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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Adam C. Sloane  
Mayer Brown LLP  
1999 K Street, N.W.  
Washington, D.C. 20006-1101

Re: Request for Reconsideration of August 26, 2010 Partial Denial of Toyota's Request for Confidential Treatment/TQ10-001

Dear Mr. Sloane:

This responds to your November 5, 2010 letter requesting reconsideration of the agency's August 26, 2010 denial of your April 23, 2010 request for confidential treatment for materials submitted by Toyota Motor North America (Toyota) in the above referenced investigation.

The agency's August 26, 2010 letter denied Toyota's request for confidential treatment for portions of your submission on both procedural and substantive grounds. Some of the information claimed as confidential originated from third-parties but was not accompanied by the certification required by Part 512. *See* 49 CFR 512.4, 512.9. Requests for confidentiality for other documents, which appeared to have been submitted only in Japanese, were also denied.

The requests for confidential treatment for the remaining materials were substantively reviewed under the standard enunciated in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). We denied Toyota's requests in instances where disclosure would not be likely to cause substantial harm to Toyota's competitive position or would not be likely to impair the Government's ability to obtain necessary information in the future. *See id.* at 770. Included in these denials were requests regarding documents or information regarding regulatory developments, requests regarding documents originating from NHTSA and other information in the public domain, requests regarding data that could be reproduced under the test elucidated in *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 56 (D.C. Cir. 1981), requests regarding compliance test information and requests regarding routine and regular correspondence that Toyota had not shown would be likely to cause substantial competitive harm if released.

Toyota now seeks reconsideration of NHTSA's August 26, 2010 partial denial of its request for confidential treatment for four categories of documents.

First, Toyota seeks reconsideration for portions of documents disclosing Toyota analyses and summaries of regulatory and legal developments, research and trade association activities and internal activities and organizational information (Copies of these documents with revised markings are provided with your request as Attachment A). The revised markings reflect a modification of Toyota's original request for confidential treatment. Information within the documents that is responsive to the TQ10-001 information request is no longer marked as confidential and Toyota is no longer requesting confidential treatment for this information. However, Toyota continues to request confidential treatment for other information in these documents and the revised markings reflect the scope of this request. You contend that this information is outside the scope of NHTSA's TQ10-001 Information Request (IR), was submitted voluntarily and should be granted confidential treatment under the standard enunciated in *Center for Auto Safety v. NHTSA*, 244 F.3d 144, 147 (D.C. Cir. 2001). Toyota has resubmitted the documents it claims contain voluntarily submitted information with revised markings in Attachment A. Toyota identified the information that fell outside the scope of the TQ10-001 IR as follows:

- Information Toyota now claims to be voluntarily submitted is on pages now labeled "Entire Page Confidential Business Information" at or near the top of each such page.
- Pages with information that Toyota now describes as voluntarily submitted as well as information Toyota was required to submit are marked with the legend "Confidential Business Information." The voluntarily-submitted information on these pages is marked with brackets.

Second, Toyota seeks reconsideration of the denial of its request for confidential treatment for documents that it claims reveal how Toyota staffs critical functions and identify specific staff members deployed to work on these functions. Toyota states that disclosure of this information could be used by competitors to benchmark their own responses to critical issues, to assess Toyota's operational capabilities and to target specific Toyota employees for recruitment efforts.

Finally, Toyota seeks reconsideration of the denial of its request for confidential treatment for a number of documents that originated from third-parties, Thermoflex Corp.; Stephen Computer Services, Inc.; Bodycote PLC; The Stewart Company; Pretty Products, LLC; LaGrange Molded Products, Inc.; Nelson Laboratories; and BT Western Corp. The April 23, 2010 request for confidential treatment did not include certificates from these third-parties as required by 49 CFR 512.9. Toyota now provides certificates from Thermoflex Corp.; Exova Test Lab (successor in liability for Bodycote PLC); The Stewart Company; Pretty Products, LLC; LaGrange Molded Products, Inc.; Nelson Laboratories; and BT Western Corp. (included as Attachment C) and lists the documents for which the certificate applies.

To make its request clear, Toyota's reconsideration request also included a CD-ROM entitled "Toyota TOY-TQ001 April 9 Submission Reconsideration Request Index: Nov. 5, 2010." This CD-ROM contains an index of all the documents denied confidential treatment by NHTSA on August 26, 2010 and states whether or not Toyota is seeking reconsideration.

I am granting your request in part and denying it in part.

### **A. Documents Outside the Scope of the TQ10-001 Information Request.**

Most of the documents that are the subject of Toyota's request for reconsideration are summaries of regulatory and legal developments, research and trade association activities and discussions of internal activities that fall outside the scope of the TQ10-001 IR. Although Toyota did not initially claim that it had provided any of the confidential information voluntarily, your reconsideration request now contends that this information was provided voluntarily. You note that NHTSA could have specifically requested this data and compelled the submission of the information but did not do so. Therefore, you now argue that because NHTSA has not actually exercised its authority to compel the submission of information, the submission of that information must be deemed "voluntary" as a matter of law. See *Parker v. Bureau of Land Management*, 141 F. Supp. 2d 71, 78 n.6 (D.D.C. 2001). According to Toyota, the regulatory reports it has marked as voluntarily submitted are outside the scope of the TQ 10-001 IR and must be evaluated under the standard enunciated in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (en banc).

*Critical Mass* establishes that confidential treatment under FOIA Exemption 4 must be extended to materials submitted voluntarily when the submitter establishes that it does not customarily disclose these materials to the public. You state that the documents described in the preceding paragraph reveal how Toyota manages and disseminates information internally; how it analyzes the legal, political and regulatory environments in which it acts; some of the research initiatives in which Toyota is involved; how it manages a variety of safety and regulatory activities; how it organizes its safety and regulatory resources; and how it structures and analyzes interactions with regulators, lawmakers and trade groups. According to your request, Toyota regards such information as highly confidential and does not customarily disclose it to the public.

Review of your submission indicates that the materials that Toyota now characterizes as voluntarily submitted are outside of the scope of NHTSA's TQ10-001 IR. Accordingly, your claim for confidential treatment was evaluated using the standard set forth in *Critical Mass*. Under that standard, information claimed to be confidential may be withheld from disclosure if the data is information that the submitter does not release to the public. Since Toyota has established that it does not release this information to the public, I am granting your request for this information.

### **B. Documents Toyota Claims Reveal Critical Function Staffing.**

Your reconsideration request also asks that NHTSA grant confidential treatment for documents that Toyota claims reveal the identities of specific staff members deployed to work on various projects and how Toyota staffs critical functions.

I reviewed your claim for confidential treatment under the test in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Under that test, information is confidential under Exemption 4 of the Freedom of Information Act (FOIA) if its disclosure would be likely to cause substantial competitive harm to the submitter or to impair the government's ability to collect the information in the future. *Id.* at 770. Toyota argues disclosure of this information could be used by competitors to benchmark their own responses

to critical issues, to assess Toyota's operational capabilities, and to target specific Toyota employees for recruitment efforts. Based on these claimed revelations, Toyota asserts it would be likely to suffer substantial competitive harm.

Under this category of documents, Toyota requested reconsideration of the denial of its request for confidential treatment for ten documents. These ten documents include seven organizational charts that are substantially similar to one another and three recurring meeting notifications that are also substantially similar to one another.

These organization charts name the employees assigned to a list of tasks Toyota determined were necessary to respond to the agency's investigation. Examination of the seven organization charts indicate that their release would be likely to cause Toyota substantial competitive harm. The lists of specific tasks that Toyota assigned could be used by a competitor to craft its own responses to critical issues and provide a competitor with insights into how Toyota responds to investigations. Accordingly, I am granting confidential treatment for these seven organizational charts:

- TOY-TQ001-00054684.pdf ("Pedal & Reinforcement Bar Crisis Team");
- TOY-TQ001-00055633.pdf ("Pedal & Reinforcement Bar Crisis Team");
- TOY-TQ001-00056168.pdf ("Pedal & Reinforcement Bar Crisis Team");
- TOY-TQ001-00056205.pdf ("Service Parts Field Repair Team");
- TOY-TQ001-00056206.pdf ("Service Parts Field Repair Team");
- TOY-TQ001-00056308.pdf ("Pedal & Reinforcement Bar Crisis Team"); and
- TOY-TQ001-00057129.pdf ("Pedal & Reinforcement Bar Crisis Team").

The remaining documents in this category, three recurring meeting notifications, are Microsoft Outlook calendar appointment notifications that include the names of meeting participants and the location, time and subject of the meetings (*e.g.*, "Service Parts Field Repair"). The notifications refer to "meeting documents" and "reference documents," but do not contain these documents.

Toyota has failed to demonstrate that release of these meeting notifications would be likely to cause it to suffer substantial competitive harm. The meeting notifications simply reveal the name of meeting attendees along with its location and a generic description of the meeting's subject. This information is not remarkable, and at best, provides little insight into how Toyota responds to critical issues or what Toyota's operational capabilities are. Also, it is not likely that a competitor would use the notification to target specific employees for recruitment because the attendee list does not reveal what tasks and responsibilities attendees had and Toyota has not demonstrated the likelihood of any such recruitment.

Toyota has not demonstrated that it would be likely to suffer substantial competitive harm if this information were released. Toyota's request for confidential treatment for the following three documents is denied:

- TOY-TQ001-00055565.pdf (“Service Parts Field Repair” – Recurring meeting attendees);
- TOY-TQ001-0006239.pdf (“Service Parts Field Repair” – Recurring meeting attendees); and
- TOY-TQ001-00057060.pdf (“Service Parts Field Repair” – Recurring meeting attendees).

### **C. Documents that Originated from Third-Parties.**

Finally, your reconsideration request asks that NHTSA grant confidential treatment for a number of documents for which Toyota failed to provide third-party certificates as required by 49 CFR 512.9. Toyota now provides a certificate from Thermoflex Corp.; Exova Test Labs (successor in liability for Bodycote PLC); The Stewart Company; Pretty Products, LLC; LaGrange Molded Products, Inc.; Nelson Laboratories; and BT Western Corp. These documents are:

- TOY-TQ001-00058372.pdf;
- TOY-TQ001-00058472.pdf;
- TOY-TQ001-00058657.pdf; and
- TOY-TQ001-00059066.pdf.

Examination of these documents indicates that release of this information would be likely to cause Toyota to suffer substantial competitive harm. Accordingly, I am granting Toyota’s request for confidential treatment for the documents originating from the entities identified in the preceding paragraph.

For the document named TOY-TQ001-00058372.pdf, Toyota explains a third-party certification is not necessary because the information from Stephen Computer Services did not contain confidential information. Stephen Computer Services merely provided the blank templates for the data charts.

Subject to the conditions below, this partial grant of confidential treatment will remain in effect indefinitely.

This partial grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information. 49 CFR 512.10. If necessary, you will be notified prior to the release of any information under the procedures established by our regulations. 49 CFR 512.22(b). Furthermore, this information may be disclosed if such disclosure would be in the public interest, pursuant to the procedures established in 49 CFR 512.23.

My decision is administratively final and no further administrative reconsideration or appeal is available. The documents identified above for which confidential treatment has been denied are subject to public disclosure within twenty (20) working days after receipt of this letter.

Sincerely yours,

**Original Signed By**

O. Kevin Vincent  
Chief Counsel

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