



U.S. Department  
of Transportation  
**National Highway  
Traffic Safety  
Administration**

DEC 16 2009

1200 New Jersey Avenue SE.  
Washington, DC 20590

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael Brooks  
Center for Auto Safety  
1825 Connecticut Avenue, NW, Suite 330  
Washington, DC 20009-5708

RE: Freedom of Information Act (FOIA) Request, 5 U.S.C. 552

Dear Mr. Brooks:

This responds to your FOIA request dated November 2, 2009. Specifically, you seek the following:

- 1) All records listing Death Incident ("DI") investigations and the subject of these investigations, which NHTSA has conducted pursuant to 49 U.S.C. § 30166. This includes both submissions by the manufacturers and/or NHTSA-generated documents in paper or electronic form. See the attached letter for an example of a DI investigation.
- 2) All records describing, and/or listing, any other type of investigation arising out of EWR quarterly reporting by manufacturers, excluding PE's and EA's.

As to item 1 of your request, which adds to our response to you dated November 18, 2009, please note that NHTSA's Death Inquiries (DI) to manufacturers are not considered by NHTSA as investigations. Thus, there are no Death Inquiry investigations. However, on occasion NHTSA has requested more information from manufacturers using DI letters with the § 30166 clause you cite on a total of 1,964 death and injury incidents. NHTSA also has requested more information from manufacturers on a total of 794 death and injury incidents where the § 30166 clause you cite was not included in the DI letter.

As to item 2 of your request, please note that there have been seven Recall Queries (RQ) where Early Warning Reporting (EWR) data provided relevant information (RQ07-003, RQ06-002, RQ08-003, RQ06-005, RQ04-008, RQ08-002 and RQ07-001). For more information about these investigations, please go to NHTSA's website at <http://www-odi.nhtsa.dot.gov/defects/defectsearch.cfm>.






In connection with your request, you seek a "waiver and/or reduction" of fees pursuant to 49 CFR § 7.44(a) for the first two hours of search time, 49 CFR § 7.44 (c) the first 100 pages of duplication, and 49 CFR § 7.44(d) for review time required to determine whether a requested record is exempt from mandatory disclosure. You state that your request is of a "very limited and highly specific nature," that the requested records have no commercial value, and that CAS has no commercial purpose or interest in requesting the records. You ask that NHTSA notify CAS before delivery of materials, should the agency deny the waiver of fees.

I am satisfied that CAS does not seek the records for a commercial use. Consequently, I agree that CAS is entitled to the first two hours of search time, the first 100 pages of duplication, and any review time to determine whether a record is exempt from mandatory disclosure, all without charge in accordance with the provisions of our regulation (49 CFR § 7.44(a), (c), (d)). However, the magnitude of the search required to locate any responsive records will far exceed the two hours to which CAS is entitled without charge.

I estimate that the search time required to respond to the request will be approximately 135 days. This estimate is based on the time that would be expended by three contract employees to search for and retrieve any responsive documents. After accounting for allowances under 49 CFR § 7.44(a) and (d), the estimated fees payable by CAS for this search would be \$55,000 (calculated in accordance with 49 CFR § 7.43). Please note that this estimate does not include duplication charges for any records in excess of the 100 pages to which CAS is entitled without charge under 49 CFR § 7.44(c).

As you have specified in your FOIA request, I am notifying you that the results of processing your request will exceed the two-hour and/or 100-page threshold that form the basis of your fee waiver request, and CAS will be subject to the payment of fees for search time and copying of documents in excess of these thresholds. In accordance with the provisions of 49 CFR §§ 7.14(c)(3) and 7.42(c), your request will be deemed not to require a response or to have been received until CAS agrees to pay the estimated fees identified above. Alternatively, you may contact me at (202) 366-1834 to discuss reformulating or further narrowing the request to meet CAS's needs within the allowance for non-commercial requesters or at a cost CAS is willing to bear. If you seek a public interest fee waiver, you must follow the requirements of 49 CFR § 7.14(c)(2)(iii), addressing the factors in 49 CFR § 7.44(f).

Sincerely,

  
Stanley Feldman  
Associate Chief Counsel

