



December 7, 2022

Mr. John Donaldson
Acting Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: HMA Request for Confidential Treatment of Responses to Agency Information Request, RQ22-003

Dear Mr. Donaldson:

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), Hyundai Motor America (“HMA”) hereby requests confidential treatment of certain information provided to the National Highway Traffic Safety Administration’s (“NHTSA”) Office of Defects Investigation (“ODI”). This information is provided in response to ODI’s October 7, 2022 Information Request in RQ22-003 regarding allegations of front driver and/or passenger-side pyrotechnic-type seat belt pretensioners that may abnormally deploy and rupture in certain model year 2020-2022 Hyundai vehicles.

Pursuant to Part 512 and instructions provided by NHTSA, this request is provided to the Office of Chief Counsel, and includes a confidential version of HMA’s response to RQ22-003 and a public version of the response with confidential information redacted. The materials designated as confidential are marked “CONFIDENTIAL BUSINESS INFORMATION” and confidential material is enclosed in brackets in accordance with 49 C.F.R. § 512.6(b).

HMA requests that the materials it has designated as confidential be protected from disclosure pursuant to 49 C.F.R. § 512.15(b), as modified by the Supreme Court’s decision in *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2,356 (2019) (“*Argus Leader*”). Specifically, the Court held in *Argus Leader* that where information that is customarily kept private and not disclosed to the public is submitted to the government with some assurance of privacy, that information is considered “confidential” within the meaning of FOIA’s Exemption 4. See also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (“*Critical Mass*”); 49 C.F.R. § 512.15(d).

The information for which HMA seeks confidential treatment is customarily and actually treated as private and is closely held by HMA; the information is not customarily released or otherwise provided to the public. The subject materials relate to proprietary and confidential

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information regarding internal communications, documents and processes; internal company testing and assessments; product design and modifications; optional vehicle service contract sales data; part sales data; and the company's assessment of the alleged defect. This information is not routinely disclosed outside the company and is used for internal operations and analysis only. See *Argus Leader* at 2,366; see also *Critical Mass* at 879. Furthermore, disclosure of this information is likely to cause competitive harm to HMA. The material reveals confidential information about HMA's processes and products, and the capabilities of its proprietary technologies. Disclosure of this information would allow competitors to develop their own systems and intellectual property based on HMA's substantial investment in developing its systems, and would allow competitors access to internal HMA plans, procedures, analyses and strategies. Disclosure of the information also could reveal strategic strengths and weaknesses of the company and its technology. Therefore, such a disclosure would cause undue competitive harm to HMA. Conversely, protection of this information will promote cooperation between NHTSA and industry to identify and investigate potential safety risks and "supply the government with information vital to its work." *Argus Leader* at 2,366; see also *Critical Mass* at 879.

NHTSA's practice of maintaining confidential information of this type constitutes assurance that NHTSA will treat this information as confidential. It is the type of information that the agency has traditionally granted confidential treatment and it is therefore entitled to confidential treatment in this case.

HMA has taken measures to ensure that the information contained in the attached responses to the agency's request have not otherwise been made available to any persons outside of HMA, its affiliates, and its legal counsel. Insofar as is known by HMA, this information is not known outside of the company, except for these entities.

In addition to the foregoing, HMA's submission includes personally identifying information, including personal medical records, which are exempt from disclosure under Exemption 6 of the Freedom of Information Act ("FOIA"), 5 U.S.C § 552(b)(6), and therefore would be entitled to confidential treatment under 49 C.F.R. § 512.15(e). HMA believes NHTSA's policy is to protect the privacy of individuals under Exemption 6; therefore, the names, addresses, and other personal information of owners or other individuals, including HMA personnel, contained in HMA's response or any of its attachments should not be made available to the public.

This request for confidentiality pertains to the following portions of HMA's RQ22-003 Information Request response and supporting documents:

1. Legal Department codes provided in the response to Request 4.

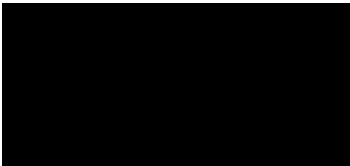
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2. Supporting attachments for Request 4 provided in *Attachments RQ22-003 – Req. 4 – 001 through 029* and *Attachment RQ22-003 – Req. 4 – 030, Privilege Log*, which relate to confidential legal documents and descriptions of privileged documents.
3. Supporting attachment for Request 8 provided in *Attachment RQ22-003 – Req. 8 - 003, Optional Service Contracts*.
4. Response to Request 10 and supporting attachments *Attachments RQ22-003 – Req. 10 – 001 through 053*, HMA's response and supporting documents describing the company's assessment actions related to the alleged defect.
5. Response to Request 11 and supporting attachments *Attachments RQ22-003 – Req. 11 – 001 through 014*, HMA's response and supporting documents describing modifications to subject vehicles.
6. Information on vehicles using the identical component in the response to Request 12, and supporting attachment for Request 12 provided in *Attachment RQ22-003 – Req. 12 - 001*, providing part sales information.
7. Response to Request 13, HMA's response describing the company's assessment of the alleged defect.

HMA requests that these above-described materials be afforded confidential treatment for an indefinite period of time. Please let us know if there are any questions regarding this request.



Cole Stutz
North America Safety Office
Hyundai Motor North America