

BMW Group

File
1/7/08

December 20, 2007

Thomas Z. Cooper
Chief, Vehicle Integrity Division
Office of Defects Investigation
National Highway Traffic Safety Administration
1200 New Jersey Ave., S.E.
Washington, DC 20590

Re: PE07-045

Dear Mr. Cooper:

With this letter, BMW is responding to NHTSA's Information Request dated September 18, 2007 in the above captioned matter.

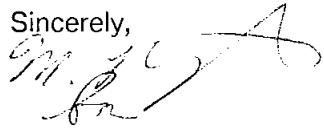
The attachments included with this letter comprise BMW's response to PE07-045. As requested, BMW has repeated each question verbatim and provided our response accordingly. Our detailed responses are contained in the attachments.

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.

Sincerely,



Jan Urbahn
General Manager
Safety Engineering & Intelligent Transportation Systems

Attachments:

CD No. 1

Cc:

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

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BMW Group Company

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**BMW Response
to
NHTSA PE07-045**

1. State, by model series and model year, the number of subject vehicles BMW has manufactured for sale or lease in the United States. Separately, for each subject vehicle manufactured to date by BMW, state the following:

- a. Make;
- b. Model Series;
- c. Model Year;
- d. Vehicle identification number (VIN);
- e. Date of manufacture (in "yyyy/mm/dd" date format);
- f. Date warranty coverage commenced (in "yyyy/mm/dd" date format);
- g. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease); and
- h. The seat type/covering code (if differs from within a model series).

Provide the table in Microsoft Access 2000, or a compatible format, entitled "PRODUCTION DATA".

Response:

The source of this information is our production vehicle database and is current as of 14 Dec 07.

Attachment P-1 ("PRODUCTION DATA") on CD No. 1 contains the requested information. Note that we have combined items (b) and (c) in the attachment. At the present time, item (h) is not able to be provided.

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 in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;
- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, 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 (including own vehicle); 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 crash occurred are to be counted as a crash report, a field report and

a consumer complaint). Identify reports that have a duplicate with either other mfg reports/claims or with ODI.

In addition, for subparts "d" through "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 number of reports, claims, complaints, etc. that relate to, or may relate to, the alleged defect in the subject vehicles is as follows:

- a. Consumer Complaints – The number of consumer complaints is difficult to determine and therefore, we are hesitant to speculate as to a number that may be appropriate. The source of this information is our customer contact database and is current as of 10 Dec 07.
- b. Field Reports including Dealer Field Reports – The number of field reports is 1, while the number of Dealer Field Reports is 5. The source of this information is our various field report systems / databases and is current as of 18 Dec 07.
- c. Reports involving a crash, injury, or fatality based upon claims, notices, etc. – The number of these reports is 0.
- d. Property Damage Claims – The number of property damage claims is 0.
- e. Third-party Arbitration Proceedings – The number of third party arbitration proceedings is included within the total for items (e) and (f), the total being 61. However, these cases specifically pertain to the issue of "Lemon Law" and are not cases involving product liability. The source of this information is our legal database and is current as of 19 Dec 07.
- f. Lawsuits – The number of lawsuits is included within the total for items (e) and (f), the total being 61. However, these cases specifically pertain to the issue of "Lemon Law" and are not cases involving product liability. The source of this information is our legal database and is current as of 19 Dec 07.

At the present time, information for items (e) and (f) that would, "...identify the parties to the action...or other document initiating the action was filed," is not available.

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 make, model and model year;**
- f. **Vehicle's mileage at time of incident;**
- g. **Incident date (in "yyyy/mm/dd" date format);**
- h. **Report or claim date (in "yyyy/mm/dd" date format);**
- i. **Whether a crash is alleged;**
- j. **Whether property damage is alleged;**
- k. **Number of alleged injuries, if any;**
- l. **Number of alleged fatalities, if any.**

Provide this information in Microsoft Access 2000, or a compatible format, entitled "REQUEST NUMBER TWO DATA."

Response:

The source of this information, and its availability date, is as noted above in our response to Question 2.

Attachment CC ("REQUEST NUMBER TWO DATA") on CD No. 2 contains the requested information for consumer complaints.

The consumer complaints were obtained using the following consumer complaint defect codes because they specifically included the word "air bag":

- 6500 - Radio, CD, OBC, Nav, Alarm, Airbag
- 6577 - Airbags Front, Side Head Protection

Code 6500 captures more than air bag issues (also radio, CD, onboard-computer, navigation system, and alarm system). Nevertheless, it was included so as to perform a comprehensive search of the consumer complaint database. Therefore, code 6577 is likely to be the more useful / applicable "air bag" consumer complaint code as that code is specifically applicable to air bag issues.

Importantly, you will note a number of "complaints" with the defect code "0035". This code pertains to "iSky" and other service- and/or sales-related "alerts". "iSky" is a brand name of a vendor that we use for telephone surveys. This code and these "complaints" were "captured" because in code 0035 cases, and specifically for these 0035 cases, there would also be either a 6500, or a 6577 code in that record. In these cases, the 0035 complaint was associated with a 6500 or 6577 component. But, it is identified as 0035 due to the method in which the complaint was "delivered" to us, i.e., in the form of an iSky alert.

The iSky records are based upon individual telephone surveys / follow-ups to customers that have had a recent service or sales experience (standard follow-up procedure in the interest of product quality, customer loyalty, etc.), and make a complaint at that time. In other words, they do not initiate the complaint themselves; it is only in response to a survey. These could be considered "second level" complaints, as the customer did not contact us directly. Unfortunately, in the "summary files", one cannot determine the actual problem from only this summary information; one has to review the actual record.

Given all of the above, it may be most useful to focus upon the records that specifically pertain to the 6577 codes / complaints first, then the 6500 codes, and then, lastly, the 0035 codes.

Although not specifically requested in this information request, we have also included production date, consumer comment summary, and, service record code and description. This information should help NHTSA in their analysis. At the present time, we are not able to provide information in response to items (c), (g), and (i) through (l).

Attachment FR ("REQUEST NUMBER TWO DATA") on CD No. 2 contains the requested information for field reports. Defect codes and descriptions applicable to the air bag system and the occupant classification mat, were used in order to perform a search of the various field report databases.

Information pertaining to arbitration proceedings and lawsuits, which are all "Lemon Law" cases, are not available at the present time.

4. Produce copies of all documents related to each item within the scope of Request No. 2. 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 source of this information, and its availability date, is as noted above in our response to Question 2.

Attachments CC-"xxx(yyy)".pdf on CD No. 2 contain copies of consumer complaints. The file name notation "xxx(yyy)" is used to identify the particular vehicle model line ("xxx"), and whether or not the file pertains to "iSky" or "non-iSky" records ("yyy"), "iSky" being explained above in response to Question 3.

Attachments FR and DFR on CD No. 2 contain copies of field reports and dealer field reports, respectively.

Copies of information pertaining to arbitration proceedings and lawsuits, which are all "Lemon Law" cases, are not available at the present time.

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 in the subject vehicles: 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 (in "dd/mm/yyyy" date format);
- e. Vehicle mileage at time of repair;
- f. Repairing dealer's or facility's name, telephone number, city, state or Zip code;
- 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".

Response:

The source of this information is our warranty claims database and is current as of 16 Oct 07.

Attachment WC-1 ("WARRANTY DATA") on CD No. 2 contains the requested information.

At the present time, item (b) is not able to be provided. Although not specifically requested, we are also providing the production date, model and model year for each warranty claim to assist NHTSA in their analysis.

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 in the subject vehicles. State, by make and model year, the terms of the new vehicle warranty coverage (including the subject component) 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 search criteria involved, as a baseline, the referenced service bulletin (72-02-06). As noted in that bulletin, and in answers to other questions within this response, vehicles were equipped with an improved OC-3 mat in Nov-'05; therefore, the production date of any vehicle in the warranty claim file is prior to Dec-'05.

Using the referenced service bulletin as a baseline, the search criteria utilized the description of the alleged defect, as also noted in the service bulletin, i.e., the issue of micro-cracks in the seat mat. Additionally, fault codes specifically identified in the service bulletin, and pertaining to the alleged defect, were utilized. These parameters were used in order to obtain those claims that could be applicable. Specifically, the following alpha-numeric character strings were utilized: ("*95B8*", "*93C3*", "*9780*", "*71*", "*72 02 06*", "*72-02-06*", "*72 2 06*", "*72 2 6*", "*72-2-06*", "*72-2-6*", "*MICRO*"). Furthermore, these searches were performed for claims in the 657708 (front seat occupancy detection mat) defect code group. Claims within that defect code group were thought to be those that would be applicable to the alleged defect in the subject vehicles.

Attachment WC-1 on CD No. 2 contains the labor operations, labor operation descriptions, problem codes, problem code descriptions, part numbers, and part number descriptions.

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

The terms of the new vehicle warranty coverage offered by BMW on the subject vehicles is contained in Attachment WC-2 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 (all issued revisions), 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, 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:

The source of this information is our technical service database and is current as of 18 Dec 07.

Attachment SB-1 on CD No. 1 contains the requested information.

At the present time, BMW does not plan on issuing any other communications of the types identified above 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 in the subject vehicles 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 source of this information is our various technical development departments and is current as of 19 Dec 07.

Attachment TA-1 on CD No. 2 contains a summary of the requested information and accounts for the "actions" that were 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 the information within Attachment TA-1 is sufficient at this time. However, if requested by NHTSA, BMW will provide additional information about the actions.

9. 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 in the subject vehicles. 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 identifiable by MY, date of build or VIN in the "PRODUCTION DATA" table of Request No. 1;
- 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 source of this information is our various technical development departments and is current as of 19 Dec 07.

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.

Question 9(a):

Attachments PM-1 and PM-2 on CD No. 2 contain the requested information.

Question 9(b):

Attachments PM-1 and TA-1 on CD No. 2 contain the requested information. Specifically, the legend at the bottom of the table on Attachment PM-1, and the information contained within Attachment TA-1, provide a description of the design changes to the component.

Question 9(c):

Attachment TA-1 contains the requested information.

Question 9(d):

Attachments PM-1 and PM-2 on CD No. 2 contain the requested information.

Question 9(e):

Attachments PM-1 and PM-2 on CD No. 2 contain the requested information. In some cases, the modified component has the same part number as the original component.

Question 9(f):

Original unmodified components were withdrawn from production and/or sale in the course of introducing the modified parts. Refer to Attachment PM-1 for additional specific information.

Question 9(g):

Attachment PM-2 on CD No. 2 contains the requested information.

Question 9(h):

Yes.

10. Produce one each of the following:

- a. Exemplar samples of each seat mat prior to and after the 11/2005 built date;
- b. Field return sample of the subject components exhibiting the subject failure mode; and
- c. Any kits that have been released, or developed, by BMW for use in service repairs to the subject component/assembly which relate, or may relate, to the alleged defect in the subject vehicles.

Response:

Samples will be provided under separate cover.

11. Provide a summary description of the vehicle's OCS and the resulting fault codes (95B8, 93C3, 97E0) in the SRS Control Module. Also provide a detailed description (comparison and contrast to the seat mat used in MY2005 vehicles) of the updated seat mat as identified in SI B 72 02 06 TSB in the subject vehicle, including:

- a. Functional block/flow diagram; and
- b. Picture/illustration of the components and component location including the seat mat and seat assembly; and
- c. The SRS logic protocol that will trigger the SRS AWL and/or the POL from a faulty seat mat.

Response:

The source of this information is our various technical development departments and is current as of 19 Dec 07.

Attachments SD-1 through SD-5 on CD No. 2 contain the requested information.

12. 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 would have that the alleged defect was occurring or subject component was malfunctioning; and
- f. The reports included with this inquiry.

Response:

Question 12(a) & (b):

Causal or contributory factors that lead to illumination of the air bag warning lamp and/or the passenger air bag off lamp are the repeated pressure/stress applied to the outer seat bolster (side bolster) of the front passenger seat when an occupant enters the vehicle and "slides" over this bolster. This pressure/stress is then directly applied to the OCS mat which, over time, can result in a mechanical failure of the OCS mat sensors. Specifically, the mechanical failure is a break in the conductive lines of the OCS mat.

Question 12(c):

This interruption will be identified by the OCS control unit. As a consequence, the passenger air bag will be deactivated and the air bag warning lamp will be illuminated. Due to the deactivated passenger air bag, the passenger air bag on-off lamp will also be illuminated.

Question 12(d):

BMW strongly believes that this issue does not introduce a new crash risk, or pose an unreasonable risk to motor vehicle safety.

As is well known, motor vehicle safety is defined as, "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident", while a defect is defined as, "includ[ing] any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment."

We believe that the issue in question does not add a new crash risk and does not present an unreasonable risk to safety given the sufficient warnings to the driver and other vehicle occupants from the air bag warning lamp and the passenger air bag on-off lamp in vehicles that are experiencing this problem. This is further described in 12(e) below.

Field Experience Suggests a Customer Satisfaction, Rather than a Customer Safety, Problem

Warranty Claim Experience

As evidenced by the warranty claim history, vehicle operators who have experienced this problem have brought their vehicle to a dealer for service and repair. Therefore, the warning lamp appears to be performing its intended function, i.e., alerting vehicle owners that there exists a potential problem, and to seek quick, perhaps immediate, attention.

Field Report and Customer Complaint Experience

Information provided in response to Questions 2, 3, and 4 indicate that while there are air bag warning lamp illuminations and passenger air-bag off lamp illuminations in vehicles, there have been no cases of crashes that BMW is aware of that indicate that deployment of the passenger air bag was needed, and in which the alleged defect is present. We do not have any evidence that suggests that there is a crash case in which the air bag electronic control module "called for" passenger air bag deployment.

Therefore, we believe the issue is better characterized as a customer satisfaction problem, rather than a customer safety problem. Customers are concerned that the air bag warning lamp in their vehicle is illuminated, as they should be, and as the function of the lamp is intended. Our Owners Manual provides adequate information and warnings to vehicle owners in order for them to have their vehicles repaired in a timely manner. The Owners Manual indicates that should the air bag system warning lamp illumination be ignored, the system may not function properly in a crash in which the system may be needed.

Legal Claim Experience

BMW has not received any legal claims involving death or injury alleged to have occurred by the alleged defect in the subject vehicles, nor notices alleging or proving that a death or injury was caused by the alleged defect in the subject vehicles. Therefore, there are no "...reports

involving a crash, injury, or fatality..." based on such legal claims or notices, because such legal claims or notices have not been received by BMW. Rather, we are in receipt of some "Lemon Law" cases in which this issue is identified, but, it is only one of a number of alleged vehicle problems that form the basis of these "Lemon Law" legal actions.

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

Question 12(e):

Adequate warnings are provided to the driver, and to other occupants, of a vehicle that is experiencing this problem.

Air Bag Warning Lamp Illumination

If a vehicle is experiencing this problem, the air bag warning lamp, and the passenger air bag off lamp, are both illuminated. We believe that these warnings are a sufficient indication to a vehicle operator that the vehicle is experiencing a problem, and therefore, should be repaired.

There are many rulemakings involving vehicle systems with warning lamps that are intended to alert a vehicle operator that the system in question may be experiencing a problem. A recent rulemaking, involving Electronic Stability Control (ESC) systems (Docket 2006-25801; 54712 Fed. Reg. @ 54729; 18 Sep 06) contained the following NHTSA quote:

"We believe that there are safety benefits associated with certain of these warnings. There is an obvious safety need to warn the driver in case of an ESC malfunction so that the system can be repaired."

Therefore, we believe that as long as the warning lamp for a vehicle system is being illuminated when a potential problem exists, that is a sufficient condition for a vehicle operator to seek service and repair of their vehicle and the specific system involved.

Owners Manual Recommendations

The vehicle Owners Manual provides a section pertaining to the air bag system. A description of the functionality of the air bag system warning lamp and the passenger air bag on-off lamp is provided in this section. The owner is instructed to have the vehicle serviced if the air bag warning lamp does not briefly illuminate during vehicle start-up, illuminates while driving, or remains illuminated while driving, indicating that there is a potential problem with the air bag system.

The Owners Manual text suggests that the potential problem could cause the air bag system to not function properly in a crash in which the system is needed, and therefore, to have the vehicle serviced. Specifically, the text states,

"In the event of a fault in the air bag system, have it checked without delay, otherwise there is the risk that the system will not function as intended even if a sufficiently severe accident occurs."

The Owners Manual also contains a section specifically regarding warning lamps, and contains information regarding the air bag system warning lamp. It refers the reader to the section regarding the functionality of the air bag system, and in particular, the air bag warning lamp for specific details. We believe that most vehicle operators will be concerned with illumination of the air bag warning lamp, and will seek service to rectify the potential problem with the system.

BMW Safety Belt Reminder System

Additionally, all of the subject vehicles incorporate the BMW safety-belt reminder system. This system produces an aggressive and relentless warning, consisting of a noticeable chime for a passenger that is unbelted. The chime repeats itself every few seconds for several minutes. Then, after a short "break", the chime is repeated again, every few seconds for several minutes. This cycle continues to repeat. Therefore, even in a case in which the air bag warning lamp was illuminated, an unbelted passenger would be strongly reminded to fasten their safety belt.

Accordingly, we believe that there is sufficient warning to drivers and other occupants that the vehicle is experiencing a potential problem, and should be repaired as soon as possible.

Question 12(f):

The "...reports included with this inquiry..." refer to the Vehicle Owner Questionnaires (VOQs) that were supplied by NHTSA as part of this Information Request. Our assessment of these VOQs is included in our response to other parts of Question 12, and is consistent with our analyses of other "non-VOQ" consumer complaints.

PE07-045
Attachment Index

Attachment Name / Identifier / CD	NHTSA IR Question No.	Description
IR-Q&A [CD No. 1]	1 – 12	NHTSA IR Questions and BMW Written Responses
P-1-PRODUCTION-DATA [CD No. 1]	1	Production Data
CC-REQUEST NUMBER TWO DATA [CD No. 2]	3	Request Number Two Summary Information – Consumer Complaints
FR-REQUEST NUMBER TWO DATA [CD No. 2]	3	Request Number Two Summary Information – Field Reports
CC-xxx(yyy) [CD No.2]	4	Copy of Consumer Complaints
FR [CD No. 2]	4	Copy of Non-Dealer Field Reports
DFR [CD No. 2]	4	Copy of Dealer Field Reports
WC-1-WARRANTY DATA [CD No. 2]	5 & 6	Warranty Claim Data and Search Criteria
WC-2 [CD No. 1]	6	New Vehicle Warranty Coverage
SB-1 [CD No. 1]	7	Service Bulletin
TA-1 [CD No. 2]	8	Testing/Analyses Documentation and Supporting Information
PM-1, PM-2 [CD No. 2]	9	Component Modifications / Introduction Dates / Etc.
SD-1 through SD-5 [CD No. 2]	11	System Description Information

Note: CD No. 2 contains information requested to be afforded confidential treatment; however, due to electronic processing and file size limitations/difficulties, certain attachments were not able to be specifically labeled as ***confidential***. However, the entire contents of CD No. 2 is labeled ***confidential***, and, the individual file names also contain the prefix "CONF" per 49 CFR 512.

BMW Group

December 20, 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 PE07-045

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 September 18, 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

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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 some of BMW's 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").

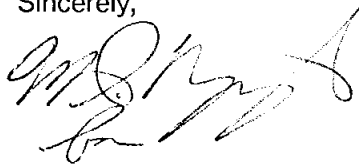
Thus, because BMW would suffer substantial harm to its competitive position if any of the information within CD No. 2 were disclosed, the information should be accorded confidential treatment.

* * *

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,



Jan Urbahn
General Manager
Safety Engineering and Intelligent Transportation Systems

Attachments:

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

Cc:

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