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Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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energycommerce.house.gov

June 29, 2010

Mr. James E. Lentz
President and Chief Operating Officer
Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501

Dear Mr. Lentz:

Our investigation into potential causes of sudden unintended acceleration in Toyota vehicles is ongoing, and we would like to ask you for more information about two issues on which you testified at the Committee's May 20, 2010, hearing: (1) brake override features in older model Toyota vehicles, and (2) the work Toyota's consulting firm Exponent, Inc. is performing on sudden unintended acceleration.

We have been notified by outside technical experts that based on their examination of a 2005 Toyota Camry, some older model Toyotas may have a brake override function that activates when the vehicle's electronic throttle control system registers a diagnostic trouble code. These experts report that this brake override function is separate from "limp home" mode. In your testimony before our Committee – on February 23, 2010, and again on May 20, 2010 – you described Toyota's commitment to outfit all vehicles with a brake override function beginning with model year 2011 and to retrofit some older model vehicles that are currently on the road. On April 28, 2010, electronics experts from Toyota briefed Committee staff on brake override features in Toyota vehicles. Neither you nor Toyota's electronics experts informed the Committee that some older model vehicles may already have a brake override function that is tied to a diagnostic trouble code.

If the information we have received about brake override in the 2005 Camry is true, we would like more information about it. We request that you contact Committee staff by July 6, 2010, to schedule a briefing to address the availability of brake override on older model Toyotas.

In addition, we request your assistance in informing the Committee about the work that Exponent is doing on behalf of Toyota. To date, Exponent has not been fully cooperative with the Committee's requests. In particular, Exponent has refused to produce important documents responsive to a Committee request and has modified a responsive document prior to production, in direct contravention of Committee instructions. Since Exponent is working on behalf of Toyota, we ask that Toyota produce the responsive documents or, if Toyota does not possess them, that you instruct Exponent to comply fully with the Committee's requests.

On April 16, 2010, we wrote to Exponent asking for documents and information related to its investigation of the possible causes of sudden unintended acceleration in Toyota vehicles. Specifically, we requested "[a]ny documents, including reports, analyses, or other communications, describing the results of Exponent's work."¹ Following Exponent's production of documents, Committee staff conducted a transcribed interview of Dr. Shukri Souri, an Exponent engineer, on May 12, 2010. Dr. Souri confirmed that Exponent had withheld from the Committee a "living document" which he stated was "an incomplete set of our opinions and conclusions" that is "continuously updated that is reflecting our progress."² By Dr. Souri's description, this document was plainly responsive to the April 16, 2010, request, and the Committee staff reiterated the request for it on May 12, 2010.

Exponent did not produce the "living document," but instead produced a document one week later that Exponent had, according to its counsel, James F. Ficene, altered by adding headers, a watermark, chapter titles, a table of contents, an introduction, and other substantive content prior to production.³ These changes constitute a clear violation of the Committee's instructions that responsive documents are to be produced without alteration. You submitted a copy of this altered document to the Committee as an attachment to your written testimony. To date, neither Toyota nor Exponent has produced an unmodified copy of the document.

To assist the Committee with its ongoing investigation, we ask that you provide the following documents:

1. Exponent's draft "living document" as it existed on April 16, 2010; and
2. Exponent's draft "living document" as it existed on May 12, 2010, when Dr. Souri notified the Committee of its existence.

¹ Letter from Chairmen Henry A. Waxman and Bart Stupak to Dr. Paul R. Johnston, President and Chief Executive Officer, Exponent, Inc. (Apr. 16, 2010).

² Committee on Energy and Commerce, Transcribed Interview of Shukri Souri at 46, 75-76 (May 12, 2010).

³ E-mail from James F. Ficene, counsel for Exponent, to Committee staff (May 19, 2010).

Mr. James E. Lentz
June 29, 2010
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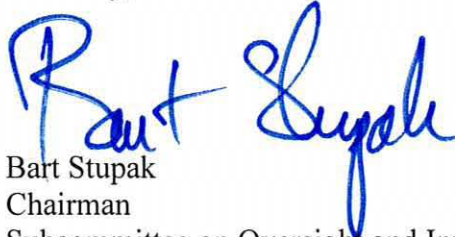
If Toyota does not have these documents, we ask that Toyota or its agent instruct Exponent to cooperate with the Committee's investigation by providing these documents immediately.

Please contact Committee staff by July 6, 2010, to schedule the requested briefing, and please produce the materials requested above by July 12, 2010. An attachment to this letter provides additional information on how to respond to Committee document requests. If you have any questions regarding this letter, please contact Molly Gaston or Alison Cassady with the Committee Staff at (202) 226-2424.

Sincerely,



Henry A. Waxman
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Joe Barton
Ranking Member

The Honorable Michael C. Burgess
Ranking Member
Subcommittee on Oversight and Investigations

Congress of the United States

House of Representatives

Washington, D.C. 20515

Responding to Document Requests from the Committee on Energy and Commerce

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.
9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

Documents produced in an electronic format should also be produced in a searchable format.

10. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be bates-stamped sequentially and produced sequentially.
15. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
16. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms “referring” or “relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.