HONDA

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January 18, 2026

Office of the Chief Counsel
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Ave., SE
Washington, DC 20590

Re: Request for Confidentiality
Honda response to IR Letter for PE25017-01

Dear Chief Counsel:

American Honda Motor Co., Inc. ("Honda") is submitting information to the NHTSA Office of Defects Investigation ("ODI") in connection with the above-referenced investigation's IR letter. Enclosed for your consideration is a Request for Confidentiality for information related to the matter referenced above.

Based on a careful review of this information, Honda has determined that some of the information is confidential and should be accorded confidential treatment under this agency's regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).

The specified information may include specific VINs, certain build information by VIN, reports, claims, and legal documents containing customer PII (Personally Identifiable Information), details of internal investigations, assessments, designs, and/or intellectual property.

Prior to the Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019), this 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.

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). These requirements are met in this case. The information for which Honda is seeking confidential treatment is clearly "commercial" because it relates to the testing and specifications of products that Honda offers for sale. *See, e.g.*, *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 28 (D.D.C. 2000). Honda also is 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 FOIA Exemption 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. Honda customarily and actually treats the information for which confidential treatment is being requested as private. Honda makes this confidential information available only to employees and agents, Honda does not customarily release this confidential information to the public, nor can this information be determined by analyzing publicly available Honda products. Further,

Honda measures to protect the confidentiality of this information include physical, information systems, process, and management controls that limit access to this information to authorized personnel only. Additionally, company and departmental restrictions prevent disclosure of this information to individuals within and outside of Honda who do not have a need to know it.

With regard to assurances of privacy, the Supreme Court expressly declined to hold that an assurance is, in fact, 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 repeatedly has concluded that an assurance of confidentiality is not required under D.C. Circuit precedent. *See Naumes v. Dep't of the Army*, 2022 WL 594541, at *8 (D.D.C. Mar. 1, 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 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") recognized that fact in guidance concerning *Food Marketing Institute*. 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-aftersupreme-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.").

Similarly, in *Center for Medical Progress v. U.S. Dep't of Health & Human Servs.*, 2022 WL 4016617 (D.D.C. Sept. 3, 2022). the court found that there were "implied" assurances of confidentiality (slip op. at *11) based, first, on a government declaration stating that the putative Exemption 4 information had been "'routinely withheld at [the National Institutes of Health ("NIH")] and other agencies . . . precisely in recognition of the commercial sensitivity of the

information,'" and, second, on a submitter declaration indicating the submitter's understanding of and reliance upon NIH's standard practices (id.; quoting declaration).

The enclosed business confidential information is voluntarily being presented to NHTSA and is not being provided pursuant to regulatory requirements or any exercise of NHTSA's power to compel the production of information. Because the *Critical Mass* voluntary submission standard now governs all submissions of information in the D.C. Circuit (*see Renewable Fuels Ass'n*, 519 F. Supp. 3d at 12), NHTSA's prior practice with regard to voluntary submissions provides the relevant standard for whether NHTSA's past practice provides an assurance of privacy—if an assurance is required at all. In the context of voluntary submissions, NHTSA has consistently accorded confidential treatment to the kinds of records that are being submitted today—that is, specific vehicle build information by VIN, complaints, field reports, lawsuits, and claims that contain customer PII, warranty claims and labor operations detail, extended warranty sales detail, internal investigation details, designs, design changes, and system specific detail, and Honda's assessment of the alleged defect.

Moreover, much of the information that Honda is submitting today would have qualified for confidential treatment under the substantial-competitive-harm standard that was superseded by *Food Marketing Institute*. The enclosed documents contain proprietary, non-disclosed information pertaining to sensitive Honda analyses and issues. This type of information is not customarily released to the public and is far more detailed and specific than information that is publicly available. Public disclosure of the specified pages would cause substantial competitive harm to the position of Honda in the marketplace. This confidential information, which results from significant investments Honda has made in research, development, intellectual property, and human resources over an extensive period of time, has independent economic value and affects the financial position, business operations, and strategic plans of Honda. Release of this information would give current or future competitors the unfair advantage of free access to Honda-specific knowledge that was acquired at great expense to Honda. Public disclosure thus would unjustly enrich Honda competitors, who could quickly adopt the Honda-proven procedures and standards in lieu of investing the time and resources required to independently develop their own processes and gain unearned insight into the impact possible future regulations may have on certain Honda vehicles. All of these damaging results of a release of such information have been deemed sufficient to establish substantial competitive harm in the past, when that standard applied. Additionally, as discussed above, Honda takes numerous steps to keep the information from being known or released (even within Honda.) Hence, in addition to being entitled to confidential treatment under 49 CFR section 512.15(d), the information also is entitled to protection pursuant to sections 512.15(a) & (b).

Accordingly, the confidential treatment of the information that Honda is submitting is warranted because that information is both customarily and actually treated as private by Honda and is being provided to the government with an assurance of privacy derived from the expectation that NHTSA will continue its past practice—established both in the voluntary- and compelled-submission contexts—of not disclosing confidential commercial information of the kind at issue here.

Honda is requesting confidential treatment of this information for an indefinite period of time.

The information for which confidential treatment is sought does not fit within a class determination.

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, Honda respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Please advise me of your decision on this matter at your earliest convenience.

Respectfully,

AMERICAN HONDA MOTOR CO., INC.

[redacted]

Andrea Martin
Senior Director
Product Regulatory Office

ASM:sb

Enclosure

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, Andrea Martin, pursuant to the provisions of 49 CFR Part 512, state as follows:

1) That I am Senior Director of the Product Regulatory Office of the American Honda Motor Co., Inc., and that I am authorized by American Honda Motor Co., Inc., and Honda Motor Co., Ltd. (Honda), to make the following representations to the National Highway Traffic Safety Administration (NHTSA) on behalf of Honda;

2) I certify that information in the attached documents are confidential and proprietary and is being voluntarily submitted in response to NHTSA's request, which was not made pursuant to NHTSA's power to compel the production of information, with the claim that this information is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by statute under which the information is being submitted), 49 CFR section 512.15(d), and 49 CFR sections 512.15(a) & (b);

3) I hereby request that the information contained in the submitted documents be protected for an indefinite period of time;

4) That the responsible Honda employees, who have authority in the normal course of business to release the information for which a claim of confidentiality has been made, have been queried to ascertain whether such information has ever been released outside of Honda and its subsidiaries, and that Honda makes the following efforts to keep this information from being disclosed: physical, information systems, process and management controls that limit access to authorized personnel only, and company and departmental restrictions that prevent disclosure to individuals who do not have a need to know;

5) That based upon the responses to such inquiries, to the best of my knowledge, information, and belief, the information for which Honda has claimed confidential treatment has never been released or become available outside of Honda and its subsidiaries;

6) Based on information and belief, none of the information in the attached materials has been released outside of the governmental entity to which it is now being supplied;

7) That I make no representations beyond those contained in this certificate, and in particular I make no representations as to whether this information may have become available outside of Honda and its subsidiaries because of unauthorized or inadvertent disclosure, except as stated in Paragraph 5; and

8) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this the 15th day of January 2026.

Andrea Martin