

This report provides a summary of relevant data and documents we received in response to Freedom of Information Act (FOIA) requests we filed on this company.

Confirmed, Undisclosed SEC Investigation

Watch List Status: Maintained on Watch List of Companies with Undisclosed SEC Investigations

An undisclosed SEC investigation is again confirmed. With new data reflected in this report, **Tesla Motors, Inc. remains on our Watch List** of companies with undisclosed SEC investigations. The first response indicating an SEC probe was dated 27-Jun-2016, BEFORE investors ever knew about a car crash that media outlets said brought on a (separate) SEC probe. On-going enforcement proceedings confirmed three times since. Those with an interest in Tesla should see our earlier reports, all available at our website:

- Published 14-Dec-2017, "As Elon Musk Hyped and Happy-Talked Investors and Fans, Tesla Kept Quiet About a Year-Long Formal SEC Probe into the Model 3."
- Published 13-Jul-2016, "New Data Reveals the SEC Was Already Investigating Tesla Before Any News Surfaced about an Autopilot-Related Crash."
- In Feb-2017, we warned that SolarCity, now owned by Tesla, had an undisclosed SEC probe. See, "Tesla / SolarCity unit - SEC Investigation Update."

Since we know there was at least one investigation in the recent past, we recommend those with an interest ask Tesla Motors, Inc. what contact it has had with the SEC's Division of Enforcement in the past two years. Keep in mind that a public company can be involved in more than one SEC investigation at a time.

From the Probes Reporter Database:

We filed our first FOIA request on this company in **Oct-2012**.

If we alert you to the existence of an undisclosed SEC investigation – or any response from the SEC – that means we filed a FOIA request on the company in question and have a response, in black-and-white on government letterhead, that supports our statement. Below is the SEC response history for this company:

24-Oct-2012	FOIA Response	No SEC investigative records found.
24-Oct-2013	FOIA Response	No SEC investigative records found.
6-Oct-2014	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
29-Dec-2014	Appeal Response	No records found on appeal. While the SEC's letter was not specific, we were previously told this could mean there was an investigation that concluded in the past but the SEC's records were not current at the time of our request. Alternatively, there may be an investigation involving not the company, but some other person or entity and the company was incidentally named or tangentially listed.
3-Mar-2016	FOIA Response with Document(s)	Documents released on closed SEC probe(s) of this company. Access to certain other investigative records denied on same probe(s).

27-Jun-2016	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
6-Jul-2016	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.
27-Jul-2016	Appeal Response with document(s)	Appeal to access certain investigative records on closed SEC probe(s) of this company denied, but some records released.
29-Jul-2016	Appeal Response	Appeal to access certain investigative records on closed SEC probe(s) of this company denied.
24-Feb-2017	FOIA Response	Access to certain investigative records on closed SEC probe(s) of this company denied.
24-Feb-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
11-Apr-2017	Appeal Response	Two-part appeal response: Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to those records remains blocked. Appeal to try to access certain records (previously identified) from a closed, but separate SEC probe(s) of this company was also denied on grounds they are internal SEC documents.
7-Dec-2017	FOIA Response with Document(s)	Documents released on closed SEC probe(s) of this company. Access to certain other investigative records denied on same probe(s).
7-Dec-2017	FOIA Response with Document(s)	Two-part response: 1) SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities"; and, 2) Documents released on separate, closed SEC probe(s) of this company. However, access to certain of these investigative records was denied.
16-Jan-2018	Appeal Response	Multi-element appeal response: 1) Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked. 2) Appeal to access certain investigative records on separate, closed SEC probe(s) of this company denied. 3) Additional records were identified which were not spoken to in an earlier SEC response. Related file(s) has been remanded for further processing.
16-Jan-2018	FOIA Response	FOIA Office sends letter indicating it is processing a file, or files, which were remanded to it from the SEC General Counsel for additional processing.

When research history is available in our database, we present it above so you can compare it to company disclosures. Other interpretative guidance and disclosures appear below.

As can be seen in the table above, at least once in the past the SEC cited the "law enforcement exemption" of the Freedom of Information Act (FOIA) as basis to deny the public's access to the detailed records we sought on this company. As a matter of law, the SEC is acknowledging some sort of investigative activity with this response. We filed an appeal with the SEC's Office of the General Counsel to challenge that response. In response to our latest appeal(s), the date(s) of which is/are also shown in the table above, the SEC stated, "We have confirmed with staff that releasing the withheld information could reasonably be expected to interfere with on-going enforcement proceedings."

While the SEC as a matter of course tells the public that an on-going investigation should not be construed as a finding of any wrongdoing, the public interest is understandably high in tracking these investigations and their outcome. In this case, our research shows these SEC proceedings are undisclosed by **Tesla Motors, Inc.**

Notable Disclosures: Repeated searches of this company’s SEC filings, back to Oct-2012, found no clear disclosures of SEC investigative activity.

Documents Acquired Under the Freedom of Information Act:

As we said in our 14-Dec-2017 Disclosure Insight® report on Tesla,

“... we recently acquired documents that show from Jun-2016 to 31-May-2017, the SEC conducted a formal investigation of Tesla Motors that was squarely focused on the company’s Model 3. The probe was in-depth and got into a wide range of items similar to questions raised by company skeptics. It also named Goldman Sachs and looked at the timing of its analyst report upgrading Tesla ahead of the company announcing a \$2 billion stock offering later that same day, in May-2016. Goldman and Morgan Stanley were the lead underwriters. The probe ended on 31-May-2017 with no enforcement action recommended.

In a subpoena dated 15-Jun-2016, the SEC asked Tesla to produce documents related to the following: reservations for the Model 3; orders; production times and rates; cancellations; refunds requested; refunds processed; revisions in reservations; how deposits for the Model 3 have or will be used by Tesla; the company’s accounting treatment for deposits; and, questions related to the 18-May-2016 offering and analyst report issued by Goldman Sachs. The 15 pages of records we obtained on this investigation are posted to our website.”

In Mar-2016, the SEC informed us it found 19 pages of records on a closed SEC probe of Tesla. The only document released on this closed matter is a one-page Case Closing Report, dated 16-Dec-2013, with the heading, “Tesla Motors”.

In Feb-2017, the SEC told us, “... we are withholding a twelve (12) page Matter Detail Report in full ...” We have no more information on this closed matter. We cannot tell if it was the same matter the SEC referenced in Mar-2016, or perhaps a different one. Again, Tesla will know and should be asked if you have an interest in this company.

Editor’s Note: When the SEC denies access to records on closed SEC investigations, they are frequently blocking internal SEC documents known as “Opening and Closing Reports, including ‘Case Closing Recommendation,’ ‘Matter Under Inquiry Summary,’ ‘Investigation Summary,’ and/or similar documents and/or reports.” A Case Closing Report is merely the cover page for a report called a Case Closing Recommendation. A Case Closing Recommendation is the SEC’s report that tells you why an investigation was opened, what work was done, and the conclusions reached. To date, the SEC is adamant in its refusal to release even one word from its Case Closing Recommendations and similar documents, a practice for which we remain sharply critical of the agency.

Supplemental Data: None.

Independent Investment Research Focused on Public Company Interactions with the SEC.

Notes: New SEC investigative activity could theoretically begin or end after the date covered by the latest information in this report, which would not be reflected here. The SEC did not disclose the details on investigations referenced herein. All we know is that they somehow pertain to the conduct, transactions, and/or disclosures of the companies referenced above. Companies with undisclosed SEC investigations are maintained on our Watch List of companies with undisclosed SEC investigations.

The SEC reminds us that its assertion of the law enforcement exemption should not be construed as an indication by the Commission or its staff that any violations of law have occurred with respect to any person, entity, or security.

To learn more about our research process, including how to best use this information in your own decision-making, [click here](#).

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