



March 8, 2021

Ms. Ann Carlson  
Chief Counsel  
National Highway Traffic Safety Administration  
NHTSA West Building W41-227  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

*VIA EMAIL*

USG 5015

GM-NHTSA  
TDD Meeting

**Re: Request for Confidential Treatment of Certain Information Submitted by General Motors LLC to the National Highway Traffic Safety Administration on March 8, 2021**

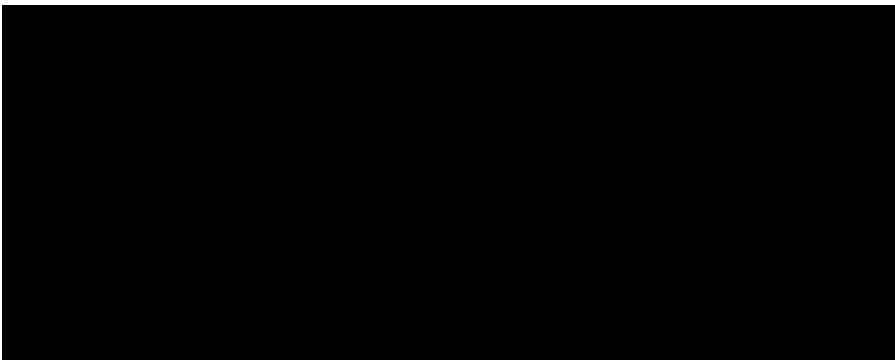
Dear Ms. Carlson:

This letter requests confidential treatment under 49 C.F.R. part 512 and Exemption 4 of the Freedom of Information Act (5 U.S.C. § 552(b)(4)) (“FOIA”) for certain confidential materials submitted by General Motors LLC (“GM”) to the National Highway Traffic Safety Administration (“NHTSA”) on March 8, 2021.

**A. Description of the Confidential Information (49 C.F.R. § 512.8(a))**

On March 8, 2021, GM transferred certain confidential materials (the “**Confidential Information**”) electronically via person-to-person transfer<sup>1</sup> to Dan Rabinovitz at the NHTSA Office of Chief Counsel and Chris Lash at the NHTSA Office of Defects Investigation. Tanya Topka requested that GM submit this information to NHTSA during a meeting on March 3, 2021. GM’s submission relates to presentations shared at the NHTSA Technical Deep Dive Meeting.

The Confidential Information contains the following files:



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<sup>1</sup> GM submits this material electronically pursuant to NHTSA’s modified part 512 submission procedures published at <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>.

**B. Production format (49 C.F.R. §§ 512.5 and 512.6)**

GM's production is in PDF format. Each page of the production is stamped "GM Confidential Business Information." GM is requesting confidential treatment for its entire submission. For this reason, GM is not submitting a redacted public copy.

**C. Basis for confidential treatment (49 C.F.R. §§ 512.8(b) and 512.8(c))**

**1. FOIA exemption four**

GM's request for confidential treatment is governed by FOIA Exemption 4, which shields from mandatory disclosure "confidential" commercial or financial information. 5 U.S.C. § 552(b)(4); *see also* 49 C.F.R. § 512.15(d). The Confidential Information qualifies as "confidential" under FOIA Exemption 4 because GM does not customarily release or otherwise provide the Confidential Information or information like the Confidential Information to the public. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

GM treats the Confidential Information as confidential and proprietary, and makes it available only on an as-needed basis to authorized GM and supplier personnel. GM utilizes numerous systems and processes that limit access to and prevent unauthorized disclosures of the Confidential Information, including: (i) password-protected electronic record-keeping systems; (ii) security systems that limit physical access to GM electronic and hard-copy record-storage facilities; and (iii) information-security training that emphasizes the importance of preventing unauthorized disclosures of information like the Confidential Information. Based on past experience with the Agency, it is GM's expectation that the Agency will keep the Confidential Information confidential, in accordance with *Food Marketing Institute*.

The documents in GM's submission may also contain personally identifiable information ("PII") (e.g., vehicle registration information or VIN, employee names, and customer/employee contact information) that is exempt from public disclosure under FOIA exemptions three and six. 5 U.S.C. § 552(b)(3); *id.* at § 552(b)(6). Consistent with long-standing practice, GM is submitting these documents with unredacted PII with the understanding that NHTSA (or GM, if NHTSA prefers) will redact any PII before disclosing these documents to the public.

**2. FOIA exemption three and six**

The Confidential Information contains data retained by an event data recorder ("EDR") that was collected for purposes of assisting GM in its investigation of a crash event. It contains personally identifiable information and other information that is protected from public disclosure by various state and federal statutes. *See, e.g.,* Fixing Americas Surface Transportation Act, Pub.

L. No. 114-94, § 24302, 129 Stat. 1312 (2015). For this reason, the Confidential Information also qualifies for confidential treatment under FOIA exemptions three and six. 5 U.S.C. § 552(b)(3); *id.* at § 552(b)(6).

**D. Information obtained from a third party (49 C.F.R. § 512.9)**

Certain portions of the Confidential Information were created by and provided to GM by Nexteer Automotive Corporation (“Nexteer”)<sup>2</sup>. This material includes supplier engineering drawings; it is highly sensitive information that, like the other Confidential Information in the presentation, GM does not customarily provide to the public. As required by 49 CFR § 512.9, GM has enclosed a third-party certification signed by Nexteer.

**E. Applicable class determinations (49 C.F.R. § 512.8(d))**

The Confidential Information is subject to a Class Determination as it contains engineering drawings.

**F. Duration of confidential treatment (49 C.F.R. § 512.8(e))**

Because GM does not anticipate ever customarily disclosing this kind of information to the public, GM requests that NHTSA treat the Confidential Information as confidential without a time limitation.

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

Please direct all inquiries and responses to this request to: Tim Cochran, General Motors LLC, Cole Engineering Center, 29427 Louis Chevrolet Rd., Warren, MI 48093, [REDACTED]

If NHTSA receives a request to disclose the Confidential Information, GM respectfully requests notification and an opportunity to provide, if necessary, additional support for its position that the Confidential Information is entitled to confidential treatment under FOIA.

Sincerely,

[REDACTED]

Timothy Cochran, Senior Manager  
External Investigations

cc: Tanya Topka  
Chris Lash

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<sup>2</sup> Nexteer, formerly Delphi, owns the design and manufacturing for the GMT800 and GMT900 Intermediate Shaft Assembly.

Letter to Ms. Ann Carlson  
USG5015 Confidentiality Request  
March 8, 2021  
Page 4 of 4

**Attachments**

Attachment A: Supporting Certificate of Timothy Cochran

Attachment B: Supporting Certificate of Thomas Fruedenstein

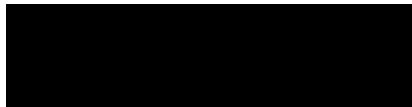
## **Attachment A**

Supporting Certificate of Timothy Cochran

**CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY**

I, Timothy Cochran, pursuant to the provisions of 49 C.F.R. § 512, state as follows:

- (1) I am the Senior Manager of External Investigations at General Motors LLC and am authorized to execute this certificate on its behalf.
- (2) I certify that the Confidential Information (as defined in GM's letter to Ms. Ann Carlson dated March 8, 2021) 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) and 49 C.F.R. § 512.
- (3) I hereby request that the Confidential Information be protected without a time limitation.
- (4) This certification is based on information provided to me by the GM personnel who have responsibility for the documents that contain the Confidential Information.
- (5) Based on that information, to the best of my knowledge, information, and belief, the Confidential Information has never been released or made available outside GM except to authorized GM contractors, suppliers, confidential advisors, and other third parties who are legally obligated to maintain the confidentiality of the Confidential Information.
- (6) I make no representations beyond those contained in this certificate and, in particular, I make no representations regarding unauthorized or inadvertent disclosures of the Confidential Information.
- (7) I certify under penalty of perjury that the foregoing is true and correct. Executed on March 8, 2021.



Timothy Cochran  
Senior Manager  
GM External Investigations

## **Attachment B**

Supporting Certificate of Thomas Freudenstein

**CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY**

I, Thomas Freudenstein, pursuant to the provisions of 49 C.F.R. § 512, state as follows:

- (1) I am the Engineering Manager of Nexteer Automotive Corporation (“Nexteer”) and am authorized to execute this certificate on its behalf.
- (2) I certify that the Confidential Information (as defined in GM’s letter to Ms. Ann Carlson dated March 8, 2021) that was supplied to GM by Nexteer (the “**Supplier Confidential Information**”) is confidential and proprietary data under 5 U.S.C. 552(b)(4) and 49 C.F.R. § 512.
- (3) This certification is based on information provided to me by the Nexteer personnel who have responsibility for the documents that contain the Supplier Confidential Information.
- (4) Based on that information, to the best of my knowledge, information, and belief, the Supplier Confidential Information has never been released or made available outside of Nexteer and GM except as required by law.
- (5) I make no representations beyond those contained in this certificate and, in particular, I make no representations regarding the potential for unauthorized or inadvertent disclosures of the Supplier Confidential Information.
- (6) I certify under penalty of perjury that the foregoing is true and correct. Executed on March 7, 2021.

**NEXTEER AUTOMOTIVE CORPORATION**



By: Thomas Freudenstein  
Its: Engineering Manager