UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY	)	
Plaintiff,	)	
v.	)	**Civil No. 11-1048 (BAH)**
U.S. DEPARTMENT OF THE TREASURY,	)	
Defendant,	)	
and	)	
GENERAL MOTORS LLC,	)	
Intervenor-Defendant.	)	

DEFENDANT AND INTERVENOR-DEFENDANT'S COMBINED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendant United States Treasury ("Treasury") and Intervenor-Defendant General Motors LLC ("GM") respectfully submit this combined opposition to Plaintiff's motion for summary judgment and reply to the opposition to Defendants' joint motion for summary judgment by Plaintiff, the Center for Auto Safety ("Plaintiff" or the "Center").

The Center through its motion seeks to turn this Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), action into a sprawling collateral inquiry into the bankruptcies of General Motors Corporation ("Old GM") and Chrysler LLC ("Old Chrysler"), litigation over Delphi ignition switches, and other matters not before this Court. The Center raises before this Court many of the same objections that it lodged with the bankruptcy court, all of which were overruled and not appealed. A FOIA challenge does not resurrect those already decided

objections. Nor does this FOIA case have anything to do with the Delphi ignition switches, an issue that is not discussed in the withheld documents.

The Center relies on these irrelevant matters in an effort to distract this Court from Treasury's fundamental compliance with FOIA in this case.

In response to Plaintiff's FOIA request, Treasury processed over 150,000 pages of records and released a total of over 65,000 pages in full or in part. Mem. of Points and Auths. in Supp. of Joint Mot. for Summ. J. ("Defs.' Mem."), Ex. 1 ("Cochrane Decl.") ¶¶ 15, 23. Treasury also withheld certain records (the "Disputed Information") as protected from disclosure under statutory exemptions to FOIA. *Id.* ¶ 11. Treasury and GM summarized the Disputed Information in the GM Revised *Vaughn* Index, providing justifications and descriptions of each withheld record, as Treasury and Chrysler did in the Chrysler Revised *Vaughn* Index.

Treasury withheld the Disputed Information pursuant to 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). All of the Disputed Information is commercial or financial in nature and was obtained from GM or Chrysler. That information is confidential because its disclosure is likely to cause substantial harm to GM's competitive position and would impair the Government's ability to obtain necessary information in the future.

In their Declarations and in the GM Revised *Vaughn* Index, Treasury and GM demonstrated that GM will face a likelihood of substantial competitive injury from any disclosure of the Disputed Information. The Disputed Information contains historical and projected financial, operating, and strategy information, the disclosure of which would allow GM's competitors to glean insights into GM's financial, intellectual-property, operating, and

real-estate decisions, as well as GM's negotiating positions, timing, approaches, and strategies employed or considered during transaction negotiations and certain restructuring initiatives. Similarly, Chrysler's Declaration and Revised *Vaughn* Index describe the likelihood of substantive competitive injury resulting from disclosure of Chrysler-specific Disputed Information, which contains confidential financial data, confidential tax- and legal-liability information, confidential operational, labor, and manufacturing information, draft transactional materials, and confidential compensation and benefits information. Moreover, disclosure of the Disputed Information would impair the Government's ability to obtain this type of information from GM, Chrysler, or others in the future and would compromise the effectiveness of government programs that may depend on sensitive information from such companies.

Plaintiff raises a number of unavailing arguments in an effort to obtain access to the Disputed Information. Although some of the Disputed Information is over five years old, courts do not consider such information "stale," as Plaintiff suggests; the withheld information is still likely to cause substantial competitive harm to GM or Chrysler in the hands of their competitors. Similarly, Plaintiff's attempt to distinguish between information that would harm Old GM and General Motors LLC ("New GM") and Old Chrysler and Chrysler Group LLC ("New Chrysler" or "Chrysler") is a red herring. New GM acquired substantially all of Old GM's assets. That purchase included the four remaining GM brands, the plants that manufacture those brands, the books and business records of Old GM, and all of the intellectual property contained in those records. Similarly, New Chrysler acquired substantially all of Old Chrysler's assets, including all intellectual property (subject to any rights granted to a third party), inventory, and substantially all documents related to Chrysler's business. *See* Master Transaction Agreement

("MTA"), Section 2.06, *available at* http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Documents/mta.pdf .

And in claiming that certain Disputed Information already has been publicly disclosed, Plaintiff fails to meet its burden to demonstrate that the information falls in the public domain. Rather than showing with specificity where the withheld information has already allegedly been released (which it has not), Plaintiff simply dumps into the record hundreds of pages of documents, including a lengthy book by Steven Rattner, and urges this Court to find public disclosure somewhere within such voluminous material.

Plaintiff's challenges to the integrity of GM's and Chrysler's Revised *Vaughn* Indices and Treasury's *Vaughn* Declaration are similarly unsubstantiated. Treasury satisfied its burden to sufficiently identify the information it withheld pursuant to Exemption 4 because its justifications for invoking the FOIA exemption are logical and plausible. Defendants and Chrysler detail the justifications for withholding the Disputed Information with the required level of specificity and demonstrate that the Disputed Information logically and credibly falls within the scope of Exemption 4. Defendants and Chrysler reasonably segregated all non-exempt information and undertook a vigorous and good-faith effort to release any non-exempt records. Recognizing that courts measure *Vaughn* indices by their function, not their form, Defendants and Chrysler properly relied on statutory language and categories to efficiently and effectively describe the Disputed Information in their *Vaughn* Indices, using similar language to describe similar documents—as is appropriate in cases that concern many withheld documents. Nothing in Plaintiff's pleadings suggests the need to award extraordinary relief such as *in camera* review or discovery, and Plaintiff recognizes as much by burying such requests in a footnote. *See* Pl.'s Mem. at 44 n.57.

Ultimately, Defendants have satisfied their burden to establish that FOIA Exemption 4 protects the Disputed Information from disclosure, and judgment should be granted as a matter of law in their favor.

BACKGROUND

Plaintiff spends close to half of its brief advancing non-FOIA-related arguments about the collapse of Old GM and Old Chrysler, in an attempt to demonstrate a public interest in the information it seeks. The confidentiality provisions of FOIA Exemption 4, however, are not subject to a public interest standard nor is the need for confidentiality that Exemption 4 seeks to protect diminished in any respect by virtue of public interest in sensitive information. Thus, Plaintiff's discussion in this regard is misplaced.

The documents Plaintiff seeks relate to the unforeseen downturn of the U.S. economy in late 2008, when the country was slipping into a recession. The U.S. auto industry was on the verge of collapse, and the White House and Treasury recognized that the failure of Old GM and Old Chrysler would be massively detrimental for the country. At the end of 2008, Old GM employed approximately 91,000 people in the United States, *see* General Motors Company U.S. SEC Form 10-Q (for the quarterly period ending 9/30/09), at 108. As of April 30, 2009, Old Chrysler (and its direct and indirect subsidiaries) employed approximately 38,500 people in the United States. *See In re Chrysler LLC*, 405 B.R. 84, 88–89 (Bankr. S.D.N.Y. 2009). Indeed, the automotive industry played a significant role in the U.S. economy, employing approximately one out of every ten workers. *See* GM Corp. Restructuring Plan (2/17/09), at 6–7. There was a looming threat of "a systemic failure throughout the domestic automotive industry and the significant harm to the overall U.S. economy that would result from the loss of hundreds of

thousands of jobs and the sequential shutdown of hundreds of ancillary businesses if GM had to cease operations." *In re General Motors Corp*., 407 B.R. 463, 477 (Bankr. S.D.N.Y. 2009).

In an effort to preserve the U.S. economy, on October 3, 2008, Congress enacted the Emergency Economic Stabilization Act ("EESA") to offset financial upheaval and economic uncertainty. EESA established the Office of Financial Stability and authorized it to implement the Troubled Asset Relief Program ("TARP").[1] In December 2008, Treasury established the Automotive Industry Financing Program under TARP to bring relief to the U.S. auto industry and to prevent the inevitable economic disruption that would occur if Old GM and Old Chrysler were to collapse. Defs.' Mem. at 3.

With the U.S. economy in turmoil, Old GM declared bankruptcy on June 1, 2009 ("Old GM Petition Date") in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See generally In re Motors Liquidation Co.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 1, 2009). On the Old GM Petition Date, Old GM sought approval of a sale of substantially all of its assets to a purchaser that was sponsored by Treasury pursuant to Section 363 of the Bankruptcy Code (the "GM § 363 Sale").[2] *See generally id.*, Order at 1, July 5, 2009, ECF No. 2968. The GM § 363 Sale was approved by the Bankruptcy Court on July 5, 2009, and the GM § 363 Sale closed a few days thereafter. *See generally id.* After approval of the GM § 363 Sale, Old GM became Motors Liquidation Company ("MLC"). *See id.*,

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[1] The full circumstances leading to the issuance of the TARP loans to Old GM and Old Chrysler are outlined in Defendants' Memorandum of Points and Authorities in Support of Joint Motion for Summary Judgment at 3–5.

[2] Although Plaintiff characterizes this process as unusual and devious, selling assets pursuant to a § 363 sale before liquidating under Chapter 11 is a common practice. The Supreme Court has recognized the "common practice" of selling the majority of a debtor's assets under § 363 prior to liquidation of the debtor's remaining assets. *See In re General Motors Corp*., 407 B.R. 463, 488 (Bankr. S.D.N.Y. 2009).

Findings of Fact, Conclusions of Law, and Order at 1, Mar. 29, 2011, ECF No. 9941. MLC liquidated its remaining real-estate assets to a trust set up specifically to manage such properties, and ultimately filed a plan of liquidation ("Old GM Plan") that was approved by the Bankruptcy Court on March 29, 2011. *See generally id.* MLC was dissolved on December 15, 2011. *See generally id.*

Old Chrysler and twenty-four of its affiliates declared bankruptcy on April 30, 2009. Defs.' Mem., Ex. 3 ("Chrysler Decl.") ¶ 5. On the same day, Old Chrysler announced an agreement in principal with Fiat S.p.A. ("Fiat") in which a global strategic alliance would be formed. *Id.* Old Chrysler sought approval to sell substantially all of its assets to Fiat pursuant to a § 363 sale (the "Chrysler § 363 Sale" and together with the GM § 363 Sale, the "§ 363 Sales"). The Chrysler § 363 Sale was approved by the Bankruptcy Court on May 31, 2009. *In re Chrysler*, 405 B.R. at 113. The global strategic alliance with Fiat was complete on June 10, 2009. Chrysler Decl. ¶ 5.

The advantages of a § 363 sale are numerous; one of them, the truncated timeframe inherent to the § 363 Sales, was most relevant to Old GM and Old Chrysler. *See* Aff. of Frederick A. Henderson Pursuant to Local Bankr. R. 1007-2, at ¶¶ 82–96, *In re Motors Liquidation Co.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 1, 2009), ECF 2176; Aff. of Ronald E. Kolka in Support of First Day Pleadings ¶¶ 6, 16, *In re Chrysler LLC*, Case No. 09-50002 (Bankr. S.D.N.Y. April 30, 2009), ECF 23. Any attempts to stabilize the businesses had to be implemented quickly, especially in the context of the national economic crisis. Implementation of a Chapter 11 reorganization plan takes many months or even years. A § 363 sale, on the other

hand, can be accomplished more quickly. A § 363 sale of rapidly depleting assets also provides greater value to creditors because the assets can be sold before such value loss.[3]

Many parties, including Plaintiff, filed objections to the § 363 Sales.[4] Plaintiff, in its objection, raised, among other issues, concerns regarding successor liability, the continuing existence of successor-liability claims, and the Bankruptcy Court's subject-matter jurisdiction. In his decision approving the § 363 Sale (the "Sale Decision"), Bankruptcy Judge Robert Gerber considered and rejected Plaintiff's objections. *See generally In re Gen. Motors Corp.*, 407 B.R. 463, 499–506 (Bankr. S.D.N.Y. 2009); *see also In re Chrysler LLC*, 405 B.R. at 110–13 (overruling all objections, except as expressly provided). New GM purchased most, but not all, of Old GM's assets, and the agreement memorializing the § 363 Sale (the "Sale Agreement") makes clear that New GM assumed only specifically identified liabilities, while Old GM retained all other liabilities. Similarly, New Chrysler purchased most, but not all, of Old Chrysler's assets, and the MTA makes clear the New Chrysler assumed some, but not all,

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[3] *See In re Gen. Motors Corp.*, 407 B.R. 463, 474 (Bankr. S.D.N.Y. 2009) ("GM contends that this is exactly the kind of case where a section 363 sale is appropriate and indeed essential—and where under the several rulings of the Second Circuit and the Supreme Court in this area, GM's business can be sold, and its value preserved, before the company dies. The Court agrees. GM cannot survive with its continuing losses and associated loss of liquidity, and without the governmental funding that will expire in a matter of days.").

[4] *See* Limited Objection of Callan Campbell, Kevin Junso, et al., Edwin Agosto, Kevin Chadwick, et al., Joseph Berlingieri, and The Center for Auto Safety, et al., to the Debtors' 363 Mot. for the Sale of the "Purchased Assets" Free and Clear of Potential Successor Liability Claims**,** *In re Motors Liquidation Co.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 22, 2009), ECF No. 2176; Mem. of Law in Support of Limited Objection of Callan Campbell, Kevin Junso, et al., Edwin Agosto, Kevin Chadwick, et al., Joseph Berlingieri, and the Center for Auto Safety, et al., to the Debtors' 363 Mot. for the Sale of the "Purchased Assets" Free and Clear of Potential Successor Liability Claims, *In re Motors Liquidation Co.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 22, 2009), ECF No. 2177; *see also* Joinder of William Lovitz, Farbod Nourian, Brian Catalano, Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen in Ad Hoc Committee of Consumer-Victims of Chrysler LLC's Objection to the Debtors' Request for Relief Under Bankr. R. 6004, *In re Chrysler LLC*, Case No. 09-50002 (Bankr. S.D.N.Y. June 1, 2009), ECF 3190.

of the liabilities of Old Chrysler. The GM § 363 Sale was approved by an order of the Bankruptcy Court dated July 5, 2009 (the "GM Sale Order"); the Chrysler § 363 Sale was approved by an order of the Bankruptcy Court dated May 31, 2009 (the "Chrysler Sale Order" and together with the GM Sale Order, "the Sale Orders"). The Sale Orders have now been final and non-appealable for over five years. While others appealed the Sale Orders, Plaintiff did not, and thus abandoned its objections to the § 363 Sales. It is improper to attempt to rehash these objections here.

Plaintiff mischaracterizes the § 363 Sales as "leav[ing] behind certain liabilities" and stranding consumers. Mem. in Support of Pl.'s Mot. for Summ. J. and in Opp'n to Defs.' Mot. for Summ. J. ("Pl.'s Mem.") at 1. But the liabilities that New GM did not assume were not extinguished; they attached to the proceeds of the GM § 363 Sale. The holders of such claims could have filed, and many did file, proofs of claim in Old GM's bankruptcy case and received a distribution from the bankruptcy estate. Old GM was insolvent by tens of billions of dollars. Were it not for the GM § 363 Sale, Old GM would have been liquidated, and, as Judge Gerber observed, all of its unsecured creditors, including vehicle-owner claimants, would have received "nothing on their claims." *In re General Motors Corp*., 407 B.R. 463, 475 (Bankr. S.D.N.Y. 2009). But because Old GM was authorized to effectuate the GM § 363 Sale, unsecured creditors of Old GM received significant distributions—as of this filing, approximately one-third of their allowed claims.

With respect to Chrysler, the liabilities that New Chrysler did not assume were not extinguished; the holders of such claims could have filed, and many did file, proofs of claim in Old Chrysler's bankruptcy case and were entitled to receive a distribution from the bankruptcy estate in accordance with the plan of liquidation. Had the Chrysler § 363 Sale not been

approved, Old Chrysler would have been liquidated. *See In re Chrysler LLC*, 405 B.R. at 96 ("the only other alternative [to the Chrysler § 363 Sale to Fiat] is the immediate liquidation of the company"); *id.* at 97 (recognizing that it was "unrebutted [ ] that the $2 billion New Chrysler is paying for the Debtors' assets exceeds the value that the First–Lien Lenders could recover in an immediate liquidation").

Plaintiff also asserts, incorrectly, that "hundreds of millions of dollars in environmental damages . . . were left with the 'old' companies . . . without the necessary funds to compensate the victims." *See* Pl.'s Mem. at 1. But these liabilities are covered under the Revitalizing Auto Communities Environmental Response Trust (the "RACER Trust"). The RACER Trust is an independent trust established pursuant to the Old GM Plan with over $641 million in funding. Its purpose is to resolve remaining environmental issues at the 89 properties that Old GM retained and subsequently transferred to the RACER Trust and to sell or otherwise divest and/or manage such properties. *See http://www.racertrust.org/About_RACER/About_Us*.[5]

Moreover, New GM assumed some liabilities and obligations related to Old GM vehicles (the "Assumed Liabilities"). Specifically, New GM agreed (i) to be bound by the glove-box warranties issued with new and certified-used Old GM vehicles, (ii) to comply with Lemon Laws (as defined in the Sale Agreement), and (iii) to assume liabilities based on Product Liabilities (as defined in the Sale Agreement) arising from accidents or incidents that occurred after the closing of the GM § 363 Sale involving Old GM vehicles. New GM also agreed to comply with the

[5] Chrysler's environmental liabilities were addressed in a Second Amended Joint Plan of Liquidation, filed with the Bankruptcy Court on April 13, 2010, which established an Environmental Reserve covering unsold properties. This plan was confirmed by the Bankruptcy Court on April 23, 2010, and the plan became effective on April 30, 2010. *In re Chrysler LLC*, No. 09-50002 (AJG) (Bankr. S.D.N.Y. 2010), ECF 6980.

recall laws.[6] The liabilities that Old GM retained are those that were not specifically identified as Assumed Liabilities (and are referred to as the "Retained Liabilities").[7]

Chrysler likewise assumed certain liabilities and obligations related to Old Chrysler (the "Chrysler Assumed Liabilities"). For example, Chrysler agreed to assume (i) liabilities pursuant to product warranties and extended service contracts, (ii) certain product liability claims (as defined in the MTA), and (iii) certain liabilities based on Lemon Law claims. Chrysler also agreed to comply with recall provisions and liabilities under specific sections of the National Traffic and Motor Vehicle Safety Act. *See* Master Transaction Agreement, Section 2.08, *available at* http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Documents/mta.pdf.

Finally, Plaintiff spends a significant amount of time in its brief trying to improperly inject Delphi ignition switches into these FOIA proceedings. This is nothing more than a red herring; neither the ignition switches nor any issues associated with the ignition switches are relevant to these proceedings. Rather, any reference to the term "ignition" in the Disputed Information appears in the context of "ignition systems" that describe parts supplied by Delphi to GM, similar to the "ignition systems" listed in HHR-DOT2-00082859, Document No. 204 in the

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[6] Specifically, from and after the closing of the GM § 363 Sale, New GM covenanted to "comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by Seller." Sale Agreement, § 6.15(a).

[7] Specifically, Section 2.3(b) of the Sale Agreement provides a non-exhaustive list of the Retained Liabilities. Generally, if the liability is not an Assumed Liability, and it relates to an Old GM vehicle, an Old GM part sold by Old GM or a third party (not New GM), or Old GM's conduct, it is a Retained Liability. *See generally* Sale Agreement, §§ 2.3(a) and 2.3(b).

GM Revised *Vaughn* Index, as well as documents already produced to Plaintiffs.[8] Therefore, Plaintiff's discussion of Delphi ignition switches is nothing more than an attempt to raise an issue that is not discussed in any of the Disputed Information and thus is wholly irrelevant to the issues in this case.

ARGUMENT

FOIA, 5 U.S.C. § 552, requires a federal agency to publicly disclose records upon request unless such records are protected by any of nine listed exemptions. Although "the basic objective of the Act is disclosure," *Chrysler Corp. v. Brown*, 441 U.S. 281, 290 (1979), that goal is tempered by the "legitimate governmental and private interests that could be harmed by release of certain types of information," *Public Citizen v. United States Dep't of Health & Human Servs.*, 975 F. Supp. 2d 81, 93 (D.D.C. 2013) (Howell, J.) (quoting *United Techs. Corp. v. United States. Dep't of Def.*, 601 F.3d 557, 559 (D.C. Cir. 2010)). When striking the proper balance between disclosure and protection, courts are cognizant that "public disclosure is not always in the public interest." *Baldrige v. Shapiro*, 455 U.S. 345, 352 (1982).

When an agency withholds responsive records, it bears the burden of showing that an exemption applies. *Public Citizen v. United States Dep't of Health & Human Serv.*, No. 11-1681-BAH, __ F. Supp. 2d __, 2014 WL 4388062, at *5 (D.D.C. Sept. 5, 2014) (Howell, J.). Disputes about whether records properly were withheld generally are resolved on motions for summary judgment. *Id.* Courts may grant summary judgment if affidavits submitted by the agency demonstrate that the withheld information "falls within the exemption, and is not contradicted by contrary evidence in the record or by evidence of the agency's bad faith." *Id.*

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[8] *See* documents produced at HHR-DOT2-00115012, HHR-DOT2-00115013, HHR-DOT2-00114937, HHR-DOT2-00114936, HHR-DOT2-00113553, HHR-DOT2-00113335, and HHR-DOT2-00113118.

(quoting *Am. Civil Liberties Union v. United States Dep't of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011)). An agency's justification for withholding records pursuant to an exemption "is sufficient if it appears 'logical' and 'plausible.'" *Public Citizen*, 975 F. Supp. 2d at 94 (quoting *Judicial Watch, Inc. v. United States Dep't of Def.*, 715 F.3d 937, 941 (D.C. Cir. 2013)).

Here, Treasury properly withheld the Disputed Information pursuant to 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). As shown below, Treasury properly determined that the Disputed Information satisfies all requirements warranting protection from disclosure under Exemption 4. In addition, the *Vaughn* Indices and the Declarations adequately detail the justification for withholding the Disputed Information and demonstrate that the Disputed Information logically and credibly falls within the scope of Exemption 4. And, contrary to Plaintiff's unsupported request, this Court need not review the Disputed Information *in camera*, permit Plaintiff to take discovery from Treasury, or grant judgment in Plaintiff's favor. Rather, this Court should conclude that Treasury has properly withheld information exempt from disclosure under FOIA pursuant to Exemption 4 and should find that Treasury and GM are entitled to judgment as a matter of law.

I. Exemption 4 protects the Disputed Information from disclosure.

Exemption 4 restricts disclosure of a record containing (1) commercial or financial information (2) obtained from a person that is (3) privileged or confidential. *See* 5 U.S.C. § 552(b)(4); *Nat'l Parks & Conservation Assoc. v. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974); *Public Citizen*, 975 F. Supp. 2d at 98. All three prongs of this test are satisfied here.

A. All of the Disputed Information is commercial or financial in nature.

Plaintiff does not dispute—and thus concedes—that the first element of the test under Exemption 4 is satisfied. Courts are clear that the terms "commercial" and "financial" should be interpreted as having "their ordinary meanings." *Public Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). Commercial information includes "records that actually reveal basic commercial operations, such as sales statistics, profits and losses, and inventories, or relate to the income-producing aspects of a business." *Id.* The *Vaughn* Indices and Declarations submitted by Defendants and Chrysler plainly demonstrate that the Disputed Information is commercial and/or financial in nature.

B. All of the Disputed Information was "obtained from a person."

FOIA makes clear that corporations like GM and Chrysler are "persons." 5 U.S.C. § 551(2). Plaintiff nonetheless argues that the Disputed Information was not "obtained from" a person, Pl.'s Mem. at 26–28, contending that the Disputed Information "clearly encompasses information authored by government officials" because it includes five GM emails and ten Chrysler emails "generated and/or received by the Department of Treasury." Pl.'s Mem. at 26.[9] But that is not the test. Plaintiff confuses documents (such as emails) with information (what is contained in the emails). FOIA specifically deals with the latter, and all of the information at

[9] *See* Pl.'s Mem. at 27 n.35 (listing documents 514, 521, 524, 526, 529, and 537 from the GM Revised *Vaughn* Index and various Bates ranges from the Chrysler Revised *Vaughn* Index). Although Plaintiff lists six GM documents as having been generated by the Government, one of those—Doc. No. 529 on Exhibit D of the GM Declaration—contains information redacted under Exemption 6, not Exemption 4. That document was redacted because it contained non-public, personal contact information about individual employees. Several Chrysler emails also contain redactions of such personal information, *e.g.*, Bates Range HHR-DOT2-00342767. Treasury GM, and Chrysler understand Plaintiff to have withdrawn its request for such information, as stated in footnote 33 of Plaintiff's Memorandum. *See* Pl.'s Mem. at 26 n.33 ("the Center made clear that it does not seek access to any <u>personal</u> information") (emphasis in original). Thus, there are only five GM emails Plaintiff challenges as not having been "obtained from a person." *See* Pl.'s Mem. at 27 n.35 (Doc Nos. 514, 521, 524, 526, and 537).

issue here was obtained from GM and Chrysler, which means it was obtained from "persons" within the meaning of FOIA's requirements. *See, e.g.*, *Elec. Privacy Info. Cntr. v. United States Dep't of Homeland Security*, 892 F. Supp. 2d 28, 39 (D.D.C. 2012) ("the focus of FOIA is information, not documents").

As an initial matter, Plaintiff does not substantiate its contention that information "received by" Treasury is somehow "authored by government officials." *See* Pl.'s Mem. at 26. Here, the emails that Plaintiff challenges as not having been "obtained from a person" are emails between individuals at GM or Chrysler and individuals at Treasury, portions of which have been redacted. Pl.'s Mem. at 27 n.35. The redacted portions of the email chains are communications actually sent from individuals at GM or Chrysler, responses from Treasury that would otherwise reveal the content of the GM or Chrysler communications, or emails from Treasury containing confidential information that GM or Chrysler provided to Treasury. *See* Defs.' Mem., Ex. 2 ("GM Decl."), Ex. D ("GM Revised *Vaughn* Index," Doc. Nos. 514, 521, 524, 526, and 537); Chrysler Revised *Vaughn* Index at Bates Ranges HHR-DOT2-00119592, HHR-DOT2-00155388, HHR-DOT2-00155393, HHR-DOT2-00153431, HHR-DOT2-00342767, HHR-DOT2-00342947, HHR-DOT2-00343725, HHR-DOT2-00346934, HHR-DOT2-00347619, and HHR-DOT2-00348806).[10]

Even assuming Plaintiff only meant to challenge the portions of the emails that were actually "generated" by Treasury, the Disputed Information was still "obtained from a person" if

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[10] In addition to assessing the redacted documents specifically identified by Plaintiff, GM also re-examined the content of all other redacted documents and confirms that all GM redactions were made to GM-generated documents. In doing so, GM identified two typographical errors in its Revised *Vaughn* Index related to such documents: (1) document number 16 does not contain any redactions and should be listed as withheld in its entirety; and (2) document number 536 appears twice in the Index when it should appear only once. Supplemental pages of the GM Revised *Vaughn* Index correcting these errors are attached as Exhibit 2 hereto. Accordingly, the total number of documents containing redactions is 89.

the information was "originally obtained from an outside source, [and] later included in agency documents." *See COMPTEL v. F.C.C.*, 910 F. Supp. 2d 100, 117 (D.D.C. 2012). For example, "portions of agency-created records may be exempt if they contain information that was either supplied by a person outside the government or that could permit others to 'extrapolate' such information." *Southern Alliance for Clean Energy v. United States Dept. of Energy*, 853 F. Supp. 2d 60, 67 (D.D.C. 2012) (internal quotations omitted) (citing *Gulf & W. Indus. v. United States*, 615 F.2d 527, 529–30 (D.C. Cir. 1979)). Although an agency's "own analysis" is not information obtained from a person, *Philadelphia Newspapers, Inc. v. Dep't of Health & Human Servs.*, 69 F. Supp. 2d 63, 67 (D.D.C. 1999), records created by the Government containing "summaries or reformulations" of information provided by a person outside the Government are considered "obtained from a person." *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 28 (D.D.C. 2000).

Here, the redacted portions of the five GM emails describe GM's terms and strategies of proposed transactions relating to Delphi. *See* GM Revised *Vaughn* Index, Doc. Nos. 514, 521, 524, 526, and 537. Similarly, the Chrysler emails describe Chrysler's views on various aspects of proposed bankruptcy terms or agreements. *See* Chrysler Decl., Ex. A ("Chrysler Revised *Vaughn* Index") *inter alia*, HHR-DOT2-00119592, HHR-DOT2-00155388. The fact that individuals from the Auto Task Force were included in the correspondence does not transform the information provided by GM or Chrysler into information or "analysis" created by the Government. *Southern Alliance for Clean Energy*, 853 F. Supp. 2d at 68. Thus, even as to the portions of the emails written by Treasury, the Disputed Information relates to GM's or Chrysler's transactions; Plaintiff has not shown that Treasury converted GM's or Chrysler's information into its own through independent analysis. *See id.*

Plaintiff also argues that Defendants withheld government-generated, public documents such as the Viability Plans. *See* Pl.'s Mem. at 27. Plaintiff makes much of the fact that one document, out of the over 150,000 pages of records processed by Treasury, was inadvertently included on Chrysler's Revised *Vaughn* Index. *See* Pl.'s Mem. at 27; Ditlow Decl. ¶ 9. From January 2012 through April 2013, Chrysler reviewed thousands of documents provided by Treasury that were responsive to Plaintiff's FOIA request and identified documents that fell within FOIA Exemption 4. After conducting an independent review of these documents, Treasury determined that a document entitled "Obama Administration New Path to Viability for GM & Chrysler" should not be withheld and, as Plaintiff acknowledges, Pl.'s Mem. at 27, released this document to the Center. Chrysler agreed with Treasury's final determination. The inclusion of this document on Chrysler's Revised *Vaughn* Index was merely an oversight. *See* Exhibit 1, January 15, 2013 Letter from Sonya Johnson to Thomas Leuba (releasing the viability plan document on the ground that the document was already publicly available).[11]

Finally, Plaintiff's broad conclusion that "the government has failed to meet its burden of proof with respect to any of the withheld information, and any communications by government employees," Pl.'s Mem. at 28 (emphasis omitted), is wrong and unsupported by the case law. Plaintiff points to nothing that suggests that, even if certain information contained in a document was improperly withheld, its withholding taints all other information protected from disclosure under Exemption 4. In fact, Plaintiff's own legal authority demonstrates quite the opposite. *See* Pl.'s Mem. at 28 (citing *COMPTEL v. F.C.C.*, 945 F. Supp. 2d 48, 57 (D.D.C. 2013)). The court in *COMPTEL* noted that because the Government had not shown how a document "originally prepared by its own staff can be considered 'obtained from a person,'" the Government did not

[11] Treasury and GM also produced to Plaintiff documents relating to GM's Viability Plan. *See, e.g.*, HHR-DOT2-00004262, HHR-DOT2-00004263, HHR-DOT2-00079954, and HHR-DOT2-00079955.

meet its burden to withhold "the entire document." 945 F. Supp. 2d at 57. But the Court did not conclude that all other information withheld in any other documents evidencing communications by or with the Government should be produced as a result. To the contrary, the Court granted the Government's motion for summary judgment with regard to all the other redacted documents at issue because the plaintiff failed to specifically object to those documents. *Id.* at 55 (noting COMPTEL challenged redactions in only two documents, and thus summary judgment was proper "with respect to the propriety of those redactions" in all other non-challenged documents). Thus, even if the redacted portions of the five GM emails and ten Chrysler emails Plaintiff challenges do not contain information "obtained from a person," which Defendants do not concede, summary judgment in favor of Treasury and GM is proper as to all other redacted documents listed in the GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index. *See id.*

C. All of the Disputed Information is privileged and confidential.

Information is considered "confidential" if disclosure likely would (1) cause substantial harm to the competitive position of the person from whom the information was obtained, or (2) impair the Government's ability to obtain necessary information in the future. *Nat'l Parks*, 498 F.2d at 770. Where disclosure is likely to cause <u>either</u> result, the information is considered confidential for purposes of satisfying Exemption 4. *Id.* Defendants have demonstrated that disclosure here is likely to cause both outcomes.

1. The Disputed Information is confidential because its disclosure is likely to cause substantial harm to GM's and Chrysler's competitive positions.

Courts do not require a showing of actual competitive harm to meet the *National Parks* test. Rather, there need only be "actual competition" and a "likelihood of substantial competitive

injury" if the information were disclosed. *Nat'l Parks & Conservation Assoc. v. Kleppe*, 547 F.2d 673, 679 (D.C. Cir. 1976); *see also Gulf & W. Indus.*, 615 F.2d at 530. Treasury and GM have demonstrated exactly that. There can be no real question whether GM and Chrysler face "actual competition" from other automobile manufacturers, suppliers, and dealers. *See* GM Decl. ¶ 13; Chrysler Decl. ¶ 8. Wisely, Plaintiff does not appear to challenge this.

Instead, Plaintiff argues that the Disputed Information is not confidential because Treasury failed to meet its burden to show that the release "will harm [GM or Chrysler] because of the affirmative use of th[e] information by competitors." Pl.'s Mem. at 32 (emphasis added; internal quotation marks omitted). As an initial matter, Treasury is not required to show actual injury, only the likelihood of substantial competitive injury. *Nat'l Parks & Conservation Assoc.*, 547 F.2d at 679. Moreover, Treasury and GM did show a likelihood of substantial competitive injury from the disclosure of the Disputed Information: the GM Revised *Vaughn* Index and the Declarations set out six categories of documents and information that competitors affirmatively could use that likely would cause GM substantial competitive injury.[12] This information includes historical and projected financial, operating, and strategy information. *See* GM Decl. ¶ 13. Transactions-related documents contain drafts of agreements, documentation of critical financial, intellectual-property, operating, and real-estate decisions, and discussions of GM's negotiating positions, timing, approaches, and strategies employed or considered during certain restructuring initiatives. *Id.* ¶¶ 28–29. And GM's financial data contains information related to historical and projected financial operating information, budgets, and forecasts that reflect

[12] As noted above, Plaintiff has withdrawn its request for "personal information," *see* Pl.'s Mem. at 26 n.33, which Defendants assume encompasses the compensation and benefits category of Disputed Information. *See* GM Decl. ¶ 33 (compensation and benefits category includes "sensitive, confidential information related to employee-compensation and -benefit matters that is not publicly disclosed and, in some instances, if disclosed would invade the privacy of individual employees.").

otherwise-undisclosed pricing, costs, plans, and strategies relevant to the business on a forward-looking basis. *Id.* ¶ 35. Chrysler's Revised *Vaughn* Index and its Declaration describe its confidential financial information as consisting of financial data, including confidential budgets, financial forecasts, and sales projections; potential tax and legal liabilities of Chrysler; operational, labor, and manufacturing information, including decisions on product strategy, manufacturing costs, and relationships with suppliers; draft transactional materials; and compensation and benefits-related information. Chrysler Decl. ¶ 16–20.

As explained in the Declarations, if any of GM's or Chrysler's competitors or others with whom GM or Chrysler may negotiate were allowed to glean insights into how GM or Chrysler approach their transactions, GM's and Chrysler's ability to negotiate favorable terms in their deals would be significantly and negatively impacted. GM Decl. ¶ 30; Chrysler Decl. ¶¶ 16–19. And industry competitors could analyze and use GM's or Chrysler's financial data on pricing, costs, business plans, strategies, and statistical, aggregated claims data to GM's or Chrysler's direct competitive disadvantages. GM Decl. ¶ 35; Chrysler Decl. ¶ 16. Defendants and Chrysler similarly described the specific nature of the confidential information comprising the other categories and how competitors' use of such information likely would cause GM and Chrysler substantial competitive injury. *See* Defs.' Mem. at 15–21; GM Decl. ¶¶ 28–36; Chrysler Decl. ¶¶ 17–19.

Plaintiff does not contest that competitors' use of the Disputed Information could cause GM or Chrysler substantial competitive injury. Instead, Plaintiff argues that GM's and Chrysler's principal concern is with suppliers, dealers, unions, customers, and employees, rather than other automakers against which they directly compete. *See* Pl.'s Mem. at 33–34. Plaintiff, however, misconstrues Defendants' argument. GM's and Chrysler's relations with suppliers,

dealers, and other constituents fundamentally affect their ability to compete in the auto-manufacturing sector. But no information was withheld solely out of concern for one of the identified groups. It is all part of the same competitive mix.

Case law in this Circuit supports GM's and Chrysler's holistic views of competition. In *National Parks & Conservation Assoc. v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976), the D.C. Circuit explained that "[s]uppliers, contractors, labor unions and creditors" could use the defendant's financial information to "bargain for higher prices, wages or interest rates," while the defendant's competitors "would not be similarly exposed." *Id.* Thus, Defendants satisfied their burden to show that disclosure of the Disputed Information to GM's and Chrysler's competitors and to other constituents is likely to cause substantial harm to GM's and Chrysler's competitive positions. *See Nat'l Parks*, 498 F.2d at 770.

Plaintiff also argues that Treasury's assertions of competitive harm are "too conclusory" to demonstrate that GM and Chrysler are likely to suffer "substantial" competitive harm. Pl.'s Mem. at 35. But agencies are permitted to treat "common documents commonly." *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 147 (D.C. Cir. 2006). Plaintiff says that Defendants and Chrysler make general, boilerplate assertions to describe the substantial competitive injury that likely would befall GM and Chrysler if the Disputed Information were disclosed. *See* Pl.'s Mem. at 35–36 & n.45. However, Defendants are only required to show a "likelihood of substantial competitive injury" if the information were disclosed. *Nat'l Parks & Conservation Assoc.*, 547 F.2d at 679. And because no one can be expected to divine future events, it would be impossible for Defendants and Chrysler to describe with specificity the exact harm that will befall GM and Chrysler. Moreover, an agency need not describe the Disputed Information in such specific detail "that the exempt material effectively would be disclosed."

Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec., 892 F. Supp. 2d 28, 43 (D.D.C. 2012).

Additionally, Plaintiff argues that "to the extent [the Disputed Information] is general in scope," it cannot create "substantial" competitive injury. Pl.'s Mem. at 39 (emphasis in original). But Plaintiff provides no legal authority for that proposition. And Plaintiff points to no GM document or GM Revised *Vaughn* Index entry that it asserts is "too general" to create the likelihood of substantial competitive injury. The one Chrysler document Plaintiff cites as "too general" to be withheld is the aforementioned "Obama Administration New Path to Viability for GM & Chrysler" document, which, as explained above, was inadvertently included on Chrysler's Revised *Vaughn* Index and has been released to Plaintiff. Moreover, GM and Chrysler specifically explained that disclosure of any of the Disputed Information likely would substantially harm their competitive positions. *See* GM Decl. ¶¶ 13, 26, 29–36; Chrysler Decl. ¶¶ 16–20.

Accordingly, this Court should reject Plaintiff's contention that Defendants' and Chrysler's assertions of competitive harm are too conclusory and too general to create a likelihood of substantial competitive injury.

2. Plaintiff's other arguments are unavailing.

Plaintiff challenges the confidential nature of the Disputed Information on a number of other grounds, none of which has any merit.

First, Plaintiff argues that Treasury wrongly withheld the Disputed Information because of confidentiality provisions in the TARP loan documents. *See* Pl.'s Mem. at 34. Not so. In providing background on GM and Chrysler's participation in the TARP program, Treasury explained that the TARP loans contained confidentiality clauses. *See* Defs.' Mem. at 4; Pl.'s

Mem. at 34 (citing same). But neither Treasury, GM, nor Chrysler relied on those confidentiality clauses in place of conducting a comprehensive FOIA analysis when they evaluated the records responsive to Plaintiff's FOIA request, nor does Plaintiff point to any evidence of such reliance during the FOIA review process. *See* Pl.'s Mem. at 34 (citing the background section of Defendants' opening Memorandum).

The confidentiality provisions of the TARP loans show that Treasury and the automakers recognized at the outset the likelihood that sensitive commercial information would be disclosed under the terms of the loans. And that is what happened: confidential commercial information was disclosed to Treasury. Of course, not every document was confidential, as hundreds have been released to Plaintiff. The confidentiality provisions in the TARP loan documents are relevant insofar as they show a longstanding expectation that confidential commercial information could flow to Treasury as part of the TARP process. But contrary to Plaintiff's belief, Treasury did not simply rely on those confidentiality provisions when determining that the Disputed Information should be protected from disclosure under Exemption 4, nor does Plaintiff show otherwise.

Second, Plaintiff argues that the Disputed Information concerns Old GM and Old Chrysler and so it cannot create substantial competitive injury to New GM and New Chrysler, respectively. *See* Pl.'s Mem. at 38–39. Plaintiff ignores the fact that New GM bought substantially all of the assets of Old GM, including the four remaining GM brands and "all of the business records of Old GM, the intellectual property contained in those records, and all rights and privileges pertaining thereto." GM Decl. ¶ 4. Likewise, New Chrysler bought substantially all of the assets of Old Chrysler. Chrysler Decl. ¶ 2. Indeed, there can be no competitive harm to Old GM or Old Chrysler because these companies have been dissolved and liquidated in

bankruptcy. New GM and New Chrysler, however, would be harmed competitively by the public disclosure of confidential information released about the assets that they purchased.

Third, Plaintiff says that because certain unidentified documents are more than five years old, they are "stale" and would not "be of any use to a competitor of the 'new' companies, let alone cause them 'substantial' competitive injury." *See* Pl.'s Mem. at 40–41. But when Plaintiff raised this same argument in another case, the court rejected it: "Information does not become stale merely because it is old." *Center for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000). Indeed, Judge Kessler found that airbag test results and other information (even about technology that is no longer used) was commercially viable and potentially harmful if disclosed because "disclosing it would provide insights into a manufacturer's 'design concept and philosophy.'" *Id.* Competitors could then use that insight to "determine the direction of the company's past and current efforts in research and development (and thus best them to new advancements)," giving them "an edge in improving their own technology by not having to invest as much time and money in research and development." *Id.*

The mere fact that some of the Disputed Information is more than five years old does not mean the information would not be useful to a competitor. Indeed, even in a changing market, six-year-old data was found to be protected under Exemption 4 because it could still have "great relevance to a competitor," who could "adjust[] the old figures" and "update" the information to be useful in the current market. *See Braintree Elec. Light Dep't v. Dep't of Energy*, 494 F. Supp. 287, 291 (D.D.C. 1980). Older financial records may not be "so old as to render them useless to competitors" when they contain "forward-looking information such as the intended use of . . . loan proceeds." *People for Ethical Treatment of Animals v. United States Dep't of Agric.*, No. CIV. 03 C 195-SBC, 2005 WL 1241141, at *10 (D.D.C. May 24, 2005). Even confidential

commercial information that is five or ten years old may be harmful if disclosed because "old business data may be extrapolated and interpreted to reveal a business' current strategy, strengths, and weaknesses." *Timken Co. v. United States Customs Serv.*, No. Civ. A. 79–1736, 1983 WL 486422, at *4–5 (D.D.C. June 24, 1983) (quoting *In re Japanese Elec. Prods. Antitrust Litig.*, 529 F. Supp. 866, 891–92 (E.D. Pa. 1981)). "[I]n the hands of an able and shrewd competitor, old data could indeed be used for competitive purposes." *Id.* (quoting *In re Japanese Elec. Prods. Antitrust Litig.*, 529 F. Supp. at 891–92).

Similarly here, GM's and Chrysler's historical and "old" financial information can be extrapolated and used to interpret GM's and Chrysler's current or future projections, making it of great relevance to their competitors. For example, the Disputed Information regarding GM's Delphi transaction could reveal to GM's competitors information about "GM's negotiating positions, timing, approaches, and strategies." *See* GM. Decl. ¶ 29. And other data included in the GM and Chrysler transactions-based Disputed Information could be used to determine negotiation strategies and approaches in future acquisitions. *See* GM Decl. ¶ 30 (describing that documents relating to transactions, the disclosure of which "would allow a third party to understand what GM deems important in such transactions and how GM assesses transaction risks in its business"); Chrysler Decl. ¶ 19 (describing documents that "give detailed insight into the course of Chrysler's negotiating and its internal strategic decision-making"). Disclosing GM's and Chrysler's confidential information would give their competitors "insights" into their strategic planning and "would allow [those] competitor[s] to determine the direction of" their projected business opportunities. *See Center for Auto Safety*, 93 F. Supp. 2d at 16; GM. Decl. ¶ 30 (describing how disclosure of transactional documents could allow competitors to "glean insights into how GM approaches" business transactions); Chrysler Decl. ¶ 16 (describing

pricing strategies and sales projections, among other confidential financial data, that "would give competitors insight into Chrysler's business strategies"). Exemption 4 is intended to protect this type of confidential business and financial information, and the fact that Plaintiff considers such information as "old" does not make it "stale" and unworthy of protection. *See Center for Auto Safety*, 93 F. Supp. 2d at 16.

Fourth, Plaintiff mischaracterizes Defendants' motion and argues that any harm to Delphi Corporation is not relevant to the Exemption 4 analysis. Pl.'s Mem. at 41. But Treasury and GM never contended that competitive harm to Delphi was the basis for withholding any Disputed Information. *See* Defs.' Mem. at 15–17. Rather, Treasury and GM explained that documents detailing strategic information about initiatives relating to the restructuring of Delphi "could and likely would be utilized to GM's direct competitive or commercial disadvantage." Defs.' Mem. at 16 (emphasis added); GM Decl. ¶¶ 29–31.

Fifth, Plaintiff says that "much of the same or similar information" as the Disputed Information "is already public in one form or another." Pl.'s Mem. at 41 (emphasis omitted). Plaintiff points to the GM and Chrysler Viability Plans that were submitted to Treasury in February 2009, as well as to certain Securities and Exchange Commission filings, monthly sales figures published on the Internet, and strategies for restructuring that were published in a book by Steven Rattner. *Id.* at 42–43.[13] But when challenging withheld documents as having been publicly disclosed, "the plaintiff bears the initial burden of showing that the requested information: (1) is as specific as the information previously disclosed; (2) matches the

[13] Plaintiff's frequent references to Mr. Rattner's book provide no legal authority upon which this Court should base its ruling. Although perhaps informative with regard to Mr. Rattner's beliefs about the historical crash of the U.S. economy in late 2008, his book has no relevance to Treasury's legal basis for protecting the Disputed Information from disclosure under Exemption 4, except to the extent Plaintiff argues it evidences a public disclosure of such information. But for the reasons described herein, Plaintiff has not satisfied its burden of proving such a public disclosure occurred.

information previously disclosed; and (3) was made public though an official and documented disclosure." *Performance Coal Co. v. United States Dep't. of Labor*, 847 F. Supp. 2d. 6, 14 n.2 (D.D.C. 2012); *see also Cottone v. Reno*, 193 F.3d 550, 554 (D.C. Cir. 1999) ("[T]he party advocating disclosure bears the initial burden of production; for were it otherwise, the government would face the daunting task of proving a negative: that requested information had not been previously disclosed.") (citing *Niagara Mohawk Power Corp. v. United States Dep't of Energy*, 169 F.3d 16, 19 (D.C. Cir. 1999)).

Here, Plaintiff does not meet its burden of showing that the Disputed Information is "as specific as the information" disclosed in the Viability Plans, securities filings, website postings, or the Rattner book. *See Performance Coal Co.*, 847 F. Supp. 2d. at 14 n.2. In fact, Plaintiff points to no document containing Disputed Information that is as specific as any publicly available information. *See* Pl.'s Mem. at 42 nn.52–53. Plaintiff lists certain Securities and Exchange Commission filings that generally discuss topics such as the "the four core U.S. brands" and "dealer reductions," but Plaintiff only compares those to other previously disclosed documents, not to any of the descriptions of the Disputed Information. *See id.* And the discussions in these disclosed or otherwise publicly released documents provide only high-level, general comments regarding those topics. The publicly released documents do not divulge GM's or Chrysler's strategies, the entities involved in negotiations, negotiations tactics, or dealer-specific information. *See generally id.* It is clear from the GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index, however, that the Disputed Information does contain these more specific details. *See generally* GM Revised *Vaughn* Index, Chrysler Revised *Vaughn* Index.

Neither does Plaintiff demonstrate that the allegedly disclosed information matches or is otherwise "identical" to any of the descriptions of the Disputed Information. *See Niagara*

Mohawk Power Corp., 169 F.3d at 19–20. Rather, Plaintiff identifies certain Securities and Exchange Commission filings that discuss the same broad categories of information as those provided in a Question-and-Answer memorandum regarding GM's Viability Plan. *See* Pl.'s Mem. at 42 n.53. This type of broad, categorical reference, however, is not sufficient to prove the information matches or is otherwise "identical" to the Disputed Information. *See Niagara Mohawk Power Corp.*, 169 F.3d at 19–20.

And Plaintiff does not show that all of the publicly available information was disclosed through "an official and documented disclosure." *See Performance Coal Co.*, 847 F. Supp. 2d. at 14 n.2. Neither the *Automotive News* website posting nor Plaintiff's citations to the Steven Rattner book provide evidence of the sources of the information that Plaintiff claims is "the same or similar" to the Disputed Information. Pl.'s Mem. at 41, 43. Accordingly, Plaintiff has not satisfied its burden of showing that the Disputed Information has been publicly disclosed and must lose its Exemption 4 protection.

Finally, the Declarations from two of Plaintiff's officers, Clarence Ditlow and Joan Claybrook, provide no grounds for piercing the confidentiality protections of Exemption 4. The Declarations are conclusory and merely repeat the legal arguments presented in Plaintiff's brief.

3. The Disputed Information is confidential because its disclosure likely would impair the Government's ability to obtain this type of information in the future.

The Disputed Information also satisfies the other prong of the *National Parks* test: its disclosure likely would impair the Government's ability to obtain necessary information in the future. *See Nat'l Parks*, 498 F.2d at 770. As Treasury's Attorney Advisor in the Office of the General Counsel declared, the disclosure of information containing "GM's and Chrysler's confidential budgetary and financial data, confidential information concerning tax liabilities, and

confidential information concerning operational decisions, would severely impair the government's ability in the future to obtain necessary information from GM and Chrysler, and other companies." Cochrane Decl. ¶ 37. In addition, disclosure would "compromise the effectiveness of government programs that may be dependent on sensitive information from such companies." *Id.*

Plaintiff argues that requiring disclosure of the Disputed Information will not impair the Government's ability to obtain similar information in the future because "any entity seeking to take advantage of a program [like TARP] would not risk losing the opportunity" by refusing to turn over documents or by turning over "unreliable" information. Pl.'s Mem. at 31.[14] Plaintiff points to *Public Citizen*, in which this Court concluded that the Government's ability to obtain withheld commercial information would not be impaired because the alternative for the defendant was a "potentially draconian penalty" of exclusion from the federal health programs. *Pub. Citizen v. United States Dep't of Health & Human Servs.*, 975 F. Supp. 2d 81, 112 (D.D.C. 2013) (Howell, J.). But in *Public Citizen*, the defendant was already under a continuing obligation to comply with a Corporate Integrity Agreement that required annual submissions of certain commercial information. *Id.* at 89. For companies without such a preexisting, ongoing obligation to submit information to the Government, however, the decision whether to participate in a federal program, whether a federal health program or the TARP loan program, or any number of other federal programs, may take on a different, heavier weight if the companies are

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[14] Plaintiff also argues that the Government has broad subpoena power and so could compel the submission of information even if it was otherwise impaired in obtaining "whatever information is needed." Pl.'s Mem. at 30 n.39. However, the Government did not obtain the Disputed Information through its subpoena power. Rather, GM and Chrysler provided the Disputed Information in the context of obtaining a loan from the Government. There is no reason to think the Government would be able to (or would have any reason to) subpoena records from a company that was simply applying for a loan, nor does Plaintiff point to any support for such a proposition in the context of a loan application.

faced with the knowledge that the Government agency may publicly disclose their confidential information.

Additionally, Plaintiff points to *Honeywell Technology Solutions, Inc. v. Dep't of the Air Force*, 779 F. Supp. 2d 14 (D.D.C. 2011), and argues that large government contractors would not "abjure the opportunity for a multi-million-dollar contract to avoid a FOIA disclosure." 779 F. Supp. 2d at 22. *Honeywell*, however, was a reverse-FOIA case where the Government explained that "the type of information to be released here has been routinely released in the past in response to similar requests and yet the Government finds no dearth of proposals for its multi-million dollar contracts." *Id.* Because the FOIA submitter and the Government have opposing views in reverse-FOIA cases, the Government's interests carry different weight: "The government agency from which disclosure is sought is in the best position to determine whether an action will impair its information gathering in the future . . . . Underlying this reasoning is the policy that when an agency wants to disclose the disputed . . . information, it would be nonsense to block disclosure under the purported rationale of protecting government interests." *Id.* (internal quotation marks and citations omitted). Here, Treasury has not expressed any interest in disclosing the Disputed Information; only Plaintiff has a contrary view. Treasury's position is aligned with the FOIA submitters, namely GM and Chrysler, in opposition to disclosure of the information on the grounds that doing so would impair Treasury's ability to obtain similar information in the future. *See* Cochrane Decl. ¶ 37.

Finally, as Treasury makes clear, disclosure of the Disputed Information would "compromise the effectiveness of government programs [such as TARP] that may be dependent on sensitive information from such companies." *Id.* Although not explicitly part of the *National Parks* test, "other interests can be introduced into the balance only as factors weighing against

disclosure, in a manner similar to the two interests identified in *National Parks*." *Pub. Citizen Health Research Grp. v. Nat'l Institutes of Health*, 209 F. Supp. 2d 37, 52 (D.D.C. 2002) (emphasis added). Specifically, "impairment of the effectiveness of a government program is a proper factor for consideration in conducting an analysis under FOIA exemption 4." *Id.* When disclosure of information would "hinder the agency in fulfilling its statutory mandate," a court may conclude the information must remain protected. *Id.* at 53. Here, Treasury declared that disclosure of the Disputed Information would "compromise the effectiveness of" its programs. Cochrane Decl. ¶ 37. As such, this Court should conclude that "the effectiveness of [the TARP] program" would be impaired by disclosure of the Disputed Information. *See id.*

In the end, Plaintiff has failed to overcome Defendants' detailed Declarations setting forth the basis for Treasury's decision that the information withheld from Plaintiff qualifies for protection under Exemption 4.

II. Treasury properly identified, described, and justified withholding the Disputed Information.

A. Treasury provided defensible *Vaughn* Indices and reasonably segregated all non-exempt information.

Treasury may satisfy its burden of "establishing that requested records were appropriately withheld through the submission of declarations detailing the reason that a FOIA exemption applies, along with an index, as necessary, describing the materials withheld." *Toensing v. United States Dep't of Justice*, 999 F. Supp. 2d 50, 54 (D.D.C. 2013) (Howell, J.). Here, Treasury satisfied its obligation to provide Plaintiff with all reasonably segregable, non-exempt information from the requested documents. Under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), the Government must justify its decision to withhold redacted portions of records and, "when nonexempt portions are inextricably intertwined with exempt portions," to withhold

documents in their entirety. *Juarez v. Dep't of Justice*, 518 F.3d 54, 61 (D.C. Cir. 2008) (internal quotations omitted). The Government "must show with reasonable specificity why a document cannot be further segregated." *Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec.*, 892 F. Supp. 2d 28, 43 (D.D.C. 2012) (internal quotations omitted).

However, "reasonable specificity" does not mean the agency must expend endless hours redacting records to the point of uselessness. In separating out "reasonably segregable" information, the Government balances "factors such as the burden of line-by-line segregation on the agency and the usefulness of the disclosures to the requester." *Elec. Privacy Info Ctr.*, 892 F. Supp. 2d at 43 (internal quotations omitted). "An agency need not, for instance, commit significant time and resources to the separation of disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content." *Judicial Watch, Inc. v. United States Dep't of Treasury*, 802 F. Supp. 2d 185, 198 (D.D.C. 2011) (internal quotations omitted) (Howell, J.). Finally, and importantly, "[t]he agency is not required to provide so much detail that the exempt material effectively would be disclosed." *Elec. Privacy Info. Ctr.*, 892 F. Supp. 2d at 43.

Here, Treasury satisfied its burden by conducting a detailed review of each page of the records processed in this case and making a good-faith effort to release all non-exempt information. Cochrane Decl. ¶ 38. Treasury, GM, and Chrysler provided an over 250-page GM Revised *Vaughn* Index and a 90-page Chrysler Revised *Vaughn* Index. They also provided supporting Declarations that further detailed the time and energy that Treasury, GM, and Chrysler spent to segregate non-exempt information for disclosure. What remains in dispute is a fraction of the original collection of records containing information that the agency has deemed "inextricably intertwined with the exempt information." Cochrane Decl. ¶ 39. Thus, Treasury

satisfied its obligation to provide Plaintiff with all reasonably segregable, non-exempt information from the requested documents.

B. Treasury was involved in producing all the *Vaughn* Indices.

Plaintiff contends that the *Vaughn* Indices are deficient because Treasury did not draft them, and instead allowed GM and Chrysler to create them. Plaintiff is wrong: the *Vaughn* Indices resulted from a back-and-forth process between the companies and Treasury as the various documents were provided to the companies for their review. This process included Treasury's rejection of various requests by GM or Chrysler to withhold or redact document when Treasury did not share the companies' view that the specific information at issue was confidential. *See, e.g.*, Exhibit 1. In any case, this Court has routinely relied on declarations and *Vaughn* indices produced by FOIA submitters in cases where records are being withheld pursuant to Exemption 4. *See Public Citizen v. United States Dep't of Health and Human Services*, No. 11-1681-BAH, __ F. Supp. 2d __, 2014 WL 4388062 (D.D.C. Sept. 5, 2014) (Howell, J.).[15] And for good reason: the FOIA submitters are best situated to identify information that could cause them substantial competitive harm. *See Public Citizen v. United States Dep't of Health and Human Services*, 975 F. Supp. 2d 81, 113–17 (D.D.C. 2013) (Howell,

[15] For example, this Court has noted that "[t]he defendant's declarant clearly and succinctly explains the links between the records listed in the original [defendant-intervenor] *Vaughn* Index, . . . the exemptions applied, and the presence or absence of any additional response records." *Public Citizen*, 2014 WL 4388062, at *4 (emphasis added); *see also id.* at *7 ("[T]he defendant-intervenors' declarants make similarly adequately proffers as to what is contained in the summaries to illustrate why they are appropriately considered 'commercial.'") (emphasis added); *id.* at *9 ("[Defendant-intervenor]'s declarant explains the precise way in which [its] competitors could use information pertaining to its compliance policies.") (emphasis added).

J.) (relying extensively on company declarations in analyzing competitive harm prong of *National Parks* test).[16]

In withholding 542 documents in part or in whole pursuant to Exemption 4, Treasury submitted an over 250-page GM Revised *Vaughn* Index describing GM's documents, along with Declarations from an Attorney Adviser at Treasury's Office of the General Counsel and a GM attorney with 31 years' experience at the company. *See generally* GM Decl.; Cochrane Decl. The GM Revised *Vaughn* Index divides the withheld documents into six categories, sorted by Bates number and accompanied by both a description of and justification for the bases for withholding each document. *See* GM Revised *Vaughn* Index. Treasury also submitted a 90-page Chrysler Revised *Vaughn* Index describing Chrysler's documents, along with a Declaration from an attorney at Chrysler. Chrysler's Declaration describes the five categories in which its Disputed Information falls: financial data, tax- and legal-liability information, operational, labor and manufacturing information, draft transactional materials, and compensation and benefits information. *See generally* Chrysler Decl.

It is notable that in response to Plaintiff's FOIA request, Treasury processed over 150,000 pages of records and disclosed a total of over 65,000 pages in full or in part to Plaintiff. *See* Defs.' Mem. at 2, Cochrane Decl. ¶¶ 15, 23, and 38. Only 542 GM documents and 284

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[16] Plaintiff asserts that courts will only defer to the agency's prediction of competitive harm in reverse-FOIA cases. Pl.'s Mem. at 23. But Plaintiff ignores another notable instance where courts generally defer to the agency's finding of substantial competitive harm—when the agency and the submitter are in agreement, as in the case at bar. *Compare Wiley Rein & Fielding v. United States Dep't of Commerce*, 782 F. Supp. 675, 676 (D.D.C. 1992) (rejecting agency's competitive-harm argument, ordering disclosure, and emphasizing that "no evidence" was provided to indicate that submitters objected to disclosure) *with Durnan v. United States Dep't of Commerce*, 777 F. Supp. 965, 966–67 (D.D.C. 1991) (finding substantial competitive harm where the agency relied on a declaration from the submitter of the commercial information). Thus, this Court can rely on Treasury's assessment of the substantial competitive harm that could befall GM and Chrysler because Treasury and GM and Chrysler are in agreement on the issue. *See Durnan*, 777 F. Supp. at 966–67.

Chrysler documents remain in dispute. *Id.* at 7–8. Indexing such a large volume of documents is no small feat: GM and Chrysler reviewed each document, in total amounting to many thousands of pages over many hundreds of hours and provided detailed *Vaughn* indices of the information withheld. GM Decl. ¶ 9. And Treasury concluded that GM and Chrysler credibly asserted that disclosure of the withheld information would cause substantial competitive harm to the companies. Cochrane Decl. ¶ 37.

But Plaintiff would have this Court disregard GM's and Chrysler's abundant and good-faith efforts and require Treasury to duplicate them, at a huge expense to taxpayers and with substantially identical results. Plaintiff cites no authority for such a requirement in connection with the application of Exemption 4. Where, as here, the vastly predominant exemption Treasury claimed over withheld records is Exemption 4 (there are only a few documents withheld under Exemption 6); and where voluminous records fall within the exemption, it only makes sense that Treasury, GM, and Chrysler would collaborate to produce the *Vaughn* Indices in the most efficient manner possible. To require Treasury (claiming the exemption) and GM and Chrysler (providing the expertise to support the exemption) to act in a wholly independent manner is both imprudent and legally unnecessary.

C. The GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index are sufficiently detailed.

The Revised *Vaughn* Indices produced by GM and Chrysler and submitted by Treasury satisfy the Government's burden to sufficiently identify the information withheld pursuant to Exemption 4. An agency's "justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.'" *Toensing v. United States Dep't of Justice*, 999 F. Supp. 2d 50, 55 (D.D.C. 2013) (Howell, J.). Through hundreds of pages of *Vaughn* Index entries and multiple Declarations, Treasury has met this burden.

Nevertheless, Plaintiff challenges the procedural integrity of the GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index. In doing so, Plaintiff has conspicuously adopted what one court has described as the "blunderbuss approach," which is disfavored, rather than "identifying the individual entries within the *Vaughn* index that it felt were insufficient." *Judicial Watch, Inc. v. United States Dep't of Hous. and Urban Dev.*, 20 F. Supp. 3d 247, 259 (D.D.C. 2014).[17] Despite Plaintiff's argument to the contrary, the GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index are sufficiently detailed, categorized, and well within the legal requirements needed to justify withholding records pursuant to Exemption 4.

As this Circuit has plainly articulated, courts focus on the "functions of the *Vaughn* index, not the length of the document descriptions" when determining the adequacy of an agency's *Vaughn* index. *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 146 (D.C. Cir. 2006). "[I]t is the function, not the form, of the index that is important." *Keys v. United States Dep't of Justice*, 830 F.2d 337, 349 (D.C. Cir. 1987). "[C]ontext dictates [a court's] approach to the particularity required of agencies." *Citizens for Responsibility & Ethics. v. United States Dep't of Justice*, 955 F. Supp. 2d 4, 14 (D.D.C. 2013).

Yet Plaintiff would have the Court believe that all *Vaughn* indices must comply with some formulaic pattern, regardless of which agency produces them or what types of documents are involved. *See* Pl.'s Mem. at 24–25. Plaintiff complains that "many of the descriptions of documents do not identify authors," the *Vaughn* indices "provide names of individuals without identifying <u>who</u> these people are," and that "many of the entries do not identify the date of the document." But "a *Vaughn* Index need only indicate in some descriptive way which documents the agency is withholding and which FOIA exemption it believes apply." *Toensing v. United*

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[17] When Plaintiff points to specific GM Revised *Vaughn* Index entries, its analysis consists of labeling those entries "cryptic," a bald assertion that hardly provides any specific argument as to why the entries are inadequate. *See* Pl.'s Mem. at 25.

States Dep't of Justice, 999 F. Supp. 2d 50, 59 (D.D.C. 2013) (internal quotations omitted) (Howell, J.) (finding the agency's *Vaughn* index sufficient despite being "sparse in the details regarding the names of the documents' authors and recipients, as well as the dates when those documents were created."). As is amply evident from even a cursory review, the GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index satisfy this requirement.

Plaintiff complains that the GM Revised *Vaughn* Index uses the same "boiler-plate" language to claim Exemption 4 protection for many similar documents. Pl.'s Mem. at 36. But "[n]o rule of law precludes the [agency] from treating common documents commonly." *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 147 (D.C. Cir. 2006). Where, as here, numerous documents fall within a recognized FOIA exemption, the agency is particularly justified in using codes or other mechanisms to categorically identify documents. *Id.* at 148. "It is not the agency's fault that thousands of documents belonged in the same category, thus leading to exhaustive repetition." *Landmark Legal Found. v. Internal Revenue Service*, 267 F.3d 1132, 1138 (D.C. Cir. 2001). To do otherwise "would waste ink and paper for no material advantage to anyone." *Keys v. United States Dep't of Justice*, 830 F.2d 337, 349 (D.C. Cir. 1987).

Moreover, in preparing a *Vaughn* index, agencies need not provide "repetitive, detailed explanations for each piece of withheld information"; instead, "codes and categories may be sufficiently particularized to carry the agency's burden of proof." *Citizens for Responsibility & Ethics v. United States Dep't of Justice*, 955 F. Supp. 2d 4, 14 (D.D.C. 2013); *see also Keys*, 830 F.2d 337, 349 (in refuting an objection to the agency not using an individualized justification for every single deletion, the court pointed out that "any other approach would require either a sort of phony individualization (meaningless variations of language at each invocation of a specific exemption) or a degree of detail that would reveal precisely the information that the agency

claims it is entitled to withhold."); *Toensing v. United States Dep't of Justice*, 999 F. Supp. 2d 50, 59 (D.D.C. 2013) ("[A] *Vaughn* index may also contain brief or categorical descriptions when necessary to prevent the litigation process from revealing the very information the agency hopes to protect." (internal quotations omitted)) (Howell, J.).

When an agency withholds voluminous records pursuant to the FOIA exemptions, in the interest of judicial resources, codes and categories and other agency shortcuts are particularly appropriate in a *Vaughn* index. *See, e.g.*, *Center for Auto Safety v. EPA*, 731 F.2d 16, 21 (D.C. Cir. 1984) (recognizing the "fundamental principle of saving judicial resources"). In fact, "[the D.C. Circuit]'s cases seem to hint at the idea of a sliding scale inversely correlating the number of withheld documents and the level of detail required to justify their withholding." *Citizens for Responsibility & Ethics in Washington v. United States Dep't of Justice*, 955 F. Supp. 2d 4, 14 (D.D.C. 2013). Thus, the use of categorical descriptions and justifications in the GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index is perfectly consistent with this Circuit's expectation for identifying withheld information.

Finally, although Plaintiff considers it "boiler-plate," many of the GM Revised *Vaughn* Index entries properly use language directly from the statutory provisions of Exemption 4. *See* Pl.'s Mem. at 36. Courts "do not fault the [agency] for using the language of the statute as part of its explanation for withholding documents. As long as it links the statutory language to the withheld documents, the agency may even 'parrot[]' the language of the statute." *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 147 (D.C. Cir. 2006) (quoting *Landmark Legal Found. v. IRS*, 267 F.3d 1132, 1138 (D.C. Cir. 2001). After all, "a *Vaughn* index is not a work of literature; agencies are not graded on the richness or evocativeness of their vocabularies." *Landmark Legal* at 1138.

D. Plaintiff's requested remedies are inappropriate and unwarranted here.

In two footnotes of its Motion, Plaintiff asks this Court to resort to extraordinary measures and to grant *in camera* review or discovery—both well outside the bounds of the ordinary FOIA analysis—in an attempt to access documents properly withheld under Exemption 4. Plaintiff asks this Court to permit it to conduct discovery to "probe the bases for Defendants' . . . assertions of harm." Pl.'s Mem. at 4 n.4, 44 n.57. But "[d]iscovery is generally unavailable in FOIA actions." *Wheeler v. C.I.A.*, 271 F. Supp. 2d 132, 139 (D.D.C. 2003).[18] Discovery is not available if, as here, "an agency's declarations are reasonably detailed, submitted in good faith, and . . . no factual dispute remains." *Schrecker*, 217 F. Supp. 2d at 35. This is because agency affidavits are accorded a presumption of good faith. *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1200 (D.C. Cir. 1991). Furthermore, discovery would give Plaintiff "the very remedy for which it seeks to prevail in the suit." *Tax Analysts v. I.R.S.*, 410 F.3d 715, 722 (D.D.C. 2005). And courts should refuse to grant FOIA plaintiffs discovery that is "'tantamount to granting the final relief sought.'" *Id.* (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 734 (D.C. Cir. 1981)). So too should this Court—especially given that Plaintiff cites no authority for why the facts in this case warrant such routinely unavailable relief.

Similarly, "courts disfavor *in camera* inspection" except in "the exceptional case." *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 119 (D.D.C. 2005). And because *in camera* review "requires effort and resources," courts "should not resort to it routinely on the theory that 'it can't hurt.'" *Ray v. Turner*, 587 F.2d 1187, 1195 (D.C. Cir. 1978). *In camera* review is not appropriate where, as here, a court's review of the documents "would require herculean labors

[18] In the limited instances where discovery is deemed appropriate in a FOIA case, courts ordinarily confine it to the scope of the agency's search for documents, an element Plaintiff has not contested here. *See Schrecker v. DOJ*, 217 F. Supp. 2d 29, 35 (D.D.C. 2002), *aff'd* 349 F.3d 657 (D.C. Cir. 2003) ("Discovery is only appropriate when an agency has not taken adequate steps to uncover responsive documents.").

because of their volume." *Carter v. United States Dep't of Commerce*, 830 F.2d 388, 393 (D.C. Cir. 1987) (internal quotations omitted). It is similarly not warranted where, as here, "the dispute centers not on the information contained in the documents but on the parties' differing interpretations as to whether the exemption applies to such information." *Id.* Finally, although *in camera* review is appropriate when there is "evidence of bad faith on the part of the agency," *Quiñon v. F.B.I.*, 86 F.3d 1222, 1228 (D.C. Cir. 1996), mere allegations of bad faith will not suffice. *Boyd v. Criminal Division of DOJ*, 475 F.3d 381, 391 (D.C. Cir. 2007). Here, Plaintiff makes no allegation—let alone points to any evidence—of bad faith. In fact, Treasury has demonstrated a continuing good-faith effort to comply with FOIA. *See* Cochrane Decl. ¶ 38.

Should this Court find the GM Revised *Vaughn* Index or the Chrysler Revised *Vaughn* Index procedurally inadequate, the proper remedy is to give Treasury the opportunity to amend the *Vaughn* Indices to conform to an order with instructions on how to amend them. *See, e.g.*, *Public Citizen v. United States Dept. of Health and Human Services*, 975 F. Supp. 2d 81, 109–10 (D.D.C. 2013) ("The Court will give the defendant and defendant-intervenors the opportunity to supplement their declarations and/or *Vaughn* indices to sustain their burden of showing the commercial nature of these documents or, alternatively, to release them.") (Howell, J.); *see also COMPTEL v. F.C.C.*, 910 F. Supp. 2d 100, 108 (D.D.C. 2012) ("The FCC is directed to file an amended declaration and *Vaughn* index to address the issues identified in this Opinion."). To do otherwise would risk compromising the "legitimate governmental and private interests that could be harmed" by the release of the withheld information. *Public Citizen v. United States Dep't of Health and Human Services*, 975 F. Supp. 2d 81, 93 (D.D.C. 2013) (Howell, J.). Accordingly, if this Court determines additional descriptions or justifications are needed, Treasury, GM, and

Chrysler respectfully request an opportunity to amend the GM Revised *Vaughn* Index and the Chrysler Revised *Vaughn* Index.

CONCLUSION

For the reasons stated above, Defendant Treasury and Intervenor-Defendant GM respectfully request that the Court deny Plaintiff's Motion for Summary Judgment, grant their Joint Motion for Summary Judgment, and rule that the Disputed Information is protected from release by FOIA Exemption 4.

Dated: April 16, 2015

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil No. 11-1048 (BAH)**
	)	
U.S. DEPARTMENT OF THE TREASURY,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
GENERAL MOTORS LLC,	)	
	)	
Intervenor-Defendant.	)	
	)	

ORDER

Upon consideration of Defendant and Defendant-Intervenor's Joint Motion for Summary Judgment in this Freedom of Information Act ("FOIA") case, Plaintiff's responding cross-motion and opposition, and the entire record in this case, the Court finds that the Defendant United States Department of the Treasury has properly withheld information exempt from disclosure under the FOIA pursuant to Exemption 4 and has reasonably segregated the non-exempt responsive information. For all these reasons, the Court finds that there are no issues of material fact and Defendant and Defendant-Intervenor are entitled to judgment as a matter of law. Therefore, it is hereby

ORDERED that Defendant and Defendant-Intervenor's Joint Motion for Summary Judgment is granted; and it is further

ORDERED that Plaintiff's Motion for Summary Judgment is denied.

This is a final, appealable order.

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UNITED STATES DISTRICT JUDGE