

**CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

JUL 8 2013

Reg Modlin, Director  
Regulatory Affairs  
Chrysler Group LLC  
800 Chrysler Drive  
CIMS 482-00-91  
Auburn Hills, MI 48326-2757

Re: Confidentiality Determination—IR Response in EA12-005

Dear Mr. Modlin:

This responds to your December 13, 2012 request for confidential treatment for information submitted by Chrysler Group LLC (Chrysler) to the National Highway Traffic Safety Administration in the above-referenced investigation. Your request seeks confidential treatment for Chrysler engineering standards, test procedures, development test data, drawings, blueprints, component change history and related documents. Chrysler states that release of this information would be likely to cause it to suffer substantial competitive harm and that the blueprints and similar drawings are subject to the class determination found in paragraph 1 of Appendix B of 49 CFR Part 512. You request that the information for which confidential treatment is sought be granted confidential treatment permanently.

I am denying your request in part and granting it in part.

You assert that the drawings in Enclosure 8B “Subject Vehicle Graphics Conf Bus Info” fall within the class determination for “blueprints and engineering drawings” under 49 CFR Part 512, App. B(1). I have reviewed these materials and have determined that the documents do not fall within the class determination under 49 CFR Part 512, App. B(1) because the drawings do not contain sufficient detail in terms of measures, materials, dimensions or other such data that the drawing could be used to produce the item or items in the image.

The documents at issue in the request were submitted to the agency in response to an agency information request (IR). Because Chrysler was required to submit this information, I reviewed your claim for confidential treatment under the test in *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Under that test, information is confidential under Exemption 4 of the Freedom of Information Act (FOIA) if its disclosure would be likely to cause substantial competitive harm to the submitter or to impair the government’s ability to collect the information in the future.

I have reviewed the materials that Chrysler claims are entitled to confidential treatment and the arguments that you assert in support of your claim. I have concluded that, except for the pages identified below, the public release of the information encompassed by the request for confidential treatment would be likely to cause substantial competitive harm. Therefore, except for the denials noted below, I am granting the request for confidential treatment for these materials.

*Engineering Standards, Fuel System Guidelines and Internal Memoranda*

Chrysler seeks confidential treatment a number of internal test guidelines located in three subfolders within "Enclosure 3 - CONF BUS INFO\Subject Vehicles CONF BUS INFO\Lawsuits and Claims CONF BUS INFO" (Enclosure 3). These are marked as deposition exhibits in personal injury lawsuits. These documents are:

- Jarmon-Banta Ex. 7 CBI.pdf (Engineering Standard PF-4660 dated 1966),
- Jarmon-Zylik Ex. 20 CBI.pdf (Engineering Standard PF-4660 dated 1974),
- Jarmon-Banta Ex. 3 CBI.pdf, Austin-Banta Ex. 5 CBI.pdf, Austin-Estes Ex. 2 CBI.pdf and Austin-Lazarus Ex. 8 CBI.pdf (Fuel System Design Guidelines dated 1999),
- Kline-Castaing Ex. 9 CBI.pdf, Austin-Estes Ex. 1 CBI.pdf and Austin-Lazarus Ex. 10 CBI.pdf (Fischbach Fuel System Presentation issued sometime before 1997),
- Kline-Dillon Ex. 10 CBI.pdf and Jarmon-Banta Ex. 5 CBI.pdf (Fuel System Guidelines, undated), and
- Kline-Castaing Ex. 8 CBI.pdf, Kline-Dillon Ex. 9 CBI.pdf, Jarmon-Banta Ex. 4 CBI.pdf and Jarmon-Zylik Ex. 1 CBI.pdf (Fuel System Guidelines, undated with pentastar logo abandoned in 1998).

In the chart attached to Chrysler's request for confidential treatment, Chrysler states that release of the foregoing documents "could enable a competitor to determine the kinds of analyses that Chrysler performs in the design process, allowing them to benchmark and replicate Chrysler's design procedures without incurring the substantial time and cost associated with independent development of such parameters and processes." Therefore, Chrysler contends that release of these internal standards and memoranda would be likely to cause it to suffer substantial competitive harm.

Your request for confidential treatment for the 15 Enclosure 3 files listed above that Chrysler describes as either internal guidelines or engineering standards is denied. Chrysler has failed to comply with 49 CFR §§ 512.8(a) and (c). Chrysler has not fairly described the documents themselves. Instead, Chrysler employs truncated and conclusory characterizations of these documents which provide virtually no meaningful information as to what the documents set forth. In fact, although not indicated by Chrysler, the documents at issue are all



at least 15 years old. The concepts and standards set forth within them no longer represent the current state of the art for fuel system design, particularly since they were conceived and disseminated either before the advent of Federal motor vehicle safety standard No. 301 or the subsequent upgrade to that minimum performance standard in 2003. Other than making a conclusory declaration that these aged standards would be valuable to its competitors, Chrysler has not demonstrated that release of these documents would be likely to cause it to suffer substantial competitive harm.

### *Test Reports*

Chrysler requests confidential treatment for test vehicle equipment and build information found in various compliance and development test reports for the Cherokee (XJ), Grand Cherokee (ZJ, WJ) and Liberty (KJ). The data claimed as confidential consists of descriptions of the attributes of particular test vehicles, including whether the vehicle is production vehicle, a pre-production prototype or is equipped to simulate a planned production vehicle.

Grand Cherokee (ZJ,WJ) rear impact fuel system tests performed from 1988 through 1996 that were marked as deposition exhibits in the Austin, Jarmon, and Kline lawsuits are located in three subfolders found within Enclosure 3. Other test reports, found in "Enclosure 6B - 301 Developmental Crash Tests Conf Bus Info\XJ Developmental VC TESTS CONF BUS Info" (Enclosure 6B XJ) relate to fuel system testing performed on the Cherokee (XJ) from August 1981 to November 1995. The Liberty (KJ) test reports, which span a period from 1999 through 2004, are found in the folder named "Enclosure 6B - 301 Developmental Crash Tests Conf Bus Info\KJ Developmental VC TESTS CONF BUS INFO" (Enclosure 6B KJ).

In support of its request for confidential treatment for the test vehicle equipment and build information within the test reports, Chrysler states that release of the equipment and build information "could enable a competitor to develop and upgrade its own testing protocols and improve its design decisions." I note first that Chrysler has marked only the vehicle equipment and build information in these test reports as confidential. The remaining information, which discusses test procedures, protocols and results, is not so marked and is apparently not claimed to be confidential. It would therefore appear that Chrysler is not seeking confidential treatment for the test protocols despite asserting, in the table attached to the request letter, that release of the test procedures and protocols would assist other manufacturers at Chrysler's expense. The justification for Chrysler's claim of confidential treatment for the vehicle equipment and build information in the test reports appears to be that release of the information would allow competitors to improve their design decisions to Chrysler's detriment.

Your request for confidential treatment for the test vehicle equipment and build information in Enclosure 3, insofar as the documents are described as "Developmental Testing" (54 files), is denied. The request fails to comply with 49 CFR §§ 512.8(a) and (c). Chrysler has not fairly described what is set forth in the documents themselves. Instead, Chrysler has used a conclusory categorization. Moreover, within many of these files, Chrysler is seeking confidential treatment for equipment and build conditions which are not addressed in its document descriptions. Other than asserting, in a conclusory fashion, that this configuration information would be valuable to competitors in improving design decisions, Chrysler has not

demonstrated that the release of this information would be likely to cause Chrysler to suffer substantial competitive harm. Similarly, Chrysler's request for confidential treatment for the test vehicle equipment and build information in Enclosure 6 B also fails to comply with 49 CFR 512.8(a) and (c). Chrysler's description of these documents as "Vehicle Developmental Testing Documents" does not fairly describe the documents or the information claimed as confidential. Chrysler's conclusory declaration that release of this information would be likely to cause it to suffer competitive harm does not demonstrate that this harm would be likely to occur if the data claimed as confidential would be released. The Cherokee (XJ) and Grand Cherokee (ZJ) data are applicable to vehicles that have been out of production for almost a decade or longer. Some of the information claimed as confidential is more than 30 years old. Since Chrysler has not demonstrated that the release of the vehicle configuration data contained in any of these test reports would be likely to cause it to suffer substantial competitive harm, your request for confidential treatment for the test reports in Enclosure 3 and Enclosure 6 B is denied.

Denial of Chrysler's request for confidential treatment for the test report vehicle configuration data is also supported by grounds other than the failure of your December 13, 2012 letter to demonstrate that competitive harm would be likely to result from release of the data. Three documents in Enclosure 3 - Austin-Banta Ex. 10 CBI.pdf, Austin-Banta Ex. 11 CBI.pdf and Jarmon-Zylik Ex. 13 CBI.pdf – are copies of compliance test reports that were submitted by Chrysler to NHTSA in its response to the IR in PE10-031. Chrysler did not request confidential treatment for these documents at that time. Accordingly, these three compliance test reports are publicly available.

Chrysler's request for confidential treatment also encompasses materials in Enclosure 6B KJ from two tests (VC10307 and VC10445) of the Liberty (KJ) with and without a trailer hitch installed:

- VC10307 CONF BUS INFOVC10307 CBI.pdf,
- VC10307 CONF BUS INFOVC10307.FAR.DCR.FA\_REPORT.DCR\_DYNAMIC\_CRUSH\_REAR CBI.pdf,
- VC10307 CONF BUS INFOVC10307.FAR.UBR.FA\_REPORT.UBR\_UNDERBODY\_REAR CBI.pdf,
- VC10307 CONF BUS INFOVC10307.TVA.TVALUE CBI.pdf,
- VC10445 CONF BUS INFOVC10445 CBI.pdf,
- VC10445 CONF BUS INFOVC10445.FAR.DCR.FA\_REPORTDCR\_DYNAMIC\_CRUSH\_REAR CBI.pdf,
- VC10445 CONF BUS INFOVC10445.FAR.UBR.FA\_REPORT.UBR\_UNDERBODY\_REAR CBI.pdf, and
- VC10445 CONF BUS INFOVC10445.TVA.TVALUE CBI.pdf.



The configuration data within these files is relevant to questions concerning the relative performance of Liberty (KJ) vehicles with and without trailer hitches. Because Chrysler has chosen to install trailer hitches or inspect existing trailer hitches as a remedy in recall 13V-252, the test and configuration data in the VC10307 and VC10445 test files has a direct bearing on the adequacy of that remedy.

Section 30167(a)(4) of the Vehicle Safety Act provides the agency with the authority to disclose otherwise confidential information “when the Secretary of Transportation decides that disclosure is necessary to carry out section 30101.” Section 30101, in turn, sets forth the purpose of the Vehicle Safety Act, which “is to reduce traffic accidents and deaths and injuries resulting from traffic accidents,” including through the remediation of safety-related defects. Section 30118 requires notification of defect determination and Section 30120 requires that manufacturers provide a remedy for safety-related defects.

NHTSA’s investigations ensure compliance with those statutory provisions and the remediation of defects. To the extent a company based a remedy on vehicle testing, the public has a strong interest in access to that information. We believe the public’s access to information relating to the manufacturer’s compliance with legal obligations to meet the federal motor vehicle safety standards, including its margin of compliance, outweighs the potential competitive harm flowing from the disclosure of such compliance information. Accordingly, we will not protect from disclosure test data that forms the basis for a remedy offered pursuant to Section 30120.

### *Drawings and Graphics*

Review of the materials in “Enclosure 8B- Subject Vehicles Graphics Conf Bus Info” (Enclosure 8B) reveals that these drawings are exploded diagrams of various body, fuel system, exhaust and suspension components of production vehicles. The information presented – components, component locations, part numbers and drawing revision history – is largely similar to what is found in service manuals and similar publicly available materials. Although notes on the drawings outline design revisions, the drawings do not include precise dimensions or material specifications. Similarly, Chrysler requests confidential treatment for a file in “Enclosure 4 - Subject Skid Plate Summary Conf. Bus Info” (Enclosure 4) named “52100332AF+++++B±SKID±PLATE±ASSY±-±FUEL±TANK CBI.pdf.” This file contains a drawing of a vehicle component without any accompanying dimensional data or specifications.

In a table attached to its request, Chrysler states that release of the drawings in Enclosure 8B would allow competitors to “improve their own designs without incurring the time and expense associated with independent design efforts.” In regard to the drawings in Enclosure 4, Chrysler states that “competitors could determine the design specifics of the subject component and improve their own designs to compete more effectively against Chrysler.”

I am denying your request for confidential treatment for the drawings in Enclosure 8B and the drawing named “52100332AF+++++B±SKID±PLATE±ASSY±-±FUEL±TANK CBI.pdf.” in Enclosure 4. As noted above, the drawings at issue do not contain dimensional data, materials specifications or other information that competitors would require to obtain the advantage your letter asserts would result from their release. Further, the drawings depict

vehicles that have been out of production for many years. I find that Chrysler has not demonstrated that the aforementioned drawings reveal information whose release would be likely to cause it to suffer substantial competitive harm. Your request for confidential treatment for these drawings is denied.

*Fuel Tank Location Document*

Chrysler also seeks confidential treatment for a table it compiled showing the fuel tank locations for various model year vehicles manufactured by Chrysler and other vehicle manufacturers. This document, “Fuel Tank Location Information CONF BUS INFO.pdf”, (Bates EA12-005- Chrysler -034818 – 0348310) is located in “Enclosure 6F - Fuel Tank Location Information Conf Bus Info.” Among other things, this table lists model years, model name tank location, wheelbase and identifies the information source used by Chrysler to verify the tank location. In support of its request for confidential treatment for this fuel tank location table, Chrysler asserts that the document “reveals valuable information into Chrysler’s design philosophies, including how Chrysler weighs various factors in making design decisions.” Further, Chrysler states that release of this table “in conjunction with publicly available information about Chrysler’s vehicles . . . would provide competitively valuable information that would enable competitors to bring their own products more quickly and at less cost.”

I am denying your request for confidential treatment for “Fuel Tank Location Information CONF BUS INFO.pdf.” The table reports the fuel tank locations for vehicles manufactured by many different manufacturers between 1984 and 2012. To the extent that the attributes of Chrysler vehicles are depicted in this table, the information is limited to characteristics such as wheelbase and fuel tank location that can be derived from the examination of production vehicles and publicly available information. Chrysler’s design philosophies are not discussed or revealed. Because Chrysler has not demonstrated how release of this chart would be likely to cause it to suffer substantial competitive harm, your request for confidential treatment for “Fuel Tank Location Information CONF BUS INFO.pdf” is denied.

Subject to the conditions below, this partial grant of confidential treatment will remain in effect for the periods requested.

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). Furthermore, this information may be disclosed if such disclosure would be in the public interest, pursuant to the procedures established in 49 CFR 512.23.



If you disagree with this partial denial, 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 C.F.R. § 512.19(a)). Any such request should contain additional justification supporting your claims for confidential treatment consistent with 49 C.F.R. Part 512 and applicable case law.

Sincerely,

**Original Signed By**

Otto G. Matheke, III  
Senior Attorney

OCC:OMatheke:65263:07/8/13

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