

June 12, 2024

Adam Raviv, Esq.  
Chief Counsel  
Office of Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

**Re: EA23-001**  
**Request for Confidential Treatment of Information Submitted**

Dear Mr. Raviv:

BMW of North America, LLC, on behalf of BMW AG, Munich, Germany ("BMW") is submitting this request for confidential treatment for certain material that is being submitted directly by Robert Bosch, LLC ("Bosch") to NHTSA in response to the agency's Information Request, dated March 28, 2024, in the above captioned matter. BMW understands that, because some of the material being submitted by Bosch contains BMW specific information, the request herein is therefore necessary in accordance with the provisions of 49 CFR 512, specifically Part 512.9.

Because the attached information is considered by BMW to be confidential, we believe it is entitled to confidential treatment under 49 CFR Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 USC § 552(b)(4). Accordingly, BMW is hereby submitting this request for confidential treatment of that material.

As set forth in the attached certificate, the information for which we are requesting confidential treatment is maintained in strict confidence by BMW, and is only available to select suppliers pursuant to confidentiality agreements. This information is not customarily made public by BMW, and contains both trade secrets and commercial information, which is privileged or confidential under 5 USC § 552(b)(4), 18 USC § 1905, 49 CFR 512, and 49 USC 30167(a).

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BMW of North America, LLC  
BMW Group Company

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We further request that this information be accorded confidential treatment on a permanent basis, because there is no foreseeable time in the future when this information could be disclosed without causing substantial harm to the competitive position of BMW. The documentation has been marked in accordance with the November 19, 2007 amendments to 49 CFR 512. The non-confidential portion of our response is also being submitted to your office.

BMW requests confidential treatment of the information because disclosure would cause substantial competitive harm and the information includes trade secrets. BMW submits that the competitive harm would be substantial because the design and manufacture of vehicles and vehicle components are the core of its business and because global competition in this business is intense.

Some of the information consists of results of tests and analyses of vehicle systems/components. This information includes details pertaining to vehicle system/component design and performance as a result of conducting such tests and analyses. Some of the information also consists of test and analyses methodologies that

have been developed in order to understand issues regarding specific vehicle systems/components. These tests and analyses methodologies would provide valuable insight into how BMW conducts certain tests.

Some of the information consists of descriptions of processes involving field data analyses of vehicle systems / components. This information would provide a competitor with valuable information pertaining to current and future performance of a vehicle component in the field. This information would allow a competitor to make informed product decisions without having to expend considerable resources to develop and implement their own product, assess field performance of that product over time, and make any necessary product change decisions.

Some of the information consists of field data, including component/system performance, such as warranty claims and/or field reports. This information is of substantial commercial value and of great interest to BMW's competitors. This information, if disclosed, would allow BMW's competitors to assess the in-use experience of BMW vehicle systems/components without having to make the otherwise necessary substantial resource investments that are required to design, develop, bring to market and, assuming significant sales/market penetration, receive similar categories of information from their own vehicles with similar systems, and then analyze this information. Some of this information can be directly related to vehicle system/component cost information, and would allow a competitor to assess BMW's cost methodology for certain vehicle systems/components without having to make their own investments. Some of this information is often unverified or unsubstantiated and, if released, could lead to the detriment of BMW in the future, such as in further legal actions or proceedings.

### **BASIS FOR REQUEST FOR CONFIDENTIAL TREATMENT**

Exemption 4 of the FOIA protects from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). The information for which BMW is requesting confidential treatment is "commercial" information that is "privileged or confidential." *See Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 28 (D.D.C.. 2000) ("In the context of Exemption 4, the terms 'commercial' and 'financial' should be given their ordinary meanings. Further, the exemption applies where the submitter has a 'commercial interest' in the information.") (citations omitted).

The information for which BMW is requesting confidential treatment are the product of BMW's long experience and substantial investments of time and money in establishing this information. The disclosure of this information would permit BMW's competitors to understand certain issues involving specific vehicle systems/components without having to incur the substantial time and expense associated with these efforts that have already been expended by BMW. BMW's competitors could use this information to analyze, further develop, and improve their products without having to expend the substantial resources that have already been incurred by BMW.

This information, therefore, would be commercially valuable to BMW's competitors, and its disclosure would cause BMW substantial competitive harm. Consequently, this information should be accorded confidential treatment under the Exemption 4 of the FOIA. *See Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 52 (D.C. Cir. 1981) (application of Exemption 4 depends on "whether release of the requested information, given its commercial value to competitors and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it"); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (information is exempted

from disclosure under FOIA Exemption 4 if its disclosure would “cause substantial harm to the competitive position of the person” submitting it); *cf. Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) (harm caused by a disclosure that would “eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with” the submitter’s product is “clearly the type of competitive harm envisioned in Exemption 4”).

The information for which we are requesting confidential treatment is maintained in strict confidence by BMW, and is only available to select suppliers pursuant to confidentiality agreements. This information is not customarily made public by BMW and contains both trade secrets and commercial information, which is privileged or confidential under 5 U.S.C. § 552(b)(4), 18 USC § 1905, 49 C.F.R 512, and 49 U.S.C. 30167(a).

BMW treats these materials as confidential proprietary information available only to authorized BMW personnel under strict confidentiality agreements, and is otherwise not available to the public. These documents are maintained under a record-keeping system which is intended to control dissemination of this material within BMW, and to assure that it is not openly available outside of BMW. Security systems are used to limit access to facilities which house this documentation, and employees are given instructions in how to further limit access to this documentation, as well as, information dissemination and disclosure procedures.

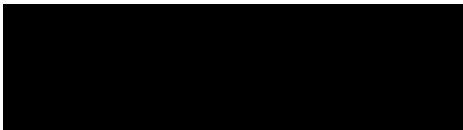
Thus, because BMW would suffer substantial harm to its competitive position if any of the information were disclosed, the information should be accorded confidential treatment.

\* \* \*

If NHTSA receives a request for disclosure of any of the information, BMW respectfully requests notification of the request and an opportunity to provide further justification for the confidential treatment of the information, if warranted.

As noted above, the certificate required by 49 CFR 512 is attached to this letter. If you need additional information, please do not hesitate to contact me at (201) 571-5360, or Martin Rapaport of my staff at (201) 571-5208.

Sincerely,



Samuel Campbell, III  
Department Head  
Safety Engineering & Intelligent Transportation Systems

Attachment:

49 CFR 512 Certificate