

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Jon D. Berman,

Report of Hearing Officer

Complainant

Docket #FIC85-99

against

State of Connecticut; Department
of Transportation,

November 13, 1985

Respondent

The above captioned matter was heard as a contested case on May 30, 1985 before Commissioner Donald W. Friedman. Upon motion of the respondent a report issued by Commissioner Friedman subsequent to the expiration of his term was withdrawn and the matter reassigned for hearing before Commissioner Deane C. Avery. The matter was reheard on September 4, 1985 at which time the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. In May, 1984 the respondent issued a Federal Environmental Assessment [hereinafter "EA"] for the relocation of Route 6, Bolton to Windham, Connecticut. Copies of the report were distributed to 137 agencies, organizations and individuals, both governmental and private, for public review and comment during a 30 day period.
3. By letter dated March 18, 1985 the complainant made a request of the respondent for access to inspect or copy any revisions or amendments to its Route 6 EA.
4. On March 29, 1985 the complainant was informed orally by the respondent that the requested records would not be made available. The respondent's denial of access was confirmed by letter dated April 1, 1985.

5. By letter of complaint filed with the Commission on April 2, 1985 the complainant appealed the respondent's failure to provide him with the requested records.

6. The EA in question was prepared pursuant to 23 C.F.R. §771.119. EA's are sent by the respondent, for review, to the Federal Highway Administration district office in Hartford, to the regional office in Albany, New York and to the national office in Washington, D.C.

7. The respondent claims that the document was prepared pursuant to federal law, that the federal government supplies 85% of the funding for its preparation and plays a part in the authorship of the document and that therefore it is the responsibility of federal authorities in a federal forum to determine the disclosability of the record.

8. It is found that, although subject to federal review, the EA in question was prepared by the respondent, is owned, used and retained by the respondent, and relates to the conduct of the public's business.

9. It is concluded that the EA is a public record within the meaning of §1-18a(d), G.S. subject to the disclosure requirements of Connecticut's Freedom of Information Act.

10. The respondent also claims that because the documents have not been approved as final products and because there is a public interest in not releasing what might amount to misinformation, the records are exempted from disclosure by §1-19(b)(1), G.S.

11. It is found that the respondent's responses, although they may be revised in the future, have been forwarded to the Federal Highway Administration for review, as written.

12. There will be no further opportunity for meaningful public comment with respect to the EA. Although comments may be submitted, there will be no new round of document revisions prior to the taking of property proposed in connection with the relocation.

13. The records, therefore, are neither preliminary drafts nor notes within the meaning of §1-19(b)(1), G.S.

14. It is concluded that the records are not exempted from disclosure by §1-19(b)(1), G.S. and that disclosure of the documents is required by §1-19(c), G.S.


15. The respondent failed to prove that the requested documents are exempted from disclosure by other state statute or federal law.

The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint.

1. The respondent shall forthwith provide the complainant with access to inspect or copy the responses to public comments and revisions prepared with respect to its Route 6 environmental assessment.

Approved by order of the Freedom of Information Commission at its regular meeting of November 13, 1985.

By order of the Freedom
of Information Commission



Karen J. Haggott
Acting Clerk of the Commission