

4. Defendant U.S. Department of Transportation (“DOT”) is a Department of the Executive Branch of the United States Government and includes as a component the National Highway Traffic Safety Administration (“NHTSA”). DOT is an agency within the meaning of 5 U.S.C. § 552(f).

The TREAD Act and its Reporting Requirements

5. The Transportation Recall Enhancement, Accountability, and Documentation (“TREAD”) Act, Pub. L. 106-414, was passed by the Congress in 2000. Enactment of the legislation followed revelations that motor vehicle and tire manufacturers possessed important information that might have been useful in the early identification of potential safety defects.

6. Under NHTSA’s regulations implementing the TREAD Act, motor vehicle and tire manufacturers are required to submit to the agency detailed Early Warning Reporting (“EWR”) data about deaths, injuries, and property damage claims. All of the EWR information NHTSA receives is stored in a database called ARTEMIS (which stands for Advanced Retrieval, Tire, Equipment, and Motor Vehicle Information System).

Plaintiff’s FOIA Request and NHTSA’s Denial of Access

7. By letter to NHTSA dated December 31, 2005, plaintiff submitted a Freedom of Information Act (“FOIA”) request for “all information submitted by Ford Motor Company pursuant to 49 CFR 579.21 regarding claims made to Ford of deaths and injuries arising from tire-related incidents in Ford Explorer and Mercury Mountaineer utility vehicles.” Plaintiff stated that it “would prefer to have this information in machine-readable, electronic format on CD or DVD disk(s).” Plaintiff further requested the expedited processing of its FOIA request, noting that “our analysis of data from the Fatality Analysis Reporting System for the 2003 and 2004 calendar years indicates that lack of expedited treatment could reasonably be expected to pose a threat to life and safety.”

8. By letter to plaintiff dated February 3, 2006, NHTSA responded to plaintiff's FOIA request. NHTSA stated, in pertinent part:

The information you seek currently is the subject of litigation before the United States District Court for the District of Columbia on the issue, among others, of whether the provision in the TREAD Act (Public Law 106-414) relating to disclosure of early warning data is an exemption (b)(3) statute under the FOIA. That litigation is expected to resolve the propriety of NHTSA's rulemaking related to the issue of whether this information may be disclosed to the public. Under these circumstances, the agency has issued a stay on the release of this type of information and I am withholding the requested information concerning deaths and injuries arising from the tire-related incidents in Ford Explorers and Mercury Mountaineer utility vehicles until a court decision is rendered.

The information you seek is also covered by class determinations under the agency's Confidential Business Information rule, which affords confidential treatment to the information. Consequently, I am withholding the requested information concerning warranty claims, customer complaints, and field reports. The litigation referred to above also is expected to address the validity of the agency's class determinations. (citations omitted).

NHTSA advised plaintiff of its right to appeal the agency's decision to withhold the requested records.

9. By letter to NHTSA's Chief Counsel dated February 25, 2006, plaintiff appealed the agency's denial of its FOIA request.

10. By letter to NHTSA dated April 5, 2006, plaintiff advised the agency that the litigation cited by the agency in its letter of February 3, 2006, "has now been terminated." Plaintiff stated that, "[b]ecause the pendency of the litigation was the principal reason offered for withholding the death and injury data, the agency should now grant [plaintiff's pending] appeal and release the requested information."

11. By letter to plaintiff dated November 14, 2006, NHTSA denied plaintiff's appeal of the agency's initial determination to withhold the requested agency records. NHTSA advised plaintiff that the agency's decision is "administratively final" and that plaintiff may seek judicial review of the decision.

12. Plaintiff has exhausted the applicable administrative remedies.

13. Defendant DOT and its component, NHTSA, have wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendant DOT and its component, NHTSA to disclose the requested records in their entirety and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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