

MEMORANDUM OF LAW

DATE: January 31, 1994

TO: Robert Osby, Fire Chief

FROM: City Attorney

SUBJECT: Public Record/Hazardous Material Management Plan

In a memorandum dated December 16, 1993, and received in our office January 4, 1994, you asked whether documents submitted from a business as part of a plan check and building permit process relating to the storing of hazardous materials was public information accessible to private parties. Specifically, the San Diego Fire Department ("SDFD") has requested information from a business about the "proposed location of hazardous chemicals stored outdoors on their property." The SDFD requires this information to complete its plan check because of public safety concerns. The information provided by the business, however, is not public information. The following is the legal analysis of that conclusion.

In Health and Safety Code ("H&S") section 25506(a), it provides in part, "the administering agency shall maintain records of all business plans received and shall index them by street address and company name. The business plan and revisions shall be available for public inspection during the regular working hours of the administering agency; except that those portions of the business plan specifying the precise location where hazardous materials are stored and handled onsite, including any maps of the site, as required by paragraph (5) of subdivision (a) of Section 25509, shall not be available for inspection (emphasis added)." H&S section 25509(a)(5) provides that sufficient information regarding hazardous materials must be disclosed to appropriate personnel in order to prepare adequately for emergency responses to potential releases of hazardous materials. In addition, Government Code section 6254(k) indicates, "records the disclosure of which is exempted or prohibited pursuant to federal or state law (emphasis added)" are not disclosable.

Consequently, H&S section 25506(a) applies to the issue at hand. The information needed by both the SDFD and Building Inspection Department is, in essence, part of a "business plan"

and site specific information as to the location of the hazardous materials onsite is nondisclosable. Therefore, the Public Records Act contained in Government code sections 6250 - 6268 would not compel disclosure of site specific information regarding the location of hazardous materials to private parties. H&S section 25506(a) prohibits disclosure of site specific information regarding the location of hazardous materials and pursuant to Government Code section 6254(k), records may be deemed nondisclosable according to the Public Records Act if the information is exempted from disclosure by state law.

In conclusion the hazardous materials information required to be disclosed in a mandated business plan for emergency response is accessible to the Fire Department as a designated regulatory agency. Such plans are not, however, open to general public access. To insure this, all business plan submittals should be clearly marked as not subject to public disclosure as it relates to the specific location of hazardous materials and kept separate from general building permit evaluations to preserve this confidentiality.

Don't hesitate to call if I can be of further assistance regarding this issue.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

ELH:mm:518:210:(x043.2)

cc Kate Casper, Assistant Fire Marshal

Alan Hardtarfer, Administrative Analyst - Bldg. Inspection

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