

SEP 10 2008

Christopher H. Grigorian, Esq.
Arent Fox PLLC
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5339

Re: Reconsideration of Confidentiality Determination/PE07-032

Dear Mr. Grigorian:

This responds to your April 7, 2008 request for reconsideration of the agency's March 6, 2008 partial denial of confidential treatment for Workhorse Custom Chassis, LLC (Workhorse) information submitted in response to an information request in the above-referenced investigation. By letter dated March 6, 2008, Mr. Otto Matheke denied confidential treatment for materials originating from a third party based upon Workhorse's failure to provide a certification from that third party as required by agency regulations. See 49 CFR § 512.9.

Workhorse now provides the requisite certificate from the third party, Robert Bosch LLC ("Bosch"), and requests reconsideration of the partial denial for the third party data. Workhorse requests permanent confidential treatment for this information.

I am granting your request.

As Workhorse was required to submit this information, I reviewed your claim under the test set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) and its progeny. Under *National Parks*, information concerning a commercial or financial matter may be withheld under Exemption 4 of the Freedom of Information Act (FOIA) if disclosure of the information would be likely to cause substantial competitive harm to the submitter, or is likely to impair the Government's ability to obtain necessary information in the future. *Id.* at 770.

The materials at issue consist of an October 12, 2001 letter from Bosch to Workhorse and an August 28, 2001 Bosch test report. The October 12, 2001 letter summarizes the results of the August 28, 2001 test report.

Workhorse's original request for confidential treatment stated that the information at issue in its request is sensitive business information whose disclosure would be likely to cause substantial competitive harm. According to Workhorse, release of these data would provide competitors with valuable insight into Workhorse's product evaluation and testing methodologies at little or no cost. Therefore, Workhorse contends that release of this information would be likely to cause Workhorse to suffer substantial competitive harm.

The October 12, 2001 Bosch letter and the August 28, 2001 Bosch test report discussed in the October 12th letter contain analyses of brake and brake friction material characteristics and performance whose release would be likely to cause Bosch and Workhorse to suffer substantial competitive harm. Therefore, as noted above, Workhorse's request for confidential treatment of this information is granted.

Subject to the following conditions, this grant of confidential treatment will remain in effect on a permanent basis. The information may be disclosed under 49 C.F.R. § 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 C.F.R. § 512.10). If necessary, you will be notified prior to the release of any information under the procedures established by our regulations (49 C.F.R. § 512.22(b)).

Workhorse's request for reconsideration has been delegated to the undersigned for decision. My decision is administratively final and no further administrative reconsideration or appeal is available.

Sincerely yours,

Original Signed By

Lloyd S. Guerci
Assistant Chief Counsel
Litigation and Enforcement Division

