



FIAT CHRYSLER AUTOMOBILES

Thomas McCarthy
Head, Vehicle Safety Compliance and
Product Analysis

June 5, 2020

Jonathan C. Morrison
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 NHTSA PE19-011 Follow Up Request(s)

Dear Mr. Morrison:

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 requests.

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:

- **20200605 – PE19-011 FOLLOWUP REQUEST - CONF BUS INFO.pdf**, consisting of one .pdf file containing entire page confidential business information; (Bates page numbers: 06/05/2020 – PE19-011 FOLLOWUP REQUEST – VOLUNTARY SUBMISSION –FCA US LLC – 000001-000006). This consists of information related to a PE19-011 follow up request from the NHTSA’s ODI.

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

In ordinary speech, an actual promise by the receiving party is not necessary for something to be communicated with an assurance of confidentiality. Past practice can suffice for someone to have a reasonable expectation that what is communicated will be held in confidence. Here FCA US has communicated confidential business information to NHTSA many times over many years. NHTSA has adhered to a practice of keeping such information confidential and not disclosing it absent legal compulsion. 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 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.

Mr. Jonathan C. Morrison

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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

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.



Thomas McCarthy

Enclosures

cc: Mr. Scott Yon