

JUN - 7 2005

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 (PE05-005).

Dear Mr. Rahe:

This is in response to your letter of March 3, 2005 requesting confidential treatment for information submitted on behalf of Mercedes-Benz USA, LLC (Mercedes-Benz) in the above matter. The materials for which Mercedes-Benz seeks confidential treatment consist of bracketed information in its written response to question 1 of the agency's Information Request, printed matter (Tab A), a CD-ROM file entitled M_Class_Seat_Heater_Production_Data.mdb, and a floppy disk file (unredacted warranty data.xls). Mercedes-Benz requests that this information be withheld indefinitely.

I am granting your request in part and denying it in part.

Your letter properly states that it is the agency's policy to accord confidential treatment to personal information about individual complainants and vehicle owners reporting problems with their vehicles. Therefore, any personally identifying information for individual vehicle owners included in your submission (i.e., name, address, telephone number and the last six digits of Vehicle Identification Numbers (VINs)) will be accorded confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) on the grounds that disclosure of this information would constitute an unwarranted invasion of privacy.

Mercedes-Benz had a legal obligation to submit the data described above. 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 the information is proprietary, confidential and is data that it does not disclose. In particular, your letter observes that two categories of data, production volumes and personal information, are types of information that this agency has deemed to be confidential in reviews of past requests.

Tab A of the printed matter provided by Mercedes-Benz consists of a collection of "Summary Note Information" and "Customer Assistance Referral" documents. These documents – each of which is stamped "Confidential" contain accounts of customer complaints and the efforts made by Mercedes-Benz employees to address these complaints. The data on the CD-ROM consist of two tables containing dealer codes by state and production data. The floppy disk contains a file entitled "unredacted_warranty_data.xls" which has two tabs entitled "unique with edit" and "unique with edit with data." The written response to the Information Request contains production volume data for M-Class vehicles.

Warranty Data

A portion of Mercedes-Benz's response contains reports on warranty claims for the heated seats in M-Class vehicles. I have determined that the warranty claim data on the floppy disk is not entitled to confidential treatment. This information, (warranty claims, vehicle VIN, consumer complaints, warranty action taken by the dealer, model year, production date, warranty claim number, repair date, vehicle mileage, part numbers, and codes for damage and operations) is not information that, if released, would result in substantial economic harm to Mercedes-Benz. The descriptions of the complaints and repairs, which are general in nature, do not include or reveal engineering information or detailed analyses. Similarly, the data at issue do not reveal anything about the internal business practices, production processes or warranty claim analyses used by Mercedes-Benz.

Mercedes-Benz has not demonstrated or explained how disclosure of the warranty data would cause it to suffer substantial economic harm. Disclosure of this data, due to its narrow focus, is not likely to cause Mercedes-Benz to suffer substantial competitive harm. I have therefore determined that the information on the floppy disk will not be granted confidential treatment.

Consumer Complaint/Customer Service reports

A portion of Mercedes-Benz's response (Tab A) also contains information relating to consumer complaints and claims as well as employee accounts of efforts taken to resolve customer concerns. As is the case with the warranty information described above, Mercedes-Benz has not articulated any reasons why release of this information would cause the company to suffer substantial competitive harm. It is the agency's position that release of these complaints would not cause Mercedes-Benz to suffer substantial competitive harm.

NHTSA also believes that release of complaints in individual defect cases would not impair the agency's ability to obtain similar information in the future.

Production Data

In addition to the warranty and consumer complaint information discussed above, I have determined not to accord confidential treatment to a portion of the data contained within the M_Class_Seat_Heater_Production_Data.mdb file contained on the CD-ROM. One datasheet within this file consists of a table containing three columns. The first column is entitled "Dealer" and contains a list of numbers that appear to be code numbers for individual dealerships. The second column is entitled "State Code" and contains a list of standard two-letter abbreviations for individual states. The third column is entitled "State DC" and contains a listing of two digit numbers that appear to correspond to particular states. The remaining datasheet on the CD-ROM is entitled "Production VINS" and contains an accounting of M-Class production for the 2000 through 2005 model years. Columns within the former are entitled "VIN," "Baum," "MY," "Production Date," "WSD," "Selling Dealer," and "Model Designation." You have not explained what the designations "Baum" and "WSD" represent. Your request for confidential treatment also does not address how release of information in these specific categories would cause the company to suffer competitive harm. Moreover, with the exception of the 2005 model year, the production figures for the M-Class vehicles are publicly available. Accordingly, with the exception of the 2005 model year data, your request for confidential treatment for the information contained on the CD-ROM is denied.

Production data is also included in Mercedes-Benz's written response to the agency's Information Request. Specifically, the response to question 1 sets out the number of 2003 ML-320 vehicles produced with seat heaters, the number of M-Class vehicles produced between September 23, 1999 and November 2, 2004 and the number of M-Class vehicles produced in the latter time period. As noted above, production volumes for past model years are publicly available. The numbers of such vehicles equipped with seat heaters during those past production periods is not. Therefore, a determination of whether the seat heater equipped production volumes should be granted confidential treatment would turn on whether release of this information would cause competitive harm.

Other than indicating that the agency has granted confidential treatment in the past for production numbers, your letter does not address how release of these past production numbers would cause Mercedes-Benz to suffer such competitive harm. As Mercedes-Benz has not sustained its burden of establishing that release of this production information would be likely to cause the company to suffer competitive harm, your request for confidential treatment for the production numbers contained in the response to question 1 is denied.

In accordance with your request, 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 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
Senior Attorney

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NCC-113:Subj/Chron
NVS-212:Lee Strickland w/enclose.
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