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MAR - 4 2011

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

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

Re: Toyota Request for Confidential Treatment of January 18, 2011 Supplementary Submission Regarding TQ10-001

Dear Mr. Sloane:

This responds to your February 1, 2011 and February 23, 2011 letters on behalf of Toyota Motor Corporation and its subsidiaries and affiliates (“Toyota”) requesting confidential treatment for information submitted in response to an Information Request issued by the Office of Defects Investigation. Toyota submitted the information for which it seeks confidential treatment on January 18, 2011 in electronic form.

You now submit your formal request for confidential treatment and explain that Toyota provisionally marked certain sections of its January 18, 2011 submission as confidential in the expectation of filing a formal request for confidential treatment. You state that after reviewing the January 18, 2011 submission Toyota decided not to seek confidential treatment for all of the information it had previously marked as confidential. Accordingly, you have provided an Excel spreadsheet (TQ10-001 20110118 Supplemental Prod Confidentiality Index.xls) that sets forth those documents or portions of documents for which Toyota now requests confidential treatment. Toyota requests that the information listed as confidential on the foregoing spreadsheet be accorded confidential treatment permanently.

Your February 23, 2011 letter clarifies and explains the marking protocol employed in the electronic documents encompassed by your request for confidential treatment. This letter explains that the documents are highlighted to indicate the confidential information in each document. You further explain that the software used for generating these highlighted documents only provides an option for an “Entire Page Confidential Business Information” marking (or no marking at all), and many of the pages are only partially confidential. To avoid confusion, you have opted not to apply labels but explain that confidential business information can be identified by highlighting. Where the entire page has been highlighted, you seek confidential treatment for the entire page. Where only portions of the page have been highlighted, you seek confidential treatment only for the highlighted portions of the page. On pages with no highlighting, you are not seeking confidential treatment.

Toyota recognizes that the information for which it seeks confidential treatment is subject to the substantial competitive harm standard set forth in *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) and contends that release of the information described above would provide a windfall to Toyota's competitors and be likely to cause the company to suffer substantial competitive harm.

I note that your submission contains potentially identifying personal information for vehicle owners. Whenever this potentially personally identifying information pertains to individuals rather than entities, the name, address, telephone number, email address and the last six digits of any vehicle identification numbers will be accorded confidential treatment pursuant to Exemption 6 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(6).

I have decided to grant your request in part and deny it in part.

Toyota was required to submit this information in response to an agency information request. Therefore, I reviewed the claims for confidential treatment under the test set forth in *National Parks*, which Toyota recognizes as the controlling standard. Under the *National Parks* decision, information concerning a commercial or financial matter may be withheld under Exemption 4 of the FOIA if disclosure of the information would be likely to cause substantial harm to the competitive position of the submitter, or would be likely to impair the Government's ability to obtain necessary information in the future. *Nat'l Parks* at 770.

With the exception of the documents discussed below, I am granting your request for confidential treatment. The specific information submitted by Toyota, including but not limited to, summaries of internal analyses, test procedures, testing standards, design information and cost information that if disclosed would be likely to cause Toyota to suffer substantial competitive harm. Accordingly, this information will be withheld under Exemption 4 of the FOIA indefinitely. Confidential treatment will only be extended to those portions that are highlighted.

The spreadsheet Toyota submitted indicates that it seeks confidential treatment for a number of pdf documents that are not highlighted as explained in your February 23, 2011 letter and do not contain any substantive information. These pdf documents contain only the words "Document Produced In Native Format" and a Bates number. Accompanying each document, in a separate file, is a spreadsheet with a file name that mirrored the Bates number listed on the pdf file. Because the pdf file does not contain any substantive information, Toyota has failed to demonstrate that release of these pdf files would be likely to cause it substantial competitive harm. Accordingly, your request for confidential treatment for the files listed in Appendix A of this letter is denied. Your request for confidential treatment for the accompanying spreadsheet files is granted with the exception of those discussed below.

Toyota also seeks confidential treatment for a number of other documents that it has not demonstrated would be likely to cause competitive harm if released. Toyota seeks confidential treatment for descriptions of warranty issues, numbers of vehicles in operation, component failure rates or emails identifying employees with quality expertise. These

documents do not contain detailed information about matters such as Toyota's design information, engineering specifications, manufacturing information or costs. Since Toyota has not demonstrated that release of this information would be likely to cause it to suffer substantial competitive harm, Toyota's request for confidential treatment is denied for the documents identified in Appendix B to this letter.

Further, Toyota seeks confidential treatment for a Japanese-language document with the file name TOY-TQ001-00059334.pdf. Each page of this document has been completely highlighted, indicating that you seek confidential treatment for the document in its entirety. However, the English-language version of this document, TOY-TQ001-00059366T-0001.pdf, only seeks confidential treatment for portions of the document. Your letters do not explain this discrepancy or otherwise identify which pages of the Japanese language document correspond to the pages claimed confidential in the English language version. Because I am unable to identify the specific portions of the Japanese-language version that match the pages claimed confidential in the English version, your request for confidential treatment of the document TOY-TQ001-00059334.pdf is denied.

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

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.

I note that Toyota has elected to mark information in a number of text documents using highlighting but not to mark pages containing this information as confidential business information. The agency's preferred method to preclude inadvertent disclosure of such information is to mark each page as "Confidential Business Information." Toyota may wish to consider the risks to the company that may arise from electing to forego labeling each page.

If you disagree with the partial denial of your request noted above, you may request reconsideration. If you seek reconsideration, your request must be addressed to NHTSA's Chief Counsel and filed within 20 working days after the receipt of this letter. 49 CFR 512.19(a). Any such request should contain additional justification supporting your claims for

confidential treatment consistent with 49 CFR Part 512 and applicable case law. Particularly for those documents listed in Appendix B, specific justification on a document-by-document basis or on a grouped listing of like documents is necessary.

Sincerely,

**Original Signed By**

Otto G. Matheke, III  
Senior Attorney

OCC:NEnglund:65263:cyt:3/3/11

Draft NE 2/16/2011 – OM Comments 2/22/11; NE rev 2/25/2011

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**NCC11-000323, NCC11-000324, NCC11-000692, NCC11-000969, NCC11-001274**

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## APPENDIX A

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## **APPENDIX B**

TOY-TQ001-00059369.pdf

TOY-TQ001-00059431.pdf

TOY-TQ001-00059688.pdf

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