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February 16, 2024

Via U.S. DOT's SLFTS

John Donaldson
Acting Chief Counsel
National Highway Traffic Safety Administration
W41-227
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Request for Confidential Treatment – Triumph Motorcycles Ltd.
(Triumph) – Voluntary Submission related to NHTSA
Investigation No. PE21-017

Dear Mr. Donaldson:

This letter serves as the request for confidential treatment by Triumph Motorcycles Ltd. (Triumph), with respect to the enclosed presentation made to the Office of Defect Investigation (ODI) on February 8, 2024, concerning the above referenced investigation and the enclosed vehicle service records requested by ODI. Triumph is voluntarily submitting the presentation and requested service records.

In accordance with 49 CFR 512.5, Triumph is submitting the information with the file name and content of these files marked "CONFIDENTIAL BUSINESS INFORMATION." These files contain detailed information related to Triumph's analysis of customer reports, brake system design, and details of Triumph's investigation related to the issues under review in NHTSA Preliminary Investigation No. PE21-017. Also enclosed is a Certificate in Support of Confidentiality. To facilitate social distancing due to COVID-19, NHTSA is treating electronic submissions, using email or secure File Transfer Protocol (FTP), as an acceptable method for submitting confidential business information. See <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>. Because Triumph is submitting this information via the U.S. Department of Transportation's "Secure Large File Transfer Solution" (SLFTS), the request includes a single copy of the confidential file.

Because this material is not the subject of compulsory process, this submission should be deemed voluntary. Therefore, Triumph requests confidential treatment pursuant to 49 CFR 512.15(d), Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) ("*Critical Mass*") (information

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provided voluntarily “will be treated as confidential under Exemption 4 if it is of a kind that the provider would not customarily make available to the public”).

Further, as set forth below, Triumph requests confidential treatment for the enclosed materials on the grounds that they contain trade secrets and/or confidential, proprietary information that is closely held by Triumph and would likely subject Triumph to substantial competitive harm if disclosed. *See* 49 C.F.R. § 512.3(c)(1) and (2); *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (FOIA Exemption 4 protects information that “is customarily kept private, or at least closely held, by the person imparting it”); *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (“commercial or financial matter is ‘confidential’ . . . if disclosure of the information is likely to . . . cause substantial harm to the competitive position of the person from whom the information was obtained.”); *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (a trade secret is a “secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort”); *Center for Auto Safety v. Nat’l Hwy. Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000), *remanded for further proceedings*, 244 F.3d 144 (D.C. Cir. 2001) (airbag specifications representing “years of research and development and enormous financial investment” not subject to FOIA disclosure).

The enclosed information contains detailed information related to Triumph’s investigation into VOQ complaints related to brake-lever feel, detailed sales information, and service and repair orders for six motorcycles identified by ODI using reports to the Fatal Accident Reporting System (FARS). As the Agency is aware, the motorcycle industry is highly competitive. Triumph closely guards against public disclosure of such information, and it is “customarily kept private” and “closely held” by Triumph. *See Food Marketing Institute v. Argus Leader Media*, *supra*. Disclosure of this information would provide Triumph’s competitors with valuable details about its motorcycle design and repairs, as well as investigative and design techniques, without the requisite effort to develop their own. Accordingly, Triumph requests that this information be given confidential treatment indefinitely.



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Please contact me if you have any questions.

Sincerely,



R. Nicholas Englund

Enclosures

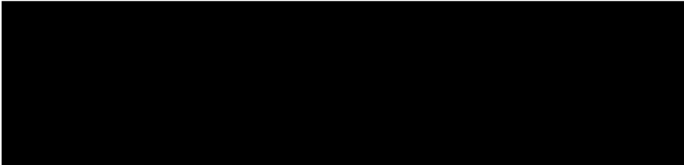
cc: Josh Neff (NHTSA ODI)
Nate Seymour (NHTSA ODI)
Sean Ward (NHTSA NCC)
Charles Smart (TML)

Certificate in Support of Request for Confidentiality

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

- (1) I am Head of Department, Claims Management, for Triumph Motorcycles Limited (UK) (TML) and I am authorized to execute this certificate on behalf of TML.
- (2) I certify that the information accompanying this confidential treatment request is confidential and proprietary and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. § 552(b)(4).
- (3) I hereby request that the information be protected indefinitely.
- (4) This certification is based on the information provided by the responsible TML 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 TML.
- (5) Based upon that information, to the best of my knowledge, information and belief, TML does not customarily release this information to the public. Further, the information for which confidential treatment is being sought has never been released or become available outside TML, with exception of being shared within the scope of confidential relationships.
- (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 TML because of unauthorized or inadvertent disclosure (except as stated in paragraph 5).
- (7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 14 day of February, 2024



Charles Smart
Head of Department
Claims Management
Triumph Motorcycles Limited (UK)