

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 Failure to Timely Respond

5. By letter to NHTSA dated February 24, 2017, plaintiff submitted a Freedom of Information Act (“FOIA”) request for information concerning the closing resume of NHTSA investigation PE16-007 (INCLA-PE16007-7876.PDF). Plaintiff noted the following language from the closing resume:

[The Office of Defects Investigation (“ODI”)] analyzed mileage and airbag deployment data supplied by Tesla for all MY 2014 through 2016 Model S and 2016 Model X vehicles equipped with the Autopilot Technology Package, either installed in the vehicle when sold or through an OTA update, to calculate crash rates by miles travelled prior to and after Autopilot installation. Figure 11 shows the rates calculated by ODI for airbag deployment crashes in the subject Tesla vehicles before and after Autosteer installation.”

Plaintiff further stated:

Based on this statement, it is reasonably believed the Office of Defects Investigation possesses the underlying data that would have been necessary for ODI to have calculated the rates illustrated in Figure 11 on page 11 of that document.

Finally, plaintiff stated that it was requesting under the FOIA “all of the mileage and airbag deployment data supplied by Tesla analyzed by ODI to calculate the crash rates shown in Figure 11,” and that, “[i]n addition, we request all records related to any statistical summaries, formulas, models, adjustments, sample weights, and/or any other data or methods relied upon to calculate the crash rates shown in Figure 11.”

6. By letter to plaintiff dated March 3, 2017, NHTSA acknowledged receipt of plaintiff’s FOIA request dated February 24, 2017, and assigned it Request No. ES17-000630.

7. By letter to plaintiff dated March 31, 2017, NHTSA stated that it was issuing “an interim response to your FOIA request dated February 24, 2017.” The agency further stated that it was “extending by ten working days the time period by which the agency must provide a response.” The agency identified the basis for the extension as “[t]he need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.” Finally, the letter stated that “[t]he agency expects to provide a response by April 14, 2017.”

8. To date, plaintiff has not received a determination or any response from defendant concerning the FOIA request plaintiff submitted on February 24, 2017.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

9. Plaintiff repeats and realleges paragraphs 1-8.
10. Plaintiff has exhausted the applicable and available administrative remedies with respect to defendant’s processing of plaintiff’s FOIA request.
11. Defendant has wrongfully withheld the requested records from plaintiff by failing to comply with the statutory time limit for rendering a determination or response to plaintiff’s FOIA request.
12. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

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 cursive script that reads "David L. Sobel". The signature is written in black ink and is positioned above a horizontal line.

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