



November 20, 2020

Via Electronic Submission Only

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

Re: Request for Confidential Treatment:
Daimler Trucks North America LLC's Response to Recall Query (RQ20-001)

Dear Mr. Morrison:

On behalf of Daimler Trucks North America LLC ("DTNA"), we request confidential treatment for certain information in DTNA's Response to the National Highway Traffic Safety Administration's ("NHTSA") Office of Defect Investigation ("ODI") September 29, 2020 Information Request ("DTNA Response") in connection with the agency's Recall Query ("RQ") (RQ20-001), which DTNA is submitting to NHTSA electronically and simultaneously with this request.

Specifically, DTNA seeks permanent confidential treatment of the following information, all of which are identified in DTNA's Response ("Confidential Information"):

- Text in the DTNA Response about DTNA's Response about (i) total count of warranty claims that have been paid by DTNA to date that relate to, or may relate to, the alleged defect in the subject vehicles and additional information about replacement parts in its response to Question 5, (ii) search methods and search criteria used by DTNA to identify the warranty claims in its response to Question 6, and (iii) DTNA's assessment of the alleged defect in the subject vehicle in its response to Question 13. Further, references to the following documents submitted to NHTSA as part of DTNA's Response in the text are designated as Confidential Information;
- Excel spreadsheet that contains information about vehicle identification number, subject component number, date of manufacture and date warranty coverage commenced, among others, for each subject vehicle manufactured to date by DTNA in Response Folder "RESPONSE-Q1;"
- Excel spreadsheet that contains information about vehicle owner or fleet name, subject component's serial number and DTNA's assessment of the problem, among others, for each item set forth in subparagraphs (a) through (g) in Question 2 that relate to, or may relate to, the alleged defect in the subject vehicles in Response Folder "RESPONSE-Q2-4;"
- Excel spreadsheet that contains information about all categories of claims, including the details about DTNA's customers, that have been paid by DTNA to date that relate to, or may relate to, the alleged defect in the subject vehicles in Response Folder "RESPONSE-Q5-6;"
- Word document that contains information about labor operations, labor operation descriptions, problem codes, and problem code descriptions, diagnostic trouble codes and diagnostic trouble

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code descriptions applicable to the alleged defect in the subject vehicles in Response Folder “RESPONSE-Q5-6;”

- Documents pertaining to DTNA’s assessments, tests and analyses, among others, that relate to, or may relate to, the alleged defect in the subject vehicles in Response Folder “RESPONSE-Q9;”
- Excel spreadsheet that contains information about modifications or changes of the subject components that relate to, or may relate to, the alleged defect in the subject vehicle in Response Folder “RESPONSE-Q10;” and
- Excel spreadsheet that contains information about suppliers for each subject component in Response Folder “RESPONSE-Q12.”

The Confidential Information qualifies for protection from public disclosure under 5 U.S.C. § 552(b)(4) (“Exemption 4”), 49 C.F.R. § 512.15 (b) and (e), the well-known standard set forth under *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) and its progeny, and the U.S. Supreme Court’s decision last year in *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364, 2366 (2019).¹ Among other reasons, it includes confidential commercial information as described in more detail below. A certificate in support of this request is attached pursuant to 49 C.F.R. § 512.4(b).

The Confidential Information qualifies for protection from disclosure under Exemption 4 because it includes confidential commercial information. For the purposes of Exemption 4, commercial information includes information in which the submitter has a “commercial interest.” *Pub. Citizen Health Research Grp.*, 704 F.2d at 1290. Information is confidential where it is customarily and actually treated as private by its owner, regardless of whether disclosure of the information would cause substantial competitive harm. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364, 2366 (2019).

Setting aside whether *National Parks* and its progeny even survived the U.S. Supreme Court’s decision last year in *Argus Leader*, the information here squarely qualifies for confidential treatment under either standard. The Confidential Information contains information that is both commercial and confidential. This information includes details about DTNA’s (i) suppliers and customers, (ii) manufacture of subject vehicles, (iii) internal procedures pertaining to or assessments about the alleged defect, and (iv) paid warranty claims. As the manufacturer of subject vehicles, DTNA has a commercial interest in this information. DTNA customarily treats these types of information as confidential because they could be used to develop or market competing vehicles and the release of this information can damage DTNA’s goodwill. Consistent with the customary handling of the types of information composing the Confidential Information, DTNA has treated the Confidential Information as confidential and does not make them available outside the company except under assurances that they will be kept confidential.

Protecting the Confidential Information from disclosure would also be consistent with the policy behind Exemption 4. Congress enacted Exemption 4 to prevent disclosures that would “eliminate much

¹ Although NHTSA’s confidentiality standard under 49 C.F.R. § 512.15(b) applies the “substantial competitive harm” test, NHTSA issued this standard before the Supreme Court rejected the *National Parks* “substantial competitive harm” test in *Argus Leader*. NHTSA thus should assess confidentiality consistent with *Argus Leader*.

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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 Confidential Information squarely falls within the Exemption 4 policy interests as well.

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, DTNA respectfully requests notification of the FOIA request and an opportunity to provide further justification for confidential treatment, if warranted, and to allow DTNA to conduct a deeper review of the requested information.

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

Sincerely,



Timothy H. Goodman
Partner

Counsel for Daimler Trucks North America LLC

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Enclosures:

Certificate in Support of Request for Confidentiality (DTNA)
DTNA Response (Confidential version)
DTNA Response (Public version)

Certificate in Support of Request for Confidentiality

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

1. I am the Executive Manager of Vehicle Safety, Compliance and Regulatory Affairs, Daimler Trucks North America LC ("DTNA"), and I am authorized by DTNA to execute this certificate on its behalf;
2. I certify that the information contained in the attached materials, and for which DTNA seeks confidential treatment, 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 DTNA 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 DTNA;
5. Based upon that information, to the best of my knowledge, information and belief, the information for which DTNA has claimed confidential treatment has never been released or become available outside DTNA.
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 DTNA 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 this 19th day of November 2020.



Larissa Stoffels
Executive Manager, Vehicle Safety
Compliance and Regulatory Affairs
Daimler Trucks North America LLC