

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Thaddeus J. Hyjek and
Robert S. Cheney,

Docket #FIC81-13

Complainants

December 8, 1981

against

the Town of East Hampton;
Chief Administrative Officer of
the Town of East Hampton, and
Board of Selectmen of the Town
of East Hampton,

Respondent(s)

The above captioned matter was heard as a contested case on June 29, 1981, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondents are public agencies as defined in §1-18a(a), G.S.
2. By letter dated December 23, 1980, the complainants requested a copy of a town counsel opinion concerning a petition and proposed ordinance on vehicle and fuel use for the Town of East Hampton.
3. By letter of complaint dated January 15, 1981 and filed with this Commission on January 19, 1981, the complainants alleged that they had received no response to their request and that they had been denied their right to a copy of the requested opinion.
4. By letters dated January 2, 1981, the respondent Chief Administrative Officer (hereinafter "CAO") informed the complainants that the town counsel had indicated that the requested communication between it and the respondent selectmen was privileged as an attorney-client communication and that the opinion would be released only if a majority of the respondent Board of Selectmen so agreed at that board's regular meeting of January 13, 1981.
5. By letters dated January 14, 1981, the respondent CAO indicated to the complainants that the respondent Board of Selectmen had denied their request for a copy of the opinion, enclosing in these letters copies of a different town counsel opinion explaining the necessity of preserving the attorney-client relationship and

copies of a summary opinion by the respondent CAO concerning the town counsel's review of the petition and ordinance in question.

6. The opinion sought was prepared pursuant to discussions between the respondent CAO and the town counsel which were conducted privately and with an expectation of confidentiality.

7. The respondents contend that the opinion sought is exempt from disclosure pursuant to §1-19(b)(10), G.S., which provides, in part, that "[n]othing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive and 1-21 to 1-21k, inclusive, shall be construed to require disclosure of . . . communications privileged by the attorney-client relationship."

8. The opinion contains statements of the matters discussed by the respondent CAO and town attorney which the respondents contend could be construed as admissions of the town with regard to the employees and offices discussed.

9. It is found that those portions of the town attorney's opinion which contain confidential communications from the CAO, including those portions which contain remarks which may be construed as admissions of the town, are exempt from disclosure under §1-19(b)(10), G.S.

10. It is further found that the remainder of the opinion, the substance of which has already been disclosed to the complainants in the summary opinion, is subject to disclosure under §1-19(a), G.S.

11. The respondents further contend that the entirety of the opinion sought is protected from disclosure by the work product doctrine, as embodied in §219 of the Connecticut Practice Book.

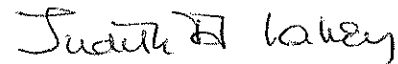
12. It is found that there is no exemption to disclosure in the Freedom of Information Act for attorney's work product as embodied in §219 of the Connecticut Practice Book.

13. The respondents further contend that the material sought by them is exempt from disclosure under §1-19(b)(4), G.S. as "records pertaining to strategy and negotiations with respect to pending claims and litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled."

14. It is found that the respondents failed to prove the applicability of §1-19(b)(4), G.S.

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

1. The respondents shall disclose to the complainants the opinion requested by them; however, the respondents may conceal from view those portions which are exempt from disclosure under §1-19(b)(10), G.S.



Commissioner Judith A. Lahey as
Hearing Officer

Approved by order of the Freedom of Information Commission
at its regular meeting of January 27, 1982.


Mary Jo Jolicœur
Clerk of the Commission