

FEB 19 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frank D. Slaveter
Senior Manager, Technical Compliance
Nissan North American, Inc.
P.O. Box 685001
Franklin, TN 37068-5001

Re: Request for Confidential Treatment for Certain Documents Provided in
Response to PE 08-045

Dear Mr. Slaveter:

This responds to your September 15 and September 29, 2008, letters requesting confidential treatment of Nissan North America, Inc. ("Nissan") information provided in response to a National Highway Traffic Safety Administration ("NHTSA") information request in the above referenced investigation. The September 15, 2008, letter requested confidential treatment for two CD-ROMs as well as hard copy documents labeled as pages E1 through E285, where pages E1 through E90 were on CD-ROMs and E91 through E285 were in hard copy. Nissan's September 29, 2008 letter asks NHTSA to dispose of the two CD-ROMs and the hard copy submitted on September 15th and replace them with new CD-ROMs that purportedly included digitized copies of the September 15th hard copy pages. Unfortunately, copies of pages E91 through E285 were not included on the CD-ROMs with the September 29th submission. Although the foregoing pages were not provided with the September 29th request, a table accompanying the September 29th request letter specified that Nissan sought confidential treatment for all the pages in the "Attachment A" folder and certain pages in the "Attachment E" folder on the CD-ROMs. The table with the September 29th letter indicates that Nissan seeks confidential treatment for pages beyond page E90. Therefore, I am construing Nissan's request as seeking confidential treatment for Attachment A and portions of Attachment E as provided on September 29th (including pages E1 through E90 in the .pdf file in Attachment E on the CD-ROM) and some of pages E91 through E285 as provided in Nissan's September 15, 2008, request. Nissan seeks permanent confidential treatment for the foregoing information.

You contend the data consists of design, development, evaluation, and testing information that, if released, would reveal competitively sensitive and highly valuable design and performance data. You further contend that Nissan limits access of this information to specific employees and that Nissan disseminates this information only to suppliers under confidentiality agreements or under other understandings that the suppliers will maintain the information in strictest confidence. Finally, you state that the information on these pages, if released, would likely cause Nissan to suffer substantial competitive harm.

Your request is granted in part and denied in part.

I note first that your submission contains potentially identifying personal information for consumers. This potentially personally identifying information, name, address, telephone number, and the last six digits of any vehicle identification numbers ("VIN") will be accorded confidential treatment pursuant to Exemption 6 of FOIA, 5 U.S.C. § 552(b)(6).

I am denying your request for the following documents originating from third parties. Pages E14 through E16 and E126 through E146 originated from Excel Polymers while pages E262 and E263 were produced by Akron Rubber Development Laboratory, Inc. Neither of Nissan's two request letters included certifications from Excel Polymers or Akron Rubber Development Laboratory, Inc.

Section 512.4(b) of 49 CFR Part 512 requires that all requests for confidential treatment be accompanied by a certification conforming to the example provided in Appendix A to Part 512. Any request for confidential treatment that is not accompanied with this certification will be denied. Materials or data generated by, or under the control of, parties other than the submitter must be accompanied by a certification from that entity. *See* 49 CFR 512.9. Since you did not provide the required certifications from these entities, your request for confidential treatment for the foregoing pages is denied and these pages were not substantively reviewed.

I am also denying your requests for confidential treatment for information on pages E254 through E261 and E264 through E274. Section 512.6(c)(2) requires that contents of electronic files claimed as confidential must be marked as follows:

Confidential portions of electronic files submitted in other than their original format must be marked "Confidential Business Information" or "Entire Page Confidential Business Information" at the top of each page. If only a portion of a page is claimed to be confidential, that portion shall be designated by brackets. Files submitted in their original format that cannot be marked as described above must, to the extent practicable, identify confidential information by alternative markings using existing attributes within the file or

means that are accessible through use of the file's associated program. When alternative markings are used, such as font changes or symbols, the submitter must use one method consistently for electronic files of the same type within the same submission. The method used for such markings must be described in the request for confidentiality.

The table attached to the September 29th request indicates that confidential treatment is sought for many of these pages; however, the pages listed as confidential in Nissan's table are either not marked or are marked as "Nissan Confidential." Due to Nissan's failure to properly mark these pages, your request for confidential treatment for them is denied and the substance of your claim relating to them was not reviewed.

Nissan submitted this information in response to 49 U.S.C. § 30166(b). Because Nissan was required to submit this information, the information was reviewed 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 harm to the competitive position of the submitter, or is likely to impair the Government's ability to obtain necessary information in the future. *Id* at 770.

With the exception of the improperly marked and third party documents described above, I am granting your request for the remaining information for which confidential treatment is requested in Attachments A and E. These pages contain product design, development, evaluation, and testing information. Public disclosure of this information would likely cause substantial harm to the competitive position of Nissan. Subject to the conditions below, the information on the pages listed in this paragraph will be permanently treated as confidential.

This partial grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR § 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 CFR § 512.10. If necessary, you will be notified prior to the release of any information under the procedures established by our regulations. 49 CFR § 512.22(b).

If you disagree with the partial denial of your request noted above, you may request reconsideration. If you seek reconsideration, your request must be addressed to NHTSA's Chief Counsel and filed within 20 working days after the receipt of this letter. 49 CFR 512.19(a). Any such request should contain additional marking and justification

supporting your claims for confidential treatment consistent with 49 CFR Part 512 and applicable case law. Please note that NHTSA is not responsible for maintaining the confidentiality of any documents that were not properly marked as confidential when originally submitted.

Sincerely,

Original Signed By

Otto G. Matheke, III
Senior Attorney

