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OFFICE OF CHIEF  
COUNSEL

David D. Dillon  
Sr. Manager  
Product Investigations & Campaigns

May 8, 2012

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

Dear Mr. Vincent:

Chrysler Group LLC ("Chrysler") is submitting information on CD, which contains a document titled "VC04561 2D Film Analysis Summary Package – CBI.pdf." The document contains the results of 2-D Digital Film Analysis that was conducted in relation to PE10-031, which was requested by Mr. Scott Yon. Based on a careful review of this information, Chrysler has determined that this is confidential business information that 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).

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 is for the document entitled, "VC04561 2D Film Analysis Summary Package – CBI.pdf," which is contains the results of a 2-D Digital Film Analysis. (Bates page #: Related to PE10-031 – Chrysler Group LLC - 01 -07).

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

This submission is subject to the confidentiality standard set forth in 49 C.F.R. § 512.15(d) for information submitted voluntarily to the agency.

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

Information is voluntarily submitted if the agency did not invoke its authority to compel the submission of the information, even if the agency had such authority. *See Parker v. Bureau of Land Management*, 141 F. Supp. 2d 71, 78 n.6 (D.D.C 2001) (“In addition to possessing the authority to compel submission, the agency must also exercise that authority in order for a submission to be deemed mandatory.”); U.S. Dept. of Justice, Guide to the Freedom of Information Act at 279 (2009) ([http://www.justice.gov/oip/foia\\_guide09/exemption4.pdf](http://www.justice.gov/oip/foia_guide09/exemption4.pdf)) (“Furthermore, the existence of agency authority to require submission of information does not automatically mean such a submission is ‘required’; the agency authority must actually be exercised in order for a particular submission to be deemed ‘required.’”). At no time did or Mr. Scott Yon purport to invoke NHTSA’s authority to compel the submission of the information for which Chrysler is seeking confidential treatment.

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. Chrysler does not ever, much less customarily, disclose to the public, the problem solving assessments, analyses, and internal processes included in this submission.

Even if this information were submitted under compulsion, it properly would be withheld under 49 C.F.R. § 512.15(b), because its disclosure would cause substantial harm to Chrysler’s competitive position. The disclosure of this information would provide competitors with this valuable information at no cost, thereby enabling them to bring competitive products to market faster and far less expensively than would otherwise be required. These are precisely the kinds of competitively harmful effects that FOIA Exemption 4 was intended to prevent. *See, e.g., Public Citizen Health Research Grp. V. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) (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”); *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) (“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.”).

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

The information for which confidential treatment is being sought does not come with a class determination.

**E. Duration for Which Confidential Treatment is Sought (49 C.F.R. § 512.8(e))**

Because the information for which confidential treatment is being sought is the kind of information that Chrysler does not anticipate ever customarily disclosing to the public, Chrysler requests that the information be accorded confidential treatment permanently. Similarly, there is no identifiable time in the future when the disclosure of the information would not be likely to cause substantial harm to Chrysler's competitive position.

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

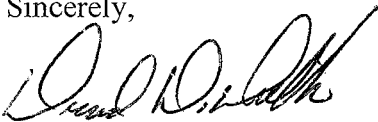
Please direct all inquiries and responses to the undersigned at:

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

cc: Scott Yon

Attachment and Enclosures

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

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

- (1) I am Chrysler Group LLC's Senior Manager, Product Investigations & Campaigns 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 8<sup>th</sup> day of May, 2012

  
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David D. Dillon