



Thomas McCarthy
Head, Vehicle Safety Compliance and
Product Analysis

February 16, 2021

Ann E. Carlson
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 for PE19-014
Follow Up Request

Dear Ms. Carlson:

FCA US LLC (f/k/a Chrysler Group LLC) ("FCA US") is voluntarily submitting additional information and certain documents to the National Highway Traffic Safety Administration ("NHTSA") Office of Defects Investigation ("ODI") in connection with the above-referenced request.

Based on a careful review of this information, FCA US has determined that the information being provided 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 this information, together with this request for confidential treatment, 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 enclosure:

- **PE19-014 -Q1 Q3 Follow up Response - 20210216 - CONF BUS INFO.pdf**, consisting of one .pdf file containing entire page confidential business information; (Bates page numbers: 02/16/2021 – INFORMATION REQUEST – VOLUNTARY SUBMISSION – FCA US LLC – 000001-000002). This consists of information for the above referenced request.

The pages for which confidential treatment is being sought have a banner at the top indicating that the entire page consists of confidential business information.

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

Prior to the Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019), this submission would have been subject to the confidentiality standard set forth

in 49 C.F.R. § 512.15(d) for information submitted voluntarily to the agency. The standard for confidential treatment is now set forth in *Food Marketing Institute*, 139 S. Ct. at 2366.

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

In *Food Marketing Institute*, the Supreme Court held that information is “confidential” within the meaning of Exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4), when it is “both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.” 139 S. Ct. at 2366.

FCA US customarily and actually treats documents, such as the information for which it is seeking confidential treatment, as private and confidential. FCA US does not disclose such information because they would reveal confidential and commercially valuable information about FCA US’s deliberative process and market considerations.

With regard to an “assurance of privacy,” the Supreme Court expressly declined to hold that an assurance is a *necessary* condition for confidentiality. *Id.* at 2363. Nor did the Court describe the nature of the “assurances” to which it referred.

Although a promise of confidentiality was involved in *Food Marketing Institute*, in ordinary speech, an actual promise need not be made for information to be communicated “under an assurance of privacy.”

The Department of Justice Office of Information Policy (“OIP”) has recognized that fact in guidance. Specifically, OIP instructed agencies that an *express* assurance of confidentiality is not required. See Exemption 4 After the Supreme Court’s Ruling in *Food Marketing Institute v. Argus Leader Media*, <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>, at 5 (second paragraph in subsection headed “Second Condition – Assurance of Confidentiality by Government”) (“[A]n assurance of confidentiality can be either explicit or implicit.”).

As the OIP guidance explains, past agency practice with regard to similar information can suffice for establishing an “implied assurance” of confidentiality. See *id.* (second paragraph under subsection headed “Implied Assurance”) (“Factors to consider include the government’s treatment of similar information For example, an agency’s long history of protecting certain commercial or financial information can serve as an implied assurance to submitters that the agency will continue treating their records in the same manner.”).

Here FCA US has voluntarily communicated confidential business information to NHTSA many times over many years. When considering confidential treatment requests for voluntarily-submitted information, NHTSA has adhered to a practice of keeping such information confidential and not disclosing it if—as is the case here—the submission consists of information that FCA US does not customarily disclose to the public. Pending further communication with the Office of Chief Counsel, FCA US views this practice as sufficient assurance—assuming that an assurance of some sort is even necessary—for the instant submission.

Accordingly, the confidential treatment of the information that FCA US is submitting is warranted because that information is both customarily and actually treated as private by FCA

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US and is being provided to the government with the expectation that NHTSA will continue its past practice of not disclosing confidential commercial information except where under a legal requirement to do so or in exceptional circumstances as provided for under 49 C.F.R. § 512.23.

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))

FCA US does not anticipate ever adopting a custom of disclosing to the public the kind of information for which confidential treatment is being sought. Therefore, FCA US requests that this information be accorded confidential treatment indefinitely.

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@stellantis.com

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 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