

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Russell L. Brenneman and the
Dow Chemical Company,

FINAL DECISION

Complainants

Docket #FIC85-25

against

JANUARY 8, 1986

Department of Environmental
Protection of the State of
Connecticut,

Respondent

The above captioned matter was heard as a contested case on April 22, 1985 in conjunction with FIC 85-21, Alan M. Kosloff v. Department of Environmental Protection of the State of Connecticut, at which time the complainants and the respondent appeared and presented testimony, exhibits and argument on the complaint. On September 18, 1985 the matter was reopened per the order of the hearing officer. A second hearing was held on October 22, 1985, at which time the complainants and the respondent again 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. On or about June 7, 1984 Culbro Corporation submitted crop fumigation records and maps relating to its tobacco farm lands to an employee of the respondent, pursuant to such employee's request. In an accompanying letter dated June 7, 1984 Culbro Corporation asked the employee to "treat the enclosed maps and the information supplied you as confidential and not [to] release it to others without letting us know of its intended use. I know you appreciate our cooperation in this matter and trust you will treat this information accordingly."

3. By letter dated December 19, 1984 the complainants made a request of the respondent for inspection and copies of all documents submitted to the respondent by Culbro Corporation which "refer, relate or pertain to the application or use in Connecticut of ethylene dibromide (EDB) or any product containing EDB."

4. By letter dated January 4, 1985 the respondent offered the complainants access to the requested documents with the exception of those regarding which Culbro had requested confidentiality, indicating that such records were exempted from disclosure by §1-19(b)(5), G.S.

5. By letter of complaint filed with the Commission on January 31, 1985 the complainants appealed the partial denial of their request for records.

6. At hearing counsel for the respondent indicated that Culbro, through its counsel, had authorized him to represent its interest.

7. Following receipt of Culbro's June 7, 1984 letter requesting confidential treatment of maps and related information, the assistant director of the respondent asked for specific reasons for such confidentiality.

8. By letter dated June 22, 1984 Culbro indicated that the information was commercial in nature and voluntarily given in confidence and was therefore exempted by §1-19(b)(5), G.S.

9. An April 22, 1985 request for an in camera inspection of the requested records was denied.

10. A "Vaughn index" of withheld records was filed by the respondent on May 8, 1985. The index identified 50 items, each of which was described as either a "map," a "delivery record" or a "shipment record."

11. Following submission of the index the complainants noted their objection to the lack of specificity of the index and the respondent's failure to indicate in what way the character of the documents mandated nondisclosure.

12. On or about October 7, 1985 Culbro agreed to allow Dow Chemical Company access to "certain information relating to the chemical EDB which was submitted to the Commissioner in confidence."

13. The records, which were made exhibits at the October 22, 1985 hearing, consisted of invoices for purchases from the Dow Chemical Company, invoices for services from "Ralph L. Wetherell, Jr., Agricultural Services," correspondence between the respondent and Culbro, records, on Culbro Corporation letterhead, showing purchases of Dow products and 26 maps of farms in Connecticut.

14. §22a-58, G.S. requires any person who distributes, sells or delivers any restricted pesticide or device to make available to employees of the respondent all records showing the delivery, movement or holding of such pesticide or device.

15. §22a-58(d), G.S. requires that commercial applicators, defined at §22a-47(f), G.S., maintain records of kinds, amounts, uses and dates and places of application of pesticides for three years after the date of application.

16. §22a-58(c), G.S., provides that private applicators shall not be required to maintain any records or file any reports.

17. Culbro Corporation is deemed by the respondent to be a "private applicator" as defined by §22a-47(d), G.S.

18. The respondent claims that because the records at issue are more than three years old, the records are not required by either §22a-58(c) or §22a-58(d), G.S. and are therefore "not required by statute" within the meaning of §1-19(b)(5), G.S.

19. It is found that the information submitted to the respondent by Culbro Corporation is not required by the language of §22a-58, G.S. nor by any other statute adduced at hearing.

20. The complainants claim that the respondent has the power to compel disclosure of the records, that the respondent has taken action to compel disclosure and that the records are therefore not exempted from disclosure.

21. It is found that although the respondent may have the power to subpoena the records in question, the records are not "required by statute" within the meaning of §1-19(b)(5), G.S.

22. It is found that the information supplied by Culbro was "commercial" in nature.

23. It is concluded that the records in question constitute commercial information given to the respondent in confidence and not required by statute and that disclosure of the records is not mandated by §1-15 or §1-19(a), G.S.

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

- 1. The complaint is hereby dismissed.

Judith A. Lahey
Commissioner Judith A. Lahey
as Hearing Officer

Approved by order of the Freedom of Information Commission at its regular meeting of January 8, 1986.

Karen J. Haggitt
Karen J. Haggitt
Clerk of the Commission