

# DAIMLERCHRYSLER

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DEPT. OF CHIEF  
COUNSEL

DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

December 8, 2006

Mr. Anthony M. Cooke  
Chief Counsel  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W. Rm. 5219  
Washington, DC 20590

Re: Request for Confidential Treatment of Certain Emails in Response to EA06-015,  
Question #11

Dear Mr. Cooke:

DaimlerChrysler Corporation ("DCC") is submitting information on CD ROM discs to the NHTSA Office of Defects Investigation in connection with the above referenced Information Request ("IR"). Based on a careful review of the submission, DCC has determined that the emails in the folders EA06-015-Confidential consist of confidential information that should be accorded confidential treatment under this agency's regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).<sup>1</sup> Therefore, DCC is submitting these CD's, together with this request for confidential treatment to the Office of the Chief Counsel.

As required by Part 512, DCC is submitting the certificate executed by responsible DCC personnel. The information required by Part 512 is set forth below.

## **A. Description of the Information (49 C.F.R. § 512.8(a))**

The information for which confidential treatment is being sought consists of confidential test procedures, test results analyses, problem solving methodology, and design processes of the subject component.

The table attached to this letter will more fully describe the documents.

## **B. Confidentiality Standard (49 C.F.R. § 512.8(b))**

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<sup>1</sup> DCC has taken steps to assure that the CD's are free of any errors or defects that would prevent NHTSA from opening each file on the disc. If, however, the agency is unable to open any of the files, DCC respectfully requests that the agency inform DCC of the issue, so that DCC may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional.

This submission is subject to the substantial-competitive harm standard (49 C.F.R. § 512.15(b)) for information that must be submitted to the agency. Under this standard, information qualifies for confidential treatment if its disclosure would be likely to result in substantial harm to the competitive position of the submitter.

**C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))**

The disclosure of this information would likely cause substantial harm to DCC's competitive position. Under 49 C.F.R. § 512.15(b) and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), information should be withheld from public disclosure if its release would be likely to cause substantial competitive harm to the submitter. *See also Nation Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). FOIA Exemption 4 was enacted to prevent disclosures 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." *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999).

In addition, FOIA Exemption 4 was enacted to prevent open records requirements from providing windfalls to competitors when private submitters have provided commercial or financial information to the government: "Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government." *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

Among the competitively-significant disclosures that FOIA Exemption 4 was enacted to prevent were disclosures that would reveal a firm's "operational strengths and weaknesses" to competitors. *See National Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). The information at issue here satisfies the requirements for protection under these standards.<sup>2</sup>

The subset of emails referenced in the attached chart being produced pursuant to question #11 should be accorded confidential treatment. The emails have been categorized into test procedures, problem solving methodology, product design information, and testing results. DCC believes disclosure of the emails in this subset would cause it substantial competitive harm and therefore requests confidentiality over these documents.

Testing Procedures, Results Analysis, and Problem Solving Methodology.

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<sup>2</sup> As noted above, DCC is providing a table that identifies the confidential information on the enclosed discs, and specifies the location of the information (by folder name and Bates page numbers). The table also briefly states the basis for the confidentiality claims.

Documents DCC00000683 – DCC00000737 contain information pertaining to DCC’s testing procedures; documents DCC00000587 through DCC00000682 relate to DCC analyses of test results, and documents DCC00000738 – DCC00000777 contain information pertaining to DCC’s problem solving methodology. These documents reveal valuable information about processes for remedying problems and evaluating and improving products and components. The disclosure of such information would enable competitors to refine their own product evaluation, remediation, and improvement procedures without incurring the costs normally required for independent development of such procedures, and also would provide information about DCC’s operational strengths.

Design Information.

Documents DCC00000778-DCC00000789 relate to the design of the subject component. NHTSA has recognized that design and developmental testing information should be protected under Exemption 4 because it reveals the scope, nature, and results of a submitter’s proprietary and developmental testing, as well as the submitter’s design and performance standards, design philosophies, and the reasons for various design choices. Such information could enable a competitor to develop and upgrade its own testing protocols, improve its design decisions, and gain insights into DCC’s operational capacities.

If this information were disclosed, competitors would gain an unfair advantage over DCC because they would be able to better utilize their resources to compete against DCC. This is the type of unfair advantage that Exemption 4 was enacted to protect against.

**D. Class Determination (49 C.F.R. § 512.8(d))**

The information for which confidential treatment is being sought does not fit within a class determination.

**E. Duration for Which Confidential Treatment is Sought (49 C.F.R. § 512.8(e))**

Since DCC anticipates that the information will retain its competitive value indefinitely, DCC requests that the information be accorded confidential treatment permanently.

**F. Contact Information (49 C.F.R. § 512.8(f))**

Please direct all inquiries and responses to the undersigned at:

800 Chrysler Drive, CIMS 482-00-91  
Auburn Hills, MI 48326  
248-512-4188  
SS6@dcx.com

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If you receive a request for disclosure of the information for which confidential treatment is being sought before you have completed your review of our request, DCC respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "S. J. Speth". The signature is written in a cursive style with a large, looping initial "S".

Stephen J. Speth

cc: Kathleen DeMeter

Attachment and Enclosures

## Certificate in Support of Request for Confidentiality

I, Stephan J. Speth pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am DaimlerChrysler Corporation's Director, Vehicle Certification, Compliance and Safety Affairs and I am authorized by DaimlerChrysler Corporation to execute documents on its behalf;
- (2) I certify that the information contained in the attached documents is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4);
- (3) I hereby request that the information contained in the indicated documents be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible DaimlerChrysler Corporation 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 DaimlerChrysler Corporation;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which DaimlerChrysler Corporation has claimed confidential treatment has never been released or become available outside DaimlerChrysler Corporation, except to certain contractors of DaimlerChrysler Corporation with the understanding that such information must be maintained in strict confidence;
- (6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside DaimlerChrysler Corporation because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this, 8<sup>th</sup> day of December, 2006

  
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Stephan J. Speth

**ATTACHMENT TO REQUEST FOR CONFIDENTIAL TREATMENT OF  
CERTAIN DOCUMENTS SUBMITTED IN CONNECTION WITH EA06-015  
CONFIDENTIAL**

ENCLOSURE	FILE/DOCUMENT NAMES	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
EA06-015-Confidential-DCC Design/01/01	DCC00000778 through DCC00000789	The emails contained in this folder all relate to the design of the subject component	DCC00000778 - DCC00000789	Confidential on the grounds that the documents set forth information on the design of the subject component and would cause substantial competitive harm if disclosed.
EA06-015-Confidential-DCC Problem Solving/01/01	DCC00000738 through DCC00000777	The emails contained in this folder all relate to problem solving techniques	DCC00000738 - DCC00000777	Confidential on the ground that the documents set forth information on problem solving techniques which would cause substantial competitive harm if disclosed
EA06-015-Confidential-DCC Test Procedure/01/01	DCC00000683 through DCC00000737	The emails contained in this folder all relate to test procedures	DCC00000683 - DCC00000737	Confidential on the grounds that the documents set forth information on testing procedures which if disclosed would cause substantial competitive harm
EA06-015-Confidential-DCC Test Results/01/01	DCC00000587 through DCC00000682	The emails contained in this folder all relate to test results analyses	DCC00000587 - DCC00000682	Confidential on the grounds that the documents set forth information on test results and the analysis of those results which would cause substantial competitive harm if disclosed

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DaimlerChrysler Corporation  
Stephan J. Speth  
Director  
Vehicle Compliance & Safety Affairs

December 8, 2006

Ms. Kathleen C. DeMeter  
Office of Defects Investigation  
National Highway Traffic Safety Administration  
U.S. Department of Transportation  
400 Seventh Street, S.W., Rm. 5326  
Washington, DC 20590

Reference: NVS-212-MBS; EA06-015

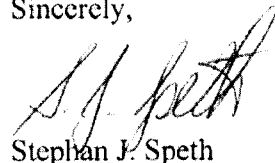
Dear Ms. DeMeter:

DaimlerChrysler Corporation ("DCC") hereby supplements its response to question # 11 of EA06-015. This supplement to the response includes email communications between DCC and the supplier of the subject component for the subject vehicles that pertain to the design, manufacture, performance, durability, quality, testing, or modification of the subject component in the subject vehicles or to its application for the instrument panel.<sup>1</sup> DCC is not waiving its claim to attorney work product and attorney-client privileged communications.

Enclosed please find two (2) public copies of documents responsive to question #11, along with a copy of the confidentiality request letter. Two complete versions of the response to question #11, along with a request for confidential treatment pursuant to 49 C.F.R. Part 512, have been submitted to the Office of Chief Counsel.

If you have any questions, please do not hesitate to call me.

Sincerely,



Stephan J. Speth

Enclosures and Attachment

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<sup>1</sup> Pursuant to a telephone call between NHTSA's ODI and DCC's VSO on 11/28/06, DCC is submitting the emails without attachments to avoid unnecessary duplicity, volume, and unresponsiveness. The attachments are available upon request.