

TOYOTA

NHTSA
WASHINGTON, DC 20590

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**Toyota Motor Engineering &
Manufacturing North America, Inc.**

Vehicle Safety & Compliance
Liaison Office
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October 13, 2011

Mr. O. Kevin Vincent, Chief Counsel
Office of Chief Counsel, NCC-110
National Highway Traffic Safety Administration
Room W41-227
1200 New Jersey Ave., SE
Washington, D.C. 20590

Subject: NVS-213cla; EA11-001.02
Request for Confidential Treatment

Dear Mr. Vincent:

Enclosed is Toyota's response to NHTSA's August 9, 2011 letter regarding EA11-001.02, a peer vehicle inquiry related to an investigation of certain General Motors vehicles. Pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), Toyota requests that the information identified in Enclosure 1 and contained in the attachments identified therein be granted confidential treatment.

The supporting information required by 49 C.F.R. Part 512 is set forth below.

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

The attachments contain extended warranty sales numbers, engineering design specifications and related design validation standards, and detailed design reliability test standards. These attachments contain confidential information that, if released, would be likely to cause Toyota substantial competitive harm.

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

This submission is subject to the substantial-competitive-harm confidentiality standard set forth in 49 C.F.R. § 512.15(b).

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

Part 512 and FOIA Exemption 4 protect the confidentiality of information that, if disclosed, would be likely to cause substantial competitive harm to the submitter. See 49 C.F.R. § 512.15(b); see also, e.g., *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Under FOIA

Exemption 4, a submitter need not establish a certainty that competitive harm will result from a disclosure. Rather, a submitter need establish only that competitive harm is a *likely* result of a disclosure. *See, e.g., Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 29 (D.D.C. 2000).

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 principal aim of promoting openness in government.” *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

The information for which Toyota is seeking confidential treatment clearly qualifies for withholding under this agency’s precedent and the case law interpreting Exemption 4.

When combined with other publicly available information, the extended warranty sales information can be used to calculate sales margins on extended warranties, and could be used by competitors in the extended warranty market to discern Toyota’s market share.

The disclosure of the design and manufacturing information in the submission would be likely to cause substantial harm to Toyota’s competitive position. This information was developed through Toyota’s investments of considerable money, time, expertise, and effort. Independent development or reproduction of the information similarly would require great expense, time, expertise, and effort. The disclosure of such information, therefore, would provide a huge windfall to Toyota’s competitors. Such windfalls are not an intended by-product of the FOIA, and Exemption 4 is properly invoked to prevent them. *Worthington Compressors*, 662 F.2d at 51.

When combined with other publicly available information, the design specifications and validation standards information could enable competitors to replicate Toyota’s designs and evaluate the performance of a variety of possible design options, saving them much of the time, money, and effort that would be required for independent design development. Thus, the disclosure of such design and manufacturing information reasonably could be expected to enable competitors to bring competitive products to market faster and at less cost than they otherwise could.

The submission also contains Toyota design reliability test standards that, when combined with other publicly available information, could enable competitors to evaluate the performance of a variety of possible design options, saving them much of the time, money, and effort that would be required for independent design development. Thus, the disclosure of such information reasonably could be expected to enable competitors to bring competitive products to market faster and at less cost than they otherwise could.

In addition, the reliability test standards and reports provide a window into Toyota’s reliability testing and evaluation processes. Such process information—which also has been developed by Toyota over long periods of time at great expense—would be extremely valuable to competitors in benchmarking their own design processes and evaluating the operational capacities of Toyota, which,

in turn, could inform decisions about resource allocation and the development of design capacities necessary to compete more effectively against Toyota.

D. Class Determination (49 C.F.R. § 512.8(d))

None of the information for which confidential treatment is being sought is subject to a class determination.

E. Duration For Which Confidential Treatment Is Sought (49 C.F.R. § 512.8(e))

Because the information will retain its competitive value indefinitely, Toyota requests that the information be accorded confidential treatment permanently, except in the case of Attachment-Response 6-1. For Attachment-Response 6-1 we ask that confidential treatment be maintained for a period of 10 years from this date.

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

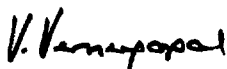
Please direct all inquiries to the undersigned at the address and telephone number on the letterhead.

* * *

Toyota is enclosing three sets of the response documents. Per 49 C.F.R. § 512, two sets of documents contain the complete response including the confidential information, and one contains the response with the confidential information redacted. All of the confidential material is being provided on CD-ROM, entitled "ATT_1 (Conf Bus Info)." Please refer to "Enclosure 1" for the specific requests identified by attachment number.

Please note that the confidential version of "Attachment-Response 13" contains redactions. This document is a standard that applies to components other than brake lines which are the subject of the agency's inquiry. The portions of the standard unrelated to the subject component have been redacted. Toyota seeks confidential treatment for the information provided to the agency related to the subject component.

Sincerely,



Vinnie Venugopal, General Manager
Toyota Motor Engineering & Manufacturing
North America, Inc.

Enclosures

Enclosure 1:

Confidential Data List

Enclosure 2:

Certificate in Support of Request for Confidential Treatment

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Enclosure 3:

Attachments – Confidential Information

Enclosure 1:

Identification of Attachments

| Attachment | Description | Basis for Confidential Request | Length | Affidavit(s) |
|--------------------------|---|--|-----------|--------------|
| Attachment-Response 6-1 | Extended Warranty Sales Numbers | Can be used by competitors to calculate Toyota's sales margins on extended warranties | 10 Years | Toyota |
| Attachment-Response 9 | Specification of the brake lines and coatings including modifications/changes | Competitors could utilize Toyota designs; Includes a detailed description of the modification or changes | Permanent | Toyota |
| Attachment-Response 12-1 | Toyota technical standard | Competitors could utilize Toyota technical standard and test method | Permanent | Toyota |
| Attachment-Response 12-2 | Toyota technical standard | Competitors could utilize Toyota technical standard and test criteria | Permanent | Toyota |
| Attachment-Response 12-3 | Toyota technical standard | Competitors could utilize Toyota technical standard and test criteria | Permanent | Toyota |
| Attachment-Response 12-4 | Toyota technical standard | Competitors could utilize Toyota technical standard and test criteria | Permanent | Toyota |
| Attachment-Response 12-5 | Toyota technical standard | Competitors could utilize Toyota technical standard and test criteria | Permanent | Toyota |
| Attachment-Response 13 | Toyota technical standard | Competitors could utilize Toyota technical standard and test criteria | Permanent | Toyota |