

TRW Automotive

Jeffery M. Cooper

Senior Counsel

2001 Tech Center Drive

Livonia, MI 48150

NHTSA
WASHINGTON, DC 20590
2009 SEP 22 P 3:24

Direct dial: 734.855.2672
Fax: 734.855.3250
E-mail: Jeff.Cooper@trw.com

OFFICE OF CHIEF COUNSEL



September 21, 2009

Mr. Stephen P. Wood
Acting Chief Counsel
Office of Chief Counsel (NCC-111)
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE, Room W41-227
Washington, DC 20590

Re: Request for Confidential Treatment of Business Information

Dear Mr. Wood:

TRW Automotive U.S. LLC ("TRW") is voluntarily submitting information to NHTSA's Office of Defects Investigation in response to an informal inquiry made to TRW in connection with EA 09-003 relating to certain trucks manufactured by Volvo Trucks North America. TRW believes that this submission is voluntary, for purposes of analysis under Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4). Therefore, based on a careful review of this information, TRW has determined that this information is confidential business information and should be accorded confidential business information protection under Exemption 4. TRW is submitting this information together with this request for confidential treatment to the Office of Chief Counsel.

The information required by Part 512 is set forth below.

A. Description of the Information (49 C.F.R. § 512.8(a))

TRW is submitting a PowerPoint presentation made to the NHTSA Office of Defects Investigation personnel during a tele-conference and WebEX meeting, held on August 27, 2009 and involving Volvo and TRW personnel. The business information for which confidential treatment is being sought is contained on pages 3, 4, 5, 6, 7 and 8. of the PowerPoint submission. We have enclosed (a) two copies of the Powerpoint presentation, with the pages containing confidential business information removed and replaced with blank pages noting the removal, (b) two copies of the Powerpoint presentation, with the pages containing confidential business information left in place, but with a watermark added identifying that such pages contain confidential business information, (c) a Certificate in Support of Request for Confidentiality from TRW, and (d) a Certificate in Support of Request for Confidentiality from Volvo.

September 21, 2009

Page 2

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.

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, March 2007, Exemption 4, http://www.usdoj.gov/oip/foia_guide07/exemption4.pdf, text at footnote 99 (“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.*, text at footnote 248 (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 NHTSA purport to invoke 49 U.S.C. § 30166 or otherwise assert NHTSA’s authority to compel the submission of the information for which TRW is seeking confidential treatment. Rather, TRW prepared the attached PowerPoint voluntarily to present to NHTSA staff at a meeting in which TRW voluntarily participated. NHTSA did not compel or purport to compel TRW to participate in the meeting, and, as noted above, did not subsequently invoke its authority to compel the submission of this PowerPoint.

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. See, e.g., *Critical Mass Energy Project v. NRC*, 975 F2d 871, 879 (D.C. Cir. 1992) (en banc). TRW does not disclose to the public its warranty data or its internal analyses of product issues.

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 TRW does not anticipate ever disclosing this type of information to the public, TRW requests that this information be accorded confidential treatment permanently.

September 21, 2009
Page 3


F. Contact Information (49 C.F.R. § 512.8(f))

Please direct all inquiries and responses to the undersigned at:

Jeffery M. Cooper, Senior Counsel
TRW Automotive
12001 Tech Center Drive
Livonia, MI 48150
734 855 2672 (phone)
734 855 3250 (facsimile)

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, TRW respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,


Jeffery M. Cooper
Senior Counsel

Certificate in Support of Request for Confidentiality

I, Jeffery M. Cooper, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am Assistant Secretary and I am authorized by TRW Automotive U.S. LLC to execute documents on its behalf;
- (2) I certify that the information contained in the attached documents and identified as confidential business information 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 identified information contained in the indicated documents be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible TRW 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 TRW;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which TRW has claimed confidential treatment has never been released or become available outside TRW, except for disclosures to Volvo Trucks North America, a customer of TRW, which was provided the information 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 TRW because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 21 day of September, 2009


Jeffery M. Cooper

Senior Counsel

Assistant Secretary

TRW Automotive U.S. LLC



Volvo Trucks North America

Certificate in Support of Request for Confidentiality

I, Timothy L. LaFon, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am Manger of Regulatory Affairs of Volvo Trucks North America ("Volvo"), and I am authorized by Volvo to execute documents on its behalf;
- (2) I certify that the information submitted by TRW Automotive U.S. LLC ("TRW") with a Request for Confidential Treatment dated September 21, 2009 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 Volvo and TRW 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 Volvo and TRW;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which TRW has claimed confidential treatment has never been released or become available outside Volvo or TRW, except for disclosures to NHTSA;
- (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 Volvo and TRW 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 ____ day of September, 2009

Printed Name: Timothy L. LaFon
VOLVO TRUCKS NORTH AMERICA