believe that the disclosure of the submitted consumer complaint information, which is limited in scope, would discourage or otherwise deter manufacturers from their efforts to continue to collect and keep these data.

As I result, I have determined that the disclosure of consumer complaint information would not be likely to cause substantial competitive harm or impair the agency's ability to collect this information in the future. Consequently, the agency will not grant confidential treatment under Exemption 4 for consumer complaints as follows:

- Appendix A documentation titled "Customer Assistance Referrals" and "Summary Note Reports";
- The CD-ROM labeled "Disk 2 Confidential" which contains lists in chart form of vehicle model and identification information, except as noted below.

Personal information, such as names, phone numbers and addresses of customers, appear throughout documentation in Appendix A and on the CD-ROM labeled "Disk 2 Confidential." This information, including the last six digits of the vehicle identification numbers that appear, will be withheld under Exemption 6 of the FOIA, which applies to information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. This information is located on the following documents in Appendix A and on the CD-ROM "Disk 2 Confidential":

- On Appendix A on the "Customer Assistance Referral" forms, the customer name, address, and telephone number appear on each report, often in several locations within the document.
- On Appendix A on the "Summary Note Information" forms, the customer name, address and telephone number appear on each note, often in several locations within the document.
- On the CD-ROM labeled "Disk 2 Confidential" -- the columns with the owner name, address and telephone number.

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.

If you disagree with this determination, you may request reconsideration. To request reconsideration, you must comply with the requirements of 49 CFR § 512.19, which must be submitted within 20 working days after the receipt of this letter. The request for reconsideration should 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). If no written request is submitted pursuant to 49 CFR § 512.19 within the required period of time, your submitted information will be placed in the public file.

Sincerely,  
**Original Signed By**

Otto G. Matheke, III  
Senior Attorney

OCC:Nmills:10/28/04:cyt:65263  
NCC-111 subj/chron, NTM, cyt NCC04-002311  
NVS-213: K. Bowker  
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