
CENTER FOR AUTO SAFETY

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March 27, 2008

VIA FAX AND FIRST CLASS MAIL

Kathy Ray
Departmental FOIA Officer
Office of the General Counsel (C-12)
1200 New Jersey Ave., SE., Suite W94-122
Washington, D.C. 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:

The 2003 review referenced in the attached article "Cellphone Law May Not Make Roads Safer," and any documents, including powerpoint presentations, related to the review. The article states, "The letter was based on a lengthy review of worldwide research on driver distraction conducted at the National Highway Traffic Safety Administration, a branch of the Department of Transportation. In that 2003 review, the agency's researchers for the first time estimated fatalities linked to cellphone use by drivers, putting the toll at 955 deaths in 2002." CAS has been unable to locate the referenced study. In addition, CAS requests that the study and all related documents be placed in docket NHTSA-2007-28442.

CAS believes that the requested records are likely to be located within the Office of the Secretary, the office of the Deputy Secretary, and/or the office of the Chief of Staff. 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 DOT 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, DOT 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 DOT'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.

Los Angeles Times

Family Guy

Hannah
Montana

SpongeBob

American Idol

Deal or
No Deal

South Park

Grey's
AnatomyThe Biggest
Loser

<http://www.latimes.com/news/local/la-me-distract25mar25,1,105874.story>
From the Los Angeles Times

Cellphone law may not make roads safer

Drivers' chatting, even on hands-free devices, is risky, experts say.

By Myron Levin

Los Angeles Times Staff Writer

March 25, 2008

As California joins five other states in requiring drivers to use hands-free devices when talking on cellphones, an increasing body of research suggests the legislation will accomplish little.

The risk doesn't stem from whether one or both hands are on the wheel, the research suggests. It's whether the driver's mind is somewhere else.

The biggest danger is "cognitive capture" -- or being blind to driving cues because one is absorbed in conversations, especially emotional ones.

"There's a common misperception that hands-free phones are safer when the research clearly suggests that they they're both equally risky," said Arthur Goodwin, a researcher at the University of North Carolina Highway Safety Research Center.

California motorists will be required to use a hands-free device to talk on a cellphone starting July 1 under a new traffic safety law. Such laws are already in effect in New York, New Jersey, Connecticut, Utah, Washington state and the District of Columbia.

Hands-free laws have come to be seen as the most politically feasible way to address the dangers of driver distraction because of cellphone use.

Gov. Arnold Schwarzenegger sought to reassure drivers that they need not hang up their phones when he spoke at a signing ceremony for the California law in 2006. "You don't have to stop talking on your cellphone, but use a headset or use a speaker system, and you will be fine."

If hands-free is the path of least resistance, it was still a long, hard slog for Sen. Joe Simitian, the Palo Alto Democrat who sponsored the bill. Simitian tried but failed to win passage for five years before breaking through. He said he persisted because he was sure the law would save lives.

"There isn't a study in the world that says you're safer driving with a cellphone clutched to your ear than when you are driving with both hands on the wheel," he said.

But Goodwin and other scientists say that hands-free laws could actually make things worse by encouraging drivers to make more or longer calls.

Indeed, federal highway safety officials drafted a letter from then-Transportation Secretary Norman Y. Mineta to the nation's governors in 2003 to warn against laws like California's that allow hands-free calling. For reasons never fully explained, the letter was neither signed by Mineta nor sent. According to the bluntly worded letter, obtained by The Times, "overwhelmingly, research worldwide indicates that both hand-held and hands-free phones increase the risk of a crash."

"We are convinced that legislation forbidding the use of hand-held cellphones. . . . will not be effective," the letter said. Such laws "may erroneously imply that hands-free phones are safe to use while driving."

The letter was based on a lengthy review of worldwide research on driver distraction conducted at the National Highway Traffic Safety Administration, a branch of the Department of Transportation. In that 2003 review, the agency's researchers for the first time estimated fatalities linked to cellphone use by drivers, putting the toll at 955 deaths in 2002. They predicted that it would only rise because of the growing use of cellphones and especially such activities as text messaging, former agency officials said.

After a June, 2003 meeting with Department of Transportation authorities, the letter was drafted but then spiked. The fatality estimate was never made public.

"They don't put the numbers out there because the numbers make it a lot harder to explain why you haven't been more active," said Bill Walsh, former senior associate administrator of the agency.

An agency spokesman, Rae Tyson, declined to comment.

Other published research, however, has resulted in similar findings. A 2003 study by the Harvard Center for Risk Analysis estimated that there are about 2,600 deaths and 12,000 serious to critical injuries a year in crashes involving drivers using cellphones.

Two widely cited studies found a fourfold greater crash risk for drivers using cellphones than for normal driving -- with nearly identical risks for hand-held and hands-free phones. The studies looked at drivers and collisions in Canada and Australia, where cellphone records were available for analysis, unlike the U.S.

A 2006 study by David L. Strayer and colleagues at the University of Utah found that drivers tested on simulators performed about the same when they used cellphones as when they had a blood alcohol-level of 0.08%, which made them legally drunk. The drivers actually did better in braking and avoiding rear-end collisions when alcohol-impaired than when they were talking on hand-held or hands-free phones.

There are some skeptics. A 2006 paper co-authored by James E. Prieger, a professor of public policy at Pepperdine University in Malibu, found that the link between cellphones and collisions was less conclusive, and the crash risks probably lower, than indicated in some of the most prominent studies.

But, Prieger said, "if you've ever used a cellphone in a car and you're honest with yourself, it's hard to doubt that at some level it doesn't make you a riskier driver."

Supporters of California's "hands-free" law cite Highway Patrol statistics showing more accidents involving hand-held phones than hands-free, but the data are limited and not adjusted for the number of hand-held or hands-free phones in use.

Some of the largest U.S. corporations bar employees from using cellphones when driving during work hours, making no exception for hands-free calling. DuPont, Chevron, ExxonMobil, Shell, and its parent, Royal Dutch Shell PLC, with collectively hundreds of thousands of employees, are among those with cellphone bans.

AMEC, a large engineering concern, also prohibits its 7,000 employees in the U.S. and Canada from using cellphones while driving. "There is no better way to proactively boost safety for a mobile, white-collar workforce," company spokesman John Kageorge said.

But with cellular use exploding -- up to 73% of Americans at least occasionally use cellphones while driving, according to one survey -- what companies can do by fiat may be politically impossible for state legislatures.

Of 95 bills pending in 28 states that relate to cellular use by drivers, none would impose an all-out ban, according to the National Conference of State Legislatures. Typically, the bills would prohibit talking by teenagers or school bus drivers, or require hands-free devices -- all measures the multibillion-dollar cellphone industry no longer opposes.

Joe Farrin, assistant vice president for public affairs at CTIA-The Wireless Assn., an industry trade group, said: "Generally, our view has been the issue of driver distraction is . . . bigger than one distraction, but at the same time we are not going to oppose a hands-free only bill, we are not going to oppose restrictions on young drivers."

Total prohibition is "off the table," said Matt Sundeen of the conference of state legislatures.

"I think a number of sponsors of the hands-free legislation would tell you . . . that they're interested in prohibiting more than just the hand-held device, but it's just not something that's politically feasible," he said.

Under the law, a first offense will bring a \$20 ticket; subsequent violations will cost \$50, with no points against a driver's insurance.

A companion law sponsored by Simitian will bar drivers younger than 18 from using any type of cellphone, similar to restrictions in 16 other states.

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