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Description of document: Ten oldest pending National Highway Transportation Safety Administration's (NHTSA) Freedom of Information Act (FOIA) requests and letter of appeal for each of the NHTSA's five oldest pending FOIA appeals, 2017

Requested date: 04-April-2017

Released date: 11-May-2017

Posted date: 05-June-2017

Source of document: FOIA request
NHTSA
Executive Secretariat
1200 New Jersey Avenue, SE
West Building, 41-304
Washington, D.C. 20590
Fax: (202) 493-2929
[Online FOIA Request Email submission form](#)

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U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA ELECTRONIC MAIL

May 11, 2017

RE: Freedom of Information Act (FOIA) Request ES17-000983

This responds to your April 4, 2017 FOIA request seeking a copy of the request letter and interim correspondence for each of the National Highway Transportation Safety Administration's (NHTSA) ten oldest pending FOIA requests. You also requested a copy of the letter of appeal for each of the NHTSA's five oldest pending FOIA appeals.

Enclosed are records responsive to your request.

I have redacted portions of records containing information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to FOIA Exemption 6. 49 U.S.C. § 552(b)(6).

Pursuant to 49 C.F.R. Part 7, there is no charge for this response.

I am the person responsible for this determination. If you wish to appeal this decision, you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., West Building, W41-227, Washington, DC 20590, pursuant to 49 C.F.R. § 7.32(d). Alternatively, you may submit your appeal via electronic mail to nhtsa.foia.appeal@dot.gov. An appeal must be submitted within 90 days from the date of this determination. It should contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

You also have the right to seek dispute resolution services from NHTSA's FOIA Public Liaison, Mary Sprague, who may be contacted on (202) 366-3564 or by electronic mail at Mary.Sprague@dot.gov.

Further dispute resolution is available through the Office of Government Information Services (OGIS). You may contact OGIS on (202) 741-5770 or by electronic mail at ogis@nara.gov.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", with a long horizontal flourish extending to the right.

Andrew J. DiMarsico
Senior Attorney

February 10, 2017

National Highway Traffic Safety Administration
Steven Wood
Office of Chief Counsel
1200 New Jersey Avenue, SE
West Building, W41-227
Washington, D.C. 20590

OFFICE OF CHIEF COUNSEL
RECEIVED

2017 MAR -9 A 11: 26

EXECUTIVE SECRETARIAT

2017 MAR -9 P 2: 08

RE: Freedom of Information Act (FOIA) Request #ES16-003839

Dear Mr. Wood,

This is an appeal, as per your office's December 15th letter, of the redactions and withholding of the draft versions of the Crash Avoidance Metrics Partnership Automated Research Consortium (CAMP-AVR) report which your office determined to relate to pre-decisional agency deliberations, opinions, or recommendations pursuant to 5 U.S.C. § 552 (b)(5).

As stated in your office's response, the b(5) exemption contained in 5 U.S.C. § 552 allows for an exemption to disclosure for portions of records and documents relating to "pre-decisional agency deliberations, opinions, or recommendations." However, as per § 552 (b)(5), the exemption only applies to material that may be classified as "inter-agency or intra-agency memorandums or letters". Although courts have been willing to extend the meaning of intra-agency communication to include materials prepared by consultant corollaries¹, the Supreme Court has held that the (b)(5) exemption does not extend to communications between an outside party communicating with the Government in their own interest, adverse to the interest of others, even if those documents do not take an argumentative form.²

In the present situation, your office has claimed the (b)(5) exemption covers a report created by CAMP-AVR. CAMP-AVR is an organization made up of a number of automobile manufacturers with several stated objectives including developing a common set of functional descriptions, feature lists, and safety principles which will serve as, or likely influence, the foundation for a common regulatory framework by which rules and standards for automated driving systems will be further developed.³ Such rules and

¹ See Department of Justice Guide to the Freedom of Information Act Exemption 5, at 359 (July 23, 2014) available at https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption5_1.pdf (citing Hoover v. Department of the Interior, 611 F.2d 1132, 1141 (5th Cir. 1980); Ryan v. DoJ, 617 F.2d 781, 790 (D.C. Cir. 1980)).

² *Id.* at 361-362 (citing Department of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1 (2001); Lardner v. DOJ, No. 03-0180, 2005 WL 758267 (D.D.C. Mar. 31, 2005)).

³ Frank Barickman, Development of Objective Tests for Automated Vehicles, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0ahUKEwiH-dOJ693RAhXp1IMKH5y6ApEQFgghMAE&url=https%3A%2F%2Fwww.nhtsa.gov%2FDOF%2FNHTSA%2FNVS%2FPubli%2F2520Meetings%2FSAE%2F2016%2FSAE-Barickman_2016.pdf&usq=AFQjCNEixxiQoo0-zQloWCJIFc-Aot13g&sig2=8SqGXzKRc3jIWowKkPjh7Q; see also Key Considerations in the Development of Driving Automation Systems, available at <https://www-esv.nhtsa.dot.gov/proceedings/24/files/24ESV-000451.PDF>.

ES17-000714

standards will undoubtedly have an impact on the degree of safety required to be designed into automated driving systems, the costs associated with bringing systems to market, and on how judges and juries will perceive designs when determining defect.

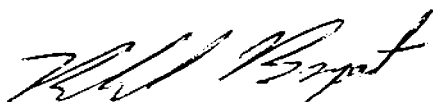
While the CAMP-AVR report may or may not have a significant impact on the actual rules and standards that may eventually be adopted, there are interests of the public (safety), of non-participant manufacturers (competition) and of not-yet-harmed victims (plaintiffs) that could be perceived as having been adversely affected by the recommendations of CAMP-AVR (and its constituent members) contained in this report.

Furthermore, CAMP should not be viewed as a consultant corollary as the CAMP project is funded with federal funding covering only 65% of costs and project participants covering the remaining 35%.⁴ The fact that manufacturers are not making money in this project, but actually paying to participate in the consortium further illustrates the degree of vested interest participant manufacturers have in influencing future regulation.

Finally, it appears from the dialogue contained in the emails which were sent in response to this FOIA that NHTSA is concerned, perhaps with good reason, that the views and conclusions from the CAMP-AVR report will be seen as reflecting NHTSA's own views or policy. While such concerns would be quite understandable for any agency contemplating releasing a report prepared by a collaborative group, the release of such content through the FOIA process is particularly well suited to absolve the agency from the perception that the report represents agency's views and instead represents only a single viewpoint which NHTSA has considered in performing its due diligence.

Given these facts, I kindly request your office reconsider the withholding of the CAMP-AVR report, and other redactions covered under the b(5) exemption as applied to materials coming from CAMP. Please find the record of our prior correspondence enclosed.

Sincerely,



Richard Bryant

(b)(6)

Columbia, SC (b)(6)

(b)(6)

⁴ CAMP Annual Report, March 2002 – April 2002, available at

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0ahUKEwjDw5-X9d3RAhXC4IMKHwJvC0wQFggfMAE&url=https%3A%2F%2Fwww.nhtsa.gov%2FDOT%2FNHTSA%2FNRD%2FMultiMedia%2FPDFs%2FCrash%2520Avoidance%2F2002%2FCAMPS.pdf&usq=AfQjCNG6qSSypSMz76gaYkcWiToChfGHnw&sig2=_0lh0l6Olarfhm9hv6CHMA&bvm=bv.145063293,d.cwE.



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

U.S. Department of Transportation
Washington, D.C. 20590

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 15, 2016

Mr. Richard Bryant

(b)(6)

Columbia, SC (b)(6)

RE: Freedom of Information Act (FOIA) Request #ES16-003839

Dear Mr. Bryant:

This responds to the Agency's December 6, 2016 decision to remand your October 13, 2016 Appeal for further processing of your FOIA request. Your August 3, 2016 FOIA request sought records submitted to the Crash Avoidance Metrics Partnership Automated Vehicle Research Consortium (CAMP-AVR) report.

We have located records in response to your request.

I have redacted portions of records and, as the report is not yet final, I am withholding draft versions of the report because they relate to pre-decisional agency deliberations, opinions, or recommendations pursuant to exemption (b)(5). 5 U.S.C. § 552 (b)(5). Additionally, I have redacted a portion of a record containing information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to FOIA Exemption 6. 5 U.S.C. § 552(b)(6).

Pursuant to 49 CFR Part 7, there is no charge for this response.

I am the person responsible for this determination. If you wish to appeal this decision, you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., West Building, W41-227, Washington, DC 20590, pursuant to 49 CFR § 7.32(d). Alternatively, you may submit your appeal via electronic mail to nhtsa.foia.appeal@dot.gov. An appeal must be submitted within 90 days from the date of this determination. It should contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

You also have the right to seek dispute resolution services from NHTSA's FOIA Public Liaison, Mary Sprague, who may be contacted on (202) 366-3564 or by electronic mail at

Mary.Sprague@dot.gov. Further dispute resolution is available through the Office of Government Information Services (OGIS). You may contact OGIS on (202) 741-5770 or by electronic mail at ogis@nara.gov.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

Enclosure: 163 pages.



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

DEC 06 2016

1200 New Jersey Avenue, SE
Washington, DC 20590

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Richard Bryant

(b)(6)

Columbia, SC (b)(6)

RE: Freedom of Information Act ("FOIA") Appeal, #ES16-005104

Dear Mr. Bryant:

This responds to your letter dated October 13, 2016 (received by the National Highway Traffic Safety Administration (NHTSA) for action on October 26, 2016), in which you appeal the Agency's non-response to your August 3, 2016 Freedom of Information Act (FOIA) request.

Your August 3, 2016 FOIA Request

In your August 3, 2016 FOIA request, you requested records "relating in any way to the most recent annual report submitted to NHTSA by the Crash Avoidance Metrics Partnership Automated Vehicle Research Consortium (CAMP-AVR)".

Agency's September 1, 2016 Extension Letter

By letter dated September 1, 2016, Senior FOIA Information Specialist Monica Skinner provided an interim response to your FOIA request, stating that the Agency would extend the response time period by ten working days to allow the Agency "to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request".

Your September 26, 2016 E-mail

On September 26, 2016, you sent an email to the Agency requesting a status update on your August 3 FOIA request.

Your October 13, 2016 Appeal

By letter dated October 13, 2016, you appeal the Agency's "apparent denial of [your] request". You note that you have not received a response to either your August 3 FOIA request or your September 26 request for status update.

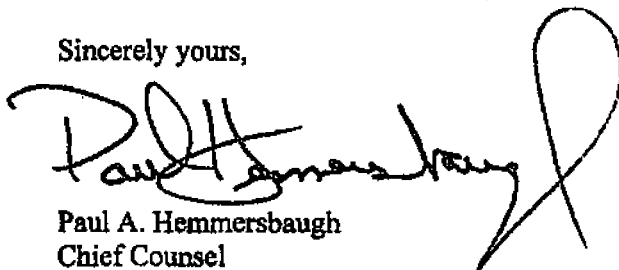
Agency Response

I have reviewed the agency's initial response to your FOIA request in light of the information you submitted. Because the Agency did not provide you a response within the statutory timeframe, I find that the Agency did not satisfy its responsibilities under the FOIA.

I therefore grant your appeal and remand your initial FOIA request for processing. The agency will treat your appeal as an initial request and will process it in accordance with applicable time lines as if it had been received by the agency today. You retain appeal rights, consistent with those generally afforded to initial FOIA requesters, with respect to the agency's response to your request.

I am the person responsible for this decision. It is administratively final. If you wish to seek review of my decision, you may do so in the U.S. District Court for the District of Columbia or in the district where you reside, have your principal place of business, or where the records are located. 5 U.S.C. § 552(a)(4)(B).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul A. Hemmersbaugh", with a large, stylized loop at the end of the signature.

Paul A. Hemmersbaugh
Chief Counsel

From: Sade, Dana (NHTSA)
To: Skinner-Goodman, Monica; Monroe, Patricia A (NHTSA)
Cc: Donaldson, John (NHTSA); DiMarsico, Andrew (NHTSA); Brown, Megan (NHTSA)
Subject: FW: Freedom of Information Act ("FOIA") Appeal, #ES17-000714
Date: Wednesday, April 19, 2017 12:22:40 PM
Attachments: Automated Vehicle Research for Enhanced Safety - Final Report.pdf

Monica: Please archive this email in FOIA Express and close this appeal.

Pat: Please use this email to close this appeal in CCM.

Thank you, ladies.

Dana

From: Sade, Dana (NHTSA)
Sent: Wednesday, April 19, 2017 12:19 PM
To: 'rlbryant@email.sc.edu' <rlbryant@email.sc.edu>
Subject: Freedom of Information Act ("FOIA") Appeal, #ES17-000714

Richard-

Attached is the final report we discussed during this morning's phone call.

This email also will confirm that this matter is now resolved and, for this reason, I am closing your appeal.

Best,

Dana Sade
Senior Counsel
NHTSA Office of the Chief Counsel

Davis, Cynthia L (NHTSA)

From: Korkor, Julie (NHTSA)
Sent: Tuesday, April 04, 2017 11:45 AM
To: Davis, Cynthia L (NHTSA)
Subject: FW: Freedom of Information Act Request #ES16-004898

From: DiMarsico, Andrew (NHTSA) **On Behalf Of** NHTSA FOIA Appeal
Sent: Tuesday, April 04, 2017 11:13 AM
To: Korkor, Julie (NHTSA) <julie.korkor@dot.gov>
Subject: FW: Freedom of Information Act Request #ES16-004898

Please process this as a FOIA appeal. Thank you.

From: wayne d [mailto:(b)(6)]
Sent: Friday, March 24, 2017 3:47 AM
To: NHTSA FOIA Appeal <nhtsa.foia.appeal@dot.gov>
Subject: RE: Freedom of Information Act Request #ES16-004898

Dear Chief Counsel; NHTSA:

I am writing to appeal the determination by Monica J. Skinner of the NHTSA (dated Dec. 29, 2016), to maintain the complete Confidential Treatment granted to the former Chrysler Group LLC regarding information submitted to NHTSA/ODI in Jan/2010.

My FOIA request is in regards to the obviously premature vehicle equipment failure/ nationally widespread product defect of the 2005 Chrysler Crossfire Roadster (Roadster denotes convertible) wherein the electrically heated safety glass rear window detaches from the heavy duty fabric roof top (failure of the manufacturing process), well documented by complaints to NHTSA.

I previously submitted DP15-003 pertaining to this defect. The result was ODI's agreement with "Chrysler Group LLC" in that no safety related defect was apparent at that time, (in the absence of any future development perhaps involving injury, death or accident circumstances). Case closed.

It must be noted that in Sept/2011, Chrysler Group issued a Service Bulletin proactively offering a 10 year/100,000 mile roof replacement remedy covering a specific group of VIN numbers of the 2005 model year, based solely upon the location of original sale (regardless of current or future location of the vehicles). In effect, "Chrysler" was stating that ONLY THAT group of cars were potentially defective, despite the fact that ALL were manufactured and imported from Germany, years prior. Any such assertion is now known to be completely false due to the many failures outside of that specific group.

Chrysler Group's subsequent acknowledgement of the defect constitutes "newly changed facts/circumstances" and "certain conditions" of which Otto G. Matheke (NHTSA) referred to as details that "may affect the protection of the information", in his response to the Chrysler Group LLC granting confidential treatment, (April/2010).

Also, please consider the following facts:

a. The former Daimler-Chrysler partnership which manufactured and imported the subject vehicles, has long since been absolved, and:

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- b. The former "Chrysler Group LLC" has long since ceased to be an active business entity, and:
- c. The 10 year time limit of the Chrysler Group LLC's limited roof top warranty remedy for the 2005 model year "Roadster" has expired, and there is no reasonably foreseeable harm that could come from disclosure.

Therefore, I respectfully submit to you that under the FOIA and it's revisions and Federal Law; Chrysler Group LLC's field reports/narratives and analysis information of that defect and time period should no longer be held confidential.

Vehicle owners like myself should be allowed to know any relevant information in order to prevent future occurrence of our windows falling out/"detaching".

Thank you for your careful consideration.

Sincerely,
Wayne DeVries

Davis, Cynthia L (NHTSA)

From: Korkor, Julie (NHTSA)
Sent: Tuesday, April 04, 2017 11:44 AM
To: Davis, Cynthia L (NHTSA)
Subject: FW: FOIA APPEAL #ES17-000523

From: DiMarsico, Andrew (NHTSA) **On Behalf Of** NHTSA FOIA Appeal
Sent: Tuesday, April 04, 2017 11:13 AM
To: Korkor, Julie (NHTSA) <julie.korkor@dot.gov>
Subject: FW: FOIA APPEAL #ES17-000523

Please process this as a FOIA Appel. Thank you.

From: Ryan Felton [<mailto:ryan.felton@jalopnik.com>]
Sent: Thursday, March 23, 2017 4:53 PM
To: NHTSA FOIA Appeal <nhtsa.foia.appeal@dot.gov>
Subject: FOIA APPEAL #ES17-000523

Hi all,

Please consider this an appeal under the Freedom of Information Act. I'm appealing on the integrity of the search, as the 2016 crash involving Tesla and Autopilot in Beijing came to light as NHTSA was investigating the Autopilot function. Please search for any and all communications that could pertain to Tesla, Beijing, Autopilot, and the individual believed to be killed in the crash, "Gao Jubin."

I'm happy to answer any questions. Please confirm recipient of this message.

Best,

Ryan Felton
Transportation & Technology Reporter, Jalopnik
734-353-2221
@ryanfelton13

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EXECUTIVE SECRETARIAT
2017 APR - 4 P 12: 52



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

APR 20 2017

ELECTRONIC MAIL

Mr. Ryan Felton
Transportation & Technology Reporter, Jalopnik
ryan.felton@jalopnik.com

RE: Freedom of Information Act ("FOIA") Appeal #ES17-000993

Dear Mr. Felton:

This responds to your e-mail dated March 23, 2017, in which you appeal the National Highway Traffic Safety Administration's (NHTSA) March 23, 2017 response to your February 23, 2017 FOIA request (#ES17-000523).

Original FOIA Request

In your FOIA request, dated February 23, 2017, you requested "access to and copies of all video footage that was obtained by NHTSA during its investigation of the Tesla Autopilot system of the fatal crash that sparked the probe." In addition, you also requested access to "any and all communications with Tesla that mention 'Gao Jubin' or anything related to a 2016 fatal crash in China that related to Autopilot."

FOIA Response

By letter dated March 23, 2017, Senior FOIA Information Specialist Monica J. Skinner-Goodman responded to your FOIA request. In that letter, NHTSA informed you that it had conducted a search based on the information you provided and located no responsive records.

FOIA Appeal

By e-mail dated March 23, 2017, you appealed NHTSA's FOIA response with regard to the 2016 crash in China. In your appeal, you challenge the "integrity of the search" on the grounds that you claim "the 2016 crash involving Tesla and Autopilot in Beijing came to light as NHTSA was investigating the Autopilot function."

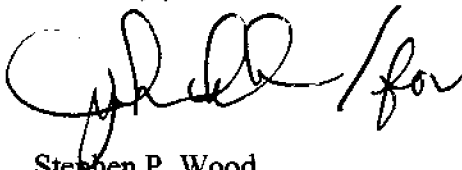
Decision on Appeal

I have reviewed NHTSA's search and initial response to your FOIA request in light of the requirements of the FOIA and relevant case law. NHTSA's responsibility under the FOIA is to conduct a search reasonably calculated to uncover all relevant documents. *Weisberg v. U.S. Dep't. of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). "The issue is not whether any further documents might conceivably exist but rather whether the government's search for responsive documents was adequate." *Id.* at 1351, quoting *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982) (per curiam); see also *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) ("[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search. After all, particular documents may have been accidentally lost or destroyed, or a reasonable and thorough search may have missed them." (citations omitted)).

Based on the foregoing, I must deny your appeal. Applying the requirements of the FOIA and relevant case law, my staff has reviewed the search process undertaken by NHTSA in response to your FOIA request. To conduct its search, NHTSA consulted the appropriate custodian of records, and he determined that no responsive records were likely to exist. Still, the employee conducted a search for communications with Tesla referencing the crash in China, and his search produced no records responsive to your request. On the basis of my office's review of the initial search, I have determined that the initial search was adequate as it was reasonably calculated to uncover all relevant documents.

I am the person responsible for this decision, and it is administratively final. If you wish to seek review of my decision, you may do so in the U.S. District Court for the District of Columbia or in the district where you reside, have your principal place of business, or where the records are located. 5 U.S.C. § 552(a)(4)(B).

Sincerely yours,

A handwritten signature in black ink, appearing to read "S. Wood" followed by a stylized flourish and the word "for".

Stephen P. Wood
Acting Chief Counsel

Davis, Cynthia L (NHTSA)

From: Korkor, Julie (NHTSA)
Sent: Tuesday, April 04, 2017 11:44 AM
To: Davis, Cynthia L (NHTSA)
Subject: FW: Appeal for FOIA request ES17-000631

From: DiMarsico, Andrew (NHTSA) **On Behalf Of** NHTSA FOIA Appeal
Sent: Tuesday, April 04, 2017 11:12 AM
To: Korkor, Julie (NHTSA) <julie.korkor@dot.gov>
Subject: FW: Appeal for FOIA request ES17-000631

Please process this as a FOIA appeal. Thank you.

From: ashwin b [<mailto:ashwin@pwr-source.com>]
Sent: Tuesday, March 21, 2017 1:50 PM
To: NHTSA FOIA Appeal <nhtsa.foia.appeal@dot.gov>
Subject: Appeal for FOIA request ES17-000631

Hello,

We are appealing the fee categorization as listed in a letter penned by Andrew DiMarisco.

We intend on using this information to determine who submitted a claim against our company, as we are unaware of any such complaints. In order to comply with the Special Order. We do not intend on using this information for commercial purposes, merely in the interest of public safety to determine if one of our customers submitted this claim or if it came from a fraudulent source.

Thank You

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2017 APR -4 P 1:00
 EXECUTIVE SECRETARIAT

ES17-000994



SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

Nathan Atkinson, Esq.
Direct Dial: (336) 725-4496
natkinson@spilmanlaw.com

December 6, 2013

Via U.S.P.S. Certified Mail,
Return Receipt Requested

NHTSA
Executive Secretariat
1200 New Jersey Avenue, SE
West Building, 41-304
Washington, D.C. 20590

RECEIVED
2013 DEC 12 A 9:33

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, please provide copies of all records (specifically described below) which were either created or obtained by the National Highway Traffic Safety Administration ("NHTSA") or which are under the control of NHTSA at the time of this request ("Records").

The Records sought (as described below) include all information related to Ford vehicles for model years 2002 through the present ("Ford Vehicles").

The term "Records" shall be read expansively and include all documents, correspondence, logs, reports, compilations, testing, studies, consumer complaints, investigations, memoranda, and information of whatever type related to the following:

- All Records related to sudden or unintended acceleration events in Ford Vehicles, including all incidents, reports, or investigations of sudden or unintended acceleration events in any Ford vehicle;
- All Records relating to the electronic throttle control system ("ETC") in Ford Vehicles including, but not limited to, the need for a failsafe, the lack of a failsafe, or malfunctions with ETC;
- All Records related to a fault tolerant system, or lack thereof, in Ford Vehicles;
- Any communications (including telephone logs of conversations) with Ford Motor Company, or any of its dealers, agents, or representatives, related to any sudden or unintended acceleration events in the Ford Vehicles;

110 Oakwood Drive Suite 500 Winston-Salem, North Carolina 27103
www.spilmanlaw.com 336.725.4710 336.725.4476 fax

West Virginia

North Carolina

Pennsylvania

Virginia

ES13-004796

- All Records of communications (including telephone logs) with Ford Motor Company, or any of its dealers, agents, suppliers or representatives, related to sudden or unintended acceleration events and/or the ETC in Ford Vehicles;
- All Records referring to or relating to test data, methodology used, correspondence, meeting minutes, emails, notes made of telephone calls, and all other memoranda related to any reported sudden or unintended acceleration events, the study or testing of sudden or unintended acceleration events, or Ford's ETC system; and
- All photographs and videos related to any of the aforementioned Records.

I understand that it may take more than the statutory twenty (20) day period to comply with this request. If so, please feel free to contact me to discuss a reasonable time for compliance.

This information may be used as evidence in trial. As a result, in order to authenticate your letter and any documentation related to the requested information for use as a trial exhibit, please certify responsive documents in conformity with the requirements of Rule 902 of the Federal Rules of Evidence (copy attached).

Release of the requested information is in the public interest because it will significantly contribute to public understanding of government operations and activities. Therefore, my firm will pay for the reasonable costs of copying and mailing these requested materials. You may invoice me with the production or, if you send an invoice in advance, we can pay that invoice prior to the release of the requested documents. If the cost of complying with this FOIA Request is expected to exceed \$1,000.00, please call me to discuss the projected expense.

If my request is denied in whole or in part, I ask that you justify all wholesale denials and potential deletions by reference to the specific exemptions of FOIA. Please release all segregable portions of otherwise exempt material.

I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please feel free to contact me at the direct dial number above or by e-mail should you have any questions or concerns.



NHTSA
Executive Secretariat
December 6, 2013
Page 3 of 3

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC,

A handwritten signature in black ink, appearing to read 'Nathan B. Atkinson', written in a cursive style.

Nathan B. Atkinson

NBA/mcc



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

DEC 12 2013

Request Date: December 6, 2013

Request Tracking No.: ES13-004796

Date of Receipt: December 12, 2013

Mr. Nathan Atkinson
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

Dear Mr. Atkinson:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.

From: Nathan B. Atkinson <NAtkinson@spilmanlaw.com>
Sent: Friday, January 17, 2014 9:15 AM
To: Skinner, Monica (NHTSA)
Subject: RE: NHTSA FOIA Correspondence [STB-WORKSITE.FID487113]

Ms. Skinner:

Thank you for following up on these issues. Yes, you can exclude the publically available information you have listed below regarding investigations EA05014, PE11018, PE12005, EA12009, PE12019, PE12033. Please include any non-publically available information related to these investigations that is responsive to the requests and, of course, any other investigations that are responsive to the FOIA Request.

- 1) We are interested in any ETC investigation.
- 2) A fault tolerant system is a system that, when properly designed, continues to operate safely and properly in the event of the failure of (or faults within) one or more of its components. We are seeking information that relates to Ford's failure to design and use a fault-tolerant electronic throttle control system in its vehicle model years 2002 to present which can lead to the failure of the vehicle to respond appropriately and safely when one or more electrical problems occur (including incidents such as sudden acceleration).

I hope this clears it up. If not, please give me a call.

Best regards,
 Nathan

Nathan B. Atkinson

336 725 4496 - office

(b)(6)

natkinson@spilmanlaw.com

From: monica.skinner@dot.gov [mailto:monica.skinner@dot.gov]
Sent: Wednesday, January 15, 2014 12:14 PM
To: Nathan B. Atkinson
Subject: RE: NHTSA FOIA Correspondence [STB-WORKSITE.FID487113]

Mr. Atkinson-

Per our conversation yesterday, if you go to our website and take a look at the documents that have been posted in NHTSA investigation's EA05014, PE11018, PE12005, EA12009, PE12019, PE12033, you may be able to specify what documents you are seeking that are not already on the website.

Additionally, there are two items we need clarified:

- 1) Are you are interested in any ETC investigation or just ETC investigations related to unintended acceleration?
- 2) We ask you clarify what you mean by "records related to a fault tolerant system, or lack thereof, in Ford vehicles". We are unfamiliar with what exactly you are seeking.

Thanks,

Monica J. Skinner
Senior FOIA Information Specialist
Office of Chief Counsel
1200 New Jersey Ave, SE
Mail Stop: Room W41-229
Washington, DC 20590
monica.skinner@dot.gov

Office - 202-366-0702

From: Nathan B. Atkinson [mailto:NAtkinson@spilmanlaw.com]
Sent: Monday, January 13, 2014 4:41 PM
To: Skinner, Monica (NHTSA)
Subject: RE: NHTSA FOIA Correspondence [STB-WORKSITE.FID487113]

Thanks. I look forward to speaking with you.

Nathan B. Atkinson

336.725.4496 - office
(b)(6) mobile
natkinson@spilmanlaw.com

From: monica.skinner@dot.gov [mailto:monica.skinner@dot.gov]
Sent: Monday, January 13, 2014 4:31 PM
To: Nathan B. Atkinson
Subject: RE: NHTSA FOIA Correspondence

That is fine. I will be sure to be available when you call.

Thanks,

Monica J. Skinner
Senior FOIA Information Specialist
Office of Chief Counsel
1200 New Jersey Ave, SE
Mail Stop: Room W41-229
Washington, DC 20590
monica.skinner@dot.gov
Office - 202-366-0702

From: Nathan B. Atkinson [mailto:NAtkinson@spilmanlaw.com]
Sent: Monday, January 13, 2014 4:22 PM
To: Skinner, Monica (NHTSA)
Cc: Meg Coppley; Kimberly L. Jones
Subject: RE: NHTSA FOIA Correspondence

Ms. Skinner:

How about tomorrow at 2:30? If that time is not convenient, I can also be available at 3:00 or 4:00.

Thanks,
Nathan

Nathan B. Atkinson

336.725.4496 - office
(b)(6) mobile
natkinson@spilmanlaw.com

From: Skinner, Monica [mailto:monica.skinner@dot.gov]
Sent: Monday, January 13, 2014 12:58 PM
To: Nathan B. Atkinson
Subject: NHTSA FOIA Correspondence

Please see the attached correspondence regarding NHTSA FOIA request, Control No. ES13-004796.

Mr. Atkinson,

Can you please call me at your convenience to clarify a couple items in your request. I can be reached at (b)(6)

Thanks,

Monica Skinner
Senior FOIA Analyst


SPILMAN THOMAS & BATTLE. PLLC

ATTORNEYS AT LAW

Nathan Atkinson, Esq.
 Direct Dial: (336) 725-4496
natkinson@spilmanlaw.com

March 24, 2014

Via U.S.P.S. Mail
and Electronic Mail
(monica.skinner@dot.gov)

Monica J. Skinner
 Senior FOIA Information Specialist
 Office of Chief Counsel
 1200 New Jersey Avenue, SE
 West Building, 41-229
 Washington, D.C. 20590

Re: NHTSA FOIA Request #ES13-004796 Atkinson

Dear Ms. Skinner:

In your most recent e-mail dated February 19, 2014, you stated that the "Office of Defects Investigation has a few more questions." I have responded to each question raised in your email herein. I trust this will satisfy each of your questions; if not, please let me know.

1) What does he mean by "sudden or unintended acceleration"?

RESPONSE: I am surprise NHTSA does not know what a sudden or unintended acceleration is. Please use NHTSA's "broad" definition of "unintended acceleration," which the Agency set forth in Footnote 1 of the Executive Summary to NHTSA's *Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems, February, 2011*, namely:

In this report, "unintended acceleration" refers to the occurrence of any degree of acceleration that the vehicle driver did not purposely cause to occur." Contrast this with the term "sudden acceleration incident," which refers to "unintended, unexpected, high-power accelerations from a stationary position or a very low initial speed accompanied by an apparent loss of braking effectiveness." *An Examination of Sudden Acceleration*, DOT-TSC-NHTSA-89-1, at v. As used here, unintended acceleration is a very broad term that encompasses sudden acceleration as well as incidents at higher speeds and incidents where brakes were partially or fully effective, including occurrences such as pedal entrapment by floor mats at full throttle and high speeds and incidents of lesser throttle openings at various speeds.

2) Does he only want such records if they involve vehicles equipped with electronic throttle control (i.e., can we exclude records related to vehicles with mechanically actuated throttles)?

RESPONSE: Throughout our e-mail exchanges and dialogue, our discussion has been about the electronic throttle control ("ETC"). We are not at this time requesting information concerning Ford's mechanical throttle control system. Therefore, you may exclude records related to vehicles with mechanically-actuated throttles. Here again, NHTSA should use its definition for ETC as expressed in Footnote 2 of the aforesaid Executive Summary:

In an ETC system, the vehicle's throttle is controlled electronically based on signals transmitted from the accelerator pedal. In a mechanical system, a physical linkage between the accelerator and throttle controls acceleration.

3) Does he want ETC records related to stalling and loss of power, or just those involving allegations of "sudden or unintended acceleration"?

RESPONSE: We want records relating to sudden or unintended acceleration in the ETC-equipped Ford vehicles we have described; for the purposes of our investigation, we are not at this time requesting reports of "stalling or loss of power."

4) Is this cars only or does it include pickups, and if it includes pickups is it diesel powered pickups also (or only gasoline fueled)?

RESPONSE: We are requesting records relating to sudden or unintended acceleration in the ETC-equipped Ford vehicles we have described. Our request did not exclude Ford pickups.

To add specificity to our prior request for "[a]ll records of communications (including telephone logs) with Ford Motor Company, or any of its dealers, agents, suppliers or representatives, related to sudden or unintended acceleration events and/or the ETC in Ford vehicles" (from our December 6, 2013 Freedom of Information Act Request), we are hereby requesting all records of communications (including telephone logs) by and between NHTSA employees Jeffrey Quandt, Scott Yon and/or Bill Collins, on the one hand, and Ford Motor Company agents and/or representatives, on the other, related to sudden or unintended acceleration events and/or the ETC in Ford vehicles.



Monica J. Skinner
Senior FOIA Information Specialist
March 24, 2014
Page 3 of 3

Please feel free to contact me at the direct dial number above or by e-mail should you have any questions or concerns.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC,

Nathan B. Atkinson

NBA/



U.S. Department of
Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

January 13, 2014

Mr. Nathan Atkinson
Spilman Thomas & Battle, PLLC
110 Oakwood Drive Suite 500
Winston-Salem, NC 27103

Re: Freedom of Information Act (FOIA) Request #ES13-004796

Dear Mr. Atkinson:

This is an interim response to your FOIA request dated December 6, 2013. In accordance with the provisions of 5 U.S.C. § 552(a)(6)(B) and 49 C.F.R. § 7.33, I am extending by ten working days the time period by which the agency must provide a response on the following basis (see checked box):

- ☒ The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request
- ☐ The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request
- ☐ The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein

The agency expects to provide a response by January 28, 2014.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner". The signature is written in a cursive, flowing style.

Monica J. Skinner
Senior FOIA Information Specialist



SPILMAN THOMAS & BATTLE, PLLC

ATTORNEYS AT LAW

Nathan Atkinson, Esq.
Direct Dial: (336) 725-4496
natkinson@spilmanlaw.com

May 7, 2014

Via U.S.P.S. Mail
and Electronic Mail
(monica.skinner@dot.gov)

Monica J. Skinner
Senior FOIA Information Specialist
Office of Chief Counsel
1200 New Jersey Avenue, SE
West Building, 41-229
Washington, D.C. 20590

Re: NHTSA FOIA Request #ES13-004796 Atkinson

Dear Ms. Skinner:

I am writing to follow up on your email dated March 28, 2014. In that email, you indicated that you had forwarded our March 24, 2014 letter to the engineers in the Office of Defects Investigation. To date, we still have not received a response to our FOIA Request. I am enclosing a copy of our original FOIA Request dated December 6, 2013, and our March 24, 2014, letter for your reference. Please let me know when we can expect a substantive response.

Please feel free to contact me at the direct dial number above or by e-mail should you have any questions.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC,

Nathan B. Atkinson

NBA/klj
Enclosures



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

May 9, 2014

Mr. Nathan Atkinson
natkinson@spilmanlaw.com

Re: Freedom of Information Act (FOIA) Request #ES13-004796

Dear Mr. Atkinson:

This is to inform you that your December 6, 2013 FOIA request seeking copies records relating to sudden/unintended acceleration, electronic throttle control (ETC) malfunctions, fault tolerant systems or lack of, communications, and test results regarding Ford vehicles has been placed in the agency's complex track for processing FOIA requests.

NHTSA employs a multitrack system for processing FOIA requests that distinguishes between simple and more complex requests based upon the amount of work and/or time needed to process the request, or on the number of records involved. Since clarifying your request, we have been informed that there are more than 2,000 pages of records responsive to your request, which need to be reviewed and redacted before release.

The agency processes requests on a first-in, first out basis. Your complex request is #12 in our queue.

As noted above, your request has been placed in the complex track in the order in which it was received. Processing these complex requests will take several months or more. You may reformulate or narrow your request to limit the scope of your request in order to qualify for the simple track. In order to qualify for the simple track, you must substantially limit the scope of your request. If we do not hear from you, your request will remain in the complex track and be processed accordingly.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist



SPILMAN THOMAS & BATTLE, PLLC

ATTORNEYS AT LAW

Nathan Atkinson, Esq.
Direct Dial: (336) 725-4496
natkinson@spilmanlaw.com

August 19, 2014

8/21/14-
1840

Via U.S.P.S. First Class Mail
and Electronic Mail
(monica.skinner@dot.gov)

Monica J. Skinner
Senior FOIA Information Specialist
Office of Chief Counsel
1200 New Jersey Avenue, SE
West Building, 41-229
Washington, DC 20590

Re: NHTSA FOIA Request #ES13-004796 Atkinson

Dear Ms. Skinner:

It has now been over ninety (90) days since you informed me that my FOIA request, initially filed on December 6, 2013, was #12 in your agency's queue and that processing would take "several months or more." Our request has been pending for over nine months. I have received nothing of substance from your agency.

This is to request the status of your agency's response. If my request was #12 ninety (90) days ago, please let me know where my request now stands. Also, please specifically let me know when I can expect the responsive documents.

If your agency will not be providing the requested documents on or before August 31, 2014, this is to request that you make at least an interim response by honoring our specific request for all records of communications, (including telephone logs) by and between **NHTSA employees Jeffrey Quandt, Scott Yon and/or Bill Collins**, on the one hand, and Ford Motor Company agents and/or representatives, on the other, related to sudden or unintended acceleration events and/or the ETC in Ford vehicles. This very specific, targeted request was spelled out for you in my letter of March 24, 2014. For now, you can limit this specific request to the period commencing on January 1, 2009, through December 31, 2013.



Monica J. Skinner
August 19, 2014
Page 2 of 2

Your prompt response is requested and will be deeply appreciated.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

A handwritten signature in black ink, appearing to read 'Nathan B. Atkinson'. The signature is fluid and cursive, with a large initial 'N' and 'B'.

Nathan B. Atkinson



U.S. Department of
Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

August 26, 2014

Mr. Nathan Atkinson
natkinson@spilmanlaw.com

Re: Freedom of Information Act (FOIA) Request #ES13-004796

Dear Mr. Atkinson:

This responds to your August 19, 2014 letter seeking a status of your above referenced FOIA request for information related to sudden/unintended acceleration, electronic throttle control (ETC) malfunctions, fault tolerant system or lack of, communications, test results regarding Ford Vehicles. In addition, you request an interim response to your request if the agency cannot provide a full response by August 31, 2014.

Pursuant 49 C.F.R. § 7.31(b), NHTSA employs a multi-track system for processing initial determinations of FOIA requests. This system permits NHTSA to have two or more tracks that distinguish requests between simple and more complex requests based upon the amount of work and/or time needed to process the request. Each track works on a first in, first out basis, with the agency providing requesters placed in the complex track the opportunity to move to the more simple track in order to more quickly process their request. Requesters that do not exercise the option to narrow their request to a more manageable work load will wait to be processed accordingly.

On May 9, 2014, we informed you that our initial search resulted in approximately 2,000 pages of potentially responsive records and that your request would be placed in the agency's complex track. You declined the opportunity to remove your request from the complex track to the simple track. At that time, your request was #12 in our complex track. Currently, your request is # 6 in the complex track.

As presently constituted, the five requests ahead of your request involve potentially a voluminous number of responsive records, some in the order of tens of thousands of documents or more. Processing the complex requests that precede your request will take many months given current agency staffing levels and resources. Moreover, since the agency is required to process your request on a first in, first out basis, we will be unable to provide you a partial

response to your request. Again, we encourage you to reconsider reformulating and substantially limiting the scope of your request to a more manageable level. One possible way to move from the complex track to the simple track is if you narrowed the scope of your request to only the communications between Jeffery Quandt, Scott Yon and Bill Collins and Ford Motor Company. However, even if narrowed, the agency could not respond before August 31, 2014.

You may contact Monica Skinner on 202-366-0702 to discuss reformulating or narrowing the scope of your request. If we do not hear from you, your request will remain in the complex track and be processed accordingly.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", written over a horizontal line.

Andrew J. DiMarsico
Senior Attorney



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

CERTIFIED MAIL - RETURN RECEIPT REQUEST

August 17, 2015

Mr. Nathan Atkinson Esq.
Spilman Thomas & Battle, PLLC
110 Oakwood Drive
Suite 500
Winston-Salem, NC 27103

RE: Freedom of Information Act (FOIA) Request #ES13-004796

Dear Mr. Atkinson:

This responds to your December 6, 2013 FOIA request seeking certified records relating to all Ford Motor Company vehicles from model years 2002 to the present in the following:

All records related to sudden or unintended acceleration events in Ford Vehicles, including all incidents, reports, or investigations of sudden or unintended acceleration events in any Ford vehicle; All records relating to the electronic throttle control system ("ETC") in Ford vehicles including, but not limited to, the need for a failsafe, the lack of a failsafe, or malfunctions with ETC; All records related to a fault tolerant system, or lack thereof, in Ford vehicles; Any communications (including telephone logs of conversations) with Ford Motor Company, or any of its dealers, agents, or representatives, related to any sudden or unintended acceleration events in the Ford vehicles; All records of communications (including telephone logs) with Ford Motor Company, or any of its dealers, agents, suppliers or representatives, related to sudden or unintended acceleration events and/or the ETC in Ford vehicles; All records referring to or relating to test data, methodology used, correspondence, meeting minutes, emails notes made of telephone calls, and all other memoranda related to any reported sudden or unintended acceleration events, the study or testing of sudden or unintended acceleration events, or Ford's ETC system; and All photographs and videos related to any of the aforementioned records.

Enclosed are 4,600 pages of information responsive to your request, which are certified as true and accurate copies. I have withheld portions of records that are exempted from FOIA's statutory disclosure requirement containing information related to trade secrets and commercial or financial information pursuant to Exemption 4. 5 U.S.C. § 552(b)(4). In addition, I have withheld portions of records pursuant to Exemption 5 of the FOIA, which protects information related to pre-decisional agency deliberations, opinions, or recommendations. 5 U.S.C. § 552(b)(5). Also, I have

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CERTIFIED MAILTM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
9214 8969 0099 9790 1401 9241 76	
Postage	\$ 0.485
Certified Fee	\$3.45
Return Receipt Fee (Endorsement Required)	\$1.40
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 5.335
<div> <div>Postmark Here</div> <div>AUG 17 2015</div> <div>Electronic Receipt Requested</div> </div>	
<div> <div>Sent To</div> <div>Mr. Nathan Atkinson Esq. Spilman Thomas & Battle, PLLC 110 Oakwood Drive Suite 500 Winston-Salem, NC 27103</div> </div>	
<div> <div>Street, Apt. No., or PO Box No. City, State, Zip+4</div> </div>	
PS Form 3800, January 2013 See Reverse for Instructions	

withheld portions of records whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. 5 U.S.C. § 552(b)(6).

Pursuant to 49 CFR Part 7, there is no charge for this response.

I am the person responsible for this decision. If you wish to appeal this decision, you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, W41-227, Washington, DC 20590, pursuant to 49 CFR § 7.32(d). An appeal must be submitted within 45 from the date of this determination. It should contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", with a horizontal line extending from the end of the signature.

Andrew J. DiMarsico
Senior Attorney

Enclosure: One CD



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

MAY 25 2016

1215 New Jersey Avenue, SE
Washington, DC 20590

CERTIFIED MAIL

Mr. Nathan B. Atkinson, Esq.
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

RE: Appeal of Freedom of Information Act ("FOIA") Request #ES13-004796

Dear Mr. Atkinson:

This responds to your letter dated October 1, 2015 (received by this office for action on October 5, 2015), in which you appeal the agency's August 17, 2015 response to your Freedom of Information Act (FOIA) request.

Original FOIA Request

In your FOIA request, dated December 29, 2013, you requested the following:

1. All Records related to sudden or unintended acceleration events in Ford Vehicles, including all incidents, reports, or investigations of sudden or unintended acceleration events in any Ford vehicle;
2. All Records relating to the electronic throttle control system ("ETC") in Ford Vehicles including, but not limited to, the need for a failsafe, the lack of a failsafe, or malfunctions with ETC;
3. All Records related to a fault tolerant system, or lack thereof, in Ford Vehicles;
4. Any communications (including telephone logs of conversations) with Ford Motor Company, or any of its dealers, agents, or representatives, related to any sudden or unintended acceleration events in the Ford Vehicles;
5. All Records of communications (including telephone logs) with Ford Motor Company, any of its dealers, agents, suppliers or representatives, related to sudden or unintended acceleration events and/or the ETC in Ford Vehicles;
6. All Records referring to or relating to test data, methodology used, correspondence, meeting minutes, emails, notes made of telephone calls, and all other memoranda related to any reported sudden or unintended acceleration events, the study or testing of sudden or unintended acceleration events, or Ford's ETC system; and
7. All photographs and videos related to any of the aforementioned Records.

In a letter dated March 24, 2014, you responded to questions from the Office of Defects Investigation that Monica Skinner, Senior FOIA Information Specialist, forwarded to you by e-mail dated February, 19, 2014. In this letter, you clarified and narrowed your fifth request. As narrowed, the request sought “all records of communications (including telephone logs) *by and between NHTSA employees Jeffrey Quandt, Scott Yon, and/or Bill Collins, on the one hand, and Ford Motor Company agents and/or representatives, on the other, related to sudden or unintended acceleration events and/or the ETC in Ford vehicles.*” (emphasis added). Additionally, you clarified that you wanted “records relating to sudden or unintended acceleration in ETC-equipped Ford vehicles” and did not want records “concerning Ford’s mechanical throttle control system.” You also stated that you were not “requesting reports of ‘stalling or loss of power.’”

FOIA Response

By letter dated August 17, 2015, Senior Attorney Andrew DiMarsico responded to your FOIA request and enclosed 4,600 pages of information responsive to your request.

The agency notified you that it had withheld portions of records that are exempted from FOIA’s statutory disclosure requirement containing information related to trade secrets and commercial or financial information pursuant to Exemption 4. 5 U.S.C. § 552(b)(4). In addition, the agency also withheld information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. 5 U.S.C. § 552(b)(6). Relevant to this appeal, Mr. DiMarsico also stated that the agency withheld portions of records related to pre-decisional agency deliberations, opinions, or recommendations pursuant to Exemption 5. *See* 5 U.S.C. § 552(b)(5).

FOIA Appeal

By letter, dated October 1, 2015, you appeal the adequacy of the agency’s search. Additionally, you appeal the agency’s decision to withhold, on Exemption 5 grounds, portions of the records you requested on December 6, 2013.

You contend that NHTSA did not search or identify all responsive documents. To this end, you indicate that the unredacted documents that the agency released to you relate almost entirely to a single investigation. You also identify as examples of documents not produced by the agency five investigations, dated May 2011 to September 2014, involving unintended acceleration in Ford vehicles with electronic throttle controls (PE11-018; DP12-006; PE13-003; PE10-019; EA12-009). You note also that specific (presumably responsive) documents were missing from the agency’s response and are not in the investigations’ public files, including “any Ford Common Quality Indicator Systems (CQIS) records gathered” in connection with the previously identified investigations. Finally, you contend that NHTSA should have specifically identified the portions of documents (in the form of a Vaughn index) that the agency withheld under Exemption 5.

Agency Decision on Appeal

Previously, by letter dated February 23, 2016, I responded to your FOIA appeal enclosing 145 newly identified pages as well as 193 pages previously provided to you, some of which my staff unredacted, in full or in part. I also enclosed Ford's formal request for confidential treatment and the agency's formal response along with the documents that were not granted confidentiality in investigation PE11-018. I informed you that we had located numerous additional documents that require processing. I am now responding to your FOIA Appeal in full.

I have reviewed the agency's initial response to your FOIA request in light of the requirement of the FOIA and relevant case law. As an initial matter, NHSTA is not required to provide a *Vaughn* index of documents or portions of documents withheld during the administrative processing of FOIA requests. See *NRDC, Inc. v. NRC*, 216 F.3d 1180, 1190 (D.C. Cir. 2000). For this reason, I therefore deny your request for a *Vaughn* index detailing specifically the portions of documents withheld by the agency under Exemption 5.

With respect to your inadequacy of search claim, NHTSA's responsibility under the FOIA is to conduct a search reasonably calculated to uncover all relevant documents. *Weisberg v. U.S. Dep't. of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). "The issue is not whether any further documents might conceivably exist but rather whether the government's search for responsive documents was adequate." *Id.* at 1351, quoting *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982) (per curiam); see also *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) ("[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search."). After all, particular documents may have been accidentally lost or destroyed, or a reasonable and thorough search may have missed them." *Iturralde*, 315 F.3d at 315 (citations omitted).

Applying the requirements of the FOIA and relevant case law, my staff has reviewed the search process undertaken by the agency in response to your FOIA request. On the basis of my office's review, I have determined that the agency did not search all sources likely to contain responsive records and that a large number of additional responsive records exist. (Dana Sade of my staff called to let you know about the agency's identification of these records earlier this Spring).

Based on the foregoing, I grant your appeal in part and hereby remand your initial FOIA request for further processing. On remand, the agency will need to review the additional records identified for application of FOIA exemptions (a process that we expect will take some time). The FOIA office will be in contact with you regarding these additional responsive records.

We note that, during the course of the initial FOIA processing, you specifically requested that the agency produce communications between Bill Collins, an engineer at our Vehicle Research and Test Facility (VRTC), and Ford Motor Company agents/or representatives.

Although typically VRTC engineers do not communicate directly with manufacturers during agency investigations, out of an abundance of caution my employees contacted Mr. Collins. A portion of the additional records that require FOIA processing came from Mr. Collins. Furthermore, the 145 pages of documents that I released to you, in part and in full, earlier in the appeal also came from Mr. Collins. My staff withheld from those documents portions of records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. 5 U.S.C. § 552(b)(6).

Please also note that Ford Common Quality Indicator Systems (CQIS) records are available in the public investigation files located at www.safercar.gov. For PE11-018, the records are described in Appendix B and located in Appendix C. For DP12-006, the records are described in Appendix B and located in Appendix C. For PE13-003, the records are described in Appendix B and located in Appendix C. For PE10-019, the records are described in Appendix B and F and located in Appendix C and G. For EA12-009, the records are located in Appendix B.

Finally, with regard to the package of documents sent to you on February 23, 2016, that package included 193 pages and/or portions which my staff determined were withheld improperly during the agency's initial processing of your FOIA request. Additionally, we are providing with this response 244 pages and/or portions that were withheld originally, which my staff determined could also be released to you. The agency discloses this information as a matter of administrative discretion. My staff also confirmed that the remainder of the documents withheld during the initial FOIA process contains deliberative information covered by FOIA Exemption 5. 5 U.S.C. § 552(b)(5) (covering "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.")

Exemption 5 also incorporates traditional civil discovery privileges, including the "deliberative process" privilege. *Tax Analysts v. Internal Revenue Service*, 294 F.3d 71, 80 (D.C. Cir. 2002); *see also Cuban v. SEC*, 744 F. Supp. 2d 60, 75 (D.D.C. 2010); *Judicial Watch v. U.S. Dep't of Homeland Sec.*, 736 F. Supp. 2d 202, 207 (D.D.C. 2010).

The purpose of the "deliberative process" privilege is to "prevent injury to the quality of agency decisions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). It ensures "that a decision-maker will receive the unimpeded advice of his associates." *Fed. Open Market Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 360 (1979). It applies when the "disclosure of [the] materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." *Formaldehyde Instit. v. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1121-22 (D.C. Cir. 1989). Exemption 5 covers documents such as "recommendations, draft documents, proposals, suggestions, and other substantive documents which reflect the personal opinions of the writer rather than the policy of the agency." *Ctr. for Responsibility & Ethics in Wash. v. U.S. Dep't of Labor*, 478 F. Supp. 2d 77, 81 (D.D.C. 2007) (quoting *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)).

To qualify for protection under the deliberative process privilege, information must be both “pre-decisional” and “deliberative.” *Elec. Frontier Found. v. U.S. Dep’t of Justice*, 739 F.3d 1, 7 (D.C. Cir. 2014) (citing *Pub. Citizen v. U.S. Office of Mgmt. and Budget*, 598 F.3d 865 (D.C. Cir. 2010)). Based on my *de novo* review, I have determined that the agency properly withheld, on Exemption 5 grounds, the documents that we continue to withhold on appeal.

The contents of these documents are both pre-decisional and deliberative. For example, these documents include e-mails between team members deliberating and discussing suggestions, edits and questions regarding steps in the investigations. The documents also include individual notes on meetings during the investigative process.

A document is pre-decisional if “it was generated before the adoption of an agency policy.” *Coastal States*, 617 F.2d at 866. The Supreme Court has emphasized that a document’s status as pre-decisional does *not* require the agency to identify a specific decision for which the document was prepared. *NLRB*, 421 U.S. at 151 n.18. If a document reflects advisory opinions, recommendations, and deliberations comprising part of the continuing process of agency decision-making or consists of personal opinions of the writer prior to the agency’s adoption of a policy, Exemption 5 is applicable. *Pub. Citizen, Inc. v. U.S. Office of Mgmt and Budget*, 598 F.3d 865, 875 (D.C. Cir. 2010) (quoting *Taxation With Representation Fund v. IRS*, 646 F.2d 666, 677 (D.C. Cir. 1981)).

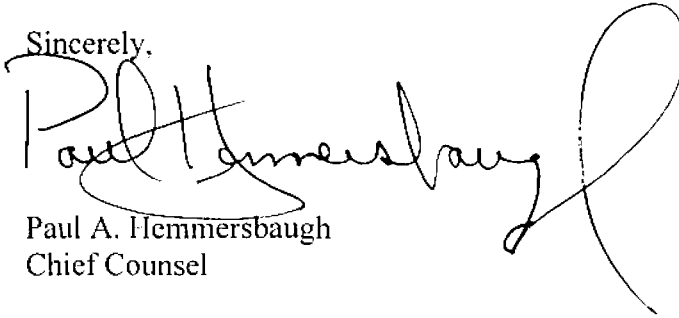
A document is deliberative “‘if it reflects the give-and-take of the consultative process.’” *Gold Anti-Trust Action Comm., Inc. v. Bd. of Gov. of Fed. Reserve*, 762 F. Supp. 2d 123, 134-35 (D.D.C. 2011) (quoting *Coastal States*, 617 F.2d at 866). In determining the deliberative status of documents, courts have generally granted “considerable deference to the [agency’s] judgment as to what constitutes ... ‘part of the agency give-and-take of the deliberative process by which the decision itself is made.’” *Chem Mfrs. Ass’n v. Consumer Prot. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C. Cir. 1975)). Accordingly, Exemption 5 protects documents that, by their very nature, might “expose an agency’s decision-making process ... discourag[ing] candid discussion within the agency” See *Quarles v. U.S. Dep’t of Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990); accord *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 575 F.2d 932, 935 (D.C. Cir. 1978) (allowing withholding of requested documents pursuant to Exemption 5 because release would have “reveal[ed] the ‘evaluative’ process by which different members of the decisionmaking chain arrived at their conclusions and what those pre-decisional conclusions [were].”)

Because the documents at issue were generated as part of the deliberations in the agency decision-making process, I have determined that the redacted contents of the documents are pre-decisional. I also have determined that the contents of the documents are deliberative because they reflect the agency’s decision-making process and disclosure would discourage candid discussion within the agency. For these reasons, these documents were, and continue to be, properly withheld under Exemption 5.

For the reasons detailed above, I grant your appeal, in part, and deny it, in part.

I am the person responsible for this decision. It is administratively final and has been concurred in on behalf of the Acting General Counsel of the Department of Transportation by Claire McKenna, an attorney on her staff. If you wish to seek review of my decision, you may do so in the U.S. District Court for the District of Columbia or in the district where you reside, have your principal place of business, or where the records are located.
5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Hemmersbaugh", with a large, stylized flourish extending from the end of the name.

Paul A. Hemmersbaugh
Chief Counsel

Enclosures



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

U.S. Department of Justice
Federal Bureau of Investigation

VIA OVERNIGHT MAIL

August 1, 2016

Mr. Nathan Atkinson Esq.
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

RE: Freedom of Information Act (FOIA) Request # ES13-004796

Dear Mr. Atkinson:

This provides NHTSA's response to its May 25, 2016 decision to remand your October 1, 2015 FOIA appeal. Your initial FOIA request sought, in general, records relating to all Ford Motor Company (Ford) vehicles produced since the 2002 model year that relate to sudden or unintended acceleration events involving the electronic throttle control system ("ETC").

On August 17, 2015, NHTSA's initial determination released approximately 4,600 pages of responsive records. On October 1, 2015, you appealed the agency's initial determination for, among other things, the inadequacy of search. On May 25, 2016, the Chief Counsel determined that the agency did not search all sources likely to contain responsive records and that a number of additional responsive records existed. The Chief Counsel granted your appeal in part and remanded it for further processing of the records identified on appeal.

Enclosed are a portion of the records identified on appeal. We anticipate producing the remaining records identified in the appeal in the next several days. Pursuant to the agency's Confidential Business Information rule (49 C.F.R. Part 512), Ford submitted three requests for confidential treatment associated with these records on December 14, 2012, January 31, 2013, and February 7, 2013 (later amended on April 8, 2013). NHTSA granted Ford's requests on April 4, 2013, April 24, 2013 and May 15, 2013. For the reasons set forth in NHTSA's determination letters, I am withholding the records identified in the Ford requests from the statutory disclosure requirement pursuant to Exemption 4 because they contain information related to trade secrets and commercial or financial information. 49 U.S.C. § 552(b)(4). I have enclosed Ford's letters requesting confidential treatment and the agency's responses to those requests for your review.

I am also withholding records or portions of records that are exempted from the statutory disclosure requirement that contain information related to pre-decisional agency deliberation, opinions or recommendations pursuant to FOIA Exemption 5. 49 U.S.C. § 552(b)(5). In addition, I have redacted portions of records containing information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. 5 U.S.C. § 552(b)(6).

I note that the records disclosed to you contain records or portions of records that Ford redacted prior to submission to the agency. Ford marked such records as "redacted for relevancy."

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

Enclosure: One CD Rom
cc: David L. Sobel



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

U.S. Department of Transportation
Washington, D.C. 20590

VIA OVERNIGHT COURIER

August 2, 2016

Mr. Nathan Atkinson Esq.
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

RE: Freedom of Information Act (FOIA) Request # ES13-004796

Dear Mr. Atkinson:

This provides the agency's second release of records in response to its May 25, 2016 decision to remand your October 1, 2015 FOIA appeal. Your initial FOIA request sought, in general, records relating to all Ford Motor Company (Ford) vehicles produced since the 2002 model year that relate to sudden or unintended acceleration events involving the electronic throttle control system ("ETC").

On August 1, 2016, we provided a partial release of the records identified on appeal. This completes the agency's release of the records identified in the agency's May 25, 2016 appeal response. As noted in our first release of records, Ford submitted three requests for confidential treatment associated with these records on December 14, 2012, January 31, 2013, and February 7, 2013 (later amended on April 8, 2013). NHTSA granted Ford's requests on April 4, 2013, April 24, 2013 and May 15, 2013. For the reasons set forth in NHTSA's determination letters, I am withholding the records identified in the Ford requests from the statutory disclosure requirement pursuant to Exemption 4 because they contain information related to trade secrets and commercial or financial information. 49 U.S.C. § 552(b)(4). Ford's letters requesting confidential treatment and the agency's responses to those requests were provided to you in the August 1, 2016 release.

I am also withholding records or portions of records that are exempted from the statutory disclosure requirement that contain information related to pre-decisional agency deliberation, opinions or recommendations pursuant to FOIA Exemption 5. 49 U.S.C. § 552(b)(5). In addition, I have redacted portions of records containing information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. 5 U.S.C. § 552(b)(6).

I note that the records disclosed to you contain records or portions of records that Ford redacted prior to submission to the agency. Ford marked such records as "redacted for relevancy."

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", with a horizontal line extending from the end of the signature.

Andrew J. DiMarsico
Senior Attorney

Enclosure: One CD Rom

cc: David L. Sobel



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

Transportation Safety Board
Washington, DC 20590

VIA OVERNIGHT COURIER

October 6, 2016

Mr. Nathan Atkinson Esq.
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

RE: Freedom of Information Act (FOIA) Request # ES13-004796

Dear Mr. Atkinson:

This further responds to your October 1, 2015 FOIA appeal. Your initial FOIA request sought, in general, records relating to all Ford Motor Company (Ford) vehicles produced since the 2002 model year that relate to sudden or unintended acceleration events involving the electronic throttle control system ("ETC").

On August 1st and 2nd, the agency released the records it identified in the agency's May 25, 2016 appeal response. In the course of processing those records, the agency located additional records responsive to your appeal. On September 14th, the agency produced its initial production of those additional records. This production meets the agency's obligation to produce records by the October 14th deadline.

The enclosed CD contains 7865 pages of records related to NHTSA investigations DP12-006 and/or PE13-003. I am withholding portions of records that are exempted from the statutory disclosure requirement that contain information related to pre-decisional agency deliberation, opinions or recommendations pursuant to FOIA Exemption 5. 49 U.S.C. § 552(b)(5). In addition, I have redacted portions of records containing information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. 5 U.S.C. § 552(b)(6).

Pursuant to the agency's Confidential Business Information regulation (49 C.F.R. Part 512), Ford submitted requests for confidential treatment associated with these investigations. Ford's letters requesting confidential treatment and the agency's responses to those requests were previously provided in earlier productions. Portions of the records disclosed to you today are redacted because

they are subject to Ford's requests for confidential treatment. For the reasons set forth in NHTSA's determination letters, I am withholding these records from the statutory disclosure requirement pursuant to Exemption 4 because they contain information related to trade secrets and commercial or financial information. 49 U.S.C. § 552(b)(4).

In addition to the records released today, we have reviewed and confirmed that a number of responsive records are publicly available on the agency's website at www.safercar.gov. You may locate these records by searching the agency's investigation database for investigations DP12-006 and PE13-003. Please note that the agency withholds information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6 from materials posted to its website.

I note that the records disclosed to you may contain records or portions of records that Ford redacted prior to submission to the agency. Ford marked such records as "redacted for relevancy."

As we plan to provide a rolling production of responsive records, the agency will notify you of your appeal rights in its final production.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

Enclosure: One CD Rom
cc: David L. Sobel



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1201 New Jersey Avenue, SE
Washington, DC 20020

VIA OVERNIGHT COURIER

November 10, 2016

Mr. Nathan Atkinson Esq.
Spilman, Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

RE: Freedom of Information Act (FOIA) Request # ES13-004796

Dear Mr. Atkinson:

This further responds to your October 1, 2015 FOIA appeal. Your initial FOIA request sought, in general, records relating to all Ford Motor Company (Ford) vehicles produced since the 2002 model year that relate to sudden or unintended acceleration events involving the electronic throttle control system ("ETC").

On August 1st and 2nd, the agency released 6,824 records it identified in the agency's May 25, 2016 appeal response. The agency produced 1,832 records on September 14th and 7,865 records on October 6th. This production meets the agency's obligation to produce records by the November 14th deadline.

The enclosed CD contains 6,812 pages of records related to NHTSA investigations DP12-006 and/or PE13-003. I am withholding portions of records that are exempted from the statutory disclosure requirement that contain information related to pre-decisional agency deliberation, opinions or recommendations pursuant to FOIA Exemption 5. 49 U.S.C. § 552(b)(5). In addition, I have redacted portions of records containing information whose disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. 5 U.S.C. § 552(b)(6).

Pursuant to the agency's Confidential Business Information regulation (49 C.F.R. Part 512), Ford submitted requests for confidential treatment associated with these investigations. Ford's letters requesting confidential treatment and the agency's responses to those requests were previously provided in earlier productions. Portions of the records disclosed to you today are redacted because they are subject to Ford's requests for confidential treatment. For the reasons set forth in NHTSA's determination letters, I am withholding these records from the statutory disclosure requirement pursuant to Exemption 4 because they contain information related to trade secrets and commercial or financial information. 49 U.S.C. § 552(b)(4).

I note that the records disclosed to you may contain records or portions of records that Ford redacted prior to submission to the agency. Ford marked such records as "redacted for relevancy."

This concludes the agency's production of information in response to your appeal. In total, we have provided 23,333 pages of records.

I am the person responsible for this determination. If you wish to appeal this decision, you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., West Building, W41-227, Washington, DC 20590, pursuant to 49 CFR § 7.32(d). Alternatively, you may submit your appeal via electronic mail to nhtsa.foia.appeal@dot.gov. An appeal must be submitted within 90 days from the date of this determination. It should contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

You also have the right to seek dispute resolution services from NHTSA's FOIA Public Liaison, Mary Sprague, who may be contacted on (202) 366-3564 or by electronic mail at Mary.Sprague@dot.gov. Further dispute resolution is available through the Office of Government Information Services (OGIS). You may contact OGIS on (202) 741-5770 or by electronic mail at ogis@nara.gov.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico", with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

Enclosure: One CD Rom
cc: David L. Sobel

Akin Gump

STRAUSS HAUER & FELD LLP

Scott M. Helmberg
+1 202.887.4085/fax: +1 202.887.4288
shelmberg@akingump.com

January 28, 2014

VIA FACSIMILE (202) 493-2929**NHTSA****Executive Secretariat****1200 New Jersey Avenue, SE****West Building, 41-304****Washington, D.C. 20590****Re: Freedom of Information Act Request****Dear Sir/Madam:**

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, as amended, we request that NHTSA provide the following:

1. With respect to the 2013 Tesla Model S manufactured by Tesla Motors, Inc. ("Tesla") for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions, in each case, excluding the 13 consumer complaints publicly available on the safecar.gov website (NHTSA ID #s: 10559748; 10557627; 10557549; 10557543; 10557103; 10557033; 10548245; 10546738; 10545488; 10545230; 10534139; 10523183; 10498446):
 - a. Any document that shows the number of consumer safety complaints received by NHTSA including (i) by telephone on the Auto Safety Hotline (1-888-327-4236 (1-888-DASH-2-DOT)), and (ii) by written correspondence addressed to the Associate Administrator for Safety Assurance NSA-10, NHTSA HQ, 1200 New Jersey Avenue SE., Washington, DC 20590;
 - b. Any document that includes a description of the alleged problem described in a complaint identified in a., and any related research and documentation;

ES14-000263



Freedom of Information Request
January 28, 2014
Page 2

- c. Any document that shows the number of consumer safety complaints received by the Office of Defects Investigation ("ODI") including by (i) telephone Hotline at (888) 327-4236, and (ii) online form at safercar.gov;
 - d. Any document that includes a description of the alleged problem described in a complaint identified in c., and any related research and documentation;
 - e. Any document that shows the number of safety complaints entered into the NHTSA-ODI's vehicle owner's complaint database; and
 - f. Any document that shows the number of investigations that have been opened by the Office of Defects Investigation since January 1, 2013, to determine if a safety defect trend exists with respect to the Tesla Model S automobile, other than PE13-037 / NVS212 , and any document that includes a description of the nature of each investigation.
- 2. With respect to the model described in request 1. above, as reported by Tesla to NHTSA-ODI:
 - a. Any document that shows the number of customer/consumer complaints, including those from fleet operators, and any document that includes a description of the alleged problem;
 - b. Any document that shows the number of field reports, including dealer field reports and any document that includes a description of the alleged problem;
 - c. Any document that shows the number of reports involving a crash, injury or fatality, and any document that includes a description of the alleged problem and causal and contributing factors and Tesla's assessment of the problem;
 - d. Any document that shows the number of reports involving a fire and any document that includes a summary description of the alleged problem and causal and contributing factors and Tesla's assessment of the problem;
 - e. Any document that shows the number of reports involving a thermal reaction and/or short, including relating to power plugs and/or adapters for chargers, in each case to the extent not included in 2(d) above, and any document that includes



Freedom of Information Request
January 28, 2014
Page 3

a summary description of the alleged problem and causal and contributing factors and Tesla's assessment of the problem;

- f. Any document that shows the number of property damage claims, and any document that includes a summary description of the alleged problem and causal and contributing factors and Tesla's assessment of the problem;
 - g. Any document that shows the number of third party arbitration proceedings where Tesla is a party to the arbitration, and any document that includes the parties to the action, court, docket number and date on which the action was initiated; and
 - h. Any document that shows the number of lawsuits, pending and closed, in which Tesla is or was a defendant or co-defendant including the parties to the action, court, docket number and date on which the action was initiated.
3. We further request all "Documents" submitted by Tesla to NHTSA-ODI and the Office of Chief Counsel in response to the NHTSA-ODI's letter, dated November 27, 2013 (Preliminary Evaluation number PE13-037 / NVS-212), attached as Exhibit A (the "ODI Letter"), to the extent determined by the Office of Chief Counsel not to constitute "confidential commercial material" within the meaning of 5 U.S.C. Section 552(b)(4). "Documents" as used in this request 3. has the meaning set forth in the ODI Letter.

This request for documents includes any records, electronic correspondence, and other information, whether in writing or electronic format about the above requests.

To the extent that you consider any portion of any document within the scope of this request to be exempt from disclosure, please identify such portions of the documents and the basis for not providing them, and produce all other non-exempt materials. Please respond with the requested information as it is obtained and do not wait to gather all requested information before responding.

We are willing to pay the fees associated with processing this request up to \$2,500 without further authorization. Please contact our office if you anticipate the fees associated with processing this request to exceed that amount.

Akin Gump
STRAUSS HAUER & FELD LLP

Freedom of Information Request
January 28, 2014
Page 4

Please email or mail all responsive documents to the following address:

Scott M. Heimberg
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Building
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036
sheimberg@akingump.com

Please contact me at (202) 887-4085 or sheimberg@akingump.com with any questions regarding this request.

Sincerely,

Scott Heimberg (JAL)

Scott M. Heimberg

Exhibit A



U.S. Department
of Transportation
National Highway
Traffic Safety
Administration

Nov.27, 2013

1200 New Jersey Avenue SE.
Washington, DC 20590

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Chen
Vice President of Regulatory Affairs
Tesla Motors, Inc.
1050 K Street, N.W., Suite 101
Washington DC 20001

NVS-212
PE13-037

Dear Mr. Chen:

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has opened a Preliminary Evaluation (PE13-037) to investigate underbody deformation in certain model year (MY) 2013 Model S motor vehicles resulting from impacts with road debris, including, but not limited to, consequent intrusion into propulsion battery compartment(s) and the associated risks to motor vehicle safety, and to request certain information. The Tesla Model S is manufactured by Tesla Motors Inc.

ODI has received information on two incidents of deformation/intrusion into the propulsion battery caused by impact with roadway debris and resulting in a thermal reaction and fire in 2013 Tesla Model S vehicles. The office is also aware that the Model S may be equipped with an active suspension system that automatically adjusts the vehicle's ride height under certain driving conditions, such as at highway speeds.

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject vehicles:** All 2013 Tesla Model S manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.
- **Subject component:** The high-voltage propulsion battery, including its enclosure baseplate (skid plate) and the components and materials it is constructed of, and all components and materials contained within the enclosure including the individual battery cells.
- **Tesla:** Tesla Motors, Inc., and all of their past and present officers and employees, whether assigned to their principal offices or any of its field or other locations, including all of their divisions, subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Tesla



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(including all business units and persons previously referred to), who are or, in or after 2006, were involved in any way with any of the following related to the alleged defect in the subject vehicles:

- a. Design, engineering, analysis, modification or production (e.g. quality control);
- b. Testing, assessment or evaluation;
- c. Consideration, or recognition of potential or actual defects, reporting, record-keeping and information management, (e.g., complaints, field reports, warranty information, part sales), analysis, claims, or lawsuits; or
- d. Communication to, from or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.

Alleged defect: Deformation or damage to the subject component from impacts to the subject component or failure of the subject component to withstand an impact such that the propulsion battery or individual cells of the battery are damaged by the impact, and/or shut down of the vehicle propulsion system, stalling of the vehicle or fire or other thermal event in the propulsion battery following an impact to the subject component.

- **Document:** "Document(s)" is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Tesla, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)"

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also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by Tesla or not. If a document is not in the English language, provide both the original document and an English translation of the document.

Short: The term "Short" refers to an unintended change in the path of electrical current flow within a circuit, battery, semiconductor, conductor or electro-mechanical device.

- **Other Terms:** To the extent that they are used in these information requests, the terms "claim," "consumer complaint," "dealer field report," "field report," "fire," "fleet," "good will," "make," "model," "model year," "notice," "property damage," "property damage claim," "rollover," "type," "warranty," "warranty adjustment," and "warranty claim," whether used in singular or in plural form, have the same meaning as found in 49 CFR 579.4.

In order for my staff to evaluate the alleged defect, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. Insofar as Tesla has previously provided a document to ODI, Tesla may produce it again or identify the document, the document submission to ODI in which it was included and the precise location in that submission where the document is located. When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation.

Please repeat the applicable request verbatim above each response. After Tesla's response to each request, identify the source of the information and indicate the last date the information was gathered.

1. State, by model and model year, the number of subject vehicles Tesla has manufactured for sale or lease in the United States. Separately, for each subject vehicle manufactured to date by Tesla, state the following:
 - a. Vehicle identification number (VIN);
 - b. Power rating/capacity of the propulsion battery;
 - c. Whether the suspension system (ride height) is actively controlled;
 - d. Date of manufacture;
 - e. Date warranty coverage commenced; and,
 - f. The State in the United States where the vehicle was originally sold or leased.

Provide the table in Microsoft Access 2010, or a compatible format, entitled "PRODUCTION DATA."

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2. State the number of each of the following, received by Tesla, or of which Tesla is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:
- Consumer complaints, including those from fleet operators;
 - Field reports, including dealer field reports;
 - Reports involving a crash, injury or fatality;
 - Reports involving a fire;
 - Reports involving a thermal reaction and/or short not included in Tesla's response to subpart d above;
 - Property damage claims;
 - Third-party arbitration proceedings where Tesla is or was a party to the arbitration; and
 - Lawsuits, both pending and closed, in which Tesla is or was a defendant or codefendant.

For subparts "a" through "h," state the total number of each item (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint).

In addition, for items "c" through "h," provide a summary description of the alleged problem and causal and contributing factors and Tesla's assessment of the problem, with a summary of the significant underlying facts and evidence. For items "g" and "h," identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information:
- Tesla's file number or other identifier used;
 - The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
 - Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
 - Vehicle's VIN;
 - Vehicle's make, model and model year;
 - Vehicle's mileage at time of incident;
 - Incident date;
 - Report or claim date;
 - Whether a crash is alleged;
 - Whether a fire, thermal reaction and/or short is alleged;
 - Whether property damage is alleged;
 - Number of alleged injuries, if any; and
 - Number of alleged fatalities, if any.

Provide this information in Microsoft Access 2010, or a compatible format, entitled "REQUEST NUMBER TWO DATA."

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4. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Tesla used for organizing the documents. Describe in detail the search methods and search criteria used by Tesla to identify the items in response to Request No. 2.
5. State, by model and model year, a total count for all of the following categories of claims, collectively, that have been paid by Tesla to date that relate to, or may relate to, the alleged defect in the subject vehicles: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

- a. Tesla's claim number;
- b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
- c. VIN;
- d. Repair date;
- e. Vehicle mileage at time of repair;
- f. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
- g. Labor operation number;
- h. Problem code;
- i. Replacement part number(s) and description(s);
- j. Concern stated by customer; and
- k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in Microsoft Access 2010, or a compatible format, entitled "WARRANTY DATA."

6. Describe in detail the search methods and search criteria used by Tesla to identify the claims in response to Request No. 5, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes, and problem code descriptions applicable to the alleged defect in the subject vehicles. State the terms of the new vehicle warranty coverage offered by Tesla on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that Tesla offered for the subject vehicles and state the number of vehicles that are covered under each such extended warranty.
7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles, that Tesla has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins, advisories, informational documents, training documents, or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that Tesla is planning to issue within the next 120 days.

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8. Describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions," and including actions conducted during subject vehicle design, development, and validation) that relate to, or may relate to, the alleged defect in the subject vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, Tesla. For each such action, provide the following information:
- a. Action title or identifier;
 - b. The actual or planned start date;
 - c. The actual or expected end date;
 - d. Brief summary of the subject and objective of the action;
 - e. Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and
 - f. A brief summary of the findings and/or conclusions resulting from the action.

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

9. Provide detailed engineering drawings depicting dimensional specifications of the subject component and including all subassemblies and mechanical, electrical, and battery components. The drawings should contain sufficient detail, such as sectional views of the battery cells/modules that show proximity to the enclosure baseplate and/or other conductive materials which would allow ODI to assess the consequences of enclosure baseplate deformation or damage and the likelihood that it could lead to cell damage.
10. Describe all modifications or changes made by, or on behalf of, Tesla in the design, material composition, manufacture, quality control, supply, or installation of the subject component, from the start of production to date, which relate to, or may relate to, the alleged defect in the subject vehicles. For each such modification or change, provide the following information:
- a. The date or approximate date on which the modification or change was incorporated into vehicle production;
 - b. A detailed description of the modification or change;
 - c. The reason(s) for the modification or change;
 - d. The part number(s) (service and engineering) of the original component;
 - e. The part number(s) (service and engineering) of the modified component;
 - f. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;
 - g. When the modified component was made available as a service component; and
 - h. Whether the modified component can be interchanged with earlier production components.

Also, provide the above information for any modification or change that Tesla is aware of which may be incorporated into vehicle production within the next 120 days.

11. Describe all modifications or changes made by, or on behalf of, Tesla in the function and operation of the actively controlled suspension system, from the start of production to date,

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which affects, or may affect the subject vehicle ride height, including but not limited to software or other programming modifications/revisions. For each such modification, provide the following information:

- a. A detailed description of the modification;
- b. The reason(s) for the modification as it pertains to the alleged defect;
- c. The changes in vehicle ride height due to the modification;
- d. Whether the modification was incorporated into vehicle production, and if so, the date it was incorporated;
- e. Whether the modification was introduced (released) as a service update for consumer owned subject vehicles, and if so;
 - i) The date the modification was released;
 - ii) The number of subject vehicles available for updated (i.e., how many were produced to the original/unmodified condition);
 - iii) The number of consumer owned vehicles that have been modified/updated to date; and,
- f. A description of how the service update is applied (the procedure or method used to make the modification) to an affected vehicle.

Also, provide the above information for any modification or change that Tesla is aware of which may be incorporated into vehicle production, or as a service update, within the next 120 days.

12. Describe in detail all possible consequences to the vehicle from an impact to the subject component that damages the battery. Describe in detail how these possible consequences were addressed in the design of the subject vehicle and the limits of that design to prevent damage to the propulsion battery, stalling and fires.

13. Furnish Tesla's assessment of the alleged defect in the subject vehicle, including:

- a. The causal or contributory factor(s);
- b. The failure mechanism(s);
- c. The failure mode(s); and,
- d. The risk to motor vehicle safety that it poses.

Legal Authority for This Request

This letter is being sent to Tesla pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information.

Civil Penalties

Tesla's failure to respond promptly and fully to this letter could subject Tesla to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) The Vehicle Safety Act, as amended, 49 U.S.C. § 30165(a)(3), provides for civil penalties of up to \$7,000 per violation per day, with a maximum of \$35,000,000 for a related series of daily violations, for failing or

refusing to perform an act required under 49 U.S.C. § 30166. This includes failing to respond completely, accurately, and in a timely manner to ODI information requests. The maximum civil penalty of \$7,000 per violation per day is established by 49 CFR 578.6(a)(3). The maximum civil penalty of \$35,000,000 for a related series of daily violations of 49 U.S.C. § 30166 is authorized by 49 U.S.C. § 30165(a)(3) as amended by § 31203(a)(1)(B) of the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141.

If Tesla cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, Tesla does not submit one or more requested documents or items of information in response to this information request, Tesla must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Confidential Business Information

All business confidential information must be submitted directly to the Office of Chief Counsel as described in the following paragraph and should not be sent to this office. In addition, do not submit any business confidential information in the body of the letter submitted to this office. Please refer to PE13-### in Tesla's response to this letter and in any confidentiality request submitted to the Office of Chief Counsel.

If Tesla claims that any of the information or documents provided in response to this information request constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, Tesla must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512, as amended, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, Room W41-227, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Tesla is required to submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted. Please remember that the phrase "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONTAINS CONFIDENTIAL BUSINESS INFORMATION" (as appropriate) must appear at the top of each page containing information claimed to be confidential, and the information must be clearly identified in accordance with 49 CFR 512.6. If you submit a request for confidentiality for all or part of your response to this IR, that is in an electronic format (e.g., CD-ROM), your request and associated submission must conform to the new requirements in NHTSA's Confidential Business Information Rule regarding submissions in electronic formats. See 49 CFR 512.6(c) (as amended by 72 Fed. Reg. 59434 (October 19, 2007)).

If you have any questions regarding submission of a request for confidential treatment, contact Otto Matheke, Senior Attorney, Office of Chief Counsel at otto.matheke@dot.gov or (202) 366-5253.

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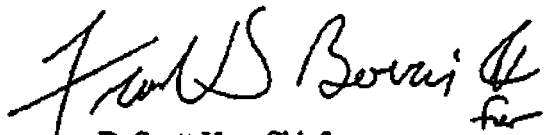
Due Date

Tesla's response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by January 14, 2014. Tesla's response must include all non-confidential attachments and a redacted version of all documents that contain confidential information. If Tesla finds that it is unable to provide all of the information requested within the time allotted, Tesla must request an extension from me at (202) 366-0139 no later than five business days before the response due date. If Tesla is unable to provide all of the information requested by the original deadline, it must submit a partial response by the original deadline with whatever information Tesla then has available, even if an extension has been granted.

Please send email notification to Will Godfrey at will.godfrey@dot.gov and to ODI_IRresponse@dot.gov when Tesla sends its response to this office and indicate whether there is confidential information as part of Tesla's response.

If you have any technical questions concerning this matter, please call Will Godfrey of my staff at (202) 366-5231.

Sincerely,



D. Scott Yon, Chief
Vehicle Integrity Division
Office of Defects Investigation

Akin Gump

STRAUSS HAUER & FELD LLP

FAX TRANSMISSION

1/28/2014

To	Company	Fax	Phone
NHTSA		2024932929	

From: Lippman, Julia
Total Pages: 15
Re: Freedom of Information Act Request
Message:

The information contained in this facsimile message is attorney-client privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us by mail at the address below.

Robert S. Strauss Building / 1333 New Hampshire Avenue, N.W. / Washington, D.C. 20036-1564 / 202.887.4000 / fax: 202.887.4286 / akingump.com



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

U.S. Department of Transportation
Washington, DC 20590

JAN 28 2014

Request Date: January 28, 2014

Request Tracking No.: ES14-000263

Date of Receipt: January 28, 2014

Mr. Scott M. Heimberg
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Building
1333 New Hampshire Ave., NW
Washington, DC 20036

Dear Mr. Heimberg:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department of
Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

February 26, 2014

Mr. Scott Heimberg
sheimberg@akingump.com

Re: Freedom of Information Act (FOIA) Request #ES14-000263

Dear Mr. Heimberg:

This is an interim response to your FOIA request dated January 28, 2014. In accordance with the provisions of 5 U.S.C. § 552(a)(6)(B) and 49 C.F.R. § 7.33, I am extending by ten working days the time period by which the agency must provide a response on the following basis (see checked box):

- ☒ The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request
- ☐ The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request
- ☐ The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein

The agency expects to provide a response by March 12, 2014.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist



U.S. Department of
Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

March 12, 2014

Mr. Scott Heimberg
sheimberg@akingump.com

Re: Freedom of Information Act (FOIA) Request #ES14-000263

Dear Mr. Heimberg:

This is an interim response to your FOIA request dated January 28, 2014. In accordance with the provisions of 5 U.S.C. § 552(a)(6)(B) and 49 C.F.R. § 7.33, I am extending by ten working days the time period by which the agency must provide a response on the following basis (see checked box):

- ☐ The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request
- ☐ The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request
- ☒ The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein

The agency expects to provide a response by March 26, 2014.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

June 3, 2014

Mr. Scott Heimberg
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Building 1333 New Hampshire Ave., N.W.
Washington, DC 20036

Re: Freedom of Information Act (FOIA) Request #ES14-000263 (2)

Dear Mr. Heimberg:

This is to inform you that your January 28, 2014 FOIA request for information related to the 2013 Tesla Model S regarding consumer safety complaints received by NHTSA has been placed in the agency's complex track for processing FOIA requests.

NHTSA employs a multitrack system for processing FOIA requests that distinguishes between simple and more complex requests based upon the amount of work and/or time needed to process the request, or on the number of records and/or records custodians involved. The agency processes requests on a first-in, first out basis.

As noted above, your request has been placed in the complex track in the order in which it was received. Processing these complex requests will take several months or more. You may reformulate or narrow your request to limit the scope of your request in order to qualify for the simple track. In order to qualify for the simple track, you must substantially limit the scope of your request. You may contact Monica Skinner on 202-366-0702 to discuss reformulating or narrowing the scope of your request. If we do not hear from you, your request will remain in the complex track and be processed accordingly.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

January 5, 2016

U.S. Department of Justice
Civil Rights Division

Mr. Scott Heimberg
sheimberg@akingump.com

Dear Mr. Heimberg:

This concerns your January 28, 2014 Freedom of Information Act (FOIA) request #ES14-000263 to the National Highway Traffic Safety Administration (NHTSA).

NHTSA strives to meet FOIA requesters' needs for records as expeditiously as possible. However, we have been unable to meet demand given current conditions and resources. On January 14, 2014, the agency advised you of its significant FOIA request backlog and that processing your request may take months to a year or more. We encouraged you to contact the agency to narrow your request to ensure a timely response to your FOIA request.

We have not heard from you whether you were interested in narrowing your request. At this time, conditions remain unchanged and processing times for requests other than very simple requests are still long. We are contacting you to confirm whether you still have an interest in the records you seek. If you are still interested, please contact Mrs. Monica Skinner by telephone at 202-366-1834 or email at monica.skinner@dot.gov. When you contact Mrs. Skinner, please be prepared to consider ways to narrow your request for the agency to process it in a timely manner.

If you are no longer interested in the processing of your request, you need not respond to this letter. Please note that if we do not hear from you by February 5, 2016, the agency will administratively close your request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Andrew J. DiMarsico', with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

RECEIVED
2014 FEB 26 P 12:00
NHTSA

The Safety Record

Newsletter & Blog

"Covering the inside baseball on motor vehicle and product safety issues"

340 Anawan Street / Suite 200
Rehoboth, MA 02769
www.safetyresearch.net

February 26, 2014

John Donaldson
NHTSA
1200 New Jersey Avenue, SE
West Building, W41-227
Washington, D.C. 20590

RE: FOIA Request

Dear Mr. Donaldson:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted on behalf of *The Safety Record*. We request the following:

We request copies of any and all of NHTSA's correspondence, manufacturer responses, and other documents associated with the Settlement Agreement executed on December 17, 2012, between the National Highway Traffic Safety Administration and Toyota regarding Recall 12V305 for floor mat entrapment in the Lexus RX. Specifically we request:

- The TQ file number and location (i.e., URL) associated with the December 17, 2012 Settlement Agreement.
- All NHTSA correspondence with Toyota associated with the December 17, 2012 Settlement Agreement, including, but not limited to NHTSA's letter informing Toyota that it intended to seek a civil penalty in this matter.
- All information requests issued by NHTSA to Toyota associated with the December 17, 2012 Settlement Agreement.
- All Toyota responses associated with the December 17, 2012 Settlement Agreement.
- All memoranda and meeting minutes associated with the December 17, 2012 Settlement Agreement.

ES14-000699

Request for Categorization as a "Representative of the News Media"

The agency's regulations provide that "[e]ach request shall . . . [s]pecify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requestor claims the request to fall and the basis of this claim." 49 C.F.R. §7.14(c)(2)(i). For the reasons set forth below, *The Safety Record* qualifies for treatment as a "representative of the news media," pursuant to 5 U.S.C. §552(a)(4)(A).

The FOIA provides, "the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Id.* As our longstanding history of publication activity demonstrates, *The Safety Record* clearly meets the statutory criteria as a "news media" requestor.

The Safety Record has published a multi-page newsletter since 2005, reporting on current motor vehicle and product safety issues with a particular emphasis on important industry trends, defects, government activities, and related litigation. The most recent issue of the newsletter (Vol. 8, Issue 3) is attached hereto. Copies of the eleven most recent issues are available in PDF format at our website, <http://thesafetyrecord.safetyresearch.net/archives> (a copy of the newsletter archive page is attached hereto). Since 2004, in an effort to present our work in the most timely manner and to the broadest possible audience, *The Safety Record* has also published a blog, which is available at no charge on our website. Recently published blog entries highlight information obtained through FOIA requests, and copies of those articles are attached hereto ("A Defect Remedy Delayed," published on December 18, 2012; "Lexus RX Floor Mat Recall NHTSA's House of Cards Adds a New Floor," published on October 3, 2012). To demonstrate the regularity of publication, and the scope of the investigative reporting disseminated by *The Safety Record's* blog, a print-out of the most recent entries are attached hereto.

Based upon our demonstrated track-record of publishing timely investigative reporting (often based upon government information) to the public, *The Safety Record* clearly qualifies as a "representative of the news media" for FOIA fee assessment purposes. As such, pursuant to 5 duplication." *The Safety Record* hereby provides its agreement to pay such duplication fees up to \$100, and requests notification if it is determined that applicable duplication fees are likely to exceed that amount.

If you choose to withhold any portion of the requested data, please cite the specific exemption of the FOIA you believe justifies such withholding.

Please provide your response within 20 business days, as specified in the FOIA and an acknowledgement of receipt of this request with a tracking number to facilitate follow-up should it be necessary.

Thank you for your assistance. Please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'ELC', followed by a horizontal line.

Ellen C. Liberman

Fax Transmission

Date: 2/26/2014 9:40:51 AM

Subject:

Total pages: 4

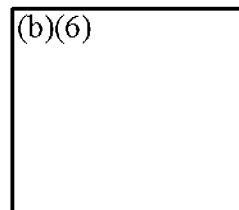


To: John Donaldson, FOIA
Services

From: Ann Boudreau

Company: NHTSA, Office of Chief
Counsel

Phone:



Phone:

Fax:

Fax: 202-366-3820

Message:



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

FEB 26 2014

Request Date: February 26, 2014

Request Tracking No.: ES14-000699

Date of Receipt: February 26, 2014

Ms. Ellen C. Liberman
The Safety Record Newsletter & Blog
340 Anawan Street, Suite 200
Rehoboth, MA 02769

Dear Ms. Liberman:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

January 5, 2016

Ellen Liberman
ellen@safetyresearch.net

U.S. Department of Transportation
Washington, D.C. 20590

Dear Ms. Liberman:

This concerns your February 26, 2014 Freedom of Information Act (FOIA) request #ES14-000699 to the National Highway Traffic Safety Administration (NHTSA).

NHTSA strives to meet FOIA requesters' needs for records as expeditiously as possible. However, we have been unable to meet demand given current conditions and resources. On February 26, 2014 the agency advised you of its significant FOIA request backlog and that processing your request may take months to a year or more. We encouraged you to contact the agency to narrow your request to ensure a timely response to your FOIA request.

We have not heard from you whether you were interested in narrowing your request. At this time, conditions remain unchanged and processing times for requests other than very simple requests are still long. We are contacting you to confirm whether you still have an interest in the records you seek. If you are still interested, please contact Mrs. Monica Skinner by telephone at 202-366-1834 or email at monica.skinner@dot.gov. When you contact Mrs. Skinner, please be prepared to consider ways to narrow your request for the agency to process it in a timely manner.

If you are no longer interested in the processing of your request, you need not respond to this letter. Please note that if we do not hear from you by February 8, 2016, the agency will administratively close your request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Andrew J. DiMarsico'.

Andrew J. DiMarsico
Senior Attorney

From: Ellen Liberman <ellen@safetyresearch.net>
Sent: Wednesday, February 03, 2016 8:41 AM
To: Skinner, Monica (NHTSA)
Subject: FW: FOIA #ES14-000699 Liberman
Attachments: FOIA #ES14-000699 Liberman.pdf; 14-699 incoming ltr..pdf

Hi Monica!

(b)(6)

Re: the attached letter -- I do not want my request closed. And since I don't know what docs are there, I can't really narrow it, so proceed.

If you'd like to discuss further, call me at 508-252-2333. Otherwise, I'm sure I'll be speaking to you sometime in the future

(b)(6)

(b)(6)

Ellen
The Safety Record

From: Hoffman, Loretta [loretta.hoffman@dot.gov]
Sent: Tuesday, January 05, 2016 10:59 AM
To: Ellen Liberman
Subject: FOIA #ES14-000699 Liberman

Please see the attached correspondence regarding NHTSA FOIA request, Control No. ES14-000699.

FROM :

FAX NO. :

Jun. 17 2012 04:33PM P2

The Safety Record

Newsletter & Blog

"Covering the inside baseball on motor vehicle and product safety issues"

340 Ariawan Street / Suite 200
Rehoboth, MA 02769
www.safetyresearch.net

May 23, 2014

John Donaldson
NHTSA
1200 New Jersey Avenue, SE
West Building, W41-227
Washington, D.C. 20590

RE: FOIA Request

Dear Mr. Donaldson:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted on behalf of *The Safety Record*. We request the following:

Any and all and all of NHTSA's correspondence, manufacturer responses, and other documents associated with TQ14-001, which concluded May 16, 2014, with a settlement agreement between the agency and General Motors.

We request:

- The Closing Resume of TQ14-001
- Copies of all of NHTSA's Information Requests, and other "solicitations of information"
- All GM responses
- All GM requests for confidentiality along with the agency's responses
- Any documents associated with the March 4, 2014 Special Order to GM
- All correspondence and other documentation associated with TQ14-001 and the settlement closing the investigation, including, but not limited to meeting minutes and agendas, electronic communications to and from NHTSA and Toyota concerning TQ14-001.

ES14-002135

FROM :

FAX NO. :

Jun. 17 2012 04:33PM P3

May 23, 2014
John Donaldson
Page 2

Request for Categorization as a "Representative of the News Media"

This request is separate and apart from those submitted by Safety Research & Strategies, and is made solely for the purpose of publication and dissemination of the requested information via *The Safety Record*.

The Safety Record qualifies as a "representative of the news media" pursuant to the FOIA and 37 C.F.R. § 102.11(b)(6). The FOIA defines a "representative of the news media" as any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. 5 U.S.C. § 552(a)(4)(A)(ii). The FOIA further provides that, "as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities."

Safety Research & Strategies, Inc. is the publisher of *The Safety Record*, which reports on motor vehicle and consumer product safety and has been in publication since 2005.¹ *The Safety Record's* objective is to educate the press, policymakers, public health practitioners, attorneys and the general public about automotive and product safety issues.

The National Highway Traffic Safety Administration has answered media inquiries from *The Safety Record*, and has made its spokespeople available for *Safety Record* stories.^{2 3} Our frequently visited blog site,⁴ reports the latest developments and contains in-depth information, commentary and analysis about a variety of automotive and product safety issues. *The Safety Record Blog* often posts documents received in response to its FOIA requests along with accompanying analysis and commentary. We offer to readers, at no charge, insight into government operations and activities. Many of our reports are the basis for consumer news in more traditional broadcast, print and web-based media. In short, *The Safety Record* publications provide the public with context around government rulemaking, investigations, and legislation in the areas of safety.

We agree to pay assessable fees associated with this request, limited to those (if any) for publication of non-exempt, responsive material. If you choose to withhold any portion of the requested data, please cite the specific exemption of the FOIA Act you feel justifies the denial.

¹ ISSN 1554-1304

² *Evenflo Discovery Recalled One Year After Consumers Union Urges Its Removal from Marketplace*; *The Safety Record Blog*; March 1, 2008

³ *Tire Dealers Freak Out Over Consumer Education Program*; *The Safety Record Blog*; May 7, 2009

⁴ <http://www.safetyresearch.net/the-safety-record-blog/>

FROM :

FAX NO. :

Jun. 17 2012 04:34PM P4

May 23, 2014
John Donaldson
Page 3

Please provide your response within 20 business days, as specified in the FOIA and an acknowledgement of receipt of this request with a tracking number to facilitate follow-up should it be necessary.

Thank you for your assistance. Please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen C. Liberman", with a long horizontal flourish extending to the right.

Ellen C. Liberman

FROM :

FAX NO. :

Jun. 17 2012 04:29PM P1

The Safety Record

Newsletter & Blog

"Covering the inside baseball on motor vehicle and product safety issues"

340 Aradwan Street / Suite 200
Rehoboth, MA 02769
www.safetyresearch.net

FACSIMILE

DATE: May 23, 2014**TO:** John Donaldson**TIME:** 4:55 PM (EST)**Fax:** 202-366-3820**PAGES:** (Including Cover): 4**Company:** NHTSA**FROM:** Ellen Liberman (p 508-252-2333, f 508-252-3137, ellen@thesafetyresearch.net)

Confidentiality Notice

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EXECUTIVE SECRETARIAT

2014 MAY 27 A 1:33

RECEIVED



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1120 New Jersey Avenue, SE
Washington, DC 20590

MAY 27 2014

Request Date: May 23, 2014

Request Tracking No.: ES14-002135

Date of Receipt: May 27, 2014

Ms. Ellen Liberman
The Safety Record Newsletter & Blog
340 Anawan Street, Suite 200
Rehoboth, MA 02769

Dear Ms. Liberman:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

June 30, 2014

Ms. Ellen Liberman
ellen@safetyresearch.net

Re: Freedom of Information Act (FOIA) Request #ES14-002135

Dear Ms. Liberman:

This is to inform you that your May 23, 2014 FOIA request seeking any and all of NHTSA'S correspondence, manufacturer responses, and other documents associated with TQ14-001, which concluded May 16, 2014, with a settlement agreement between the agency and General Motors (GM) has been placed in the agency's complex track for processing FOIA requests.

NHTSA employs a multitrack system for processing FOIA requests that distinguishes between simple and more complex requests based upon the amount of work and/or time needed to process the request, or on the number of records involved. The agency processes requests on a first-in, first out basis.

As noted above, your request has been placed in the complex track in the order in which it was received. Processing these complex requests will take several months or more. You may reformulate or narrow your request to limit the scope of your request in order to qualify for the simple track. In order to qualify for the simple track, you must substantially limit the scope of your request. You may contact Monica Skinner on 202-366-0702 to discuss reformulating or narrowing the scope of your request. If we do not hear from you, your request will remain in the complex track and be processed accordingly.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist

Skinner, Monica (NHTSA)

From: Ivory, Danielle <danielle.ivory@nytimes.com>
Sent: Tuesday, July 22, 2014 12:46 PM
To: Skinner, Monica (NHTSA)
Subject: Re: Request: #ES14-000766

Yes, absolutely, could you enter it as a new FOIA request? I appreciate you doing that.

Many thanks, Monica, for your help. Yours,

Danielle

On Tue, Jul 22, 2014 at 12:34 PM, <monica.skinner@dot.gov> wrote:

Danielle-

First, you noted RE: Request: #ES14-000766 in the subject line of this email. In our response letter and by email on July 2, I explained to you that your request #ES14-000766 was closed. You emailed saying you did not consider it closed, but it was closed in our system and remains so. We have called each other a couple times since that time to discuss how you could narrow your request so you could put in a new FOIA request. We have not been able to catch up with each other. At information, at the time you submitted your FOIA request #ES14-000766, there were already 18 requests in our complex queue.

In our final response letter to you, we explained that items 2, 3 and 4 were too broad to process.

(2) Records of all communications between NHTSA and GM from January 1, 2004, to the present, including, but not limited to emails, phone calls and text messages.

(3) Meeting minutes from all meetings between GM and NHTSA from January 1, 2004, to the present.

(4) Records of correspondence of NHTSA employees that mention GM or GM products, from January 1, 2004, to the present.

RECEIVED
 2014 JUL 22 P 1:01
 IVORY, DANIELLE

You now want to narrow to all model years of the Chevrolet Cobalt, Saturn Ion and Chevrolet Malibu, for 5 years for the items above. Your request will still be complex and placed in the complex queue at #25.

We are still processing simple and complex FOIA's unrelated to GM, plus we are buried in complex GM requests. I am the ONLY FOIA Specialist processing every single FOIA request for NHTSA. We are doing the best we can with the human resources we have. I would be glad to enter your request above in to our FOIA tracking system as a new FOIA request. Please let me know if you would like me to do that and you will be sent an acknowledgement letter and new FOIA tracking #.

Thanks,

Monica J. Skinner

Senior FOIA Information Specialist

Office of Chief Counsel

1200 New Jersey Ave, SE

Mail Stop: Room W41-229

Washington, DC 20590

monica.skinner@dot.gov

Office - [202-366-0702](tel:202-366-0702)

From: Ivory, Danielle [<mailto:danielle.ivory@nytimes.com>]

Sent: Tuesday, July 22, 2014 11:41 AM

To: Skinner, Monica (NHTSA)

Subject: Re: Request: #ES14-000766

Hi Monica, if I narrowed this request to all model years of the Chevrolet Cobalt, Saturn Ion and Chevrolet Malibu, would that be helpful? I could also limit this request to five years, instead of ten, as I mentioned in my last email. Would that be possible? Let me know if you have some time to talk -- or I'm happy to do this over email.

Thanks,

Danielle

On Wed, Jul 2, 2014 at 2:42 PM, Danielle ivory <danielle.ivory@nytimes.com> wrote:

Hi Monica, my apologies. I think my email was not clear. I was not asking you which models/vehicles you would choose. I was asking how you would suggest narrowing the request? I am interested in GM vehicles broadly, so perhaps it would be better to narrow by year. Would it help to limit the request to five years instead of ten? Please let me know of your recommendations on narrowing.

Thanks again,

Danielle

Sent from my iPhone

On Jul 2, 2014, at 1:59 PM, <monica.skinner@dot.gov> wrote:

Danielle –

You have asked me to suggest what specific model/vehicles you should request information about in your FOIA request. I am sorry, but it would be inappropriate for me to do that. You have also asked me to explain why requesting the meeting minutes of GM over a 10 year period of time would be so difficult to obtain without narrowing the scope of your request. I am not sure what you still do not understand, so I will do my best to try and assist.

A few facts. There are approximately 44 auto manufacturers worldwide that sell vehicles in the US. 13 manufacturers operate plants in the US. NHTSA is a small Federal agency of less than 600 employees. NHTSA is tasked with overseeing the safe manufacture of motor vehicles and equipment by setting safety standards, investigating possible safety-related defects and assuring that manufacturers

conduct timely recalls. NHTSA also encourages the safe behavior of drivers, occupants, cyclists, and pedestrians through grants to the States to establish safety programs.

There are 2 FOIA analysts processing FOIA requests from the public for the entire agency. GM is one of the biggest manufacturers in the world and NHTSA has a lot of interaction with them on many levels and for many different reasons. We (the FOIA Office) has no way to know what every single NHTSA employee is working on related to General Motors. I can't even guess how many times the letters GM were written or typed just today in this building. It is unreasonable to send out an email to every single NHTSA employee in the entire agency and ask them for any and all meeting minutes they may have related to GM for the past 10 years without providing them one single piece of clarifying information.

Your revised request below for "discussions between NHTSA and GM that involve safety issues or stalling in cars" is still too broad. I would suggest you go: <http://www-odi.nhtsa.dot.gov/owners/SearchSafetyIssues> to research and narrow down what you are really looking for. You can search by the vehicle make, model, model year, and then by the terms that interest you (such as stalling.) Once you are clearer about what records you seek, we encourage you to send us a new FOIA request with a more defined description of the records you seek.

If you are still not satisfied, you have 45 days from the date of our response letter to file a FOIA appeal with our Chief Counsel.

NOTE: I noticed that NHTSA's June 16, 2014 final response letter said that an appeal must be submitted within 30 days after you receive this determination. DOT's regulations recently changed. I failed to revise your letter. An appeal must be submitted within 45 from the date of the June 16, 2014 determination.

Thanks,

Monica J. Skinner

Senior FOIA Information Specialist

Office of Chief Counsel

1200 New Jersey Ave, SE

Mail Stop: Room W41-229

Washington, DC 20590

monica.skinner@dot.gov

Office - 202-366-0702

From: Ivory, Danielle [<mailto:danielle.ivory@nytimes.com>]

Sent: Wednesday, July 02, 2014 10:33 AM

To: Skinner, Monica (NHTSA)

Subject: Re: Request: #ES14-000766

Monica, to add to this, I'm not certain why the meeting minutes (item #3) would be difficult to obtain without narrowing. Could you please explain that to me?

Thanks again,

Danielle

On Wed, Jul 2, 2014 at 10:31 AM, Ivory, Danielle <danielle.ivory@nytimes.com> wrote:

Hi Monica, I am interested in any discussions between NHTSA and GM that involve safety issues or stalling in cars. I'd like to narrow the period of time, but -- because it has become clear that GM and NHTSA were aware of safety problems in the Cobalt dating at least back to the early 2000s, I'm concerned about narrowing the time period further. I am also concerned about narrowing to a specific model/vehicle since safety issues seem to be affecting many of the cars in GM's line-up. What would you suggest?

Many thanks,

Danielle

On Wed, Jul 2, 2014 at 8:38 AM, <monica.skinner@dot.gov> wrote:

Hi Danielle-

Your request #ES14-000766 is closed. If you wish to appeal that decision, you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, W41-227, Washington, DC 20590, within 45 days of NHTSA's June 16, 2014 response letter.

If you would prefer, I would be glad to assist you in narrowing down what you really want, so you can draft a new clear and reasonable request. Your request will be processed as a new FOIA request and you will be provided a new FOIA tracking number.

Per your email below, you are disputing that a request for : All communications between NHTSA and GM, meeting minutes for all meetings between NHTSA and GM, and internal NHTSA correspondence that mentions GM or GM products over a 10 year time period is overbroad. As stated in NHTSA response letter, GM is one of the largest motor vehicle manufacturers in the world. I have no idea how many safety recalls it has done or how many investigation NHTSA has done related to GM products over a 10 year period of time. I would literally have to contact every single NHTSA employee and have them search for every single document that named GM for any reason over a ten year period of time. You did not specify any particular recall, topic, investigation, vehicle, model year, etc... Items 2, 3 and 4 are a generic request for ALL NHTSA – GM records. Millions of documents. I can assure you that your request is out of the ballpark overly broad. If you can describe exactly what records are seeking, I can begin to try and help you obtain those records.

If you would like to call me to discuss this before you send in a new request, I would be more than glad to speak with you. I am here 7-5:30 EST. I do not generally work on Wednesdays (except I am here today).

Thanks,

Monica J. Skinner

Senior FOIA Information Specialist

Office of Chief Counsel

1200 New Jersey Ave, SE

Mail Stop: Room W41-229

Washington, DC 20590

monica.skinner@dot.gov

Office - 202-366-0702

From: Ivory, Danielle [mailto:danielle.ivory@nytimes.com]
Sent: Tuesday, July 01, 2014 4:15 PM
To: Skinner, Monica (NHTSA)
Subject: Request: #ES14-000766

Hi Monica, I just received NHTSA's response to request #ES14-000766. The response letter says that items #2, 3 and 4 were overly broad. I disagree, but I would like to make an effort to work with NHTSA to narrow the request. I wish someone had mentioned this to me earlier since this response was already quite late.

As it stands, I do not consider this request to be closed. Who can I speak with about narrowing the current request? There was no phone number or email address on the response letter, indicating who to contact to narrow the request.

I have enclosed a copy of the letter I received from NHTSA, for your convenience.

Many thanks,

Danielle

--

Danielle Ivory
The New York Times

Office: 212-556-1596

Cell: (b)(6)

--

Danielle Ivory
The New York Times

Office: 212-556-1596

Cell: (b)(6)

Skinner-Goodman, Monica

From: MacDougall, Ian <ian.macdougall@nytimes.com>
Sent: Friday, September 16, 2016 11:54 AM
To: Skinner, Monica (NHTSA)
Subject: Follow-up from The New York Times

Follow Up Flag: Follow up
Flag Status: Completed

Hi Monica--

I hope this note finds you well. I recently took over for Tali Leinwand in the Times Legal Department, and I'm writing to follow up on your correspondence pertaining to Danielle Ivory's FOIA requests to NHTSA (see copied email below). Many thanks -- I should add -- for your helpful guidance in how we might narrow the requests. We're working on narrowing the requests now, and to that end, I have two questions.

(1) What are the official titles of the ODI employees who investigate and assess safety issues pertaining to GM, Takata, and Tesla? Are they called "investigators," as your email indicates? Or do they have a different official title? We want to make sure we identify the right subset of employees in narrowing our request.

(2) For subpart (2) under the "GM request" heading (see below), aren't minutes of official meetings between ODI and GM kept in some centralized file or database? As I understand it, the request wasn't for notes taken by any employee any time they talked to somebody from GM. Rather, it was for the minutes of official meetings between ODI and GM.

Many thanks for your help on this. We're hoping to get a response narrowing the requests to you Monday or Tuesday, so if it would be possible to get answers by then, we would be very grateful.

Also, if we follow your guidance, as set forth below, is there a chance these requests will end up in the non-complex channel? Or would it at least be possible to get a hard estimate on when the requests will be processed?

Thanks again. I can be reached at this e-mail address or by phone -- (212) 556-8009 (office) and (b)(6) (cell).

All best
 Ian MacDougall

Ms. Leinwand,

I apologize for the delay in responding to your email. We appreciate your and Ms. Ivory's willingness to have a dialogue with us and to narrow your GM (ES14-003058) and Takata (ES15-006123) requests to remove them from our complex

queue. We strive to provide requesters with records as expeditiously as possible subject to the complexity of the requests and resources available to process them.

As you know, these requests concern voluminous records and, with our limited resources, the agency faces supreme challenges in processing these requests. Part of the challenge is how GM and Takata submitted the records to NHTSA. The reality is that GM and Takata did not provide information in a structured format. You could easily say it was a large dump of records. These unstructured data dumps create huge obstacles to processing FOIA requests. Another challenge is, due to the nature of these records, the agency must go page by page to identify and remove all personal identifying information within these voluminous record sets. With that in mind, we have had an opportunity to review your narrowed requests and address each one below.

GM request

1) All emails between NHTSA'S Office of Defects Investigation (ODI) and General Motors (GM) from JANUARY 1, 2013 to present.

This remains very broad because I don't have a request that reasonably describes the records. It's unclear because the first subject identified was in item 6 of Ms. Ivory's original request, which was the faulty switch ignition. In an email exchange on July 2, 2014, she expanded that focus to "any discussions between NHTSA and GM that involve safety issues or stalling cars." It's still unclear to me what we should look for in all these emails. ODI investigates "safety issues" in motor vehicles and equipment, and many issues arise with GM. A request seeking all emails between ODI employees, and GM (one of the largest automobile manufacturers in the world) for any safety issue since 2013 would result in a huge number of records that would require significant time to process. Just so you are aware, we do not have a sophisticated email software system. I would have to have each employee search their desktop for the emails. With over 50 employees in ODI, and a broad scope, you can imagine the difficulty that would entail. To narrow your request, I suggest that you provide a defined subject matter and identify a handful of employees to search, such as the investigators involved in the matter. Also, a three year window is very broad. If you can narrow that to a more finite window that would help scope the search. Additionally, it would be helpful to identify the specific vehicle, i.e. the cobalt, that is the subject of your query. I am able to work with you on crafting a more narrowed request.

2) All meeting minutes between ODI and GM during the same period.

Again, I don't have a request that reasonably describes the subject of the records. Without more finite information, I would have to query all ODI employees on any GM issue over a three year time period. If you have a more specific issue and time frame that would help.

3) Records of correspondence of ODI employees mentioning THE MODEL YEAR 2005 Chevrolet Cobalt from JANUARY 1, 2013, to July 1, 2014.

I interpret "correspondence" as distinct from emails. I could process this item of your request if you can confirm that the subject matter is the ignition switch investigation.

Takata request

1) All records, including emails, reports and powerpoint presentations, from January 2000 to the present, related to Takata employees' belief or knowledge that Takata concealed testing failures and/or provided erroneous or incomplete data in reports on some of its air-bag inflators to Honda or any other automaker.

This is rather difficult to process due to the subjective nature of the request. Because of the subjective nature of the request, it fails to reasonably describe the records sought. NHTSA record custodians would have to have the ability to discern the state of mind of Takata employees and their intent. Even assuming that this was possible, because of the sheer volume of records, it would be the proverbial needle in the haystack. It would require a page by page review of a significant record set that would be overly burdensome.

2) All emails sent to or from Bob Schubert, a Takata employee, related to data inconsistencies, discrepancies, manipulation, inaccuracies, concealment or incompleteness, sent or received between January 2000 and the present.

To the extent this seeks records submitted to NHTSA by Takata, this is similar to 1) above. While we might be able to search for an individual Takata employee, we would not have the ability to discern the intent of a specific Takata employee's emails. For NHTSA created records, it's unlikely that NHTSA maintains email records dating back to 2000. As I mentioned above, the email search is limited to each employees desktop. We can search specific NHTSA employees for a specific time frame for emails to or from this individual.

3) All emails sent to or from takata.com domain name, related to data inconsistencies, discrepancies, manipulation, inaccuracies, concealment or incompleteness, sent or received between January 2000 and the present.

I assume that this is for records submitted to NHTSA from Takata. For the reasons stated in 1), this fails to reasonably describe the records.

I also note that, pursuant to 49 CFR Part 512, GM and Takata have submitted numerous requests for confidential treatment for the information each submitted to NHTSA. NHTSA's Chief Counsel's office is reviewing these requests. I don't know how long it will take Counsel's office to process the requests for confidential treatment. Information pending a decision regarding confidentiality is deemed confidential until the Office of Chief Counsel makes its

determination. See 49 CFR § 512. Assuming confidentiality is granted, the agency must redact confidential business information (CBI) pursuant to 5 U.S.C. § 552(b)(4), and of course, PII (5 U.S.C. §552(b)(6)), prior to disclosure.

Tesla request

We received Ms. Ivory's Tesla request in July and are currently processing it. It appears that this request is specifically related to the May 7, 2016 Tesla vehicle. If so, I suggest you narrow the scope to just that subject because item 2 of the request is very broad. NHTSA has been involved with a number of autonomous vehicle initiatives since January 2015 that would require a search of a number of employees unrelated to the May 7, 2016 crash. If item 2 remains as currently constituted, even without yet knowing how many records exist related to the May 7 crash, it will likely be placed in our complex queue. In addition, this request seeks all emails related to items 1-3. This would expand the search exponentially, creating a complex request or overly burdensome situation.

Thank you for notifying us that Ms. Ivory was withdrawing her request #ES16-000455. The agency responded to that request on March 23, 2016. I have attached a copy of the agency's response for your review.

--

Ian MacDougall
First Amendment Fellow
The New York Times Company
620 8th Avenue, 18th Floor
New York, NY 10018
(b)(6) (cell)
(212) 556-8009 (office)



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1201 New Jersey Avenue, SE
Washington, DC 20020

JUL 22 2014

Request Date: July 22, 2014

Request Tracking No.: ES14-003058

Date of Receipt: July 22, 2014

Ms. Danielle Ivory
The New York Times
620 Eighth Avenue 2nd Floor
New York, NY 10018

Dear Ms. Ivory:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

July 24, 2014

Ms. Danielle Ivory
danielle.ivory@nytimes.com

Re: Freedom of Information Act (FOIA) Request #ES14-003058

Dear Ms. Ivory:

This is to inform you that your July 22, 2014 FOIA request seeking: 1) all communications between NHTSA and General Motors (GM) from July 1, 2010 to present, 2) all meeting minutes between NHTSA and GM, and 3) records of correspondence of NHTSA employees mentioning GM or GM products for all models of the Chevrolet Cobalt, Saturn Ion and Chevrolet Malibu has been placed in the agency's complex track for processing FOIA requests. You and I have had several conversations about the scope of your request. Although you have narrowed the scope of your request from 10 years to 5 years, I must emphasize once more that your request is still extremely broad and voluminous, especially item 3.

NHTSA employs a multitrack system for processing FOIA requests that distinguishes between simple and more complex requests based upon the amount of work and/or time needed to process the request, or on the number of records involved. The agency processes requests on a first-in, first out basis.

As noted above, your request has been placed in the complex track in the order in which it was received. Processing these complex requests will take several months or more. You may reformulate or narrow your request to limit the scope of your request in order to qualify for the simple track. In order to qualify for the simple track, you must substantially limit the scope of your request. You may contact Monica Skinner on 202-366-0702 to discuss reformulating or narrowing the scope of your request. If we do not hear from you, your request will remain in the complex track and be processed accordingly.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

January 5, 2016

Danielle Ivory
danielle.ivory@nytimes.com

Dear Ms. Ivory:

This concerns your July 22, 2014 Freedom of Information Act (FOIA) request #ES14-003058 to the National Highway Traffic Safety Administration (NHTSA).

NHTSA strives to meet FOIA requesters' needs for records as expeditiously as possible. However, we have been unable to meet demand given current conditions and resources. On July 22, 2014, the agency advised you of its significant FOIA request backlog and that processing your request may take months to a year or more. We encouraged you to contact the agency to narrow your request to ensure a timely response to your FOIA request.

We have not heard from you whether you were interested in narrowing your request. At this time, conditions remain unchanged and processing times for requests other than very simple requests are still long. We are contacting you to confirm whether you still have an interest in the records you seek. If you are still interested, please contact Mrs. Monica Skinner by telephone at 202-366-1834 or email at monica.skinner@dot.gov. When you contact Mrs. Skinner, please be prepared to consider ways to narrow your request for the agency to process it in a timely manner.

If you are no longer interested in the processing of your request, you need not respond to this letter. Please note that if we do not hear from you by February 8, 2016, the agency will administratively close your request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Andrew J. DiMarsico'.

Andrew J. DiMarsico
Senior Attorney

From: danielle.ivory@nytimes.com
To: [Hoffman, Loretta \(NHTSA\)](#)
Subject: Re: FOIA ES14-003058 Ivory
Date: Tuesday, January 05, 2016 12:53:44 PM

Hi Loretta, yes, I am interested in this request and I have another pending request as well which had not been acknowledged.

I would like an estimate of how long both requests will take to fulfill. And please note that I did narrow the request that you wrote to me about and have asked Ms. Skinner several times for time estimates on delivery and for the names of the contractors or contracting firm processing them. She has not provided this information.

Thanks,

Danielle

Sent from my iPhone

> On Jan 5, 2016, at 12:48 PM, Hoffman, Loretta <loretta.hoffman@dot.gov> wrote:
>
> Please see the attached correspondence regarding NHTSA FOIA request, Control No. ES14-003058.
> <[FOIA ES14-003058 Ivory.pdf](#)>
> <[14-3058 INCOMING.pdf](#)>

Harris, Sandra (NHTSA)

From: Webmaster, NHTSA (NHTSA)
Sent: Friday, October 31, 2014 1:54 PM
To: Mapp, Tammy (NHTSA); Harris, Sandra (NHTSA); Korkor, Julie (NHTSA)
Subject: Wall Street Journal FOIA

Sender Name: Christina Rogers

Sender Email: christina.rogers@wsj.com

Subject: Wall Street Journal FOIA

Comments: Dear custodian of records: This is a request under the Freedom of Information Act. I request that a copy of the following documents, or documents containing the following information, be provided to me: Any and all emails and/or postal mail correspondence between or among the National Highway Traffic Safety Administration and Takata referring to air bags and/or air-bag technology and/or injuries related to air bags between Jan. 1, 2008 and present. Any and all email correspondence by NHTSA staff referring to Takata air bags and/or Takata air bag technology and/or injuries related to air bags between Jan. 1, 2008 and present. Also, please provide any and all email and/or postal mail correspondence between the auto manufacturers and NHTSA about Takata airbags between Jan. 1, 2008 and present. Please provide email documents in native digital format and postal mail correspondence as scanned PDFs. In order to help to determine my status to assess fees, you should know that I am a journalist with The Wall Street Journal and this request is made in the public interest as part of news gathering. I am willing to pay fees for this request up to a maximum of \$200. If you estimate that the fees will exceed this limit, please inform me first. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. If all or a part of this request is denied, I request that I be provided with a written statement of the grounds for denial. If some portions of the requested documents are determined to be exempt from disclosure, please provide me with the portions that can be disclosed. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. Please feel free to contact me by phone with questions. My number is (b)(6) or (b)(6). Thank you for your consideration of this request. Sincerely, Christina Rogers The Wall Street Journal 2000 Town Center, Suite 750 Southfield, MI 48075

2014 OCT 31 A 11:40



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20020

NOV 3 2014

Request Date: October 31, 2014

Request Tracking No.: ES14-004861

Date of Receipt: November 3, 2014

Ms. Christina Rogers
The Wall Street Journal
2000 Town Center, Suite 750
Southfield, MI 48075

Dear Ms. Rogers:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

December 6, 2014

Ms. Christina Rogers
christina.rogers@wsj.com

Re: Freedom of Information Act (FOIA) Request #ES14-004861

Dear Ms. Rogers:

This responds to your October 31, 2014 FOIA request seeking any and all communications between NHTSA and Takata and NHTSA and automobile manufacturers concerning Takata airbags, airbag technology and injuries related to airbags from January 2008 to present.

The FOIA and agency regulations require requesters to reasonably describe the record or records sought. See 5 U.S.C. § 552(a)(3)(A); 49 CFR § 7.14(c)(1).). Your request is extremely broad and seeks a significant amount of information. You literally seek all information regarding airbags related to Takata for 7 years. Takata is one of the largest vehicle parts suppliers in the world and NHTSA has had a vast number of communications with Takata regarding airbags. Accordingly, your request is overbroad and unreasonably burdensome. Under the FOIA and agency regulations, the agency is not required to process requests that require an unreasonably burdensome search.

Pursuant to the provisions of 49 C.F.R. Part 7, there is no charge for this response.

I am the person responsible for this decision. If you wish to appeal this decision, you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, W41-227, Washington, DC 20590, pursuant to 49 CFR § 7.32(d). An appeal must be submitted within 45 from the date of this determination. It should contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20020

VIA EMAIL

January 11, 2016

Christina Rogers
christina.rogers@wsj.com

Dear Ms. Rogers:

This concerns your October 31, 2014 Freedom of Information Act (FOIA) request #ES14-004861 to the National Highway Traffic Safety Administration (NHTSA).

NHTSA strives to meet FOIA requesters' needs for records as expeditiously as possible. However, we have been unable to meet demand given current conditions and resources. On November 3, 2014, the agency advised you of its significant FOIA request backlog and that processing your request may take months to a year or more. We encouraged you to contact the agency to narrow your request to ensure a timely response to your FOIA request.

We have not heard from you whether you were interested in narrowing your request. At this time, conditions remain unchanged and processing times for requests other than very simple requests are still long. We are contacting you to confirm whether you still have an interest in the records you seek. If you are still interested, please contact Mrs. Monica Skinner by telephone at 202-366-1834 or email at monica.skinner@dot.gov. When you contact Mrs. Skinner, please be prepared to consider ways to narrow your request for the agency to process it in a timely manner.

If you are no longer interested in the processing of your request, you need not respond to this letter. Please note that if we do not hear from you by February 16, 2016, the agency will administratively close your request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Andrew J. DiMarsico', with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

Harris, Sandra (NHTSA)

From: Webmaster, NHTSA (NHTSA)
Sent: Monday, November 03, 2014 4:04 PM
To: Mapp, Tammy (NHTSA); Harris, Sandra (NHTSA); Korkor, Julie (NHTSA)
Subject: WSJ FOIA on Jeep Fuel-Tank Fires Recall/Investigation

Sender Name: Christina Rogers

Sender Email: christina.rogers@wsj.com

Subject: WSJ FOIA on Jeep Fuel-Tank Fires Recall/Investigation

Comments: Dear custodian of records: This is a request under the Freedom of Information Act. I request that a copy of the following documents, or documents containing the following information, be provided to me: Any and all emails and/or postal mail correspondence between or among the National Highway Traffic Safety Administration and Chrysler Group LLC referring to Jeep fuel tank fires and/or Jeep fires and/or Jeep post-collision fires and/or Jeep trailer hitches and/or deaths related to Jeep fires between Aug. 2010 and present. Any and all emails between or among NHTSA staff referring to Jeep fuel tank fires and/or Jeep fires and/or Jeep post-collision fires and/or Jeep trailer hitches and/or deaths related to Jeep fires between Aug. 2010 and present. Any and all emails and/or postal mail correspondence between or among the National Highway Traffic Safety Administration and Chrysler Group LLC referring and/or related to NHTSA investigation EA12005 between Aug. 2010 and present. Any and all email and/or postal mail correspondence between or among the National Highway Traffic Safety Administration and Chrysler Group LLC referring to and/or related to NHTSA recall campaign #13V252000. Any and all documents on file for NHTSA recall campaign #13V252000. Please provide documents in either their native digital format or as scanned PDFs. In order to help to determine my status to assess fees, you should know that I am a journalist with The Wall Street Journal and this request is made in the public interest as part of news gathering. I am willing to pay fees for this request up to a maximum of \$200. If you estimate that the fees will exceed this limit, please inform me first. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. If all or a part of this request is denied, I request that I be provided with a written statement of the grounds for denial. If some portions of the requested documents are determined to be exempt from disclosure, please provide me with the portions that can be disclosed. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. Please feel free to contact me my phone with questions. My number is (b)(6) or (b)(6) My email: christina.rogers@wsj.com Thank you for your consideration of this request. Sincerely, Christina Rogers The Wall Street Journal 2000 Town Center, Suite 750 Southfield, MI 48075

52 6 V 4-100-0002



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1215 New Jersey Avenue, SE
Washington, DC 20590

NOV 4 2014

Request Date: November 3, 2014

Request Tracking No.: ES14-004887

Date of Receipt: November 4, 2014

Ms. Christina Rogers
The Wall Street Journal
2000 Town Center, Suite 750
Southfield, MI 48075

Dear Ms. Rogers:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

December 6, 2014

Ms. Christina Rogers
christina.rogers@wsj.com

Re: Freedom of Information Act (FOIA) Request #ES14-004887

Dear Ms. Rogers:

This responds to your November 3, 2014 FOIA request seeking any and all emails and/or postal correspondence between NHTSA and Chrysler Group LLC (Chrysler) relating to Jeep fuel tank fires, post collision fires, trailer hitches and/or deaths related to Jeep fires from 2010 to present. You have also requested any and all emails and/or postal correspondence referring or relating to NHTSA investigation EA12005 and Recall 13v252000.

The FOIA and agency regulations require requesters to reasonably describe the record or records sought. See 5 U.S.C. § 552(a)(3)(A); 49 CFR § 7.14(c)(1).). Your request is extremely broad and seeks a significant amount of information. You literally seek all communications relating to Jeep fires, Jeep fuel tank fires, Jeep post collision fires, trailer hitches and deaths between NHTSA and Chrysler on these issues for 5 years. Chrysler is one of the largest motor vehicle manufacturers in the world and has had a vast amount of communications with NHTSA on these issues. Accordingly, your request is overbroad and unreasonably burdensome. Under the FOIA and agency regulations, the agency is not required to process requests that require an unreasonably burdensome search.

Pursuant to the provisions of 49 C.F.R. Part 7, there is no charge for this response.

I am the person responsible for this decision. If you wish to appeal this decision, you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, W41-227, Washington, DC 20590, pursuant to 49 CFR § 7.32(d). An appeal must be submitted within 45 from the date of this determination. It should

contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner". The signature is written in a cursive, flowing style.

Monica J. Skinner
Senior FOIA Information Specialist



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, NE
Washington, DC 20590

VIA EMAIL

January 11, 2016

Christina Rogers
christina.rogers@wsj.com

Dear Ms. Rogers:

This concerns your November 3, 2014 Freedom of Information Act (FOIA) request #ES14-004887 to the National Highway Traffic Safety Administration (NHTSA).

NHTSA strives to meet FOIA requesters' needs for records as expeditiously as possible. However, we have been unable to meet demand given current conditions and resources. On November 4, 2014, the agency advised you of its significant FOIA request backlog and that processing your request may take months to a year or more. We encouraged you to contact the agency to narrow your request to ensure a timely response to your FOIA request.

We have not heard from you whether you were interested in narrowing your request. At this time, conditions remain unchanged and processing times for requests other than very simple requests are still long. We are contacting you to confirm whether you still have an interest in the records you seek. If you are still interested, please contact Mrs. Monica Skinner by telephone at 202-366-1834 or email at monica.skinner@dot.gov. When you contact Mrs. Skinner, please be prepared to consider ways to narrow your request for the agency to process it in a timely manner.

If you are no longer interested in the processing of your request, you need not respond to this letter. Please note that if we do not hear from you by February 16, 2016, the agency will administratively close your request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Andrew J. DiMarsico', with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

Mapp, Tammy (NHTSA)

From: Webmaster, NHTSA (NHTSA)
Sent: Monday, November 17, 2014 9:57 AM
To: Mapp, Tammy (NHTSA); Harris, Sandra (NHTSA); Korkor, Julie (NHTSA)
Subject: FOIA request for copy of contract DTNH22-12-C-00271

EXECUTIVE SECRETARIAT
 RECEIVED-NHTSA

2014 NOV 17 A 11:21

Sender Name: Paul Lanigan

Sender Email: paul.lanigan@calspan.com

Subject: FOIA request for copy of contract DTNH22-12-C-00271

Comments: In accordance with the Freedom of Information (FOIA) 5USC522, as amended (32 CFR parts 806 and 813) and implementing regulations, I am requesting a copy of the awarded master contract DTNH22-12-C-00271, awarded to Dynamic Sciences, Inc. I recognize that a charge may be assessed for the direct cost of searching and duplication necessary to respond to our request. I assume financial responsibility for the specific costs associated with this request. Paul J. Lanigan Calspan Corporation 4455 Genesee Street Buffalo, NY 14225 716-631-6994 paul.lanigan@calspan.com

ESK-005132



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

NOV 17 2014

Request Date: November 17, 2014

Request Tracking No.: ES14-005132

Date of Receipt: November 17, 2014

Mr. Paul J. Lanigan
Calspan Corporation
4455 Genesee Street
Buffalo, NY 14225

Dear Mr. Lanigan:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department of
Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

December 16, 2014

Mr. Paul Lanigan
Calspan Corporation
Paul.lanigan@calspan.com

Re: Freedom of Information Act (FOIA) Request #ES14-005132, 005133, 005134, 05135,
005136, 5137, 005138, 005139

Dear Mr. Lanigan:

This is an interim response to your FOIA requests dated November 17, 2014. In accordance with the provisions of 5 U.S.C. § 552(a)(6)(B) and 49 C.F.R. § 7.33, I am extending by ten working days the time period by which the agency must provide a response on the following basis (see checked box):

- ☐ The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request
- ☐ The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request
- ☒ The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein

The agency expects to provide a response by January 2, 2015

Sincerely,

A handwritten signature in black ink that reads "Monica J. Skinner".

Monica J. Skinner
Senior FOIA Information Specialist



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

ELECTRONIC MAIL

December 24, 2014

Mr. Paul Lanigan
Paul.lanigan@calspan.com

Re: Freedom of Information Act (FOIA) Requests: ES14-005132, 5133, 005134, 005135, 005136, 005137, 005138, and 005139

Dear Mr. Lanigan:

This responds to your November 17, 2014 FOIA requests, seeking records regarding contracts relating to the following: DTNH22-12-C-00271, DTNH22-12-C-00270, DTNH22-12-C-00269, and various contracts awarded as a result of RFP DTNH22-14-R-00002.

We have notified the parties awarded the respective contracts and have permitted them an opportunity to object to the disclosure of this information. See 49 CFR § 7.17.

After we receive responses, NHTSA will determine whether the requested business information may properly be disclosed to you.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. DiMarsico".

Andrew J. DiMarsico
Senior Attorney

From: [Paul Lanigan](#)
To: [Hoffman, Loretta \(NHTSA\)](#)
Subject: RE: #ES14-005132 Lanigan
Date: Thursday, January 14, 2016 1:31:28 PM

I still have interest in receiving these records.

Thank you

Paul

Paul Lanigan | Sr. Contracts Manager
Calspan Corporation | Compliance
2041 Niagara Falls Boulevard
Niagara Falls, NY 14304-1617
716.631.6994 (phone)
716.236.1001 (fax)
paul.lanigan@calspan.com

Check out our **NEW** Website, www.calspan.com

From: Hoffman, Loretta [mailto:loretta.hoffman@dot.gov]
Sent: Monday, January 11, 2016 10:10 AM
To: Paul Lanigan <paul.lanigan@calspan.com>
Subject: #ES14-005132 Lanigan

To view Calspan's e-mail message disclaimer, please visit: <http://www.calspan.com/ourCompany/emailDisclaimer.php>
Check out our NEW Website, www.calspan.com

Mapp, Tammy (NHTSA)

From: Webmaster, NHTSA (NHTSA)
Sent: Monday, November 17, 2014 10:01 AM
To: Mapp, Tammy (NHTSA); Harris, Sandra (NHTSA); Korkor, J. (NHTSA)
Subject: FOIA request for copy of contract DTNH22-12-C-00269

EXECUTIVE SECRETARIAT
 RECEIVED-NHTSA

2014 NOV 17 A 11:38

Sender Name: Paul Lanigan

Sender Email: paul.lanigan@calspan.com

Subject: FOIA request for copy of contract DTNH22-12-C-00269

Comments: In accordance with the Freedom of Information (FOIA) 5USC522, as amended (32 CFR parts 806 and 813) and implementing regulations, I am requesting a copy of the awarded master contract DTNH22-12-C-00269, awarded to Crash Research & Analysis, Inc. I recognize that a charge may be assessed for the direct cost of searching and duplication necessary to respond to our request. I assume financial responsibility for the specific costs associated with this request. Paul J. Lanigan Calspan Corporation 4455 Genesee Street Buffalo, NY 14225 716-631-6994 paul.lanigan@calspan.com

ESH-005134



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

NOV 17 2014

Request Date: November 17, 2014

Request Tracking No.: ES14-005134

Date of Receipt: November 17, 2014

Mr. Paul J. Lanigan
Calspan Corporation
4455 Genesee Street
Buffalo, NY 14225

Dear Mr. Lanigan:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, NE
Washington, DC 20590

VIA EMAIL

January 11, 2016

Paul J. Lanigan
paul.lanigan@calspan.com

Dear Mr. Lanigan:

This concerns your November 17, 2014 Freedom of Information Act (FOIA) request #ES14-005134 to the National Highway Traffic Safety Administration (NHTSA).

NHTSA strives to meet FOIA requesters' needs for records as expeditiously as possible. However, we have been unable to meet demand given current conditions and resources. On November 17, 2014, the agency advised you of its significant FOIA request backlog and that processing your request may take months to a year or more. We encouraged you to contact the agency to narrow your request to ensure a timely response to your FOIA request.

We have not heard from you whether you were interested in narrowing your request. At this time, conditions remain unchanged and processing times for requests other than very simple requests are still long. We are contacting you to confirm whether you still have an interest in the records you seek. If you are still interested, please contact Mrs. Monica Skinner by telephone at 202-366-1834 or email at monica.skinner@dot.gov. When you contact Mrs. Skinner, please be prepared to consider ways to narrow your request for the agency to process it in a timely manner.

If you are no longer interested in the processing of your request, you need not respond to this letter. Please note that if we do not hear from you by February 16, 2016, the agency will administratively close your request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Andrew J. DiMarsico', with a stylized flourish at the end.

Andrew J. DiMarsico
Senior Attorney

Mapp, Tammy (NHTSA)

From: Webmaster, NHTSA (NHTSA)
Sent: Monday, November 17, 2014 10:33 AM
To: Mapp, Tammy (NHTSA); Harris, Sandra (NHTSA); Kottor, Julie (NHTSA)
Subject: FOIA o obtain IDIQ contract awarded to Dynamic Sciences, Inc, as a result of RFP DTNH22-14-R-00002

EXECUTIVE SECRETARIAT
 RECEIVED-NHTSA

2014 NOV 17 AM 11:59

Sender Name: Paul Lanigan

Sender Email: paul.lanigan@calspan.com

Subject: FOIA o obtain IDIQ contract awarded to Dynamic Sciences, Inc, as a result of RFP DTNH22-14-R-00002

Comments: In accordance with the Freedom of Information (FOIA) 5USC522, as amended (32 CFR parts 806 and 813) and implementing regulations, I am requesting a copy of the awarded master/governing IDIQ contract issued as a result of RFP DTNH22-14-R-00002 Modernization for the Operation of the National Automotive Sampling System, awarded to Dynamic Sciences, Inc. I recognize that a charge may be assessed for the direct cost of searching and duplication necessary to respond to our request. I assume financial responsibility for the specific costs associated with this request. Paul J. Lanigan Calspan Corporation 4455 Genesee Street Buffalo, NY 14225 716-631-6994 paul.lanigan@calspan.com

LSA-005137



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

NOV 17

Request Date: November 17, 2014

Request Tracking No.: ES14-005137

Date of Receipt: November 17, 2014

Mr. Paul J. Lanigan
Calspan Corporation
4455 Genesee Street
Buffalo, NY 14225

Dear Mr. Lanigan:

This acknowledges receipt of your Freedom of Information Act request, received by the National Highway Traffic Safety Administration. Requests are processed on a first in, first out basis. Your request is being processed as expeditiously as possible, but actual processing time depends upon the complexity of your request. Complex or large requests may take significant processing time. If you wish to narrow your request or have any questions, please call (202) 366-1834.



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20020

VIA EMAIL

January 11, 2016

Paul J. Lanigan
paul.lanigan@calspan.com

Dear Mr. Lanigan:

This concerns your November 17, 2014 Freedom of Information Act (FOIA) request #ES14-5137 to the National Highway Traffic Safety Administration (NHTSA).

NHTSA strives to meet FOIA requesters' needs for records as expeditiously as possible. However, we have been unable to meet demand given current conditions and resources. On November 17, 2014, the agency advised you of its significant FOIA request backlog and that processing your request may take months to a year or more. We encouraged you to contact the agency to narrow your request to ensure a timely response to your FOIA request.

We have not heard from you whether you were interested in narrowing your request. At this time, conditions remain unchanged and processing times for requests other than very simple requests are still long. We are contacting you to confirm whether you still have an interest in the records you seek. If you are still interested, please contact Mrs. Monica Skinner by telephone at 202-366-1834 or email at monica.skinner@dot.gov. When you contact Mrs. Skinner, please be prepared to consider ways to narrow your request for the agency to process it in a timely manner.

If you are no longer interested in the processing of your request, you need not respond to this letter. Please note that if we do not hear from you by February 16, 2016, the agency will administratively close your request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Andrew J. DiMarsico', written over a horizontal line.

Andrew J. DiMarsico
Senior Attorney