

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SAFETY RESEARCH & STRATEGIES, INC.)
340 Anawan Street)
Rehoboth, MA 02769)

Plaintiff,)

v.)

U.S. DEPARTMENT OF TRANSPORTATION)
400 Seventh Street, S.W.)
Washington, DC 20590)

Defendant.)

Case: 1:12-cv-00101
Assigned To : Kessler, Gladys
Assign. Date : 1/23/2012
Description: FOIA/Privacy Act

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant U.S. Department of Transportation and its component, the National Highway Traffic Safety Administration.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Safety Research & Strategies, Inc. (“SRS”) is a Massachusetts company specializing in motor vehicle and product safety research, investigation and advocacy. SRS’s clients include attorneys, engineering firms, supplier companies, media, and government. SRS works with organizations and entities interested in improving vehicle and product safety. The company’s advocacy mission includes the publication of special reports, articles and

investigations and submissions to safety agencies and policymakers on matters of public interest.

Much of SRS's advocacy work is performed on a *pro bono* basis.

4. Defendant U.S. Department of Transportation ("DOT") is a Department of the Executive Branch of the United States Government and includes as a component the National Highway Traffic Safety Administration ("NHTSA"). DOT is an agency within the meaning of 5 U.S.C. § 552(f).

Plaintiff's FOIA Request and NHTSA's Denial of Access

5. By letter to NHTSA dated September 30, 2011, plaintiff submitted a FOIA request seeking the following agency records:

Any and all documents and information pertaining to the vehicle that is subject of the ODI complaint number 10428551, including, but not limited to:

- Photographs of site images, vehicle images, screen images, and data images
- Video files
- Data files, diagnostic data, ECM readings, freeze frame data, data exports and/or summaries
- DTC codes
- Floor mat configuration and type
- Accelerator pedal assembly and component part identification numbers
- Brake wear
- Transmission shift lever performance
- Travel requests
- Travel expenses
- Physical measurements
- Communication and or meeting logs between agency and non-agency staff, including all electronic communication
- Communication and or meeting logs between NHTSA and other agency staff, including all electronic communication
- Investigation protocols
- Test and/or examination protocols
- Test and/or examination results
- Test equipment specifications used during any inspection
- Transcriptions or recordings describing the vehicle owner's complaint
- Transcriptions or recordings describing the factual events of the vehicle inspection by NHTSA and/or its contractors
- Investigator notes, findings, and/or other observations.

6. By letter to plaintiff dated December 2, 2011, NHTSA responded to plaintiff's FOIA request. NHTSA stated that it had "located 22 pages, 7 photographs and 8 videos responsive to" plaintiff's request. NHTSA released 6 pages of material with certain redactions pursuant to FOIA Exemptions 5 and 6. NHTSA further stated that it is "withholding 16 pages, 7 photographs and 8 videos in full" on the ground that "they are exempted from the statutory disclosure requirement because they contain information related to pre-decisional agency deliberation, opinions or recommendations pursuant to Exemption 5." NHTSA further stated that it "withheld portions of these pages that relate to trade secrets or confidential financial or commercial information pursuant to Exemption 4." NHTSA advised plaintiff of its right to appeal the agency's decision to withhold the requested records.

7. By letter to NHTSA's Chief Counsel dated December 8, 2011, plaintiff appealed the agency's denial of its FOIA request. By letter to plaintiff dated January 10, 2012, NHTSA's Chief Counsel denied plaintiff's administrative appeal and advised plaintiff of its right to seek judicial review of the agency's final action on plaintiff's FOIA request.

8. Plaintiff has exhausted the applicable administrative remedies.

9. Defendant DOT and its component, NHTSA, have wrongfully withheld the requested records from plaintiff.


Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendant DOT and its component, NHTSA, to disclose the requested records in their entirety and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and

D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Sobel", written over a horizontal line.

DAVID L. SOBEL
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