INFORMATION REDACTED PURSUANT TO THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6)

U.S. Department of Transportation
National Highway Traffic Safety Administration

NHTSA

July 11, 2024

VIA EMAIL

Eddie Gates, Director Field Quality
Director, Field Quality
Tesla, Inc.
45500 Fremont Blvd
Fremont, CA 94538

Subject: Information Request ID PE22-002-02

Dear Mr. Gates,

The Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) requests that Tesla updates portions of its response to the May 4, 2022, Information Request sent to this office concerning Preliminary Evaluation (PE22002). PE22002 was opened to investigate allegations of unexpected brake activation in certain model year (MY) 2021-2022 Model 3 & Y vehicles manufactured by Tesla, Inc., (Tesla).

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject vehicles:** All model year (MY) 2021-2022 Tesla Model 3 & Y vehicles manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.

- **Peer vehicles:** All MY 2023-2024 Tesla Model 3 and Model Y manufactured for sale or lease in the United States and federalized territories that were equipped with FSD and Autopilot firmware versions.

- **Subject System:** Autopilot specific components: Traffic-Aware Cruise Control (TACC), Autosteer, Full Self-Driving (FSD) Beta, Navigate on Autopilot, Traffic and Stop Sign Control Beta and, as relevant, Automatic Emergency Braking (AEB) and Forward Collision Warning (FCW).

- **Alleged defect:** The Autopilot System engages the brakes with no imminent collision hazard present, resulting in a sudden rapid vehicle speed decrease or deceleration. The inadvertent braking events occur without warning and randomly. The alleged defect can be broken into:

    - Allegations of false collision alert warnings by the subject system

- Allegations of unnecessary emergency braking by the subject system
- Allegations of excessive or unrequested braking by the subject system

- **Tesla:** Tesla, Inc., all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions, subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Tesla (including all business units and persons previously referred to), who are or were involved in any way as of January 10, 2010, with any of the following related to the alleged defect in the subject vehicles:

  a. Design, engineering, analysis, modification or production (e.g., quality control);
  b. Testing, assessment or evaluation;
  c. Consideration, or recognition of potential or actual defects, reporting, record-keeping and information management, (e.g., complaints, field reports, warranty information, part sales), analysis, claims, lawsuits or arbitrations; or
  d. Communication to, from or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.

- **Document:** "Document(s)" is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Tesla, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note,

comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)" also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by Tesla or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Other Terms:** To the extent that they are used in these information requests, the terms "claim," "consumer complaint," "dealer field report," "field report," "fire," "fleet," "good will," "make," "model," "model year," "notice," "property damage," "property damage claim," "rollover," "type," "warranty," "warranty adjustment," and "warranty claim," whether used in singular or in plural form, have the same meaning as found in 49 C.F.R. § 579.4.

In order for my staff to evaluate the alleged defect, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. Insofar as Tesla has previously provided a document to ODI, Tesla may produce it again or identify the document, the document submission to ODI in which it was included and the precise location in that submission where the document is located. When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation.

Please repeat the applicable request verbatim above each response. After Tesla's response to each request, identify the source of the information and indicate the last date the information was gathered.

1. Update, by model and model year, the number of subject and peer vehicles Tesla has manufactured for sale or lease in the United States. Separately, for each subject and peer vehicle manufactured to date by Tesla update the following information starting May 14, 2022 through July 2, 2024:
    a. Vehicle identification number (17-character VIN);
    b. Model;
    c. Model Year;
    d. Subject System trade/trim name, part number and design version installed as original equipment;
        a) Software version;
        b) Firmware version;
        c) Hardware version;
    e. Date of manufacture (MM/DD/YYYY);
    f. Date warranty coverage commenced (MM/DD/YYYY);
    g. Date and mileage at which the "Full Self Driving" (FSD) option was enabled;

h. The State in the United States where the vehicle was originally sold or leased, or delivered for sale or lease (postal abbreviation);
i. Latest known vehicle mileage and commensurate date and;
j. Date and identities of the most recent software, firmware, and hardware updates.

Provide the table in Microsoft Access 2010, or a compatible format, entitled "PRODUCTION DATA UPDATE".

2. Separately, for each VIN, if applicable, provide complaints, reports, claims, notices or any matter the following information:

a. Tesla's file number or other identifier used;
b. The category of the item (i.e., consumer complaint, field report, etc.);
c. Vehicle owner or fleet name (and fleet contact person);
d. Vehicle's 17-character VIN;
e. Vehicle's model and model year (please use distinct fields for each data type);
f. Vehicle's mileage at time of incident (numeric data type);
g. Software, firmware, and hardware versions in place at the time of the incident, along with the vehicle mileage and date of installation
h. Report or claim date (MM/DD/YYYY);
i. Whether a crash is alleged;
j. Incident description, including;
    a) Whether FSD was active at the time of the incident;
    b) AEB braking activation; yes or no;
    c) Vehicle speed at the start of the braking event;
    d) Vehicle speed at the end of the braking event;
    e) Average deceleration during the event;
    f) Video; yes or no;
        (1) If yes, provide and;
k. Target detected during event;

Provide this information in Microsoft Access 2010, or a compatible format, entitled "REQUEST NUMBER TWO DATA UPDATE".

3. Pursuant to Question 8 of the previous Information Request, for each of the 148 clips determined to be false positive slowdowns events in Investigation #3, please provide:

a. Peak longitudinal deceleration value during the event;
b. Average longitudinal deceleration during the event;
c. Duration in seconds of the deceleration during the event;
d. Subject Vehicle travel speed prior to the event and;
e. Subject Vehicle travel speed at the conclusion of the event

Legal Authority for This Request

This letter is being sent to Tesla pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports. It constitutes a new request for information.

Civil Penalties

Tesla's failure to respond promptly and fully to this letter could subject Tesla to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) The Vehicle Safety Act, 49 U.S.C. § 30165(a)(3), provides for civil penalties of up to $27,168 per violation per day, with a maximum of $135,828,178 for a related series of daily violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. See 49 C.F.R. § 578.6(a)(3). This includes failing to respond completely, accurately, or in a timely manner to ODI information requests.

If Tesla cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, Tesla does not submit one or more requested documents or items of information in response to this information request, Tesla must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Confidential Business Information (CBI)

If Tesla's response contains any information that you claim is confidential business information, Tesla must submit its request for confidential treatment and any files containing CBI to NHTSA's Office of the Chief Counsel via the CBI Portal or a secure electronic file transfer link. Please see enclosure 1 for additional instructions on submitting a request for confidential treatment that is compliant with 49 C.F.R. Part 512 (specifically, a request for confidential treatment must include the four required parts that are discussed in enclosure 1).

If you choose not to submit your request and files containing CBI to NHTSA's Office of the Chief Counsel via the CBI Portal, please notify the investigator referenced in this IR to ensure that the secure file transfer link for your request for confidential treatment and any files containing CBI are directed to the Office of the Chief Counsel accordingly.

In addition to submitting a request for confidential treatment and files containing CBI directly to NHTSA's Office of the Chief Counsel, Tesla must also submit its request for confidential treatment, the files containing CBI, and their corresponding redacted versions directly to ODI via the Safety Defect Investigations (SDI) Portal. The requests for confidential treatment and certification documents are not confidential so these documents should be uploaded as non-confidential files.

Please refer to PE22-002-02 in Tesla's response to this letter and in the request for confidential treatment that Tesla may submit.

Due Date

Tesla's response to this letter must be submitted to this office by **August 15, 2024**. If Tesla finds that it is unable to provide all the information requested within the time allotted, Tesla must request an extension from me at (202) 366-5226 no later than five business days before the response due date. If Tesla is unable to provide all the information requested by the original deadline, it must submit a partial response by the original deadline with whatever information Tesla then has available, even if an extension has been granted.

If you have any technical questions concerning this matter, please call Tim Igbawua of my staff at (202) 366-9340.

Sincerely,

[redacted]

Gregory Magno, Chief
Vehicle Defects Division D
Office of Defects Investigation

Enclosure 1, Information for Requests for Confidential Treatment.

ENCLOSURE 1 – INFORMATION FOR REQUESTS FOR CONFIDENTIAL TREATMENT

If you believe that your response contains any material that you claim is confidential business information, submit these materials to NHTSA's Office of the Chief Counsel in accordance with 49 C.F.R. Part 512. **All requests for confidential treatment must be submitted directly to the Office of the Chief Counsel via the Confidential Business Information (CBI) Portal or a secure file transfer link for your submission addressed to the Office of the Chief Counsel. If you are not currently registered for the CBI Portal, you may send a registration request to cbi-helpdesk@dot.gov. In addition to directly submitting the files to the Office of the Chief Counsel, you will also need to submit your request, the files containing CBI, and their corresponding redacted versions directly to ODI through the Safety Defect Investigations (SDI) Portal.**

Requests for confidential treatment are governed by Part 512. A current version of this regulation is available on the internet at http://www.ecfr.gov by selecting Title 49 "Transportation," selecting "Parts 500 – 599" and then selecting Part 512 "Confidential Business Information."

How to request confidential treatment:

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. If you claim that any of the information or documents provided in your response constitutes confidential business information within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit the information or documents directly to the Office of Chief Counsel via the CBI Portal or request a secure file transfer link from the ODI contact listed in your Information Request. You must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with Part 512, to the Office of the Chief Counsel. Do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters.

Your request must include a request letter that contains supporting information, pursuant to Part 512.8. Your request must also include a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit one unredacted "confidential version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: "[ ]."

You are also required to submit one redacted "public version" of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted "public version" should include redactions of any information for which you are seeking confidential treatment (i.e., the only information that should be unredacted is information for which you are **not** seeking confidential treatment).

For questions about a request for confidential treatment, please contact Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov or (202)366-8534.