



City of Dallas

July 25, 2013

Hal Barker
9191 Garland Road, # 1126
Dallas, Texas 75218
hbarker_2011@yahoo.com

Re: Request for an Open Records Decision

Dear Mr. Barker:

This letter responds to your open records request received by the city of Dallas on July 12, 2013 for information pertaining to asbestos at 811 Pemberton Hill Road. Some of the requested documents have been sent to the Attorney General for an open records decision regarding their release. A copy of the letter to the Attorney General is enclosed for your information. The Office of Environmental Quality will provide you with the remaining requested information.

If you have any questions regarding this matter please contact me or Assistant City Attorney Heather Silver at 214-670-3519.

Sincerely,

A handwritten signature in black ink, appearing to read 'Warren M. S. Ernst'.

WARREN M. S. ERNST
Chief of the General Counsel Division

Attachments

c: Thomas P. Perkins, Jr., City Attorney
Heather Silver, Assistant City Attorney
Lori Trulson, P.G., REM, Office of Environmental Quality
Carolyn Brescia, Park and Recreation Department
Jeri Carter, Public Information Office



July 25, 2013

Honorable Greg Abbott
Attorney General of Texas
300 W. 15th Street
Clements Building, 12th Floor
P.O. Box 12548
Austin, Texas 78711

Re: Request for an Open Records Decision

Dear Mr. Attorney General Abbott:

By email (Exhibit A) received by the city of Dallas ("city") on July 12, 2013, Hal Barker requested information pertaining to asbestos at 811 Pemberton Hill Road.

This office is responsible for representing the legal interests of the city. In our opinion, some of the requested information is excepted from required public disclosure under Sections 552.111 of the Public Information Act, Chapter 552, Texas Government Code (the "Act"). Under Section 552.301 of the Act, this office now seeks your determination about whether this information is exempt from disclosure. We will provide Mr. Barker with the remaining requested information.

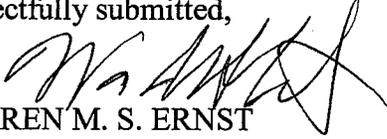
Terracon has been retained by the city to prepare an Asbestos Abatement Report for 811 Pemberton Hill Road. The Asbestos Abatement Report is still a draft.

Exhibit B consists of a representative sample of the draft Asbestos Abatement Report that we believe is exempt from disclosure under Section 552.111 of the Act which excepts from required disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 of the Act incorporates the deliberative process privilege, which protects from disclosure intra-agency and interagency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. In Open Records Decision No. 631 (1995), your office determined that Section 552.111 of the Act may apply to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. Terracon performed services and prepared the draft report at the request of the city. A draft of a document that has been released or will be released in final form to the public is excepted from disclosure in its entirety under Section 552.111 of the Act because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final documents. Open Records Decision No. 559 (1990). The draft report in Exhibit B will be released in final form to the public.

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Honorable Greg Abbott
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If you have any questions regarding this matter please contact me or Assistant City Attorney Heather Silver at 214-670-3519.

Respectfully submitted,



WARREN M. S. ERNST
Chief of the General Counsel Division

Attachments

- c: (with Exhibit A only)
Thomas P. Perkins, Jr., City Attorney
Heather Silver, Assistant City Attorney
Lori Trulson, P.G., REM, Office of Environmental Quality
Carolyn Brescia, Park and Recreation Department
Jeri Carter, Public Information Office

Hal Barker
9191 Garland Road, # 1126
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hbarker_2011@yahoo.com

“EXHIBIT A”

From: Hal Barker` [mailto:hbarker_2011@yahoo.com]
Sent: Friday, July 12, 2013 1:30 PM
To: Frauli Trulson, Lori
Subject: Open records Request - 811 Pemberton Hill Road - Asbestos

Lori,

I learned today that the City reported asbestos to a future Texas Horse Park tenant as an issue in the multiple buildings that were at one time on the Texas Horse Park site.

My unconfirmed report is that City of Dallas demolition crews demolished the buildings containing asbestos and I presume removed the materials to a general landfill.

I have experience with asbestos removal so I have an understanding of remediation protocols. I've commissioned asbestos engineering reports in conjunction with construction projects in the past so I know the drill. The last one of these was at the Infomart and the report was 30 pages long with engineer stamp.

I didn't see anything in the Terracon files about asbestos so I presume your office or Terracon may not have been in the asbestos loop.

If you do have anything relating to asbestos at 811 Pemberton Hill Road, I'd like to see those records ASAP under the Texas Public Information Act as part of my original Open Records on 811 Pemberton Hill, as well as any records relating to remediation of asbestos at 811 Pemberton Hill Road.

The demolition took place in about July 2012.

There is a great deal of debris left on the site and this indicates to me that this was not a licensed remediation crew under the supervision of an professional engineer as was required at the Infomart.

What concerns me personally is residual asbestos in the soil and the general environment, and the possible circumvention of routine protocols for asbestos removal. What also concerns me is that the folks who removed

the alleged asbestos, if not trained professionals, may not have been informed of the dangers inherent to asbestos.

Hal

Hal Barker
Dallas, Texas