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330 Town Center Drive
Dearborn, MI 48126-2738

October 30, 2023

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

Re: Request for Confidential Treatment of Information Pertaining to RQ23-004

Dear Mr. Donaldson:

Today, Ford Motor Company ("Ford") is submitting its response to the Recall Query in the above-referenced investigation. Ford has determined that the response contains confidential business information that should be accorded confidential treatment under Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and NHTSA's regulations at 49 C.F.R. Part 512. Therefore, Ford is requesting confidential treatment of the designated information.

The information required by your regulations is set forth below.

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

We are supplying a copy of the entire submission, together with a "public" copy that does not include the confidential information. A PDF file containing copies of the documents are labeled "CONFIDENTIAL" and documents contained in the electronic files are marked "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION" in the top margin as appropriate. The second PDF file is labeled "PUBLIC" and contains a "public" copy of the documents. Ford notes that these PDF documents were created using Adobe Acrobat 9.0 Professional and must be printed by selecting "document and comments" or "document and markups" in order to print the appropriate bracket markings. The confidential business information in the submission consists of designs, design philosophy information, materials information; product evaluation process and capacities information; and geographic sales information.

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

This submission is subject to the substantial-competitive-harm standard (49 C.F.R. § 512.15(b)).

C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))

Ford customarily and actually treats the information for which it is requesting confidential treatment as private. *See Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019).

Part 512 and FOIA Exemption 4 protect the confidentiality of information that, if disclosed, would be likely to cause substantial competitive harm to the submitter. *See* 49 C.F.R. § 512.15(b); *see also*, *e.g.*, *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Under FOIA Exemption 4, a submitter need not establish a certainty that competitive harm will result from a disclosure. Rather, a submitter need establish only that competitive harm is a *likely* result of a disclosure. *See*, *e.g.*, *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 29 (D.D.C. 2000).

FOIA Exemption 4 was enacted to prevent disclosures 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." *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999). "Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government." *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

In addition, courts have recognized that Exemption 4 may be invoked to prevent the substantial competitive harm that can be expected from disclosures that would inform competitors about a firm's "operational strengths and weaknesses." *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976); *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, No. Civ-03 C 195-SBC, 2005 WL 1241141, at *7 (D.D.C. May 24, 2005).

The submission also includes a great deal of information about how Ford conducts internal analyses, approaches quality control issues, tracks emerging trends in product quality issues, and engages in product evaluation and remediation processes. The disclosure of such information would cause Ford substantial competitive harm. As the D.C. Circuit has noted, information that could be used by competitors "to improve their own manufacturing and quality control systems" merits protection under FOIA Exemption 4. *See United Technologies Corp. v. U.S. Dep't of Def. & Def. Contracting Mgmt. Agency*, 601 F.3d 557, 564 (D.C. Cir. 2010). Every vehicle manufacturer must perform internal analyses and address product quality issues. A disclosure revealing how Ford addresses these matters would enable competitors to develop analytic techniques and product evaluation processes at far less cost and in far less time than independent development efforts would involve. As a result, competitors could use the information to bring competitive products to market faster and at less expense, and to address product evaluation

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issues at lower cost, than they otherwise could. Like much of the other information at issue in this request, this information also would shed light on Ford's operational capabilities.

The disclosure of the designs, design process information and design change information would be likely to cause substantial harm to Ford's competitive position. Ford developed this information through investments of considerable money, time, expertise, and effort. Independent development or reproduction of the information would likewise require great expense, time, expertise, and effort. The disclosure of such information, therefore, would provide a huge windfall to Ford's competitors. Such windfalls are not an intended by-product of the FOIA, and Exemption 4 is properly invoked to prevent them. *Worthington Compressors*, 662 F.2d at 51.

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

The submission contains a number of engineering drawings and sales figures for specific models that are exempt from disclosure under the Class Determination set forth in paragraph 1 of Appendix B of Part 512.

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

Because the information for which confidential treatment is being sought is the kind of information that Ford does not anticipate ever customarily disclosing to the public, Ford requests that the information be accorded confidential treatment on a permanent or indefinite basis.

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

Please direct all written notices to me at Ford Motor Company, Suite 400, Fairlane Plaza South, 330 Town Center Drive, Dearborn, Michigan 48126. Please direct all non-written communication to Ms. Julie L. Ludington, Esq. in Ford's Office of the General Counsel who may be contacted by telephone at (313) 570-7933.

* * *

Ford has supplied one copy of the entire submission. A certificate in support of confidentiality executed on behalf of Ford is included as Attachment 1.

If you receive a request for disclosure of the information for which confidential treatment is being sought before you have completed your review of our request, Ford respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted. In the event that the agency should conclude that all or part of the submitted information is not to be given confidential treatment, Ford asks the agency to provide reasonable notice prior to any contemplated disclosure in order that Ford may pursue such legal remedies as it may choose.

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Sincerely,

DocuSigned by:
Tom Single
FD1692468D2241B...

For:
Emily Frascaroli

Enclosure