



# The Attorney General of Texas

December 20, 1982

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An Equal Opportunity/  
Affirmative Action Employer

Honorable Kathryn J. Whitmire  
Mayor  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251

Open Records Decision No. 322

Re: City Air Pollution Control  
Division investigative records  
of chemical company

Dear Ms. Whitmire:

You have requested our opinion on whether a file is subject to exception from public disclosure under the Open Records Act, article 6252-17a, section 3(a)(3).

Section 3(a)(3) of article 6252-17a exempts from disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

The file about which you inquire is composed of records pertaining to the USS Chemical Company, compiled by the city pursuant to article 4477-5, section 4.03, V.T.C.S., the Clean Air Act.

Generally, emissions data is public information under article 4477-5, section 2.13, V.T.C.S., applicable to local governments through section 5.01(b) of the act. Attorney General Opinions H-635, H-539 (1975); H-276, H-241 (1974).

A suit styled Pascoe, et al v. U.S. Steel Corporation d/b/a/ U.S. Steel Chemical, Cause No. 82-22987 has been filed against USS Chemical. A pre-trial conference was held on June 23, 1982, at which time plaintiffs' counsel indicated that the city of Houston might be joined as a co-defendant in the lawsuit. The presiding judge suggested adding the city as an involuntary plaintiff. A second pre-trial conference is set for September 27, 1982. Plaintiffs' counsel stated in a letter dated July 29, 1982, that:

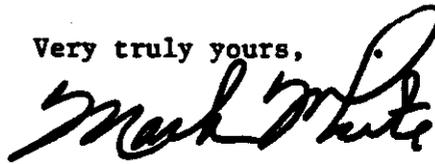
At this time, no final decision has been made with respect to the city of Houston's being made a party to this lawsuit, either as a Co-Defendant, or... an 'involuntary plaintiff.' Such determination must await additional discovery and further consultation with my clients.

You state that the file was developed as a basis for any litigation the city might initiate against USS Chemical pursuant to section 4.03 of the Clean Air Act. The city may not exercise any enforcement power under section 4.03, however, unless the Houston City Council adopts a resolution authorizing the city attorney to exercise such power. V.T.C.S. art 4477-5, §4.03. To date, the city council has not adopted such a resolution.

You have suggested that the file may be withheld since the city is contemplating litigation against USS Chemical, and because the city is very likely to be joined in the previously cited lawsuit.

Since the city has not adopted the resolution which is a prerequisite to bringing a lawsuit, we do not believe section 3(a)(3) can be invoked on the basis of litigation that the city anticipates bringing. However, in view of the pending lawsuit and the likelihood that the city will become a party to the lawsuit, we agree that the file may remain closed until the issue is determined. Either party may advise us as to the determination of the matter.

Very truly yours,



MARK WHITE  
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APPROVED:  
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