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Ford World Headquarters
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Dearborn, MI 48126

May 23, 2025

Peter Simshauser
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE, Room W41-227
Washington, DC 20590

Re: Ford Request for Confidential Treatment of Information Pertaining to RQ24014-03 Part 1

Dear Mr. Simshauser:

Today, Ford Motor Company ("Ford") is submitting its response to the Recall Query referenced above. Ford has determined that today's submission 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 Part 512 is set forth below.

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

Today, Ford is submitting information related to the above-referenced investigation. The confidential business information in the submission consists of Ford's design process information, design philosophy information, and design change information; engineering specifications and standards; failure mode analyses; test standards; test procedures, and information about the scope of Ford testing; and product evaluation process and capacities information.

We are supplying a copy of the document, together with a "public" copy that does not include the confidential information. A PDF file labeled "Conf Bus Info" is 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 document.

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

Prior to the United States Supreme Court’s decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019), the submission would have been subject to the confidentiality standard set forth in 49 C.F.R. § 512.15(b) for information that the submitter is required to submit to the agency. The standard for confidential treatment is now set forth in *Food Marketing Institute*, 139 S. Ct. at 2366.

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

FOIA Exemption 4 precludes the disclosure of “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 Ford is seeking confidential treatment is clearly “commercial” because it relates to Ford’s internal processes and procedures. Those processes are an integral part of Ford’s business operations. *See, e.g., Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 28 (D.D.C. 2000). Ford also qualifies as a “person” under the case law governing Exemption 4. *See, e.g., id.*

In *Food Marketing Institute*, the Supreme Court held that information is “confidential” within the meaning of Exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4), when it is “both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.” 139 S. Ct. at 2366.

Ford customarily and actually treats the information for which it is seeking confidential treatment as private and confidential. Ford customarily maintains the confidentiality of the information because of its commercial value and the competitive damage that would result from the disclosure of the information.

With regard to an “assurance of privacy,” the Supreme Court expressly declined to hold that an assurance is a *necessary* condition for confidentiality. *Id.* at 2363. Nor did the Court describe the nature of the “assurances” to which it referred.

In considering the question of assurances, the United States District Court for the District of Columbia has concluded in numerous cases that an assurance of confidentiality is *not* required. *See Naumes v. Dep’t of the Army*, 2022WL 594541, at *8 (D.D.C. Feb. 28, 2022) (“This Circuit does not require assurances of privacy as a separate component of confidentiality, and this Court will not ‘read the word “confidential” to impose a blanket requirement that the government provide an assurance of privacy in every case in which it asserts Exemption 4.’”) (quoting *Renewable Fuels Ass’n v. EPA*, 519 F. Supp. 3d 1, 12 (D.D.C. 2021)); *Cause of Action Inst. v. Export-Import Bank of the U.S.*, 2022 WL 252028, at *18 (D.D.C. Jan. 27, 2022) (stating that the Supreme Court did not resolve whether assurances are a mandatory element of confidentiality under Exemption 4, and “this Court has since explained that binding Circuit precedent compels an answer in the negative”); *Renewable Fuels*, 519 F. Supp. 3d at 12 (declining to require proof of an assurance of confidentiality). At most, according to the D.C. District Court, an assurance is “relevant but not strictly required.” *See Wilson v. FCC*, 2022 WL 4245485, at *7 (D.D.C. Sept. 15, 2022). Indeed, “[i]f anything, courts here have taken the position that privately held information is generally confidential absent an express statement by the agency that it would *not*

keep information private, or a clear implication to that effect (for example, a history of releasing the information at issue).” *Id.* at *10 (internal quotation marks and citation omitted).

Moreover, even if an assurance of some kind were required under *Food Marketing Institute*, such an assurance need not take the form of a promise by an agency to protect the confidentiality of confidential business information. Although a promise of confidentiality was involved in *Food Marketing Institute*, in ordinary speech, an actual promise need not be made for information to be communicated “under an assurance of privacy.”

The Department of Justice Office of Information Policy (“OIP”) has recognized that fact in guidance. Specifically, OIP instructed agencies that an *express* assurance of confidentiality is not required. *See* Exemption 4 After the Supreme Court’s Ruling in *Food Marketing Institute v. Argus Leader Media*, <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>, at 5 (second paragraph in subsection headed “Second Condition – Assurance of Confidentiality by Government”) (“[A]n assurance of confidentiality can be either explicit or implicit.”).

As the OIP guidance explains, past agency practice with regard to similar information can suffice for establishing an “implied assurance” of confidentiality. *See id.* (second paragraph under subsection headed “Implied Assurance”) (“Factors to consider include the government’s treatment of similar information For example, an agency’s long history of protecting certain commercial or financial information can serve as an implied assurance to submitters that the agency will continue treating their records in the same manner.”).

Accordingly, the information that Ford is submitting is entitled to confidential treatment under *Food Marketing Institute*. The information is both customarily and actually treated as private by Ford, and it is being provided to the government with an assurance of privacy derived from the expectation that NHTSA will continue its past practice of withholding confidential commercial information of the kind at issue here. It also is readily foreseeable that disclosure of the information would harm the interest(s) that Exemption 4 is intended to protect.

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

The information is not subject to a class determination.

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

Ford requests that this information be accorded confidential treatment indefinitely.

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

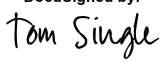
Please direct all written notices to me at Ford Motor Company, Ford World Headquarters, One American Road, Dearborn, Michigan 48126.

* * *

A certificate in support of confidentiality executed on behalf of Ford is included as an attachment.

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.

Sincerely,

DocuSigned by:

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For:
Emily Frascaroli

Enclosure