



U.S. Department
of Transportation
**Federal Highway
Administration**

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Memorandum

Subject: Freedom of Information Act (FOIA)
and Environmental Documents

From: Director, Office of Environmental Policy
Washington, D.C. 20590

Date

MAR 27 1989

Reply to
Attn of

HEV-11

To: Regional Federal Highway Administrators
Direct Federal Program Administrator

My December 23, 1987, memorandum distributed Federal Highway Administration's (FHWA's) cooperating agency policy which suggested that predraft and prefinal environmental impacts statements (EISs) be provided to cooperating agencies. We have encountered several recent instances where the distribution of prefinal EISs has caused problems. We do not wish to alter the policy of distributing preliminary versions of environmental documents. Instead, we would like your support in taking precautions when making distribution of these documents.

The most recent instances of problems were created when individuals or groups interested in a proposed project learned that a prefinal EIS had been provided to governmental agencies for review. These individuals then either obtained copies of or gained access to the preliminary EIS. This had the effect of removing FOIA Exemption No. 5 on intragovernmental exchange described in my September 25, 1985, memorandum (copy attached).

Premature release of this material can give those segments of the public having access to it an unfair advantage over the remaining public. In addition, it encourages pressure groups to try to influence decisionmaking at inappropriate times. The visibility and publicity accompanying any premature release can have a chilling effect on the willingness of State highway agencies (SHAs) to provide preliminary versions of environmental documents in the future, thereby undermining the cooperating agency concept.

For the above reasons, we request that you ask SHAs to incorporate a statement such as the following in correspondence transmitting preliminary documents to commenting and cooperating agencies. "The FHWA has determined that this preliminary document is an intergovernmental exchange that may be withheld under the FOIA request. Premature release of this material to any segment of the public could give some sectors an unfair advantage and would have a chilling effect on intergovernmental coordination and the success of the cooperating agency concept. For these reasons, we respectfully request that the public not be given access to this document."

Your cooperation in this matter is appreciated.

Ali F. Sevin

Attachment