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**Thomas McCarthy**  
Head, Vehicle Safety Compliance  
and Product Analysis

May 02, 2019

Jonathan C. Morrison  
Chief Counsel  
National Highway Traffic Safety Administration ("NHTSA")  
1200 New Jersey Ave., SE,  
Room W41-227  
Washington, DC 20590

Regarding: Request for Confidential Treatment of Business Information Submitted Regarding PE18-016

Dear Mr. Morrison:

FCA US LLC (f/k/a Chrysler Group LLC) ("FCA US") is submitting information to the NHTSA Office of Defects Investigation ("ODI") in connection with the above-referenced investigation. Based on a careful review of the submission, FCA US has determined that some of the information is confidential and 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). Therefore, FCA US is submitting the enclosed CDs<sup>1</sup>, together with this request for confidential treatment and Certificate in Support of Request for Confidentiality, to the Office of Chief Counsel.

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 within the following enclosures:

- PE18-016 Service Contracts Subject\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000007). This file contains information regarding service contracts offered on subject vehicles. The confidential business information is highlighted. (We have highlighted rather than bracketed the confidential business information to facilitate identification of that information.)
- 1013 - D2DDDDFDJDX - Drag Link Adjuster Nut Loose\_ISG 10-26-16\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-

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<sup>1</sup> FCA US has taken steps to assure that the CDs are free of any errors or defects that would prevent NHTSA from opening the files on the discs. If, however, the agency is unable to open the files, FCA US respectfully requests that the agency inform FCA US of the issue, so that FCA US may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional.

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000015). This file contains information regarding an FCA US internal investigation into loose drag link adjuster nuts on certain subject vehicles.

- DDD2\_4x4\_rev12\_Draglink\_Study\_Report\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000010). This file contains information regarding a steering linkage study on certain subject vehicles.
- DJ Jam Nut Torque Report 6951\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000011). This file contains information regarding a jam nut fastener engineering joint review/lab report.
- Drag Link DV Testing - Component\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000010). This file contains information regarding drag link testing.
- Drag Link PV Testing - Component\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000010). This file contains information regarding drag link testing.
- Fastener Engineering Lab Report #14396\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000004). This file contains information regarding jam nut torque testing.
- Fastener Lab Result Summary #17522\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000005). This file contains information regarding a jam nut torque study.
- FCA D2 4x4 Steering Bounce Test - Torqued & Weld\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000024). This file contains information regarding a steering bounce test on certain subject vehicles.
- FCA D2 4x4 Steering Bounce Test - Torqued No Weld\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000048). This file contains information regarding a steering bounce test on certain subject vehicles.

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- FCA\_D2\_4x4\_DragLink\_Ultimate\_Strength\_Log\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001). This file contains information regarding drag link testing.
- HD-TRK 4x4 Drag Link Data\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000003). This file contains information regarding drag link testing.
- Materials Engineering Lab Report #159167\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000015). This file contains information regarding drag link part analysis.
- PE18-016-Durability Testing\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000034). This file contains information regarding durability testing on certain subject vehicles.
- Q12 Testing Summary\_Subject\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000003). This file contains information regarding drag link testing.
- Steering Linkage Comparison\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000002). This file contains information regarding a comparison of steering linkage designs.
- Washout Drag Link Results\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000002). This file contains information regarding drag link testing.
- PE18-016 SUBJECT\_Change History\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001). This file contains information regarding subject component change history on subject vehicles.
- PE18-016 SUBJECT\_Part Sales\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000003). This file contains information regarding subject component parts sales on subject vehicles.

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- PE18-016 SUBJECT\_Supplier\_Part\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001). This file contains information regarding subject component supplier information.
- STEERING LINKAGE COMPARISON\_CONF BUS INFO.pdf, consisting of one .pdf file containing confidential business information; (Bates page number: 05/02/2019 - FCA US LLC – PE18-016 – COMPELLED - 000001-000002). This file contains information regarding a comparison of steering linkage designs.

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

This submission is subject to the substantial competitive harm standard set forth in 49 C.F.R. § 512.15(b) for information that a submitter is required to provide to the agency.

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

This agency's regulations and FOIA Exemption 4 protect the confidentiality of information that would be likely to cause substantial competitive harm to the submitter if disclosed. *See e.g.* 49 C.F.R. § 512.15(b); *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). 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*, 195 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). Substantial competitive harm also may result from disclosures that would reveal a firm's "operational strengths and weaknesses" to competitors. *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976); *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, No. Civ-03 C 195-SBC, 2005 WL 1241141, at \*7 (D.D.C. May 24, 2005) (same). The information at issue here should be protected under these standards.

The disclosure of the extended service contracts that FCA US has sold would give competitors an unfair advantage over FCA US because it would enable them to determine the market share that FCA US has obtained in the highly-competitive extended service contract market. Competitors could then use this information to adjust the price of their service contracts to undercut FCA US' pricing to gain an unfair competitive advantage over FCA US.

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Similarly, the disclosure of the part sales information would provide valuable information to entities that compete against FCA US in the competitive after-market. The information could readily be used by competitors to gauge FCA US's competitive strengths and market position with regard to specific components, which, in turn, would assist competitors in determining where to focus their own production and marketing resources to compete more effectively against FCA US. In enacting FOIA, Congress was particularly concerned about the competitive significance of such data, specifically mentioning "business sales statistics" as one of the types of information that Exemption 4 was intended to protect. *See* H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10, *reprinted in* 1966 U.S.C.C.A.N. 2418, 2427.

The submission also includes comparative design information, as well as design change information. This information is the fruit of considerable investments of time, money, expertise, and effort. Independent development or reproduction of the information would require commensurate investments. The disclosure of such information, therefore, would provide a huge windfall to FCA US's competitors. Such windfalls are not an intended by-product of the FOIA, and Exemption 4 should prevent them. *Worthington Compressors*, 662 F.2d at 51.

The competitive harm to FCA US resulting from the disclosure of the design-related information is clear. The disclosure of design, specification, and design change information could readily enable competitors to replicate FCA US's designs, evaluate the performance of a variety of possible design options, and avoid much of the trial-and-error that typically is required for independent design efforts. The information also could be used to obtain insights into FCA US's design philosophy and the specific design features of FCA US's components as they have evolved over time. Such valuable information could enable competitors to compete far more effectively against FCA US and to evaluate their own materials and design options for similar components without incurring the costs associated with independent design evaluations. Thus, the disclosure of the design and design change 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 includes a substantial amount of testing, studies, analyses, and product evaluation information. Information concerning test parameters, studies, and analyses, including performance standards and test protocols, should be protected under the substantial-competitive-harm test. Because testing, studies, and analyses are essential to motor vehicle manufacturers, and performance standards and test procedures reveal valuable information about the steps needed to assure the quality of both the products and the testing procedures themselves, information about such matters would be extremely valuable to competitors. The disclosure of such information would provide those competitors a "windfall" (*Worthington Compressors* 662 F.2d at 51). Such a windfall would be subsidized by FCA US and would enable competitors to bring competitive products to market faster and more inexpensively than they otherwise could, resulting in substantial harm to FCA US's competitive position. The information also would provide valuable insights into the operational strengths of FCA US and its contractors, and so should be withheld under FOIA Exemption 4. *See Kleppe*, 547 F.2d at 684; *People for the Ethical Treatment of Animals*, 2005 WL 1241141, at \*7

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Beyond the test protocols themselves, the submission's information about how FCA US evaluates its products, both as it develops them and responds to issues after they are introduced into the market, would be extremely valuable to competitors in benchmarking their own processes. Thus, the disclosure of such information would be likely to enable competitors to bring competitive products to market faster and at less cost than they otherwise could. Such a disclosure also would reveal valuable information about the operational capacities of FCA US and its contractors—which is competitively valuable information under Exemption 4. *See Kleppe*, 547 F.2d at 684; *People for the Ethical Treatment of Animals*, 2005 WL 1241141, at \*7.

Finally, the submission also includes supplier-identification information. This information should be withheld from disclosure under the substantial-competitive-harm standard. It is often time consuming and expensive to identify suppliers who can meet quality, cost, and capacity requirements. The disclosure of the identity of a submitter's supplier would save competitors much of the time, expense, and trial-and-error that would otherwise be required to identify suppliers. In particular, this would be a boon to new entrants to the market. For these reasons, supplier information has been protected from disclosure under FOIA Exemption 4. *See SMS Data Grp., Inc. v. U.S. Dep't of the Air Force*, Civ. A. No. 88-0481-LFO, 1989 WL 201031, at \*4 (D.D.C. 1989) (submitter spent “years” developing network of suppliers, and release of information would give competitors the information “without needing to expend the same time and resources”).

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

The information for which confidential treatment is sought does not fit within a class determination.

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

Because FCA US anticipates that the information will be competitively valuable indefinitely, FCA US requests that the information be accorded confidential treatment permanently.

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

Please direct all inquiries and responses to the undersigned at:

800 Chrysler Drive; CIMS 482-00-83  
Auburn Hills, MI 48326  
(248) 512-3771  
Thomas.McCarthy@fcagroup.com

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FCA US is seeking certificates in support of confidentiality from several entities that supplied some of the information for which FCA US is seeking confidential treatment. FCA US will forward those certificates to you upon receipt.

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, FCA US respectfully

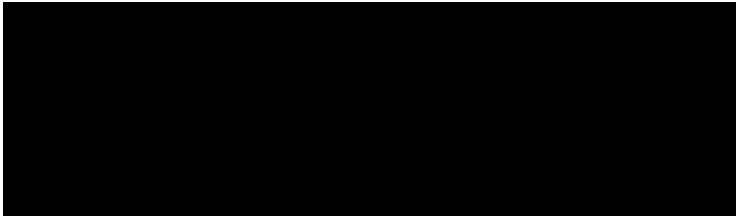
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requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,



Thomas McCarthy

Enclosures

cc: Mr. Scott Yon