



July 15, 2021

Ms. Ann Carlson, Chief Counsel
Office of Chief Counsel, NCC-100
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building W41-227
Washington, D.C. 20590

Re: NEF-101 SAH, PE21-013: Porsche Request for Confidential Treatment

Dear Ms. Carlson:

Porsche Cars North America, Inc., on behalf of Dr. Ing. h.c. F. Porsche AG (collectively "Porsche"), transmits the attached material in response to the Information Request of the Office of Defects Investigation in connection with the above referenced Preliminary Evaluation:

- A copy of Porsche's responses to the Information Request.
- The certification required by Part 512 in support of this request.
- A list of materials accompanying this request.
- A confidential copy of the materials for which this request is being made.
- A public version of the materials with the confidential portions redacted.

This information subject of this request is proprietary, confidential, competitively sensitive, and not customarily disclosed to the public. As such, Porsche is submitting this information through your office with this request for confidential treatment, pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).

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

The information for which Porsche is requesting confidential treatment consists of responses that contain the following: consumer complaint counts and copies; field report counts and copies; counts of warranty claims and related information; information regarding Porsche vehicle system components and modifications or changes to the design



and/or manufacture of those components; and information describing assessments, analyses, tests, test results, studies, investigations and evaluations (collectively, "actions") and copies of related documents. These documents contain confidential information that, if released, would be likely to cause Porsche substantial competitive harm. The materials have been appropriately marked as confidential.

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

Prior to the decision of the U.S. Supreme Court in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019), this request would have been subject to the confidentiality standard set forth in 49 C.F.R. § 512.15(b) for information that the submitter is required to submit. The standard for confidential treatment is now set forth in *Food Marketing*, 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 FOIA Exemption 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. Porsche both customarily and actually treats the information for which it is requesting confidential treatment as private and confidential.

The Supreme Court decision did not describe the nature of the "assurances" to which it referred. However, the U.S. Department of Justice has issued guidelines which addresses this. The Department's Office of Information Policy ("OIP") has instructed agencies that an express assurance of confidentiality is not required. See <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>, which stated that "an assurance of confidentiality can be either explicit or implicit." As the OIP guidance explains, past agency action with regard to similar information can establish an "implied assurance" of confidentiality. For example, if an agency has typically protected certain commercial or financial information, this can serve as an implied assurance that the agency will continue treating these types of information as confidential.



Porsche customarily and actually treats the information confidentially, and the information is being provided with the expectation and assurance that NHTSA will continue its past practice of not disclosing confidential commercial information except as otherwise required. In addition to past submissions it has made, Porsche also relies on class determinations noted below for those assurances related to certain information being submitted. Therefore, the information should be accorded confidential treatment under *Food Marketing Institute*.

D. Class Determination (49 C.F.R. § 512.8(d))

In addition to Porsche's confidential treatment of the materials for which this request is being made, field reports, consumer complaints, and warranty claims are also subject to a class determination pursuant to Appendix C of Part 512.

E. Duration for Which Confidential Treatment is Sought (49 C.F.R. § 512.8(e))

Because Porsche does not anticipate ever customarily disclosing this kind of information to the public, Porsche requests that the information be accorded confidential treatment indefinitely.

F. Contact Information (49 C.F.R. § 512.8(f))

Jim Moore
Manager, In-Use Vehicle Conformity
Porsche Cars North America, Inc.
Phone: 770.290.2054
Cell: 404.883.9103
Email: jim.moore@porsche.us

We are enclosing electronic copies for which Porsche is seeking confidential treatment in accordance with, and in reliance on, NHTSA's guidance posted on its website (<https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>) due to the COVID-19 pandemic. Upon request, we will submit these materials through the U.S. mail. As all materials are designated confidential, no public version is being included.



If you receive a request for disclosure of this information before you have completed your review of our request, Porsche respectfully requests notification and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,

Jim Moore
Manager, In-Use Vehicle Conformity
Porsche Cars North America, Inc.

Enclosures

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, Jim Moore, pursuant to the provisions of 49 CFR 512, state as follows:

- a) I am Jim Moore, Manager, In-Use Vehicle Conformity, Porsche Cars North America, Inc., Porsche Cars North America, Inc. , and I am authorized by the Porsche companies to execute this document;
- b) I certify that the information contained in the attached documents is confidential and proprietary and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. Section 522(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted.);



- c) I hereby request that the confidential business information contained in Porsche's responses be protected on a permanent basis;
- d) This certification is based on the information provided by the responsible Porsche 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 Porsche;
- e) Based upon that information, to the best of my knowledge, information and belief, the information for which Porsche has claimed confidential treatment has never been released or become available outside Porsche or its suppliers, who may have the information with the understanding that such information must be maintained in strict confidence;
- f) 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 Porsche because of unauthorized or inadvertent disclosure; and
- g) I certify under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of July, 2021.

Jim Moore
Manager, In-Use Vehicle Conformity
Porsche Cars North America, Inc.