

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
CENTER FOR AUTO SAFETY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 11-1048 (BAH)
	)	
U.S. DEPARTMENT OF TREASURY,	)	
	)	
Defendant.	)	
_____	)	

**GENERAL MOTORS LLC’S UNOPPOSED MOTION TO INTERVENE**

General Motors LLC (GM) respectfully moves for leave to intervene. As demonstrated by the accompanying Memorandum of Points and Authorities, which is incorporated herein by reference, intervention is proper because GM has a direct and substantial interest in this case. Plaintiff, the Center for Auto Safety (Center), seeks to compel Defendant, the U.S. Department of Treasury (Treasury), to release GM’s business information pursuant to the Freedom of Information Act. Intervention causes no prejudice to the parties. Nor do the parties adequately represent GM’s interests in its own business information. Neither Treasury nor the Center oppose GM’s intervention. A proposed Answer in Intervention and a proposed Order are attached as exhibits hereto.

Respectfully submitted,

HOGAN LOVELLS US LLP

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Dated: May 30, 2014

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General Motors LLC

UNITED STATES DISTRICT COURT  
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CENTER FOR AUTO SAFETY,	)	
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U.S. DEPARTMENT OF TREASURY,	)	
	)	
Defendant.	)	
_____	)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
GENERAL MOTORS LLC’S UNOPPOSED MOTION TO INTERVENE**

General Motors LLC (GM)<sup>1</sup> respectfully moves to intervene as a defendant in this Freedom of Information Act (FOIA) matter. Plaintiff, the Center for Auto Safety (Plaintiff or the Center), seeks the release of certain business information that GM provided to the U.S. Department of Treasury (Treasury or Defendant) in connection with loans that Treasury made to GM during the turbulent economic times of recent years. Since the filing of this action, GM has expended considerable time and resources in working with Treasury to review information sought by the Center, and has agreed to the voluntary release of thousands of pages of documents. Despite these ongoing cooperative efforts to narrow the issues, GM documents remain in dispute.

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<sup>1</sup> General Motors LLC (GM) “acquired substantially all of the assets” of the General Motors Corporation (Old GM) on July 10, 2009. Decl. of Laura L. Fitzpatrick, Exhibit 3 to Docket No. 21, at 2 (hereinafter Fitzpatrick Decl.). This restructuring was approved by the United States Bankruptcy Court for the Southern District of New York. *See In re General Motors Corp.*, 407 B.R. 463 (Bankr., SDNY 2009). Included among the assets acquired by GM in that transaction are “all of the business records of Old GM, the intellectual property contained in those records, and all rights and privileges pertaining thereto.” Fitzpatrick Decl. at 2.

As a result, the case may now be entering an active litigation phase, including the setting of a briefing schedule for dispositive motions.

Before briefing commences, the Court should grant GM's motion to intervene. GM has a direct and substantial interest in whether FOIA exemptions apply to the sensitive business information that GM provided to Treasury. No undue prejudice would result from intervention, and none of the parties adequately represents GM's interests in its own business information. Neither Treasury nor the Center oppose intervention.

### **Background**

The events precipitating this lawsuit were set in motion when the Center filed a FOIA request for "email correspondence that would shed light on" what role Treasury played in the GM and Chrysler restructurings. Compl. ¶ 2. When Treasury declined to grant "a fee waiver for copying costs or to transmit the e-mail correspondence electronically," and instead allegedly "insisted that the Center must pay \$33,980 to obtain the requested documents," the Center filed this action against Treasury. *Id.* The Plaintiff's Claim for Relief in the Complaint makes clear that the fee waiver was the sole issue in this action at its initiation. *See id.* ¶¶ 30-32.

Although no Amended Complaint has been filed, the Center is now using this lawsuit to seek the disclosure of certain information provided by GM and Chrysler to Treasury. *See* Status Report, Docket No. 29. In cooperation with Treasury, GM has been diligently working to review the requested documents. *See* Decl. of Laura L. Fitzpatrick, Exhibit 3 to Docket No. 21 (hereinafter Fitzpatrick Decl.). Several thousand pages of the requested documents have already been produced to Plaintiff. Fitzpatrick Decl. at 6. But GM has opposed the production of a smaller subset of the requested documents because they qualify for a FOIA exemption. *Id.* at 3-6.

More specifically, the remaining documents contain confidential information concerning “virtually every aspect of GM’s business.” *Id.* at 5. GM provided this information to Treasury voluntarily, pursuant to “various commercial loan agreements,” and “subject to strict confidentiality provisions.” *Id.* at 3. GM has opposed the disclosure of this confidential information because it is covered by FOIA Exemption 4, which protects from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

Despite this FOIA exemption protection, GM has cooperated with the parties and has agreed to review the remaining documents again to reevaluate whether it will continue to maintain its FOIA exemption protection for all of the documents for which it has claimed such protection, or could agree to the release of additional information at this time. That ongoing review process may narrow the dispute between the parties, as additional pages of documents may be produced. *See* Status Report, Docket No. 29. Nonetheless, it appears that litigation may occur in the near term, including the setting of a briefing schedule over whether FOIA exemptions apply to the remaining GM business documents. Before that active litigation phase begins, GM respectfully seeks leave to intervene.

### **Argument**

#### **GM SHOULD BE GRANTED LEAVE TO INTERVENE UNDER FEDERAL RULE OF CIVIL PROCEDURE 24.**

“A district court must grant a timely motion to intervene that seeks to protect an interest that might be impaired by the action and that is not adequately represented by the parties.” *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). This is just such a motion. GM is entitled to intervene as of right pursuant to Fed. R. Civ. P. 24(a) to protect its interests in

preventing disclosure of company documents under FOIA. In the alternative, GM should be permitted to intervene pursuant to Fed. R. Civ. P. 24(b).

A. GM Has The Right To Intervene Under Fed. R. Civ. P. 24(a).

Rule 24(a) provides that:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a). "Parsing the language" of Rule 24(a), the D.C. Circuit has held that "qualification for intervention as of right depends on the following four factors:"

(1) the timeliness of the motion; (2) whether the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) whether the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) whether the applicant's interest is adequately represented by existing parties.

*Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (internal quotation marks and citations omitted). GM meets all four factors of this test.

First, this motion is timely. In *Roane*, the D.C. Circuit recently emphasized that "the requirement of timeliness is aimed primarily at preventing potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties." 741 F.3d at 151. Timeliness is not required "for its own sake." *Id.* Nor is "the amount of time that ha[s] elapsed between the filing of the lawsuit and . . . [the] motion to intervene" the focus of the analysis. *Id.* at 152. Rather, the "most important consideration" is whether intervention would prejudice or "disadvantage the existing parties." *Id.*

GM's intervention is timely because it would not prejudice the parties. There has been no active litigation over whether FOIA exemptions apply to the business information that GM provided to Treasury. Rather, GM has engaged with the parties in a review process to narrow the dispute between the parties. Should litigation begin over the remaining documents, GM would comply with the Court's deadlines including the briefing schedule, and both the Center and Treasury would have a full opportunity to consider GM's arguments and to respond to them. Because GM's intervention carries "no risk of prejudicing the existing parties," *id.* at 152, it is timely.

The second and third factors for intervention as of right—having an interest that might be impaired by the action—are also plainly satisfied. GM has an interest in the confidentiality of certain information it provided to Treasury, and disclosure of that information would nullify that interest. *See Appleton v. Food & Drug Admin.*, 310 F. Supp. 2d 194, 197 (D.D.C. 2004).<sup>2</sup> Courts within this Circuit regularly allow companies like GM that provide confidential information to the government to intervene in FOIA lawsuits requesting that information. *See, e.g., id.*; *Center for Auto Safety v. NHTSA*, 93 F. Supp. 2d 1, 3 (D.D.C. 2000) (noting intervention by an automaker to protect its confidential information from disclosure under FOIA); *Pub. Citizen Health Research Group v. Food & Drug Admin.*, 185 F.3d 898, 900 (D.C. Cir. 1999) (noting intervention by a drug manufacturer to protect its confidential information from disclosure under FOIA); *Tax Analysts v. U.S. Dep't of Justice*, 913 F. Supp. 599, 601 (D.D.C.

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<sup>2</sup> For this same reason, GM has standing to participate in this litigation as a party. *See Appleton*, 310 F. Supp. 2d at 197 (finding that disclosure of the intervenors' "trade secrets or confidential information would cause them to suffer an injury-in-fact that intervention to defend against disclosure could redress").

1996) (noting intervention by a legal publisher to protect its confidential information from disclosure under FOIA).

Finally, the existing parties do not adequately represent GM. GM has an interest in protecting its confidential information that obviously diverges from the Center's interest in disclosure, and that also diverges from Treasury's interest in responding to the Center's request in accordance with its own statutory and regulatory obligations under FOIA. *See Appleton*, 310 F. Supp. 2d at 197 (permitting intervention in a FOIA case on these grounds). The business information at issue is of a kind that would not customarily be released. Fitzpatrick Decl. at 5. Its disclosure would harm the company's competitive position across "virtually every aspect of GM's business." *Id.* No existing party to this litigation adequately and directly represents that business interest. *See Fund for Animals*, 322 F.3d at 735 ("[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors."); *Dimond v. D.C.*, 792 F.2d 179, 192-93 (D.C. Cir. 1986) ("A government entity such as the District of Columbia is charged by law with representing the public interest of its citizens. [Intervenor], on the other hand, is seeking to protect a more narrow and 'parochial' financial interest not shared by the citizens of the District of Columbia."). This is especially true given that a movant "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee," and that "the burden is on those opposing intervention to show that representation for the absentee will be adequate." *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980) (citations omitted).

B. Permissive Intervention is Appropriate Under Fed. R. Civ. P. 24(b).

Rule 24(b) provides that:

On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a



common question of law or fact. . . . In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b). The test for permissive intervention is not exacting. "Rule 24(b) . . . provides basically that anyone may be permitted to intervene if his claim and the main action have a common question of law or fact." *Nuesse v. Camp*, 385 F.2d 694, 704 (D.C. Cir. 1967).

Permissive intervention is proper. GM shares a common question with the litigants, specifically whether FOIA exemptions apply to business information that GM provided to Treasury. Further, GM's intervention would not cause undue delay or prejudice, as explained above.

#### CONCLUSION

GM respectfully requests that its Motion to Intervene be granted, and its Answer be docketed.

Respectfully submitted,

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