

HYUNDAI

Dr. Stephen Ridella, Director
Re: NEF-103no; EA19-001 – Response to Agency Information Request

October 3, 2019
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Certificate of Corporate Responsibility for Reports

I, Wayne Gates, pursuant to the provisions of 49 U.S.C. § 30166, state as follows:

1. I am the Director for Engineering and Design Analysis and I am authorized by Hyundai Motor America (“HMA”) to execute this certificate on its behalf;
2. I have reviewed the submission and, based on my knowledge, the submission does not contain any untrue statement of a material fact; or omit to state a material fact necessary in order to make the statements made not misleading, in light of the circumstances under which such statements were made.
3. I directed that a good faith inquiry be conducted that would be reasonably calculated to assure that the answers and production of documents are complete and correct, and that documents within the possession, custody, and control of HMA be searched diligently for information and documents responsive to the Information Request and produced to NHTSA.
4. I also directed that a team representing HMA work with HMA’s parent company, Hyundai Motor Company (“HMC”), to obtain further information and documents responsive to the Information Request. Based on information provided to me, it is my understanding that HMA made good faith inquiry to obtain information and to collect documents needed to respond to the Information Request.
5. Based on information provided to me, inquiry has been made of the persons and offices reasonably calculated to have responsive information and documents, and the answers to the Information Request are correct based upon HMA’s investigation to date.
6. HMA’s investigation is ongoing, HMA reserves the right to supplement or clarify these responses if it deems appropriate to do so.
7. I certify under penalty of perjury that the foregoing is true and correct.

Executed on this the 3rd day of October, 2019.



Wayne Gates
Director
Engineering and Design Analysis

October 3, 2019

VIA FedEx

Mr. Jonathan Morrison, Chief Counsel
Office of Chief Counsel
National Highway Traffic Safety Administration
West Building W41-227
1200 New Jersey Avenue, SE
Washington D.C. 20590

Re: Hyundai Motor America – Request for Confidential Treatment – EA19-001

Dear Mr. Morrison,

On behalf of Hyundai Motor America (“HMA”), we request confidential treatment for information submitted in response to the July 16, 2019, Information Request with regard to EA19-001, an inquiry opened on April 19, 2019 by NHTSA’s Office of Defects Investigation (“ODI”), into certain Chrysler, Honda, Hyundai, Kia, Mitsubishi, and Toyota vehicles equipped with air bag control units (“ACU”) produced by TRW Automotive, Inc. (“ZF TRW”). In regards to HMA, this pursuit involves model year (“MY”) 2013-19 Sonata and MY 2013-19 Sonata Hybrid vehicles equipped with ACUs manufactured by ZF TRW and Mobis that contained the DS84 Application Specific Integrated Circuit (“ASIC”) with circuit protection. For vehicles without circuit protection, specifically MY 2011-2012 Sonata and Sonata Hybrid vehicles, HMA filed a recall (NHTSA Campaign No. 18V-137) and ZF-TRW has filed its own Part 573 report.

Along with this request, HMA is submitting the company’s Response to the July 16, 2019, Information Request as well as a CD-ROM including attachments to such Response. Responses containing confidential information are marked with “CONF BUS INFO” in the file name as certain files and materials, and embedded files, cannot be marked internally, as provided in 49 C.F.R. § 512.6(c)(2). HMA intends that this marking applies to all information in the file, including embedded files that could not be individually marked.

HMA asserts the information submitted in these response is protected from public disclosure pursuant to 5 U.S.C. § 552(b)(4) (“Exemption 4”) and 49 C.F.R. § 512.15(d) and (e). HMA seeks confidential treatment for types of information that is regularly and properly protected by the agency in other submissions. HMA seeks permanent confidential treatment for this information in its entirety.

Generally, Exemption 4 protects trade secrets and privileged or confidential commercial or financial information. It 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 standard for confidential information had previously been set forth by the D.C. Circuit in *National Park & Conservation Ass’n v. Morton*, stating that commercial and financial information that is required to be submitted to a federal agency “is ‘confidential’ for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” 498 F.2d 765, 770 (D.C. Cir. 1974). The documents for which HMA is seeking confidential treatment qualify as confidential under the *National Park* standard.

In addition, the United States Supreme Court’s recent decision in *Food Marketing Institute v. Argus Leader Media*, No. 18-481 (U.S. June 24, 2019) further supports HMA’s position through its holding that FOIA allows a federal agency to withhold from disclosure records submitted by a private entity where the submitter keeps the records secret and the agency promises to keep the records from disclosure. HMA customarily keeps private the information described in this letter, and HMA believes that the agency has assured HMA and other private entities that it will keep from disclosure the type of information referenced in this letter. Whether analyzed under *National Park* or *Food Marketing Institute*, the documents for which HMA is seeking confidential treatment qualify as confidential and should be protected from public disclosure pursuant to Exemption 4.

The documents for which HMA is seeking confidential treatment are responses prepared by HMA and HMA counsel, in connection with ODI’s July 16, 2019, Information Request with regard to EA19-001. These responses contain confidential business information including internal company engineering standards, specifications, drawings, and wiring diagrams. These engineering documents include information related to motor vehicle form, function, integration, and materials, among others, that may be shared with suppliers for approval design drawings. These engineering documents also include quality assurance standards used in engineering inspections and testing. The engineering documents contain proprietary information that, if released, would cause competitive harm to HMA by enabling its competitors to recreate or copy such designs. These responses also inform and reflect on HMA’s internal corporate processes and decision-making in connection with the company’s vehicles. The responses include identification and justification for test procedures and results, which, if released, would allow insight into how HMA analyzes component design, durability, and reliability, for improved product performance. The release of these responses could cause substantial harm to HMA if the

information was disclosed to the public and competitive harm if HMA's competitors received such confidential, proprietary information related to the company's vehicle designs, processes, and procedures, as well as proprietary technical information and data.

If you receive a FOIA request for disclosure of the information for which confidential treatment is sought before you have completed your review of this request, HMA respectfully requests notification of the FOIA request and an opportunity to provide further justification for confidential treatment, if warranted, and to allow HMA to conduct a deeper review of the requested information.

Please contact me if you have any questions with regard to this confidentiality request.

Sincerely,

A large black rectangular redaction box covers the signature area.

Timothy H. Goodman
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Washington, DC 20004
(202) 853-3465
tgoodman@babstcalland.com
Counsel for Hyundai Motor America

Attachments

1. Letter to Dr. Stephen Ridella re. NEF-103no; EA19-001 – Response to Agency Information Request
2. CD-ROM labeled “ATT1 (CONF BUS INFO)”

Certificate in Support of Request for Confidentiality

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

1. I am the Director for Engineering and Design Analysis and I am authorized by Hyundai Motor America ("HMA") to execute this certificate on its behalf;
2. I certify that the information contained in the attached document 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 enclosed be protected on a permanent basis;
4. This certification is based on the information provided by the responsible HMA 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 HMA;
5. Based upon that information, to the best of my knowledge, information and belief, the information for which HMA has claimed confidential treatment has never been released or become available outside HMA.
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 HMA 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 October 3, 2019.



Wayne Gates
Director
Engineering and Design Analysis
Hyundai Motor America