



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

APR 29 2008

1200 New Jersey Avenue SE.
Washington, DC 20590

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

RE: Freedom of Information Act (FOIA) Request, 5 U.S. C 552
Copy of the 2003 review referenced in the attached article
"Cellphone Law May Not Make Roads Safer," and any docu-
ments, 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.

Dear Mr. Brooks:

This responds to the Center for Auto Safety's ("CAS") FOIA request dated March 25, 2008 for the above-referenced information. We provided an interim response to the CAS request on April 24, 2008, in accordance with the provisions of 5 U.S.C. § 7.33 extending the time period for our response.

The agency conducted a thorough search and found documents responsive to CAS's request. However, I am withholding these documents (i.e., the 2003 review cited in the above-referenced request, and any documents, including powerpoint presentations, related to the review) pursuant to exemption (b)(5) of the FOIA (5 U.S.C. § 552(b)(5)),



because they contain internal pre-decisional, deliberative information. The release of this information would reveal advice, opinions or recommendations of agency officials and would have a chilling effect on the decision-making process.¹

Pursuant to the provisions of 49 CFR Part 7, there is no charge for this response.

I am the person responsible for this decision. If you wish to appeal this decision you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, W41-227, Washington, DC 20590. An appeal must be submitted within 30 days after you receive this determination. It should contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

Sincerely,



Stanley Feldman
Associate Chief Counsel

¹ See NLRB v. Sears Roebuck & Co., 421 U.S. 132, 151 (1975) (emphasizing importance of deliberative process privilege in protecting decision makers' ability to receive "confidential advice and counsel"); Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Russell v. Dep't of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982); Jordan v. U.S. Dep't of Justice, 591 F.2d 753, 772-73 (D.C. Cir. 178) (en banc); Kidd v. U.S. Dep't of Justice, 362 F. Supp. 2d 291, 296 (D.D.C. 2005) (protecting documents on basis that disclosure would "inhibit drafters from freely exchanging ideas, language choice, and comments in drafting documents") (internal quotation marks omitted); Greenberg v. U.S. Dep't of Treasury, 10 F. Supp. 2d 3, 16 n.19 (D.D.C. 1998) (concluding that Exemption 5 "is not limited to preventing embarrassment or 'chilling' of the individual authors of deliberative documents" but is designed to prevent chilling of agency deliberations).