

VIA CERTIFIED MAIL

JUL 22 2013

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

Re: Confidentiality Determination— Information Submitted in EA12-005 Peer Investigation

Dear Mr. Modlin:

This responds to your February 18, 2013 request for confidential treatment for information submitted by Chrysler Group LLC (Chrysler) to the National Highway Traffic Safety Administration (NHTSA) in the above-referenced investigation. Your request seeks confidential treatment for Chrysler drawings, development crash test information, a summary of fuel system integrity tests, compliance test procedures and compliance reports. Chrysler states that the data submitted relates to vehicles selected by NHTSA as peers of the vehicles investigated in EA12-005. Your request states that NHTSA considers responses to peer vehicle information requests (IRs) to be voluntarily submitted and that Chrysler does not customarily release this peer vehicle information to the public. Additionally, Chrysler contends that release of this information would be likely to cause it to suffer substantial competitive harm. Chrysler also asserts that the drawings submitted in response to NHTSA's peer IR are confidential under 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.

The materials for which Chrysler seeks confidential treatment were provided on electronic media. Four folders in that media contain information that your letter asks be granted confidential treatment:

- Enclosure 5B – Subject Peer Vehicle Graphics Conf Bus Info
- Enclosure 6A - 301 Developmental Crash Test Conf Bus Info
- Enclosure 6C - Summary of 301 Crash Test Conf Bus Info
- Enclosure 6D - Compliance Procedures Conf Bus Info

whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter . . .

Section 30166(e) authorizes NHTSA to require manufacturers that may be violating a statutory or regulatory duty to provide information related the manufacturer's conduct. In an instance such as this, the fact that the peer IR sought information about other Jeep vehicles manufactured by Chrysler does not limit the applicability of § 30166(e) to inquiries relating only to the subject vehicles in EA12-005. Chrysler, the manufacturer of both the peer and the subject vehicles, is the focus of the investigation – it is Chrysler's decision-making, design and manufacturing processes that are at issue. In NHTSA's view, Chrysler materials relating to peer vehicles are relevant to the agency's inquiry into the subject vehicles that are the focus of EA12-005. Accordingly, Chrysler was required to respond to the peer IR and its response was not voluntary.

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.

Enclosure 5B – Drawings and Graphics

In support of its request for confidential treatment for the drawings in Enclosure 5, Chrysler describes the drawings in Enclosure 5B as containing “the detailed design specifics for various vehicle components.” Your letter states that competitors, including those in the aftermarket, could use this design information to improve their own designs without incurring the time and expense associated with independent design efforts. As a result, Chrysler Group's competitors could bring to market their products much quicker and at less cost.

Review of the materials in “Enclosure 5B – Subject Peer Vehicle Graphics Conf Bus Info” 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. Chrysler has not demonstrated that the aforementioned drawings, some of which depict vehicles that have been out of production for many years (e.g., the YJ platform), 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.

Enclosure 6A – 301 Development Test Data

Enclosure 6A contains six subfolders that correspond to different Jeep models that were produced at different times from the 1980's to the present. The six models represented by subfolders in Enclosure 6A are:

Each table has five columns – VC# (Chrysler Test Number), Test Date, Vehicle Tested, Purpose of Test, and Results. Entries in each column identify the test number, the test date, basic configuration of the test vehicle, whether the test was a development, certification or production validation test and whether the test result was successful or unsuccessful. Chrysler requests that some of the entries in the “Vehicle Tested” column describing test vehicles used in development and production validation tests (highlighted in yellow) be granted confidential treatment. Although Chrysler’s letter does not address its rationale for seeking confidential treatment for this summary of crash information, the chart attached to the letter states that Chrysler does not customarily disclose this information to the public and that release of the summary could enable a competitor to develop and upgrade its own testing protocols and improve its design decisions.

Your request for the crash test summary information in Enclosure 6C 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 document and offers a cursory description of the contents. Chrysler’s request for confidential treatment describes the information in Enclosure 6C as “Summary Document of Testing Information.” The rationale offered in favor of confidential treatment is that release of the vehicle build and equipment information would assist a competitor to “develop or upgrade its own test protocols” and “improve design decisions.” However, the test summaries claimed as confidential do not contain any information related to test protocols or procedures. To the extent that the test summaries might be valuable to competitors, Chrysler has not demonstrated that the release of this information, particularly for vehicles that have been out of production for many years, would be likely to cause Chrysler to suffer substantial competitive harm.

Enclosure 6D - Compliance Procedures

Enclosure 6D of Chrysler’s response contains subfolders corresponding to each of the model years from 1987 to 2010. Within each of the model year subfolders other subfolders contain fuel system integrity test procedures and compliance reports for each model produced in that year. Chrysler’s request for confidential treatment states that the test procedures set forth in these documents “go well beyond the procedures set forth in the NHTSA and Canadian motor vehicle safety standards.” Your letter also states that these test procedure documents discuss the fine points of test set-ups, vehicle preparation, and safety procedures and methods for conducting tests and recording relevant information. In Chrysler’s view, disclosure of this information would enable competitors to prepare and refine their own test procedures, saving them time, effort and costs.

Your request for confidential treatment for the materials in Enclosure 6D is denied. Chrysler asserts that the compliance test procedures located within various subfolders of Enclosure 6D contain numerous details about test set-ups, execution and data recording.

Examination of the test procedure documents reveals that Chrysler’s characterization of these documents is false. With the exception of the American Motors test procedures employed before 1987, the test procedures provided by Chrysler in Enclosure 6D can fairly be described as skeletal. These documents are not detailed and, at best, are a bare general outline of the steps involved in testing. None of the Chrysler test procedure documents exceed nine pages in length (In some instances, two of the nine pages are photocopies of a public ASTM standard for hydrocarbon dry cleaning solvents). In contrast, the FMVSS 301 contractor test procedure