

# TOYOTA

## TOYOTA MOTOR NORTH AMERICA, INC.

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April 26, 2010

Ms. Kathleen C. DeMeter  
Director, Office of Defects Investigation Enforcement  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

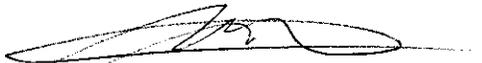
Re: Unintended Acceleration in Toyota Vehicles/RQ10-003

Dear Ms. DeMeter:

On behalf of Toyota Motor Corporation (TMC) and its subsidiaries and affiliates (collectively referred to as Toyota), Toyota Motor North America, Inc. (TMA), is transmitting information in response to the Information Request (IR) issued by the Office of Defects Investigation (ODI) on February 16, 2010 in recall query RQ10-003 to the Office of Chief Counsel with a request for confidential treatment. This information is responsive to Request 39(a)(ix) of the IR. Toyota will be providing additional supplements to this IR request as translations of the information are completed.

If you have any questions with respect to any portion of this response, please do not hesitate to contact me, and I will direct your inquiry to the appropriate Toyota entity.

Sincerely,



Christopher Tinto  
Group Vice President  
Technical and Regulatory Affairs

cc: O. Kevin Vincent, Esq., Chief Counsel

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April 26, 2010

**BY HAND DELIVERY**

Mr. O. Kevin Vincent  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE  
Room W41-227  
Washington, DC 20590

Re: RQ10-003: Request for Confidential Treatment

Dear Mr. Vincent:

Today, on behalf of Toyota Motor Corporation and its subsidiaries and affiliates (collectively, "Toyota"), Toyota Motor North America is submitting additional information in response to the Information Request in the above-referenced matter. Because the information in today's submission is comprised of extremely valuable proprietary test information that, if disclosed, would cause Toyota to suffer substantial competitive harm, Toyota is submitting this information though your office with this request for confidential treatment, pursuant to Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and Part 512 of this agency's regulations.

The supporting information required by 49 C.F.R. Part 512 is set forth below.

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

The submission is comprised of confidential business information consisting of a comprehensive index describing Toyota's proprietary testing, as well as test reports detailing test procedures, standards, and results.

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

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

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

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

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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 testing information set forth in the attached index and test reports is entitled to confidential treatment under these standards. The submission sets forth highly confidential, valuable information about the scope and nature of Toyota testing, as well as proprietary and unique test procedures, protocols, and standards used by Toyota in advanced electronics design and testing. The disclosure of such information would be extremely harmful to Toyota’s competitive position. Competitors could use the information to discern the scope of testing undertaken by Toyota in connection with product development, validation, and evaluation. In addition, the information reveals specific proprietary test procedures and methods used by Toyota. Because testing is essential to motor vehicle manufacturing, and because the development of testing expertise requires significant time and money, the disclosure of this information would provide a windfall to Toyota’s competitors at Toyota’s expense. The disclosure of the information also would provide a window into Toyota’s testing philosophy and capabilities, providing competitors insights into Toyota’s operational capabilities and design processes—information that, in turn, could be used in refining and developing their own testing and design capacities and enhancing their ability to compete against Toyota.

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

The submission is not subject to a class determination.

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

Because the information will retain its competitive value indefinitely, Toyota requests that the information be accorded confidential treatment permanently.

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

Please direct all inquiries to the undersigned at the address and telephone number on the letterhead.

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Toyota is submitting two "confidential" copies of the information. Because Toyota is seeking confidential treatment for the submission in its entirety, Toyota is not attaching a "public" redacted copy of the information. Because all of the files on the attached disks are confidential, Toyota has not renamed them to include a notice in the file name that the material is confidential.

A certificate in support of confidentiality executed on behalf of Toyota is attached.

The documents have a confidential business information legend on the *bottom* of the pages of the submission, rather than at the top. These documents were produced electronically out of Ringtail® Legal™ software, and the production printer within that software facilitates the insertion of footers, but not headers.

If you receive a request for disclosure of the information for which confidential treatment is sought before you have completed your review of this request, Toyota respectfully requests notification of the request and an opportunity to provide further justification for confidential treatment, if warranted.

Sincerely,



Adam C. Sloane

Enclosures  
cc: Kathleen C. DeMeter

**Certificate in Support of Request for Confidentiality**

I, Kevin S. Ro, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am National Manager and I am authorized by Toyota Motor North America, Inc. ("Toyota") to execute documents on its behalf;
- (2) I certify that the information described in the attached document is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4);
- (3) I hereby request that the information contained in the pertinent documents be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible Toyota personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside Toyota;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Toyota has claimed confidential treatment has never been released or become available outside Toyota, except for disclosures to suppliers and contractors who were provided the information with the understanding that such information must be maintained in strict confidence, and except for required disclosures that may have been made in connection with Congressional investigations, which were accompanied by requests for confidential treatment;
- (6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside Toyota because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 26th day of April, 2010



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Kevin S. Ro  
National Manager  
Toyota Motor North America, Inc.