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Product Investigations & Campaigns  
OFFICE OF CHIEF  
COUNSEL

August 2, 2012

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

Re: Request for Confidential Treatment of Business Information Submitted in Relation to PE10-031/EA12-005

Dear Mr. Vincent:

Chrysler Group LLC ("Chrysler") is voluntarily submitting two engineering drawing documents in connection with the ongoing PE10-031 investigation. Based on a careful review of the submission, Chrysler has determined that some of the information in the submission 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).<sup>1</sup> Therefore, Chrysler is submitting the enclosed CDs together with this request for confidential treatment to the Office of Chief Counsel.

The information required by Part 512 is set forth below.

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

The business information for which confidential treatment is being sought is contained in two pdf documents. The documents provided in Enclosure 4- August, 2012 Supplemental Submission of Enclosure 4 CONF BUS INFO are engineering drawings of the skid plate from the subject vehicle population (Bates page # Related to PE10-031 – Chrysler – 01-07).

In addition, Chrysler Group is also resubmitting the Enclosure 6A and 6B folders in their entirety to correct the placement of vehicle crash tests in the proper Compliance and

<sup>1</sup> Chrysler has taken steps to assure that the CDs are free of any errors or defects that would prevent NHTSA from opening the files on the discs. If, however, the agency is unable to open the files, Chrysler respectfully requests that the agency inform Chrysler of the issue, so that Chrysler may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional.

Developmental Crash Test folders. Enclosure 6A – August, 2012 Supplemental Submission of 301 Compliance Crash Tests and Enclosure 6B – August, 2012 Supplemental Submission of 301 Developmental Crash Tests Conf Bus Info contain the same crash tests, but one test (VC10102) is now placed in the proper folder (WJ Developmental VC TESTS). These materials were originally submitted on November 12, 2010 and, by letter dated March 24, 2011, NHTSA’s Chief Counsel has already granted a request for confidentiality over certain materials contained in the original Enclosure 6B –301 Developmental Crash Tests Conf Bus Info (Bates page # PE10-031 – Chrysler - 002201- 002536, 002546- 002688, 004235- 004518, and 004592-004762). Chrysler Group assumes the original grant of confidentiality still applies to the re-submission of these same materials. If a new request for confidentiality is required, Chrysler Group would like the opportunity to make such a request.

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

This submission is subject to the voluntary submission standard set forth in 49 C.F.R. § 512.15(d).

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

Information is voluntarily submitted if the agency did not invoke its authority to compel the submission of the information, even if the agency had such authority. *See Parker v. Bureau of Land Management*, 141 F. Supp. 2d 71, 78 n.6 (D.D.C 2001) (“In addition to possessing the authority to compel submission, the agency must also exercise that authority in order for a submission to be deemed mandatory.”); U.S. Dept. of Justice, Guide to the Freedom of Information Act at 279 (2009) ([http://www.justice.gov/oip/foia\\_guide09/exemption4.pdf](http://www.justice.gov/oip/foia_guide09/exemption4.pdf)) (“Furthermore, the existence of agency authority to require submission of information does not automatically mean such a submission is ‘required’; the agency authority must actually be exercised in order for a particular submission to be deemed ‘required.’”). At no time did Scott Yon purport to invoke NHTSA’s authority to compel the submission of the information for which Chrysler is seeking confidential treatment.

Information submitted voluntarily should be accorded confidential treatment if it is the type of information that is not customarily disclosed by the submitter to the public. Chrysler does not ever, much less customarily, disclose to the public, the problem solving assessments and analysis, internal processes, and/or engineering drawings included in this submission.

Even if this information were submitted under compulsion, it properly would be withheld under 49 C.F.R. § 512.15(b), because its disclosure would cause substantial harm to Chrysler’s competitive position. The disclosure of this information would provide competitors with this valuable information at no cost, thereby enabling them to bring competitive products to market faster and far less expensively than would otherwise be required. *See, e.g., Public Citizen Health Research Grp. V. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) (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"); *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) ("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 principle aim of promoting openness in government.").

If this information is disclosed, competitors would have access to the engineering drawings which contain detailed design specifics for various components of two vehicles. Competitors could use this design information to improve their own designs without incurring the time and expense associated with independent design efforts. As a result, Chrysler's competitors could bring their products much quicker and at less cost.

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

The engineering drawings fall within the class determination for "blueprints and engineering drawings." 49 C.F.R. Part 512, App B (1).

**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 Chrysler does not anticipate ever customarily disclosing to the public, Chrysler requests that the information be accorded confidential treatment permanently.

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

Please direct all inquiries and responses to the undersigned at:  
800 Chrysler Drive, CIMS 482-00-91  
Auburn Hills, MI 48326  
248-512-0087  
dd28@chrysler.com

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

Sincerely,



David D. Dillon

cc: Scott Yon

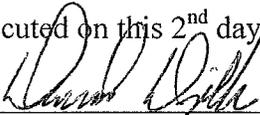
Attachment and Enclosures

### Certificate in Support of Request for Confidentiality

I, David D. Dillon, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am Chrysler Group LLC's Senior Manager, Product Investigations & Campaigns and I am authorized by Chrysler Group LLC to execute documents on its behalf;
- (2) I certify that the information contained in the attached documents 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 indicated documents be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible Chrysler Group LLC 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 Chrysler Group LLC;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Chrysler Group LLC has claimed confidential treatment has never been released or become available outside Chrysler Group LLC, except to certain contractors of Chrysler Group LLC with the understanding that such information must be maintained in strict confidence;
- (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 Chrysler Group LLC because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 2<sup>nd</sup> day of August, 2012

  
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David D. Dillon