

# CENTER FOR AUTO SAFETY

1825 CONNECTICUT AVENUE NW SUITE 330 WASHINGTON DC 20009-5708  
202-328-7700 ◆ www.autoafety.org

July 18, 2012

## VIA FAX AND FIRST CLASS MAIL

National Highway Traffic Safety Administration (NHTSA)  
Executive Secretariat  
1200 New Jersey Ave. SE  
West Building  
Washington, DC 20590

## FOIA REQUEST

Dear FOIA Officer:

The Center for Auto Safety ("CAS") files this request pursuant to the Freedom of Information Act ("FOIA"). CAS is a nationwide nonprofit consumer advocacy organization established in 1970 by Consumers Union and Ralph Nader. CAS works toward improved safety, environmental responsibility, and fair dealing in the automotive industry and the marketplace.

CAS seeks the following information:

**All records relating to Mazda Tribute and Ford Escape speed control or accelerator cable failures received or produced by NHTSA from January 1 through July 13, 2012. This request does not include any documents included on the agency website in the investigatory files for PE12-019 or DP12-005, Vehicle Owner Questionnaires (VOQs), or Center for Auto Safety's two petitions. This request includes any records provided by contractors for NHTSA. This request specifically includes all communications, including attachments, whether written or in electronic format, to or from Marie Choi, as well as any notes of her phone conversations concerning any failures, crashes injuries and/or deaths concerning any Ford Escape or Mazda Tribute. Please see the attached emails for reference to Ms. Choi's involvement in Tribute and Escape inquiries. Also, please note Ms. Choi's warning, "Please keep in mind that anything you send to us could be released to the public, if requested under the Freedom of Information Act (FOIA)."**

CAS believes that the requested records are likely to be located within the Office of Defects Investigation, the Office of Chief Counsel, and the Office of the Administrator. These documents may include electronic as well as paper records. Also, pursuant to 5 U.S.C. § 552(a)(4)(A) and U.S. Department of Transportation regulations set forth at 49 C.F.R. § 7.44, CAS requests, and NHTSA should grant, a waiver and/or

reduction of fees for processing this FOIA request, including search, review, and duplication charges, for the reasons given below.

49 C.F.R. § 7.44(a) and (c) provide that a fee is not to be charged for the first two hours of search time or the duplication of the first 100 pages, "unless the records are requested for commercial use." In addition, 49 C.F.R. § 7.44(d) states that review fees for determining whether the requested records are exempt from mandatory disclosure may not be charged when records are not requested for a commercial use. The above information request is of a very limited and highly specific nature, and CAS believes that these records have no commercial value whatsoever. Even if the requested records had some potential commercial value, CAS has no commercial purpose or interest in requesting them. See Attachment A. Therefore, NHTSA should fully apply the subsection (a), (c) and (d) allowances to this request.

Should NHTSA deny the waiver of fees, CAS asks that the Agency to obtain authorization from CAS before delivery of any materials. If the agency refuses access to any of the requested records, please describe the materials it wishes to withhold and specify the statutory justifications for the refusal. Also, please state separately NHTSA's reasons for failing to invoke its discretionary powers to release the materials in the public interest.

If you have any questions about the scope of this request, or if you believe there are any ambiguities in the way CAS has framed its request, please let me know as soon as possible.

CAS looks forward to a response within twenty working days, as required under the FOIA, and will interpret any delay in response as a denial of this request. Thank you for your very prompt attention to this matter.

Sincerely,



Michael Brooks  
Staff Attorney

Attachment(s): 2

# CENTER FOR AUTO SAFETY

1825 Connecticut Avenue, NW Suite 330 Washington, DC 20009-1160 (202) 328-7700

Attachment A

## MISSION STATEMENT

The Center for Auto Safety (CAS) is a nonprofit research and advocacy organization founded by Consumers Union and Ralph Nader in 1970 to provide consumers with a voice for auto safety and quality in Washington, D.C. and to assist owners of "lemon" vehicles to file complaints and obtain relief. Although CAS has a staff of less than a dozen people, its work is supported by approximately 20,000 members across the United States, and it is nationally recognized as a leader in the areas of automobile safety and consumer protection.

CAS vigorously supports economically feasible motor vehicle safety policies that will reduce the risk of crash-related deaths and injuries. CAS serves as an important counterweight before federal policymakers to the automobile industry, whose positions on these safety issues are dictated by the desire to maximize profits for shareholders rather than to strike the proper balance between safety and other vehicle features.

In fulfilling its mission, CAS is engaged in the following activities:

- Researching defects in motor vehicles and monitoring defect investigations conducted by the National Highway Traffic Safety Administration (NHTSA) and other federal agencies;
- Obtaining information on potential vehicle safety defects from consumers, alerting NHTSA to these problems, and requesting that NHTSA undertake investigations;
- Responding with comments to agency rulemaking proposals and other initiatives that affect motor vehicle safety;
- Supporting motor vehicle safety legislation before Congress, including testifying at public hearings and advocating with members of Congress and their staffs;
- Monitoring enforcement of federal vehicle safety laws by NHTSA and other federal agencies;
- Furnishing consumers with free information packets that detail the performance and safety problems of vehicles by make, model, and model year; and
- Providing free information to consumers about state "lemon laws" and automobile manufacturers "secret warranties" (where the auto manufacturer has an internal policy to pay for repairs beyond the limits of the express warranty) to assist consumers with complaints against manufacturers or dealers.

A key pillar of CAS's mission is actively to disseminate the information that CAS gathers to the public so that consumers are better informed about motor vehicle safety issues. CAS regularly distributes a newsletter to its 20,000 members. CAS is also establishing a website that will provide information on a range of motor vehicle safety topics. In addition, because members of CAS's staff are recognized as leading experts on motor vehicle safety, CAS officials regularly appear on television and radio, and they are frequently quoted in the print media. CAS staff members also write op-ed pieces for national and local newspapers. Finally, CAS forms coalitions with some of the nation's leading individual and organizational advocates for motor vehicle safety, and CAS encourages these safety leaders to disseminate the information gathered and produced by CAS to their memberships and contacts. These other organizations, such as Public Citizen and its approximately 100,000 members, Consumers Union, and the Consumer Federation of America, routinely utilize information and analysis provided to them by CAS.

**Clarence Bloom**

**From:** Boatman, Robert W. <RWB@gknet.com>  
**Sent:** Thursday, July 12, 2012 1:33 PM  
**To:** marie.choi@dot.gov  
**Subject:** RE: Bloom -- NHTSA: response re prior owners and route

Ms. Choi,

I just received a call from Tammy Graham of Baytown Texas (281-576-2568) who describes being in an accident almost identical to Saige Bloom while driving her 2001 Escape on June 8. She says she has pictures of the broken speed control cable caught in the engine cover. I have asked her for those pictures and will forward them as soon as I receive them. She told me she has reported this accident but I wasn't sure it had reached your desk.

---

**From:** marie.choi@dot.gov [mailto:marie.choi@dot.gov]  
**Sent:** Thursday, July 05, 2012 11:37 AM  
**To:** Boatman, Robert W.  
**Subject:** RE: Bloom -- NHTSA: response re prior owners and route

Thanks so much.

---

**From:** Boatman, Robert W. [mailto:RWB@gknet.com]  
**Sent:** Thursday, July 05, 2012 1:58 PM  
**To:** Choi, Marie (NHTSA)  
**Subject:** RE: Bloom -- NHTSA: response re prior owners and route

Ms. Choi,

The immediate prior owner was Tony D'Andrea, cell phone 602-421-4400. He had the car for less than a year and drove it less than 2,000 miles. He remembers meeting Saige when they picked up the car and is very upset about learning of her death. The only work he had done on the vehicle was an oil change. He had no stuck throttle problems.

The original owner was Jose Leyba 623-680-2034. He owned the car from when it was new until selling it to Mr. D'Andrea in 2011. He had the car serviced at Pioneer Ford in Phoenix, which included taking it in for three recalls. He has sent the invoices for the recalls to me and I will forward them to you separately. He had no stuck throttle problems.

Saige would have left the Phoenix/Mesa metropolitan area after picking up the Escape and got on State Route 87 (also known as the Beeline Highway). SR87 is a rural hiway that goes from the desert up to Payson, where Saige lived. It is about 70 miles without a traffic signal until you get to Payson. The last stretch of road is a long, steep grade (I would guess five to seven miles) that takes you up to Payson (with an elevation of over 5,000 feet). The speed limit on that stretch of road is 65 mph, and you must really floor your accelerator to maintain your speed as you drive up that grade. I believe that is what caused the throttle to open wide enough that the broken speed control cable could catch in the engine cover. It was on that grade that the throttle became stuck and Saige called her mom. I think you know the rest.

Our team will continue to provide you with all the information we can in the hope that further deaths like Saige's can be avoided. Please let me know anything else we can do to help.

**From:** [marie.choi@dot.gov](mailto:marie.choi@dot.gov) [mailto:marie.choi@dot.gov]  
**Sent:** Monday, July 02, 2012 8:56 AM  
**To:** Boatman, Robert W.  
**Subject:** RE: Bloom - Williams Video - Escape SC Cable

Hi Bob,

I just wanted to follow up on our conversation last Thursday. You mentioned sharing some photos with us. We are also interested obtaining the following information, to the extent you are willing to share:

1. Vehicle failure mode specifics (evidence of the stuck throttle condition)
2. Vehicle history:
  - a. Previous owner contact information & observations
  - b. Identity of entity who sold the vehicle to Saige and her grandmother
  - c. Any available maintenance records
3. Travel route taken
4. Information concerning other related deaths or cases against Ford (You mentioned a deposition transcript).

Please keep in mind that anything you send to us could be released to the public, if requested under the Freedom of Information Act (FOIA). If you have concerns about this, please give me a call.

Thanks,

**Marie E. Choi**  
U.S. Department of Transportation  
Office of Chief Counsel, National Highway Traffic Safety Administration  
1200 New Jersey Avenue, S.E., W41-210  
Washington, DC 20590  
Tel: (202) 366-1738  
Fax: (202) 366-3820  
E-mail: [Marie.Choi@dot.gov](mailto:Marie.Choi@dot.gov)

---

**From:** Boatman, Robert W. [mailto:RWB@gknet.com]  
**Sent:** Thursday, June 28, 2012 5:35 PM  
**To:** Choi, Marie (NHTSA)  
**Subject:** RE: Bloom - Williams Video - Escape SC Cable

You are welcome. I hope you can help the public on this matter. The files of the inspection are big so I'm trying to get them small enough to send by email.

---

**From:** [marie.choi@dot.gov](mailto:marie.choi@dot.gov) [mailto:marie.choi@dot.gov]  
**Sent:** Thursday, June 28, 2012 2:35 PM  
**To:** Boatman, Robert W.  
**Subject:** RE: Bloom - Williams Video - Escape SC Cable

Thank you.

---

**From:** Boatman, Robert W. [mailto:RWB@gknet.com]  
**Sent:** Thursday, June 28, 2012 5:13 PM

To: Chief (100-20175A)

Subject: RW/ Bloom - Williams Video - Escape SC Cable

This video demonstrates exactly what is wrong with the Escape and what we found at the Bloom inspection. This evidence (and a similar video) was provided to Ford by Mr. Williams in 2007, almost five years ago. Result is throttle is wide open.

<https://www.dropbox.com/s/xam2u6cn7harcz0/Escape%20SC%20cable.wmv>

This message and any of the attached documents contain information from the law firm of Gallagher & Kennedy, P.A. that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information, and no privilege has been waived by your inadvertent receipt. If you have received this transmission in error, please notify the sender by reply e-mail and then delete this message. Thank you.

**Clarence Ditlow**

---

**From:** Boatman, Robert W. <RWB@gknet.com>  
**Sent:** Thursday, July 12, 2012 2:17 PM  
**To:** marie.choi@dot.gov  
**Cc:** Clarence Ditlow; jamesandtammmygraham@verizon.net; bwilliams@undercaranswers.com  
**Subject:** FW: 2001 Ford Escape Police Report  
**Attachments:** Case 12-21970 pg 4.jpg; Case 12-21970 pg 1.jpg; Case 12-21970 pg 3.jpg; Case 12-21970 pg 2.jpg; IMG-20120619-00105.jpg; IMG-20120619-00108.jpg; IMG-20120619-00129.jpg; IMG-20120619-00130.jpg; IMG-20120619-00131.jpg; IMG-20120619-00101.jpg; IMG-20120619-00139.jpg; IMG-20120619-00104.jpg

Here are the photos and the police report from the Graham accident. It appears to be identical to the Bloom case (and for that matter to the video Mr. Williams produced in the Baier case in 2007). I believe the vehicle is still available for inspection (as is the Bloom vehicle). It looks like Ajit Alkondon was sent this information, is he part of your team?

---

**From:** James Graham [mailto:jamesandtammmygraham@verizon.net]  
**Sent:** Thursday, July 12, 2012 10:54 AM  
**To:** Boatman, Robert W.  
**Subject:** FW: 2001 Ford Escape Police Report

Dear Mr. Boatman,

2001 Ford Escape Police Report and pics of engine attached.

Best regards,  
Tammy Graham

---

**From:** James Graham [mailto:jamesandtammmygraham@verizon.net]  
**Sent:** Friday, June 22, 2012 2:15 PM  
**To:** 'Ajit.Alkondon@dot.gov'  
**Subject:** FW: 2001 Ford Escape Police Report

The Police Report is attached. Is there any additional information that would be helpful?

Best regards,  
Tammy Graham  
281-576-2568

This message and any of the attached documents contain information from the law firm of Gallagher & Kennedy, P.A. that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information, and no privilege has been waived by your inadvertent receipt. If you have received this transmission in error, please notify the sender by reply e-mail and then delete this message. Thank you.