

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY )  
1825 Connecticut Avenue, NW )  
Suite 330 )  
Washington, DC 20009, )

Plaintiff, )

v. )

Civil Action No. \_\_\_\_\_

NATIONAL HIGHWAY TRAFFIC SAFETY )  
ADMINISTRATION )  
1200 New Jersey Avenue, SE )  
West Building )  
Washington, DC 20590, )

Defendant. )  
\_\_\_\_\_ )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the production of records relating to the National Highway Traffic Safety Administration’s (“NHTSA”) 2003 review of worldwide research on driver distraction. In this review, NHTSA researchers estimated – for the first time – the number of fatalities linked to cell phone use by automobile drivers.

**JURISDICTION**

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

## **PARTIES**

3. Plaintiff Center for Auto Safety (“CAS”) is a national non-profit organization. Since its founding in 1970, it has provided consumers a voice for auto safety and quality in Washington. A key pillar of CAS’s mission is to disseminate the information that CAS gathers so that consumers are better informed about motor vehicle safety issues.

4. Defendant NHTSA is an agency of the United States and has possession of and control over the records Plaintiff seeks.

## **STATEMENT OF FACTS**

5. By letter dated March 27, 2008, and signed by Michael Brooks, Staff Attorney, CAS submitted a FOIA request to NHTSA for materials related to NHTSA’s 2003 review of worldwide research on driver distraction. In particular, CAS requested:

The 2003 review referenced in the attached article “Cellphone Law May Not Make Roads Safer,” and any documents, 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.”

6. By letter dated April 29, 2008, and signed by Stanley Feldman, Associate Chief Counsel, NHTSA denied CAS’s request. Mr. Feldman stated that although NHTSA had found responsive documents, he had decided that the documents are exempt from mandatory disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), because the documents “contain internal pre-

decisional, deliberative information,” the disclosure of which “would reveal advice, opinions or recommendations of agency officials and would have a chilling effect on the decision-making process.”

7. By letter sent on May 29, 2008, (but mistakenly dated May 29, 2006) and signed by Michael Brooks, CAS appealed NHTSA’s denial. CAS explained that FOIA Exemption 5 does not apply because the requested records contain factual, rather than deliberative, material.

8. By letter dated September 12, 2008, and signed by Anthony M. Cooke, Chief Counsel, NHTSA released four documents. The released documents included two reports: one entitled “NHTSA Driver Distraction Expert Working Group Meetings” and another entitled “NHTSA Driver Distraction Internet Forum,” both of which were already available publicly on NHTSA’s website. NHTSA released a third document entitled “‘References,’ which served as a bibliography for the 2003 review.” Finally, the fourth document released by NHTSA contained a redacted powerpoint presentation entitled, “The Relationship Between On-Road Wireless Phone Use and Crashes.” Mr. Cooke asserted he was releasing this fourth, redacted document as a matter of discretion.

9. In the September 12, 2008 letter, Mr. Cooke affirmed the agency’s decision to withhold all remaining responsive documents under FOIA Exemption 5. Moreover, Mr. Cooke asserted that some responsive documents were also being withheld under Exemption 6, 5 U.S.C. § 552(b)(6), because they contained “personally identifiable information, the release of which would constitute a clearly unwarranted invasion of personal privacy.”

10. Plaintiff has a statutory right to the records it seeks, and there is no legal basis for Defendant’s failure to disclose them to Plaintiff.

## CLAIMS FOR RELIEF

WHEREFORE, Plaintiff requests that this Court

- A) Declare that Defendant's failure to disclose records requested by Plaintiff is unlawful under FOIA;
- B) Order Defendant to make all the requested records available to Plaintiff;
- C) Award Plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- D) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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Attorneys for Plaintiff

Dated: December 1, 2008