



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1994

Ms. Marna Martinez
Mayor
City of Commerce
1119 Alamo Street
Commerce, Texas 75428-2693

OR94-545

Dear Ms. Martinez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26504.

The City of Commerce (the "city") received a request for information related to Hi-Yield and Universal Chemical Companies, Voluntary Purchasing Groups, Bonny Corporation, H. Dean Smith, and Michael Smith. Specifically, the request is for

municipal records, documents, writings, letters, memoranda, material, photographs, and other tangible things related to the:

- a) Closure of Norris Elementary School;
- b) Health risks associated with the Hi-Yield and Universal Chemical Company plant;
- c) Communications or dealings with Hi-Yield Chemical Company, Universal Chemical Company, Voluntary Purchasing Groups, Bonny Corporation and its officers, including, H. Dean Smith, and Michael Smith;
- d) The construction of Sycamore Street; between Johnson Road and Meadows Street;
- e) Closure or relocation of Norris Park;

- f) Arsenic, pesticide, or any other toxic contamination, poisoning, or discharge into the Norris Community, Norris Park or Sayle Creek;
- g) Flood and storm controls on the Hi-Yield or Universal Chemical Company sites, Norris Park, Norris Community, and Sayle Creek;
- h) The administration or organizational flow chart of the City of Commerce since 1950; and,
- i) The agendas, resolutions, and minutes of all meetings or proceedings related to items (a) through (h) above;
- [j] Completed reports, audits, evaluations, or investigations made of, for, or by you relating to items (a) through (i) above; [];
- [k] The name, sex, ethnicity, salary, title, and dates of employment of each administrative personnel or officer of the City of Commerce;
- [l] The name of each official and the final record of voting of all City of Commerce related proceedings related to the Norris Community, Norris Park, Norris Elementary School, Hi-Yield or Universal Chemical Companies, Voluntary Purchasing Groupe, Bonny Corporation, H. Dean Smith, and Michael Smith; [];
- [m] All working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by the City of Commerce related to Norris Park, Norris Elementary School and the Norris Community;
- [n] A description of your central and field organization including:
 - i. The established places at which I may obtain information, submit information or requests, or obtain decisions;
 - ii. The employees from whom I may obtain information, submit information or requests, or obtain decisions; and
 - iii. The methods by which I may obtain information, submit information or requests, or obtain decisions.

The city has enclosed as "representative samples" of the information it seeks to withhold: copies of the minutes and agendas of several meetings of the City Commission. Since this is the only information you enclosed, we assume that all other information the city maintains that is responsive to this request has been released.

The city asserts that the requested information is excepted from required public disclosure based on section 552.103(a) of the Government Code. Section 552.103(a) applies to information that relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). We understand the city is asserting this exception because it anticipates litigation. However, we need not determine whether the city has met its burden under section 552.103(a) for the following reason.

The minutes of an open meeting are public records. Gov't Code § 551.022. Section 552.103(a) cannot apply to information specifically made public by statute. See Open Records Decision Nos. 221 (1979); 161 (1977). Thus, even if the minutes and public notices relate to reasonably anticipated or pending litigation, the city could not withhold the information based on section 552.103(a) of the Government Code. The city must release the information immediately.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/KKO/rho

Ref.: ID# 26504

Enclosures: Submitted documents

cc: Chris Cowan
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(w/o enclosures)