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

JUN 2 7 2013

1200 New Jersey Avenue, SE
Washington, D.C. 20590

Refer To: HCC-40
FOIA Control Numbers: 2013-0110A
2013-0111A

FOIA Office
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960

FOIA Office:

Enclosed you will find 58 pages of Environmental Protection Agency records located in connection with our search for documents responsive to a FOIA request. Also included is a copy of the incoming request and the Federal Highway Administration's (FHWA) response. These documents are being referred to you for review and a direct response to the requester. The requester has been advised of this referral and may be contacted at the address below.

Sam Evans
Southern Environmental Law Center
22 South Pack Square, Suite700
Asheville, NC 28801
Phone: 828-258-2023

Please provide me a copy of your response. If you have any questions or concerns with regard to this matter, please feel free to contact Ronald E. Gagnon, FHWA FOIA Specialist, at 202-366-0948.

Sincerely,

Ronald E. Gagnon
FHWA FOIA Specialist

Enclosures

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

JUN 27 2013

1200 New Jersey Ave., SE
Washington, D.C. 20590

FOIA Control Numbers:
2013-0110A
2013-0111A

In Reply Refer To:
HCC-40

Austin "DJ" Gerken
Southern Environmental Law Center
22 South Pack Square, Suite700
Asheville, NC 28801

Dear Mr. Gerken:

This letter responds to your letter dated December 27, 2012, appealing the responses to your October 29, 2012 initial Freedom of Information Act (FOIA) request to the Federal Highway Administration (FHWA) North Carolina and Tennessee Division Offices.

Sarah Shores, the FHWA Associate Administrator for Administration, is the agency official responsible for all final decisions regarding FOIA appeals submitted to FHWA. Ms. Shores remanded this matter to the FHWA FOIA Office and directed my office to coordinate a new search because you challenged the adequacy of the search in your FOIA appeal letter. Ms. Shores remanded this to my office because records responsive to this request were likely to be located in multiple field offices within FHWA and because FHWA needed to conduct additional searches for records to ensure that a reasonable search was carried out.

As FOIA officer for FHWA, my office is responsible for implementing the FOIA program within FHWA. After reviewing your appeal letter, I determined that any records responsive to your request would likely be located in our North Carolina and Tennessee Division Offices and in our Headquarters office. Since this appeal matter involves records from multiple FHWA offices, my office continued to take the lead in managing and coordinating this search.

In your appeal letter, you contest the adequacy of the search conducted for the following items requested in your initial FOIA request:

> (1) The design standards applicable to highways of the ADHS in general or Corridor K in particular, other than the AASHTO Green Book and the ARC Code, whether such standards are imposed by FHWA, the Appalachian Regional Commission ("ARC"), or any other source;
>
> (2) The effects of MAP-21, P.L. 112-141 (July 6, 2012), on past, present, or future funding for highways of the ADHS in general or Corridor K in particular;

My office requested that each office conduct a broader search for records that could be responsive to items (1) and (2) based on the examples of records you provided in your appeal that you expected the agency to produce.

In accordance with the FOIA, 5 U.S.C. §552, we are enclosing all communications and correspondence responsive to items (1) and (2) above, in an enclosed CD as a result of our new search. In conducting this new search, this office directed the Tennessee and North Carolina Division Offices to identify employees that would likely have records responsive to your request. The Tennessee Division identified eight employees and the North Carolina Division identified four employees who would conduct additional searches.

Regarding records from the North Carolina Division, FHWA used a search date range for emails from November 2006 thru 2012. The search was also narrowed to records discussing segments A, B, and C of the project, but excluding Segment D from the search because it has already been completed. This range was chosen because your initial request explained that it was "a new request for a narrow subset of documents" previously requested in an earlier FOIA request dated September 16, 2011 (FOIA Control No. 2011-0437). The North Carolina Division Office had previously narrowed the scope of that FOIA request and documented that scope in an agency response letter dated November 10, 2011.

Regarding records from the Tennessee Division, FHWA used a starting search date of September 21, 2010, the date of publication in the *Federal Register* of the Tennessee portion of the Corridor K project Notice of Intent (NOI). This start date was chosen because your initial request explained that it was "a new request for a narrow subset of documents" previously requested in an earlier FOIA request dated September 16, 2011 (FOIA Control No. 2011-0440). The Tennessee Division Office had previously narrowed the scope of that FOIA request and documented that scope in an agency response letter dated November 16, 2011.

Our search disclosed 1,648 pages of records relevant to your request. After collecting all responsive records, both the Division offices and my office reviewed the responsive records to determine if any records or portions of records needed to be withheld under a FOIA exemption. Following review, my office identified 103 pages of records that originated with other federal agencies. These records were referred to the agencies for processing under FOIA. In addition, following review, this office redacted content from 573 pages of responsive records pursuant to FOIA Exemption 5 U.S.C. § 552(b)(5). Although some responsive records were identified for withholding under the aforementioned exemption, our office is producing those records as discretionary releases. All records not referred to other agencies, are on the enclosed CD in Adobe PDF format and are stored in seven different Adobe PDF portfolio files, which are labeled as follows:

- HQ Emails & Documents.pdf
  - Emails and documents found in FHWA headquarters computers pertaining to ADHS and MAP-21. Some documents contain redactions pursuant to FOIA Exemption 5 U.S.C. § 552(b)(5) in order to protect attorney-client communications.

- NC Emails with Records Referred to Other Federal Agencies.pdf
  - Responsive emails found in North Carolina Division computers containing documents drafted by another federal agency. These documents have been removed from these emails for further processing by the following federal agencies for direct response to you:

    United States Environmental Protection Agency
    Region 4 Raleigh Office
    Terry Sanford Federal Courthouse
    310 New Bern Avenue
    Raleigh, NC 27601

United States Environmental protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960

United States Department of Agriculture
Forest Service
160 Zillicoa St. Suite A
Asheville, NC 28801

- NC Records with Redactions.pdf
  - Emails and documents found in North Carolina Division computers that contain redactions pursuant to FOIA Exemption 5 U.S.C. § 552(b)(5) in order to protect 1) draft documents, 2) deliberative and intra-governmental communications, and 3) attorney-client communications.

- NC Responsive Records.pdf
  - Responsive emails and documents found in North Carolina Division computers.

- TN Emails with Records Referred to Other Federal Agencies.pdf
  - Responsive emails found in Tennessee Division computers containing documents drafted by another federal agency. These documents have been removed from these emails for further processing by the following federal agencies for direct response to you:

U.S. Department of the Interior
Fish and Wildlife Service
446 Neal Street
Cookeville, TN 38501

United States Department of Agriculture
Forest Service - Cherokee National Forest
2800 Ocoee Street N
Cleveland, TN 37312-5374

Department of the Army
Nashville District – Corps of Engineers
3701 Bell Road
Nashville, TN 37214

- TN Records with Redactions.pdf
  - Emails and documents found in Tennessee Division computers that contain redactions pursuant to FOIA Exemption 5 U.S.C. § 552(b)(5) in order to protect 1) draft documents, 2) deliberative and intra-governmental communications, and 3) attorney-client communications.

- TN Responsive Records.pdf
  - Responsive emails and documents found in Tennessee Division computers.

Pursuant to the regulations of the Department of Transportation, 49 C.F.R. § 7.21, you have the right to appeal this decision to Sarah Shores, Associate Administrator for Administration, Federal Highway Administration, 1200 New Jersey Avenue, S.E., E66-322, Washington, D.C. 20590-9898. Should you wish to appeal, her decision will be administratively final. Your appeal must be made in writing within 30 days after receipt of this letter and must include all information and arguments relied upon in making the appeal.

We regret any inconvenience caused by the delay in responding to your request. If you have any questions with regard to this letter, please feel free to contact Mr. Ronald Gagnon at 202-366-0948.

Sincerely,

Sheryl G. Williams
FOIA Officer/Assistant Chief Counsel

Enclosures cc: North Carolina Division Office
Tennessee Division Office
Southern Legal Services