

NCS - 213
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SEP 15 2005

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Stephan J. Speth, Director
Vehicle Compliance & Safety Affairs
DaimlerChrysler Corporation
800 Chrysler Drive
CIMS 482-00-91
Auburn Hills, MI 48326-2757

Re: Request for Confidential Treatment of Information for Materials Submitted by
DaimlerChrysler in Response to EA 04-025

Dear Mr. Speth:

This is in response to your letter, dated May 16, 2005, in which you request confidential treatment for materials submitted by DaimlerChrysler Corporation (DCC) in response to an agency Information Request, dated, March 17, 2005, regarding the above matter. These materials are located on a single CD-ROM and consist of an executable (exe) file (ops_warning.exe). DCC did not indicate a period of time that it seeks confidential treatment for the CD-ROM, but we have construed your request that the information contained on the CD-ROM be withheld on a permanent basis.

For the reasons discussed further in this correspondence, I am denying your request for confidential treatment.

Because the information contained in the above appendices was submitted to the agency in response to the above information request, we reviewed your claim for confidential treatment under the test announced in *National Parks & Conservation Ass'n v. Morton* (*National Parks*), 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) 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.

DCC asserts that the file contains highly sensitive information relating to its attempts to identify, evaluate, and remedy potential problems relating to the operation of automatic transmission shift mechanisms. DCC states that the file reveals its processes for identifying

and addressing potential shift mechanism operation issues and development of the automatic transmission system. DCC claims that the disclosure of such information would permit its competitors to duplicate DCC's design, research, and remediation protocols without incurring the substantial expense associated with the development of their own products.

After reviewing your submission, I have determined that the public disclosure of the executable file, open_warning.exe, would not cause substantial competitive harm to DCC. DCC's submission is a computer simulation that indicates that a warning will be given when certain conditions that have been identified in EA 04-025 occur. The conditions identified in EA 04-025 are publicly available. Moreover, DCC fails to adequately explain how the disclosure of this executable file will cause DCC substantial competitive harm, especially in light of the substantial knowledge of automatic transmissions publicly available and held by competitors. Furthermore, DCC has not demonstrated that disclosure of this file will reveal its attempts to identify, evaluate and remedy potential problems relating to the operation of automatic transmissions. In addition, you have not shown how the disclosure of the executable file, which mimics a potential warning system design that is neither novel or complex, will permit DCC's competitors to duplicate DCC's design, research, and remediation protocols, nor explain how its competitors would be able to use the executable file to develop their own protocols. Therefore, I am denying your request.

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. In addition to identifying the documents, the request for reconsideration should show the particular competitive harm to your company from the disclosure of the materials for which confidentiality has been denied, and should contain any legal arguments and citations upon which you rely.

Sincerely,



Otto G. Matheke, III
Senior Attorney

NHTSA:DiMarsico:p11:8/31/05:
NCC-113:Subj/Chron
NVS-213: S. Yon w/enclosures
NCC30/CONF/misc04/DCX05-4694ajd.doc