

BMW Group

9/25/07

September 14, 2007

Richard P. Boyd
Chief, MHD-T Division
Office of Defects Investigation
National Highway Traffic Safety Administration
1200 New Jersey Ave., S.E.
Washington, DC 20590

Re: PE07-031

Dear Mr. Boyd:

With this letter, BMW is responding to NHTSA's Information Requested dated June 25, 2007 in the above captioned matter.

The attachments included with this letter comprise BMW's response to PE07-031. As requested, BMW has repeated each question verbatim and provided our response accordingly. Our detailed responses are contained in the attachments.

Portions of our response contain information that is considered by BMW to be confidential, and accordingly, those materials are not being submitted to your office. As instructed, the portions of our response that are claimed by BMW to be confidential are being submitted to the Office of Chief Counsel, along with our request for confidentiality including supporting material, and the required 49 CFR 512 Certificate.

Additionally, BMW understands that it is NHTSA policy to protect the privacy of individuals under Exemption 6 of the Freedom of Information Act, 5 USC Section 552(b)(6). Certain information requested by NHTSA, such as personal information pertaining to BMW vehicle owners that is contained in the attachments, although not claimed herein to be "BMW Confidential" pursuant to 5 USC Section 552(b)(4) (Exemption 4) and 49 CFR 512, should not be made public by NHTSA in accordance with Exemption 6.

Should you have any questions pertaining to the information enclosed with this letter, please contact me at (201) 573-2071, or Martin Rapaport of my staff at (201) 573-7708.

Company
BMW of North America, LLC

BMW Group Company

Mailing address
PO Box 1227
Westwood, NJ
07675-1227

Office address
300 Chestnut Ridge Road
Woodcliff Lake, NJ
07677-7731

Telephone
(201) 307-4000

Fax
(201) 782-0764

Website
bmwusa.com

Sincerely,



Thomas C. Baloga
Vice President
Engineering-US

Attachments:

CD No. 1

Cc:

A. Cooke, Esq., NHTSA (Chief Counsel) – Letter Only



BMW Group

September 14, 2007

Anthony Cooke, Esq.
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Re: Request for Confidential Treatment of Information Submitted in PE07-031

Dear Mr. Cooke:

Today, BMW of North America, LLC (a subsidiary of BMW AG of Munich, Germany ("BMW")) is submitting its response to the Information Request, dated June 25, 2007, in the above captioned matter. Because a portion of BMW's response, specifically, CD No. 2, is considered by BMW to be confidential, we believe it is entitled to confidential treatment under 49 C.F.R. 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, some of the information for which we are requesting confidential treatment is maintained in strict confidence by BMW, and some of the information is maintained in strict confidence by BMW and its select suppliers pursuant to confidentiality agreements. This information is not customarily made public by BMW or its select 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).

As noted above, the information for which BMW is requesting confidential treatment consists of CD No. 2 in BMW's response to the Information Request. We are requesting confidential treatment of CD No. 2 in its entirety. We further request that CD No. 2 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 and its suppliers in this matter.

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 documentation contained within CD No. 2 consists of different types of confidential information as explained in greater detail below.

Company
BMW of North America, LLC

BMW Group Company

Mailing address
PO Box 1227
Westwood, NJ
07675-1227

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Telephone
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Some of the information consists of results of tests and analyses of vehicle systems/components. This information includes details pertaining to vehicle system/component design and performance as a result of conducting such tests and analyses. Some of the information also consists of test and analyses methodologies that have been developed in order to understand issues regarding specific vehicle systems/components. These tests and analyses methodologies would provide valuable insight into how BMW and its select suppliers conduct certain tests.

Some of the information consists of vehicle systems/component specifications, engineering tolerances, engineering drawings, and other design data. Competitors who would have access to this information would be able to understand the design 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 also 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 warranty claims, consumer complaints, field reports, and legal proceedings. All of these categories of information are 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, bring to market, and, assuming significant sales/market penetration, receive similar categories of information from their own vehicles with similar systems, and then analyze this information. Some of this information can be directly related to 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 is often unverified or unsubstantiated, and 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").

Thus, because BMW would suffer substantial harm to its competitive position if any of the information within CD No. 2 were disclosed, the information should be accorded confidential treatment.

* * *

Additionally, BMW understands that it is NHTSA policy to protect the privacy of individuals under Exemption 6 of the Freedom of Information Act, 5 USC Section 552(b)(6). Certain information requested by NHTSA, such as personal information pertaining to BMW vehicle owners that is contained in the attachments, although not claimed herein to be "BMW Confidential" pursuant to 5 USC Section 552(b)(4) (Exemption 4) and 49 CFR 512, should not be made public by NHTSA in accordance with Exemption 6.

As noted above, the certificate required by 49 C.F.R 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 within CD No. 2 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
Vice President
Engineering-US

Attachments:

49 CFR 512 Certificate
CD No. 1
CD No. 2

Cc:

R. Boyd, NHTSA (Office of Defects Investigation) – Letter only

**BMW Response
to
NHTSA PE07-031**

1. State, by model and model year, the number of subject vehicles manufactured by BMW to date. Separately, for each subject vehicle counted, state the following:

- a. Vehicle identification number (VIN);**
- b. Model;**
- c. Model Year;**
- d. Date of manufacture;**
- e. Warranty coverage start date;**
- f. Original purchaser first and last name; and**
- g. The selling dealer 5-digit BMW identification number.**

Provide the table in Microsoft Access 2000, or a compatible format, entitled "PRODUCTION DATA". See the attached CD-ROM, titled "PE07-031 IR Attachments", for pre-formatted template illustrating the requested information format.

Response:

Attachment "PD-PRODUCTION-DATA" on CD No. 1 contains the requested information.

2. State the number of each of the following, received by BMW, or of which BMW is otherwise aware, which relate to, or may relate to, the alleged defect:

- a. Consumer complaints, including those from fleet operators;**
- b. Field reports, including dealer field reports;**
- c. Reports involving a fire, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;**
- d. Property damage claims; and**
- e. Third-party arbitration proceedings where BMW is or was a party to the arbitration; and**
- f. Lawsuits, both pending and closed, in which BMW is or was a defendant or codefendant.**

For subparts "a" through "d," state the total number of each item (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a fire occurred are to be counted as a fire report, a field report and a consumer complaint).

In addition, for items "c" through "f," provide a summary description of the problem and casual and contributing factors and BMW's assessment of the problem, with a summary of the significant underlying facts and evidence. For items "e" and "f," identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

Response:

The information contained herein in response to Question 2 is information that is current as of July 12, 2007 for consumer complaints, July 30, 2007 for field reports, and July 12, 2007 for legal cases.

The specific information requested is contained in Attachment "CATEGORY-COUNTS" on CD No. 1.

Note that, if one wants to determine the total number of separate incidents, the numbers in Attachment "CATEGORY-COUNTS" are not additive as a simple arithmetic sum. As noted in the Information Request, "[M]ultiple reports of the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint." Therefore, for example, an initial contact to BMW that was received as a consumer complaint, but then in which the vehicle was inspected, and perhaps a lawsuit involving property damage was filed, has been recorded, as instructed, in the multiple categories of consumer complaint, field report, property damage claim, and lawsuit. However, as noted, these are not four (4) different incidents. In fact, it is one (1) incident, and therefore, one cannot deduce that by a summation of all of the counts of the various categories, that the aggregate number is then the total number of separate incidents.

Attachment "L1" on CD No. 2 contains the requested summary information regarding legal cases and arbitration proceedings.

BMW has not received any reports of a fire based upon claims involving a death or injury, or, based upon notices alleging or proving that a death or injury was caused by a possible defect in the subject vehicle, as we are unaware of any injuries, or fatalities occurring as a result of the alleged defect. While BMW has received several "fire reports", they have been received in the form of property damage claims or field reports.

* * *

The additional information requested, specifically, information asking for "...a summary description of the alleged problem and casual and contributing factors and BMW's assessment of the problem, with a summary of the significant underlying facts and evidence..." is contained within our response to Question 14.

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information:

- a. **BMW's file number or other identifier used;**
- b. **The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);**
- c. **Vehicle owner or fleet name (and fleet contact person), address, and telephone number;**
- d. **Vehicle's VIN;**
- e. **Vehicle's model and model year;**
- f. **Vehicle's mileage at time of incident;**
- g. **Incident date;**
- h. **Report or claim date;**
- i. **Whether a fire is alleged;**
- j. **Whether property damage is alleged;**
- k. **Number of alleged injuries, if any; and**
- l. **Number of alleged fatalities, if any.**

Provide this information in Microsoft Access 2000, or a compatible format, entitled "COMPLAINT DATA." See the attached CD-ROM, titled "PE07-031 IR Attachments", for a pre-formatted template illustrating the requested information format.

Response:

The information contained herein in response to Question 3 is information that is current as of the dates specified above in response to Question 2.

Attachment "COMPLAINT-DATA" on CD No. 2 contains the requested information.

4. Produce copies of all documents related to each item within the scope of Request No. 2. Include all photographs referenced in each of the attached EWR Field Reports. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method BMW used for organizing the documents.

Response:

The information contained herein in response to Question 4 is information that is current as of the dates specified above in response to Question 2.

Copies of consumer complaints are contained in Attachment "CC-CONSUMER-COMPLAINTS" on CD No. 2.

Copies of field reports are contained in Attachments "FR-1" through "FR-6" on CD No. 2.

Copies of legal cases and arbitration proceedings are contained in Attachment "L2" on CD No. 2.

5. State, by model and model year, a total count for all of the following categories of claims, collectively, that have been paid by BMW to date that relate to, or may relate to, the alleged defect: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

- a. BMW's claim number;
- b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
- c. VIN;
- d. Repair date;
- e. Vehicle mileage at time of repair;
- f. Repairing dealer's 5-digit BMW dealer number;
- g. Labor operation number;
- h. Problem code;
- i. Replacement part number(s) and description(s);
- j. Concern stated by customer; and
- k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "WARRANTY DATA." See the attached CD-ROM, titled "PE07-031 IR Attachments", for a pre-formatted template illustrating the requested information format.

Response:

The information contained herein in response to Question 5 is information that is current as of July 17, 2007.

As will be described in detail in response to Question 6, we have performed a comprehensive search of our warranty claim database to initially identify any claims that relate to, or may relate to, the alleged defect. Then, each claim was specifically reviewed in order to determine its possible applicability to the alleged defect.

Attachment "WARRANTY DATA" on CD No. 2 contains the requested information.

6. Describe in detail the search criteria used by BMW to identify the claims identified in response to Request No. 5, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes, and problem code descriptions applicable to the alleged defect. State, by make and model year, the terms of the new vehicle warranty coverage offered by BMW on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that BMW offered for the subject vehicles and state by option, model, and model year, the number of vehicles that are covered under each such extended warranty.

Response:

The information contained herein in response to Question 6 is information that is current as of July 17, 2007.

We have performed a comprehensive search of our warranty claim database in order to initially identify any claims that relate to, or may relate to, the alleged defect. Specifically, we utilized a set of defect codes that we believe are relevant in this matter. Those defect codes are contained in Attachment "WARRANTY DATA" on CD No. 2. Then, the actual text of each claim was specifically reviewed in order to determine its possible applicability to the alleged defect. In addition, as part of the claim review process, certain "key words" were also used in order to attempt to specifically identify those claims which may particularly pertain to the alleged defect. Key words such as "flame", "fire", "smoke", "burn", "heat", "melt", "bubble", and "discolor", were utilized.

Note that the defect codes that were utilized as search criteria specifically pertained to the use of the 6-digit level (vehicle system, sub-system, general problem). By utilizing the 6-digit level codes, paid warranty claims within the 8- and 10-digit (more detailed) levels were also captured during the search. Use of the 6-digit level codes ensures that all possible relevant paid warranty claims were captured by conducting a more comprehensive ("wider") search of the warranty claim database than otherwise would have been accomplished if utilizing instead the 8- or 10-digit level defect codes. In other words, the 6-digit level codes "include" the 8- and 10-digit level codes.

Attachment "WARRANTY DATA" on CD No. 2 contains the requested information including all defect codes, defect code descriptions, labor operation codes, labor operation code

descriptions, part numbers, and part number descriptions contained within all of the possible warranty claims that relate to, or may relate to, the alleged defect.

* * *

The terms of the new vehicle warranty coverage offered by BMW on the subject vehicles is contained in Attachment "WARRANTY-TERMS" on CD No. 1.

7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles, that BMW has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins, advisories, informational documents, training documents (including those presented at any technician training session), or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that BMW is planning to issue within the next 120 days.

Response:

BMW has not issued any service, warranty, or other documents that relate to, or may relate to, the alleged defect in the subject vehicles. Additionally, BMW is not planning on issuing any such documentation within the next 120 days.

8. Describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to, or may relate to, the alleged defect that have been conducted, are being conducted, are planned, or are being planned by, or for, BMW. For each such action, provide the following information:

- a. **Action title or identifier;**
- b. **The actual or planned start date;**
- c. **The actual or expected end date;**
- d. **Brief summary of the subject and objective of the action;**
- e. **Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and**
- f. **A brief summary of the findings and/or conclusions resulting from the action.**

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

Response:

The information contained herein in response to Question 8 is information that is current as of July 27, 2007.

Attachment TA-1 on CD No. 2 provides an overview of the "actions" and summarizes the information requested in Questions 8(a) through 8(f).

Attachment TA-2 on CD No. 2 contain copies of the pertinent test and analyses documentation in response to the information requested, and account for the "actions" conducted.

Due to the volume and extensive nature of testing and analyses, we have not provided copies of "all documents" related to the actions. BMW believes that all relevant/pertinent documents are provided for each action. If requested by NHTSA, BMW will provide additional information about any of the actions.

We have provided translations for one of the test reports contained in Attachment TA-2. All of the test reports contained in Attachment TA-2 follow a similar pattern, and contain very similar information. Therefore, we believe that only one of the test reports needed to be translated. If requested by NHTSA, BMW will provide translations of the additional test reports.

9. Provide copies of all engineering standards, material specification, and design verification/validation documents related to the subject component.

Response:

The information contained herein in response to Question 9 is information that is current as of July 27, 2007.

Attachment "ES-1" on CD No. 2 contains the requested information. This information consists of a number of BMW Group standards, DIN standards, and ISO standards that relate to the design, development, and performance of the oil level sight glass.

Attachment "ES-2" on CD No. 2 also contains the relevant engineering drawings that relate to the design and performance of the oil-level site glass. The BMW Group standards, DIN standards, and ISO standards are cited and/or referenced directly on these engineering drawings.

This information will also be useful in reviewing the answers to the various subparts of Question 10.

10. Describe all modifications or changes made by, or on behalf of, BMW in the design, material composition, manufacture, quality control, supply, or installation of the subject component, from the start of production to date, which relate to, or may relate to, the alleged defect. This includes any changes made to the crankcase that may relate to subject component retention. For each such modification or change, provide the following information:

- a. The date or approximate date on which the modification or change was incorporated into vehicle production;
- b. A detailed description of the modification or change;
- c. The reason(s) for the modification or change;
- d. The part numbers (service and engineering) of the original component;
- e. The part number (service and engineering) of the modified component;
- f. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;
- g. When the modified component was made available as a service component; and
- h. Whether the modified component can be interchanged with earlier production components.

Also, provide the above information for any modification or change that BMW is aware of which may be incorporated into vehicle production within the next 120 days.

Response:

The information contained herein in response to Question 10 is information that is current as of July 27, 2007. Note, some of the information contained in Attachments "ES-1" (engineering standards) and "ES-2" (engineering drawings) referred to in our response to Question 9, pertain to our response to Question 10 below.

There were three modifications which relate to, or may relate to, the alleged defect in the subject vehicles. Specifically, there was a specification change of the diameter of the engine/crankcase housing in which the oil level site glass is inserted from a diameter of 40H7 to a diameter of 39.9H7, a modification of the elastomeric material characteristics of the external gasket, and a change to a new supplier.

Question 10(a):

1. The housing diameter specification change occurred on February 3, 2000.
2. The external gasket elastomeric material characteristics modification occurred on July 24, 2000.
3. The supplier change occurred on January 12, 2007.

Questions 10(b) and 10(c):

1. The oil level site glass housing diameter specification changed from a diameter with the dimension 40H7 to a diameter with the dimension 39.9H7. This change was implemented for a tighter seal under adverse misuse conditions.
2. The external gasket elastomeric material specification change was from a Nitrile-Butadiene Rubber (NBR) to a Fluoro Rubber (FPM) material. The gasket material change was made for a tighter seal under adverse misuse conditions. The newer material had improved material property characteristics to better withstand high temperatures that might occur as a result of misuse. It also contained an improvement in tolerance fit with respect to vehicle assembly.
3. A supplier change was necessary due to financial circumstances of the original supplier.

Question 10(d):

Oil level sight glass original part number – 1 465 293.

Question 10(e):

Part number after first modification – 7 661 648.

Part number after second modification – 7 703 823.

Question 10(f):

1. First modification – refer to 10(a)(1).
2. Second modification – refer to 10(a)(2).
3. Third modification – refer to 10(a)(3).

Question 10(g):

The oil level sight glass with the second modification (external gasket elastomeric material characteristic specification change) was available as a service part as of July 26, 2000.

Question 10(h):

The oil level sight glass service parts are interchangeable with prior versions.

* * *

At the present time, BMW does not plan on any modification or change which may be incorporated into vehicle production within the next 120 days.

11. Produce one of each of the following:

- a. Exemplar samples of each design version of the subject component; and**
- b. Field return samples of the subject component exhibiting the subject failure mode.**

Response:

Exemplar samples will be submitted under separate cover.

12. State the number of subject components BMW has sold by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used and month/year of sale (including the cut-off date for sales, if applicable).

For each component part number, provide the supplier's name, address, and appropriate point of contact (name, title, and telephone number). Also identify by make, model and model year, any other vehicles of which BMW is aware that contain the identical component, whether installed in production or in service, and state the applicable dates of production or service usage.

Response:

The information contained herein in response to Question 12 is information that is current as of July 12, 2007.

Parts sales information is not yet available for submittal to NHTSA.

Information requested regarding the supplier of the oil level sight glass is as follows:

Supplier Number One

Sidler
Tel: 07071/938-0

Supplier Number Two

FKS Kunststoffe GmbH
Hinter Stock 17
D-72406 Bisingen
Mr. Wissmann
Tel: 07476/9462-733
a.wissmann@fks-kunststoffe.de

The oil level sight glass service parts 7 703 823 are available for all model years of the F650 GS models (production start 1999), K1200 LT models (production start 1983), R1200 models (production start 2003) and the older Boxer models since 1992.

13. Provide a listing, ordered by each dealer's 5-digit BMW dealer number, of all BMW motorcycle dealers in the United States and its territories. Please include the dealer name (including, where applicable, its DBA), street address (including city, state, and zip code), contact phone number, and BMW dealer number.

Response:

Attachment "DL" on CD No. 1 contains the requested information.

14. Furnish BMW's assessment of the alleged defect in the subject vehicle, including:

- a. **The causal or contributory factor(s);**
- b. **The failure mechanism(s);**
- c. **The failure mode(s);**
- d. **The risk to motor vehicle safety that it poses;**
- e. **What warnings, if any, the operator and other persons both inside and outside the vehicle would have that the alleged defect was occurring or subject component was malfunctioning; and**
- f. **The reports included with this inquiry.**

Response:

Questions 14(a), 14(b), and 14(c):

A description of the causal or contributory factors, failure mechanisms, and failure modes, which pertain to this issue, is contained below.

The issue identified in this Information Request appears to occur as a result of operator misuse, specifically, due to a particularly long and/or unusually high-level of engine idle speed while the motorcycle is stationary contrary to instructions in our Rider's Manual. The fact that this is a misuse condition is also depicted in response to Question 14(e). An example of a similar misuse condition with a car or light truck would be parking over dry leaves where the catalytic converter catches them on fire. Nearly every vehicle Owner's Manual cautions against this practice, but the fact that fires could occur does not mean that all cars with catalytic converters have a design defect.

As noted in the field reports, allowing an air-cooled engine to idle for an unusually long period of time, and especially at high-idle, can result in an overheat condition. By definition and design, an air-cooled engine must have airflow to prevent overheating. In this situation, and as depicted in the field reports, an overheat condition can lead to events which ultimately may result in a fire. However, as also depicted in the field reports, there is no specific component, trend, or pattern that is always the cause of the fire. Some reports indicate that failure of the oil level site glass can occur, and if so, then escaping engine oil can initiate, or further support an already existing fire. Other reports indicate that various vehicle components, such as fairing panels, component covers, wiring, guards, etc., can melt/ignite due to proximity to, for example, overheated engine exhaust systems.

Not only is this misuse condition occurring as a result of the motorcycle idling at a standstill, but it is also exacerbated, as depicted in a number of the field reports, by an excessive (high-level of) engine idle speed. If the motorcycle is operated contrary to instructions in the Rider's Manual such that the engine is left running, and certainly at an increased speed above idle (e.g.,

by operating the choke longer than necessary to obtain a smooth idle), while the motorcycle is stationary, it is possible for the temperature of the exhaust system, or the circulating oil, to rise considerably and ultimately, for various failure modes to occur.

Essentially, the issue identified in this Information Request is a condition that involves operational misuse of the motorcycle, rather than a malfunction or failure of a component or system. For the engine to be properly cooled and remain at an appropriate operating temperature, air must be flowing past and over the engine to act as a cooling agent.

Question 14(d):

We believe that this misuse issue does not pose an unreasonable risk to motor vehicle safety because reasonable steps can be taken to avoid this rare condition.

As has been depicted in all of the information presented, there is a small percentage of the vehicle population (on the order of less than one percent) of warranty claims that relate to, or may relate to, the alleged defect in the subject vehicles, or to other nonconformities such as discoloration of the oil level site glass. Additionally, there are very few field reports, customer complaints, and legal actions. Moreover, we are not aware of any injuries or fatalities associated with this condition.

The fact that this problem occurs due to operator misuse indicates that this is not an unreasonable risk. This is also reflected within the field reports which describe an examination of this condition by qualified engineering personnel. In other words, the field reports indicate that this condition occurs as a direct result of a particularly long and/or unusually high-level of engine idle speed believed to include over-choking. An examination of the engineering standards and test reports provided in response to this Information Request also supports this.

Furthermore, this design is not unique to BMW. Other major motorcycle manufacturers also produce models with air-cooled engines.

Just as fires from catalytic converters parked over leaves has shown, if vehicle operators ignore reasonable steps to avoid misuse conditions, a fire could occur. Our changes to further improve the sealing of the sight glass under adverse misuse conditions represent our efforts to avoid problems brought on by misuse, similar to adding additional catalytic converter shields, but should not be interpreted as a faulty design.

Accordingly, we do not believe that the issue identified within this Information Request constitutes an unreasonable risk to motor vehicle safety.

Question 14(e):

Adequate warnings are provided to an operator of the motorcycle. The Rider's Manual contains the following warning statements, in bold typeface, with an alert "stop-and-read" hand symbol regarding the possibility of this misuse condition.

Warning:

Do not keep the engine running while the motorcycle is at a standstill – risk of overheating and fire.

Ride away as soon as possible after starting the engine.

To prevent the air-cooled engine from overheating and possibly suffering further damage, even short warming-up periods at a standstill must be avoided.

After a cold start, avoid high engine speeds until the engine has warmed up.

Additionally, and as reflected in some of the attachments in response to this Information Request, during delivery of the motorcycle to a new customer, riders are directed toward this warning within the Rider's Manual, and also instructed about this possible misuse condition.

Question 14(f):

Our assessment of the "...reports included with this inquiry..." refers to our assessment of the Vehicle Owner Questionnaires (VOQs) and the Early Warning Reporting (EWR) reports that were supplied by NHTSA as part of this Information Request. Our assessment of these VOQs, and of the EWR reports, is included in our response to other sub-parts of Question 14.