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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

APR 4 2011

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

Re: Request for Reconsideration of March 4, 2011 Partial Denial of Toyota's Request for Confidential Treatment/TQ10-001 January 18, 2011 Submission

Dear Mr. Sloane:

This responds to your March 22, 2011 letter requesting reconsideration of the agency's March 4, 2011 partial denial of a February 1, 2011 request for confidential treatment (modified by a February 23, 2011 supplement to the February 1 request) for materials submitted by Toyota Motor Corporation and its subsidiaries and affiliates (Toyota) in the above referenced investigation.

The agency's March 4, 2011 letter denied Toyota's request for confidential treatment for portions of your submission on both procedural and substantive grounds. Your request for confidential treatment for a Japanese-language document was denied because the document's markings, which indicated the confidential portions of the document, did not appear to match the corresponding pages in its English-language counterpart.

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 that contained only the words "Document Produced In Native Format," 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 general descriptions of warranty issues, numbers of vehicles in operation, component failure rates and emails identifying employees with quality expertise that Toyota had not shown would be likely to cause substantial competitive harm if released.

Toyota now seeks reconsideration of NHTSA's March 4, 2011 partial denial of its request for confidential treatment for two documents TOY-TQ001-00059334.pdf and TOY-TQ001-00059716.pdf. For TOY-TQ001-00059334.pdf, Toyota provided newly marked

versions of the pages both in paper (included as Attachment A) and electronic format. For TQ001-00059716.pdf, Toyota provided a copy of the document in paper form as Attachment B in which the cost information has been marked.

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

Toyota submitted this information in response to an agency information request. Since Toyota was required to submit this information, your claim for confidential treatment was reviewed under the test set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) and its progeny. Under the *National Parks* decision, information concerning a commercial or financial matter may be withheld under Exemption 4 of the Freedom of Information Act if disclosure of the information would be likely either to cause substantial harm to the competitive position of the submitter, or to impair the Government's ability to obtain necessary information in the future. *Id.* at 770.

Your reconsideration request asks that NHTSA grant confidential treatment for a Japanese-language document (TOY-TQ001-00059334.pdf). In its initial request for confidential treatment, Toyota requested confidential treatment for the entire document. Yet, Toyota requested confidential treatment only for the marked portions of the document's English-language counterpart (TOY-TQ001-00059366T-0001.pdf). Because its initial confidentiality request for the Japanese-language document did not match its English-language counterpart, the agency denied Toyota's initial request for confidential treatment. Toyota now identifies the specific portions of the Japanese-language document for which it seeks confidential treatment and matches those portions to the English-language version.

With the exception of the pages listed below, examination of the marked versions of TOY-TQ001-00059334.pdf and its English-language counterpart, TOY-TQ001-00059366T-0001.pdf, indicates that release of this information would be likely to cause Toyota to suffer substantial competitive harm. Toyota's competitors could use this information to gain insights into Toyota's operational strengths, design strategies and product improvement systems. With the exception of the pages discussed below, I am granting your request for confidential treatment for the Japanese-language document (TOY-TQ001-00059334.pdf) and the accompanying English translation of the document (TOY-TQ001-00059366T-0001.pdf).

For the pages with Bates numbers TOY-TQ001-00059343 and TOY-TQ001-00059361 of the file TOY-TQ001-00059334.pdf and its English-language counterparts with Bates numbers TOY-TQ001-00059366T-0010 and TOY-TQ001-00059366T-0028 of the file TOY-TQ001-00059366T-0001.pdf, Toyota states disclosure of this information would reveal the kind of studies Toyota performs in connection with product evaluation and improvement efforts. Toyota states release would enable competitors to obtain the results of Toyota's studies without investing time, money and effort in independent development. Further, Toyota states disclosure would reveal Toyota's operational strengths.

I disagree. Under the reasoning set forth in *Worthington Compressor*, data in the hands of the government is commercially valuable under Exemption 4 if private reproduction of the data would be so expensive or arcane as to be impracticable. *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 56 (D.C. Cir. 1981). The information contained on TOY-TQ001-00059343 and its English-language counterpart TOY-TQ001-00059366T-0010, contain a table

describing generally how several competitors' vehicles behave when the brake pedal and the accelerator pedal are pressed. Similarly, the information on TOY-TQ001-00059361 and its English-language counterpart, TOY-TQ001-00059366T-0028, contain a table categorizing vehicles that use engine output suppression control when the brake pedal is pressed and those that do not use suppression control. The information in these pages is not so sufficiently detailed that release of this information would be likely to cause substantial competitive harm to Toyota. The descriptions are general and private reproduction of this general information would not be so costly or arcane as to be impracticable. Accordingly, your requests for confidential treatment of the pages with Bates numbers TOY-TQ001-00059343 and TOY-TQ001-00059361 of the file TOY-TQ001-00059334.pdf and its English-language counterparts, TOY-TQ001-00059366T-0010 and TOY-TQ001-00059366T-0028 of the file TOY-TQ001-00059366T-0001.pdf, are denied.

Your reconsideration request also seeks confidential treatment for warranty cost information in the file named TOY-TQ001-00059716.pdf. In the initial request for confidential treatment, Toyota requested confidential treatment for the warranty cost information as well as other information that did not qualify for confidential treatment under the *National Parks* standard. Toyota now limits its request to the warranty cost information. Disclosure of this cost information would enable competitors to discover Toyota's expenses and operational capacities and would be likely to cause Toyota substantial competitive harm. Accordingly, I am granting your request for confidential treatment of the cost information marked on TOY-TQ001-00059716.pdf in Attachment B to your March 22, 2011 letter.

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

OCC:NEnglund:65263:cyt:3/31/11

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