



NHTSA  
WASHINGTON, DC 20590

2009 DEC -7 A 11: 03

OFFICE OF CHIEF  
COUNSEL

David D. Dillon  
Sr. Manager  
Product Investigations & Campaigns

December 4, 2009

Mr. O. Kevin Vincent  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Ave., SE, Room W41-227  
Washington, DC 20590

Re: Reconsideration Request for Confidential Treatment of Business Information  
Submitted in RQ09-003

Dear Mr. Vincent:

Pursuant to 49 C.F.R. § 512.19, Chrysler Group LLC ("Chrysler"), hereby seeks reconsideration of the partial denial of Chrysler's September 3, 2009 request for confidential treatment for information provided in RQ09-003.

The partial denial of confidential treatment was conveyed in a letter from Otto G. Matheke, III to David R. Bernier of Chrysler. Chrysler received this letter on November 24, 2009.

The confidentiality request was denied in part for the following document:

- Enclosure 8E – SHAININ BLACKBELT STUDY

Confidential treatment for Enclosure 8E was denied because, according to Mr. Matheke's letter, this blackbelt study "appears to originate from Shainin, LLC" and Chrysler did not submit a Part 512 certification executed by Shainin, LLC.

Chrysler, however, was not required to submit a certification from Shainin LLC because, although the study used a methodology developed by Shainin, the study was commissioned and conducted solely by Chrysler engineers without the participation of Shainin LLC personnel. Thus, although this study used the Shainin method, no one from Shainin, LLC had any involvement with this study or has seen it. Accordingly, no third-party certification was required under these circumstances.

The disclosure of this information would reveal how Chrysler evaluates products, investigates, and analyzes issues, and reports on the results, as well as the specific analytic processes and detailed product testing methodologies used by Chrysler. The disclosure of such information would enable competitors to refine their own product evaluation and reporting processes and compete more effectively against Chrysler.

If your office needs any further information, please do not hesitate to contact me at:

800 Chrysler Drive, CIMS 482-00-91  
Auburn Hills, MI 48326  
248-512-0087  
dd28@chrysler.com

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Enclosed for your reference is a signed copy of the original September 3, 2009 Request for Confidential Treatment for Information Provided in RQ09-003 and the Certificate in Support of Request for Confidentiality by Chrysler.

Sincerely,



David D. Dillon

Enclosure

### **Certificate in Support of Request for Confidentiality**

I, David R. Bernier pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am Chrysler Group LLC's Manager of Recall Administration and EWR and I am authorized by Chrysler Group LLC to execute documents on its behalf;
- (2) I certify that the information contained in the attached documents 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 Chrysler Group LLC 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 Chrysler Group LLC;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Chrysler Group LLC has claimed confidential treatment has never been released or become available outside Chrysler Group LLC, except to certain contractors of Chrysler Group LLC 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 Chrysler Group LLC 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 3<sup>rd</sup> day of September, 2009

  
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September 3, 2009

Mr. O. Kevin Vincent  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Ave., SE, Room W41-227  
Washington, DC 20590

Re: Request for Confidential Treatment of Business Information Submitted in RQ09-003

Dear Mr. Vincent:

Chrysler Group LLC ("Chrysler") is submitting information on CD-Rom discs to the NHTSA Office of Defect Investigations in the above referenced investigation. Based on a careful review of the submission, Chrysler has determined that some of the information is confidential and should be accorded confidential treatment under this agency's regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).<sup>1</sup> Therefore, Chrysler is submitting these CDs together with this request for confidential treatment to the Office of Chief Counsel.

Because information supplied by Robert Bosch Corporation ("Bosch") is included in the information for which Chrysler is seeking confidential treatment, Chrysler is submitting certificates executed by responsible Bosch and Chrysler personnel. The information required by Part 512 is set forth below.

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

The business information for which confidential treatment is being sought in Enclosure 8B, 8D, 8E, 8F, and 8G consists of nine Chrysler documents that reveal testing and data analyses, component assessments, and problem solving capabilities. (Bates page #RQ09-003-Chrysler-0002-0078) Enclosure 8C contains one Bosch document that reveals testing analysis and problem solving capabilities. (RQ09-003-Bosch-0001) Enclosure 9 – Subject Component Changes contains three change history documents showing the design and material changes for the subject components and the reasons for these changes. (Bates page #RQ09-003-

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<sup>1</sup> Chrysler has taken steps to assure that the CDs are free of any errors or defects that would prevent NHTSA from opening the files on the discs. If, however, the agency is unable to open the files, Chrysler respectfully requests that the agency inform Chrysler of the issue, so that Chrysler may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional.

Chrysler-0079-0081) Enclosure 10B – Materials contains two materials standards for the subject components. (Bates page #RQ09-003-Chrysler-0082-0113)

The table attached to this letter more fully describes the documents and provides the principal justification for the confidentiality of the information. (The justifications for the confidentiality of the information are more fully set below.)

**B. Confidentiality Standard (49 C.F.R. § 512.8(b))**

This submission is subject to the substantial competitive harm standard set forth in 49 C.F.R. § 512.15(b) for information that a submitter is required to provide to the agency.

**C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))**

This agency's regulations and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), protect the confidentiality of information that would be likely to cause substantial competitive harm to the submitter if disclosed. *See, e.g.* 49 C.F.R. § 512.15(b); *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). FOIA Exemption 4 was enacted to prevent disclosures 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." *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) "Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principle aim of promoting openness in government." *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) Substantial competitive harm also may result from disclosures that would reveal a firm's "operational strengths and weaknesses" to competitors. *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). The information at issue here should be protected under these standards.<sup>2</sup>

The testing information contained in this submission shows how Chrysler and Bosch evaluate their products and report on the results of the tests, and reveals their respective analytic processes and product testing methodologies. The disclosure of such information would enable competitors to refine their own product evaluation and reporting processes. The information also could be used by competitors to develop and upgrade their own testing protocols, improve design decisions, and gain insights into Chrysler's and Bosch's

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<sup>2</sup> As noted above, Chrysler is providing a table that identifies the confidential information on the enclosed discs, and specifies the location of the information (by enclosure number, and where applicable, by folder and sub-folder as well as the Bates page numbers). The table also briefly states the basis for the confidentiality claims.

operational capacities without incurring the costs normally required for independent development of such procedures and information.

The change history would reveal information about the design and manufacturing process changes to the subject component, the timing of such changes, the reasons for the changes, and the process by which such changes were made. Thus, these documents reveal information about the design and manufacturing process, as well as Chrysler's and Bosch's lead-time and operational capacity information, which could enable competitors to improve their own designs and manufacturing processes, and compete more effectively against Chrysler and Bosch.

If disclosed, the materials standards applicable to the subject components would enable competitors to improve their own designs and materials choices and to discern competitively valuable information about Chrysler's design philosophies. Such information would otherwise be available to competitors only as a result of considerable investments of time and money in independent development efforts.

The disclosure of the information described above also would reveal how Chrysler investigates and analyzes issues, which would enable competitors to improve their own investigative capabilities and compete more effectively against Chrysler. In addition, the information reveals how Chrysler communicates with suppliers to identify potential issues, which could be used by competitors to improve their own product evaluation procedures and to discern Chrysler's operational strengths.

In addition, some of the documents provide information about the performance and operational capacities of suppliers. The disclosure of such information could relieve competitors of the costs and burdens of independently identifying and assessing suppliers thereby enabling them to bring products competitive with Chrysler's products to market more quickly and at less cost. *See SMS Data Prods. Grp., Inc. v United States Dept. of Air Force*, Civ. A. No. 88-0481-LFO, 1989 WL 201031, at \*4(D.D.C. May 11, 1989) (submitter of information had spent years developing a network of subcontractors, and release of the information would give competitors the information "without needing to expend the same time and resources").

**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 Chrysler anticipates that the information will be competitively valuable indefinitely, Chrysler requests that the information be accorded confidential treatment permanently.

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

Please direct all inquiries and responses to the undersigned at:

800 Chrysler Drive, CIMS 482-00-91  
Auburn Hills, MI 48326  
248-576-7313  
drb3@chrysler.com

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

Sincerely,



David R. Bernier

cc: Scott Yon  
Mike Lee

Attachment and Enclosures

**ATTACHMENT TO REQUEST FOR CONFIDENTIAL  
TREATMENT OF BUSINESS INFORMATION SUBMITTED IN  
CONNECTION WITH RQ09-003 WITHIN ENCLOSURES 8B, 8C,  
8D, 8E, 8F, 8G, 9, and 10B CONFIDENTIAL BUSINESS  
INFORMATION**

QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
8 Chrysler	8B – NEW ASSESSMENTS SUMMARY CONF BUS INFO	Assessments Summary RQ09-003.pdf	Summary of all testing done including results	RQ09-003-Chrysler-0002-0004	Confidential on the grounds that this document reveals testing details and analysis
8 Chrysler	8E – SHAININ BLACKBELT STUDY CONF BUS INFO	Shainin FACTUAL writeup UFS.pdf	Black Belt Study – problem solving, testing, and analysis	RQ09-003-Chrysler-0007-0068	Confidential on the grounds that this document reveals Chrysler's procedures for problem solving, testing, and analysis.
8 Bosch	8C – BOSCH TEST MATRICES CONF BUS INFO	Testmatrix_DC_UFS1_FCCT_061214.pdf	Testing analysis and problem solving capabilities	RQ09-003-Bosch-0001	Confidential on the grounds that this document reveals Chrysler/Bosch testing analysis and problem solving capabilities which competitors could use to improve their processes.
8 Chrysler	8D – DCC CRASH SENSOR REVIEW CONF BUS INFO	RS Crash Sensors DCC Review 3-20-07.pdf	Problem solving analysis	RQ09-003-Chrysler-0005-0006	Confidential on the grounds that this document reveals Chrysler's procedures for problem solving and warranty analysis.
8 Chrysler	8G – WARRANTY STUDY CONF BUS INFO	Warranty Study.pdf	Problem solving and data analysis	RQ09-003-Chrysler-0077-0078	Confidential on the grounds that this document reveals Chrysler's procedures for problem solving and warranty analysis.
8 Chrysler	8F – PRAS CONF BUS INFO	PRAS 0489023AA.pdf, PRAS 0489059AA.pdf, PRAS05170520AA.pdf,	Problem solving and data analysis system for	RQ09-003-Chrysler-	Confidential on the grounds that these documents reveal



QUESTION # SOURCE	ENCLOSURE	FILE/DOCUMENT NAME	DOCUMENT DESCRIPTION	BATES PAGE #	CONFIDENTIALITY JUSTIFICATION
		PRAS05175788AB.pdf, PRAS05175978AA.pdf	communicating with suppliers	0069-0076	Chrysler's procedures for communicating with suppliers for problem solving and analysis.
9 Chrysler	9 - SUBJECT COMPONENT CHANGES CONF BUS INFO	RQ09-003 Change History Body.pdf, RQ09-003 Change History Sensor.pdf, RQ09-003 Change History Wire Harness.pdf	Change history with analysis, Chrysler/supplier operational procedures and lead time capacity information	RQ09-003-Chrysler-0079-0081	Confidential on the grounds that competitors could improve their designs and manufacturing processes and compete more effectively against Chrysler.
10 Chrysler	10B - MATERIALS CONF BUS INFO	ms8288_rev_E.pdf, MS-6000(Frame Rails).pdf	Materials standards of the subject components	RQ09-003-Chrysler-0082-0113	Confidential on the grounds that competitors could improve their designs and compete more effectively against Chrysler.

## Certificate in Support of Request for Confidentiality

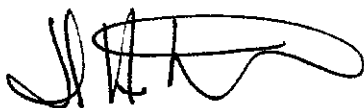
I, Joachim Schmidt pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am the Regional Business Unit Manager for Occupant Safety for Robert Bosch LLC and I am authorized by Robert Bosch LLC to execute documents on its behalf;
- (2) I certify that the information contained in the attached documents being submitted by Chrysler Group LLC (Bosch Test Matrices) 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 Bosch 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 Bosch;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Bosch has claimed confidential treatment has never been released or become available outside Bosch, except to Chrysler Group LLC and/or its predecessors and to NHTSA 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 Bosch 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 20 day of August, 2009



Joachim Schmidt



JANE H LATIMER  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF OAKLAND  
My Commission expires May 22, 2011  
Acting in the County of Wayne