

DAIMLERCHRYSLER

DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

March 12, 2007

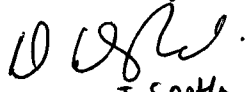
Mr. Mike Lee
National Highway Traffic Safety Administration
400 Seventh Street, S.W., Rm. 5326
Washington, DC 20590

Re: EA06-003 - 9246 Calibration Analysis of Subject Vehicle ORC Modules

Dear Mr. Lee:

Pursuant to your telephone conversation with Dino DePaolis of the Vehicle Safety Office, DaimlerChrysler Corporation is submitting the 9246 analysis, a Robert Bosch Corporation document, to the Office of Chief Counsel with a request for confidential treatment. Attached is a copy of that request.

Sincerely,


for Steve J. Speth
Stephan J. Speth

Attachment

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Stephan J. Speth
Director
Vehicle Compliance & Safety Affairs

March 12, 2007

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 Voluntarily Submitted Test Data

Dear Mr. Cooke:

DaimlerChrysler Corporation ("DCC") is voluntarily submitting information on CD-ROM to Mike Lee from the Office of Defects Investigations. This information contains confidential information that is not disclosed to the public. DCC is requesting that it be accorded confidential treatment pursuant to your regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4).¹ Therefore, DCC is submitting the CD's, together with this request for confidential treatment to the Office of Chief Counsel.

As required by Part 512, DCC is submitting certificates executed by responsible DCC and Robert Bosch Corporation ("Bosch") 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 is an Excel spreadsheet "RS Deployment Study – 9246 Calibration" showing testing data and charts pertaining to the 9246 calibration supplied to DCC by Bosch.

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

This submission is subject to the confidentiality standard set forth in 49 C.F.R. § 512.15(d) for information submitted voluntarily to the agency.

¹ DCC has taken steps to assure that the CD's are free of any errors or defects that would prevent NHTSA from opening the files 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.

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

Information is voluntarily submitted if the agency did not invoke its authority to compel the submission of the information, even if the agency had such authority. *See Parker v. Bureau of Land Management*, 141 F. Supp. 2d 71, 78 n.6 (D.D.C. 2001) “In addition to possessing the authority to compel submission, the agency must also exercise that authority in order for a submission to be deemed mandatory.”; U.S. Dept of Justice, Freedom of Information Act Guide, May 2004, Exemption 4, <http://www.usdoj.gov/oip/exemption4.htm>, test at footnote 95 (“Furthermore, the existence of agency authority to require submission of information does not automatically mean such a submission is ‘required’; the agency authority must actually be exercised in order for a particular submission to be deemed ‘required.’”) (footnote omitted); *id.* Test at footnote 232 (noting that “the D.C. Circuit has made it clear that an agency’s unexercised authority, or mere ‘power to compel’ submission of information, does not preclude such information from being provided to the agency ‘voluntarily’”) (emphasis in original). At no time did Mike Lee purport to invoke NHTSA’s authority to compel the submission of the information for which DCC is seeking confidential treatment.

Information submitted voluntarily should be accorded confidential treatment if it is the type of information that is not customarily disclosed by the submitter to the public. DCC and Bosch do not ever, much less customarily, disclose to the public, the testing data in this submission.

Even if this information were submitted under compulsion, it properly would be withheld under 49 C.F.R. § 512.15(b), because its disclosure would cause substantial harm to DCC’s and Bosch’s competitive positions. The disclosure of this information would provide competitors with this valuable information at not cost, thereby enabling them to bring competitive products to market faster and far less expensively than would otherwise be required. These are precisely the kinds of competitively harmful effects that FOIA Exemption 4 was intended to prevent. *See, e.g. Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) (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”. *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) (“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 principle aim of promoting openness in government.”)

The data in this submission reveal the type of developmental and design tests DCC and Bosch perform in creating, developing, and implementing air bag systems into vehicles and the results of those tests. NHTSA has recognized that 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 and Bosch's operational capacities.

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

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

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

Because the information for which confidential treatment is being sought is the kind of information, that DCC and Bosch do not anticipate ever customarily disclosing to the public, DCC requests that the information be accorded confidential treatment indefinitely.


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

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,


for Steve J. Speth
Stephan J. Speth

cc: Mike Lee

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 1st day of March, 2007

Stephan J. Speth

Certificate in Support of Request for Confidentiality

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

- (1) I am the Director of Engineering Restraint Systems for Robert Bosch LLC and I am authorized by Robert Bosch LLC to execute documents on its behalf;
- (2) I certify that the information contained in the attached documents related to the occupant control modules in DaimlerChrysler Corporation minivans with calibration 9246 are confidential and proprietary data and are 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 Bosch 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 of Bosch;
- (5) Based upon that information, to the best of my knowledge, information and belief, the documents for which Bosch has claimed confidential treatment has never been released or become available outside Bosch, except for disclosures to DaimlerChrysler 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 Bosch 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 twelfth day of March, 2007