

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Clifford Teutsch and
The Hartford Courant

FINAL DECISION

Complainants

Docket #FIC 85-112

against

Commissioner, Department of
Transportation, State of
Connecticut

September 18, 1985

Respondent

The above captioned matter was heard as a contested case on July 23, 1985 at which time the complainants 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. By letter filed with the Commission on May 13, 1985, the complainants alleged that the respondent denied access on May 8, 1985 to the following records:

"...all documents, including but not limited to notes, memoranda, reports of site visits, etc., prepared by members of DOT's Office of Management Services or other DOT units concerning:

"1) any audit, survey or similar review of the liquid asphalt cement contents of backtop at various batch plants around the state; and

"2) any audit, survey or similar review of inspection and receiving practices concerning blacktop deliveries to state projects, including but not limited to projects at Bradley International Airport during 1984."

3. The complainant Teutsch requested access to the records in a telephone conversation with the respondent Commissioner on May 8, 1985.

4. The Commissioner told Teutsch that the records were "notes" and that Teutsch could have access to the notes only after a panel investigating the paving program completed its review.

5. The records were two file boxes of audit notes prepared by the respondent's Internal Audit Division. The notes were prepared during a regular internal audit and included a review of the weight slips and mixing systems used by vendors supplying paving materials to state construction projects.

6. On March 6, 1985, the Commissioner appointed a Paving Program Investigation Panel. Deputy Commissioner William Lazarek was chairman of the Panel, whose members also included the Chief Engineer, the Director of Environmental Planning and an Assistant Attorney General. The Panel investigated allegations of wrongdoing and mismanagement in the highway paving program.

7. The Panel issued its report on or about May 21, 1985. The report included two audit reports prepared from the notes requested by the complainants.

8. The respondent claimed that the records were withheld on May 8, 1985 pursuant to §1-19(b)(1), G.S., and that disclosure of the records was not required by §1-19(c)(1), G.S.

9. §1-19(b)(1), G.S., exempts "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure." Notwithstanding §1-19(b)(1), §1-19(c)(1), G.S., requires disclosure of:

"interagency or intra-agency memoranda. . . comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to. . . the members of such agency."

10. The auditor's notes contained factual data gathered during testing done on the computerized weight systems that vendors used to mix paving materials and bill the state.

11. The auditor's notes also contained evaluative comments concerning whether vendors were overbilling the state or providing materials of inferior quality.

12. It is concluded that the factual data gathered by the auditors do not constitute "preliminary drafts or notes" and therefore do not fall within the exemption in §1-19(b)(1), G.S.

13. Therefore, disclosure of the factual data in the notes is required by §1-19(a), G.S.

14. It is found that previous to May 8, 1985, Deputy Commissioner Lazarek, the Panel's chairman, received and reviewed the auditor's notes as part of the Panel's investigation.

15. Therefore, the evaluative material in the notes is not subject to the exception in §1-19(c)(1), G.S., because the notes were submitted to the Panel's chairman before May 8, 1985.

16. It is found that the evaluative comments in the notes were intra-agency memoranda comprising part of the process by which the Panel's decisions were formulated. Therefore, disclosure of the evaluative comments in the notes is required by §1-19(c)(1), G.S.

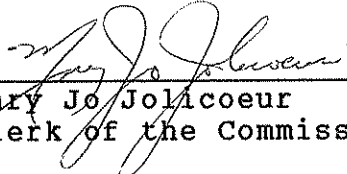
17. It is concluded that the denial of access by the respondent to the request for the notes on May 8, 1985 violated §1-19, G.S.

18. The respondent claimed that the public interest in the integrity of the Panel's investigation was served by withholding the notes. It is found that the only interest served by nondisclosure was the respondent's interest in defending its public image. It is concluded that that interest does not outweigh the public interest in access to public records.

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

1. Henceforth the respondent shall provide prompt access to public records. Any denial of the right to inspect or copy public records shall be made in writing, within four business days of the request, pursuant to §1-21i, G.S. The written denial shall state the statutory basis and the reasons for the denial.

Approved by order of the Freedom of Information Commission at its special meeting of September 18, 1985.



Mary Jo Jolicœur
Clerk of the Commission