

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

Vehicle Safety & Compliance
Liaison Office
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February 15, 2013

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-212-pco; EA12-005
Request for Confidential Treatment

Dear Mr. Vincent:

Enclosed is Toyota's response to NHTSA's letter regarding EA12-005, a peer vehicle inquiry. 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 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 engineering design specifications and related design validation standards, product evaluation process information, information about the scope and kinds of testing that Toyota performs and about Toyota's proprietary test protocols. Toyota treats this information as confidential and, if released, would be likely to cause Toyota substantial competitive harm.

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

The Peer Information Request seeks Toyota information for comparative assessment with certain Chrysler vehicles that are the subject of the agency investigation. As a peer vehicle manufacturer, we believe the voluntary submission standard (49 C.F.R. § 512.15(d)) applies to this request.

In addition, we believe this submission would meet 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))

Under Part 512 and the case law interpreting FOIA Exemption 4, 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., Center for Auto Safety v. NHTSA*, 244 F.3d 144, 147 (D.C. Cir. 2001); 49 C.F.R. § 512.15(d). Toyota does not customarily disclose information of this type to the public, because such documents reveal proprietary information about Toyota's products and methodologies. Because this information is the kind of information that Toyota does not customarily disclose to the public, it should be withheld from disclosure.

In addition, we believe this submission would meet the substantial-competitive-harm confidentiality standard. 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 by this standard as well.

The disclosure of Toyota's testing practices and philosophies would be competitively harmful. Competitors could use such information to discern the scope of testing undertaken by Toyota in connection with product development, validation, and evaluation. In addition, the information reveals specific proprietary test procedures and methods used by Toyota in a variety of contexts. Because testing is essential to motor vehicle manufacturing, and because the development of testing expertise requires significant time and money, the disclosure of this information would provide a windfall to Toyota's competitors at Toyota's expense.

Some documents also reveal details of design specifications and related validation standards. 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 information reasonably could be expected to enable competitors to bring competitive products to market faster and at less cost than they otherwise could.

Finally, the disclosure of design and testing 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.

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.

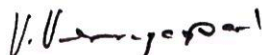
F. Contact Information (49 C.F.R. § 512.8(f))

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 response including the confidential information, and one contains the response with the confidential information redacted. All of the confidential material is being provided on DVD. Please refer to "Enclosure 1" for the specific requests identified by attachment number.

Sincerely,



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

Enclosure 1:

Identification of Attachments

Attachment	Description	Basis for Confidential Request	Length	Affidavit(s)
Attachment-Response 6	FMVSS Test Result	Includes internal test procedure and evaluation results	Permanent	Hino
Attachment-Response 6	Toyota Engineering Standard	Includes engineering design standard and criteria	Permanent	Toyota

Toyota

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Enclosures

Enclosure 1:

Confidential Data List

Enclosure 2:

Certificates in Support of Request for Confidential Treatment

Enclosure 3:

Response including Attachments –Confidential Information

Enclosure 4:


Response including Attachments –Confidential Information Removed

Certificate in Support of Request for Confidentiality

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

- (1) I am General Manager, Toyota Motor Engineering & Manufacturing North America, Inc., and I am authorized by Toyota Motor Corporation ("Toyota") to execute documents on its behalf;
- (2) I certify that the information contained in the attachments of Toyota's response to NHTSA's December 20, 2012 letter [NVS-212-pco; EA12-005] that are identified in Enclosure 1 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) (as incorporated by reference in and modified by the statute under which the information is being submitted);
- (3) I hereby request that the information contained in the attachments be protected on a permanent basis.
- (4) This certification is based on the information provided by the responsible Toyota 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 Toyota;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Toyota has claimed confidential treatment has never been released or become available outside Toyota, except for disclosures to suppliers and contractors who were 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 Toyota 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 12th day of February, 2013



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