

MAR -2 2004

John Maddox
Product Compliance Officer
Volkswagen of America, Inc.
3800 Hamlin Rd.
Auburn Hills, MI 48326

Re: Confidentiality Determination /EA03-013

Dear Mr. Maddox:

This is in response to your letter dated October 15, 2003, in which you request confidential treatment for the materials submitted by Volkswagen of America Inc. (VW) and enclosed with your letter. The materials contain responses to a NHTSA Information Request pertaining to the above-captioned matter. You request that the materials be granted confidential treatment for ten years.

The materials for which you request confidential treatment are consist of test reports relating to examination of electric cooling fan components that are the subject of the above-captioned investigation. Your letter indicates that the information consists of trade secrets that detail material specifications and performance criteria used by VW to evaluate its products. You further contend that this information that, if disclosed, would cause VW to suffer substantial competitive harm.

I have decided to grant VW confidential treatment for these materials. However, I note that VW's request barely meets the minimum requirements of 49 CFR Part 512. Your request does not, other than to provide a conclusory allegation that disclosure of the material involved would cause substantial competitive harm, explain with any degree of specificity why the material involved should be granted confidential treatment.

The Freedom of Information Act (FOIA) provides that Federal agencies may not withhold information under their control unless that information is exempted from disclosure by a specific FOIA exemption or another Federal statute barring disclosure.

Any submitter requesting confidential treatment for whatever it submits bears the burden of demonstrating with sufficient particularity why the materials for which confidential treatment is requested are exempted from disclosure.

NHTSA's regulations implementing its FOIA responsibilities are set forth in 49 CFR Part 512, and were clarified recently. See 68 Fed. Reg. 44230 (July 28, 2003). In general, to satisfy FOIA requirements for confidentiality, manufacturers must demonstrate that the disclosure of their responses to Office of Defects Investigation information requests would be likely to result in substantial competitive harm. Manufacturers are required to justify their claims for confidentiality. They must state what the harmful effects of disclosure would be and why the effects should be viewed as substantial. See 49 CFR § 512.8 (2003); 49 CFR § 512.4(b)(3), (d) (2002). I note that the requirement of specificity and complete justification has been a major component of the Part 512 regulation since its inception in 1981. See 46 Fed. Reg. 2049, 2060 (January 8, 1981) and 49 CFR 512.4(b)(6) (1981). Among other things, it is based on a desire to reduce and discourage specious claims for confidential treatment, and to provide the agency the ability to make prompt determinations. See 43 Fed. Reg. 22412, 22413 (May 25, 1978).

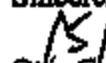
The information submitted was requested pursuant to 49 USC § 30166, which authorizes the agency to conduct investigations and require manufacturers to submit reports. Therefore, because the information was not submitted voluntarily, I have reviewed your submission under the competitive harm standard set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

After reviewing your submission, I have determined that the information that you seek to be given confidential treatment consists of VW's own investigation and testing procedures. If this information were made public, competitors of VW would have access to VW's internal procedures for investigation and testing. Revealing this data might also discourage VW from conducting similar investigations and testing in the future. Release of this data could also cause VW to suffer competitive harm. I have therefore determined that the information in your submission is entitled to confidential treatment.

As you requested, this grant of confidential treatment will remain in effect for ten years. However, it is also subject to the various provisions of Part 512 that specify the circumstances under which otherwise confidential information can be disclosed.

This grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR § 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information (49 CFR § 512.10)). If necessary, you will be notified prior to the release of any information under the procedures established by our regulations (49 CFR § 512.22(b)).

Sincerely,


Otto G. Matheke, III
Staff Attorney

