

December 9, 2010

The Honorable Patrick J. Leahy
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

On behalf of organizations concerned with government openness and accountability, we write to express our concerns with section 301 of the Motor Vehicle Safety Act, S. 3302. As currently drafted, section 301(b) would authorize the Secretary of Transportation to “establish categories of information that are exempt from public disclosure under section 552(b) of title 5, United States Code” (the Freedom of Information Act or FOIA).

We understand the National Highway Traffic and Safety Administration (NHTSA) seeks this authority to avoid the burden of processing under the FOIA the vast amounts of data it receives quarterly from regulated entities. This rationale, however, could be used by many other regulatory agencies that receive periodic data from those they regulate to support a similar exception to the FOIA, a precedent we believe threatens to undermine the FOIA’s pro-disclosure mandate. Moreover, as technology improves, the usefulness of a vast swath of data in the possession of federal agencies increases exponentially. For these reasons, we cannot support legislation that cedes to agencies the authority to unilaterally exempt information from the reach of the FOIA.

To address the concerns raised by section 301(b), alternative language has been proposed that would preserve those portions of amended section 301 that broaden the scope of the warranty and claims data vehicle manufacturers must submit periodically to the Secretary of the Department of Transportation, require public disclosure of information submitted to the Secretary, and specify information presumptively not exempt from disclosure under the FOIA. Under this proposal, Section 30166(m) of title 49 of the U.S. Code would be amended as follows:

(a) striking clause (ii) in paragraph (3)(A) and inserting the following:

“(ii) customer satisfaction campaigns, customer advisories, recalls, consumer complaints, warranty claims, field reports, technical service bulletins, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment.”; and

(b) striking subparagraph (C) of paragraph (4) and inserting the following:

“(C) DISCLOSURE.—The information provided to the Secretary pursuant to this subsection shall be disclosed publicly unless exempt from disclosure under section 552(b) of title 5. The Secretary shall administer this

Chairman Patrick J. Leahy
December 9, 2010
Page Two

subsection with a presumption in favor of maximum public availability of information. The following types of information shall presumptively not be exempt from disclosure under section 552(b) of title 5, United States Code:

- (i) Vehicle safety defect information related to incidents involving death or injury.
- (ii) Aggregated numbers of property damage claims; and
- (iii) Aggregated numbers of consumer complaints related to potential vehicle defects.

We urge you to support the above revisions to Section 301(b) of Motor Vehicle Safety Act. If the Act is not revised to incorporate these revisions, however, we urge you not to support the bill.

Thank you for your consideration of this important issue, and for your continuing support and protection of the Freedom of Information Act.

Sincerely,

Anne Weismann
Chief Counsel
Citizens for Responsibility and Ethics in
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