

BMW Group

November 30, 2006

Otto G. Matheke, III, Esq.
Office of the Chief Counsel
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

2006-11-30 12:58
Dec 1
2006-11-30 12:58
OFFICE OF CHIEF
COUNSEL

Re: Request for Confidential Treatment of Information Submitted in Follow-up Report to PE05-053 – Field Incident Analysis (Jul-Sep 2006)

Dear Mr. Matheke:

Today, BMW of North America, LLC (a subsidiary of BMW AG, Munich, Germany (“BMW”)) is submitting a follow-up report to the Information Request, dated October 5, 2005, in the above captioned matter. Because we believe our response is confidential, we believe it is entitled to confidential treatment under 49 CFR Part 512 and Exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4). Accordingly, BMW is hereby submitting this request for confidential treatment of that material.

As set forth in the attached certificate, the information for which we are requesting confidential treatment is maintained in strict confidence by BMW. This information is not customarily made public by BMW, and contains both trade secrets and commercial information, which is privileged or confidential under 5 U.S.C. § 552(b)(4), 49 C.F.R. 512, and 49 U.S.C. 30167(a).

We are requesting confidential treatment of this information in its entirety. We further request that this information be accorded confidential treatment on a permanent basis, because there is no foreseeable time in the future when this information could be disclosed without causing substantial harm to the competitive position of BMW.

Company

BMW of North America, LLC

BMW Group Company

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07675-1227

Office address

300 Chestnut Ridge Road
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07677-7731

Telephone

(201) 307-4000

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(201) 782-0764

BASIS FOR REQUEST FOR CONFIDENTIAL TREATMENT

Exemption 4 of the FOIA protects from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). The information for which BMW is requesting confidential treatment is “commercial” information that is “privileged or confidential.” See *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 28 (D.D.C., 2000) (“In the context of Exemption 4, the terms ‘commercial’ and ‘financial’ should be given their ordinary meanings. Further, the exemption applies where the submitter has a ‘commercial interest’ in the information.”) (citations omitted).

The information contains details from engineering field reports. It is related to system design and performance of certain vehicle systems and components. This information is of substantial commercial value and of great interest to BMW’s competitors. This information, if disclosed, would allow BMW’s competitors to assess the in-use experience of BMW vehicle systems/components without having to make the otherwise necessary substantial resource investments that are required to design, develop, and bring to market such systems. Some of this information can be used to assess vehicle system/component cost information, and would allow a competitor to assess BMW’s cost methodology for certain



vehicle systems/components without having to make their own investments. Some of this information, if released, could lead to the detriment of BMW in the future, such as in further legal actions or proceedings.

The information for which BMW is requesting confidential treatment are the product of BMW's long experience and substantial investments of time and money in establishing this information. The disclosure of this information would permit BMW's competitors to understand certain issues involving specific vehicle systems/components without having to incur the substantial time and expense associated with these efforts that have already been expended by BMW. BMW's competitors could use this information to analyze, further develop, and improve their products without having to expend the substantial resources that have already been incurred by BMW.

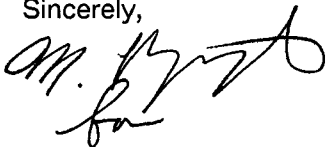
This information, therefore, would be commercially valuable to BMW's competitors, and its disclosure would cause BMW substantial competitive harm. Consequently, this information should be accorded confidential treatment under the Exemption 4 of the FOIA. *See Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 52 (D.C. Cir. 1981) (application of Exemption 4 depends on "whether release of the requested information, given its commercial value to competitors and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it"); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (information is exempted from disclosure under FOIA Exemption 4 if its disclosure would "cause substantial harm to the competitive position of the person" submitting it); *cf. Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) (harm caused by a disclosure that would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with" the submitter's product is "clearly the type of competitive harm envisioned in Exemption 4").

Thus, because BMW would suffer substantial harm to its competitive position if any of the information were disclosed, the information should be accorded confidential treatment.

* * *

As noted above, the certificate required by 49 CFR 512 is attached to this letter. If you need additional information, please do not hesitate to contact me at (201) 573-2071, or Martin Rapaport of my staff at (201) 573-7708. If you receive a request for disclosure of any of the information prior to the completion of your review of our claim for confidential treatment, BMW respectfully requests notification of the request and an opportunity to provide further justification for the confidential treatment of the information, if warranted.

Sincerely,



Thomas C. Baloga
General Manager
Safety Engineering and Intelligent Transportation Systems

Attachments:

cc: T. Cooper, NHTSA (Office of Defects Investigation) – Letter only

BMW Group

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT

I, Martin Rapaport, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

(1) I am the Safety Engineering Manager, Safety Engineering and Intelligent Transportation Systems Department for BMW of North America, LLC ("BMW"), and I am authorized by BMW to execute documents on its behalf.

(2) The information attached hereto and identified in the attached letter is confidential and proprietary and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. § 552(b)(4) and 49 C.F.R. Part 512.

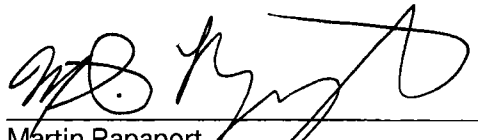
(3) I have personally inquired of the responsible BMW personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside BMW.

(4) Based upon such inquiries, to the best of my knowledge, information, and belief, some of the information for which BMW has claimed confidential treatment has been released only to BMW's suppliers pursuant to confidentiality agreements.

(5) I make no representation beyond those contained in this certificate, and, in particular, I make no representation as to whether the information may become available outside BMW because of unauthorized or inadvertent disclosure.

(6) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of November, 2006



Martin Rapaport
Safety Engineering Manager
Safety Engineering and Intelligent Transportation Systems
BMW of North America, LLC

Company

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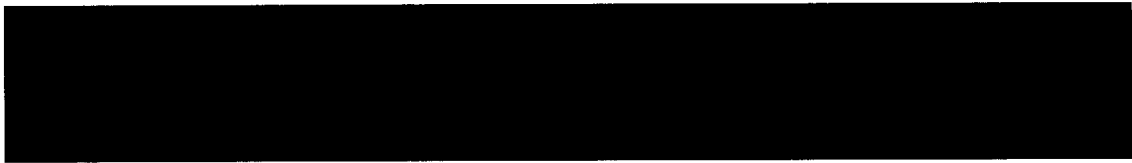
(201) 573-7708

Fax

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Jul-Sep 2006
CONFIDENTIAL



No incidents Jul-Sep 2006.

CONFIDENTIAL

BMW Group

November 30, 2006

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National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Request for Confidential Treatment of Information Submitted in Follow-up Report to PE05-053 – Parts Return Analysis (Jul-Sep 2006)

Dear Mr. Matheke:

Today, BMW of North America, LLC (a subsidiary of BMW AG of Munich, Germany (“BMW”)) is submitting a follow-up report to the Information Request, dated October 5, 2005, in the above captioned matter. Because we believe our response is confidential, we believe it is entitled to confidential treatment under 49 CFR Part 512 and Exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4). Accordingly, BMW is hereby submitting this request for confidential treatment of that material.

As set forth in the attached certificate, the information for which we are requesting confidential treatment is maintained in strict confidence by BMW and its select suppliers. This information is not customarily made public by BMW nor its suppliers, and contains both trade secrets and commercial information, which is privileged or confidential under 5 U.S.C. § 552(b)(4), 49 C.F.R 512, and 49 U.S.C. 30167(a).

We are requesting confidential treatment of this information in its entirety. We further request that this information be accorded confidential treatment on a permanent basis, because there is no foreseeable time in the future when this information could be disclosed without causing substantial harm to the competitive position of BMW.

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The documentation contained in this response consists of test procedures, test results, and other information pertaining to tests and analyses of vehicle components/systems which is explained in greater detail below.

Some of the information consists of test and analyses methodologies that have been developed in order to understand issues regarding specific vehicle systems/component behavior in the field. These tests and analyses methodologies would provide valuable insight into how BMW and some of its select suppliers conduct certain tests. Some of the



information consists of vehicle systems/component specifications, including engineering/testing tolerances, and other design-related data. Competitors who would have access to this information would be able to understand the design/performance basis for certain vehicle systems/components without having to make the necessary investment that has been made by BMW and its select suppliers. Some of the information consists of proprietary protocols and confidential processes used in the analyses of certain vehicle systems/components, information that is of great value to BMW's competitors. Some of the information consists of results of conducting such tests and analyses and provides a comprehensive dataset pertaining to certain vehicle component/system performance, information which is of great interest to BMW's competitors.

This information is of substantial commercial value and of great interest to BMW's competitors. This information, if disclosed, would allow BMW's competitors to assess the in-use experience of BMW vehicle systems/components without having to make the otherwise necessary substantial resource investments that are required to design, develop, and bring to market such systems. Some of this information can be used to assess vehicle system/component cost information, and would allow a competitor to assess BMW's cost methodology for certain vehicle systems/components without having to make their own investments. Some of this information, if released, could lead to the detriment of BMW in the future, such as in further legal actions or proceedings.

The information for which BMW is requesting confidential treatment are the product of BMW's and its select suppliers' long experience and substantial investments of time and money in establishing this information. The disclosure of this information would permit BMW's competitors to understand certain issues involving specific vehicle systems/components without having to incur the substantial time and expense associated with these efforts that have already been expended by BMW and its select suppliers in this matter. BMW's competitors could use this information to analyze, further develop, and improve their products without having to expend the substantial resources that have already been incurred by BMW and its select suppliers.

This information, therefore, would be commercially valuable to BMW's competitors, and its disclosure would cause BMW substantial competitive harm. Consequently, this information should be accorded confidential treatment under the Exemption 4 of the FOIA. *See Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 52 (D.C. Cir. 1981) (application of Exemption 4 depends on "whether release of the requested information, given its commercial value to competitors and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it"); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (information is exempted from disclosure under FOIA Exemption 4 if its disclosure would "cause substantial harm to the competitive position of the person" submitting it); *cf. Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) (harm caused by a disclosure that would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with" the submitter's product is "clearly the type of competitive harm envisioned in Exemption 4").

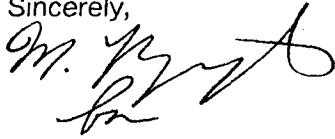
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treatment, BMW respectfully requests notification of the request and an opportunity to provide further justification for the confidential treatment of the information, if warranted.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Baloga', written in a cursive style.

Thomas C. Baloga
General Manager
Safety Engineering and Intelligent Transportation Systems

Attachments:

cc: T. Cooper, NHTSA (Office of Defects Investigation) – Letter only

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(3) I have personally inquired of the responsible BMW personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside BMW.

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Executed on this 30th day of November, 2006



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