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April 15, 2014

Attorney General Abbott
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

Subject: Open Government

Dear Attorney General Abbott,

Based on your stated mission¹ and Public Information Act §552.3215(i), I respectfully request a review of my closed meeting, open records, and purchasing complaint originally submitted to the Llano District Attorney's Office, investigated by ADA Gary Bunyard.

Proving that illegal closed and walking meetings took place is difficult because of their nature – they are secret and clandestine. However in this case, it should be easy to prove since we have three distinct types of conclusive, undeniable evidence – despite ADA Bunyard's assertion that it is "insufficient."

1. **Audio & Video Evidence** – In a scheduled, videotaped, city council meeting, Mayor Mikel Virdell admitted that, in a *closed meeting*, council *decided to contract* Chanas Aggregates, LLC for \$50,000. The video shows that council members did not ask a single question and were able to answer questions. This demonstrates that they had already discussed it and had decided.
2. **Published Evidence** – The meeting agenda item F2 for that meeting indicates that "The Elected Officials and Staff have for several months explored the various avenues..." Also, I submitted a PIA request for information regarding the closed meeting referenced in Mayor Virdell's video statements. The city responded that the referenced meeting was on 10/7/13, which was a closed meeting but a different posted subject. They later changed their answer to say that no closed meeting on dredging was held.

¹ An open government is the cornerstone of a free society. The Attorney General is responsible for ensuring that Texas government is open and accessible to all citizens.

The Texas Open Meetings Act represents a commitment to the people of Texas that the public's business will be conducted in the open. It is a legal guarantee of a transparent government and one to which I'm committed as attorney general.

Gregg Abbott

3. **Outcome Evidence** – The outcome of the secret meeting(s) was a contract with a local contractor that was not in the dredging business - despite the stated objective of determining the best approach to dredging. The amount of the contract was just under the competitive bid requirement but extras were excluded from the contract which would have pushed the cost past the \$50K threshold. The scope of the contract was arbitrary to keep the cost just under the \$50K threshold.

One of the obvious reasons for the open meetings and records laws is an attempt to prevent secret, back-room deals with privileged contractors. The evidence above shows this to be a classic case - all alternative dredging techniques, costs, contractors, and contract provisions were discussed in secret, private meetings that were not announced to the citizens. The chosen vendor is local and not in the dredging business. The contract was priced and specified to avoid competitive bidding laws. Mayor and council agreed to the contract in secret. Citizens were presented the final agreed-to solution, as well as cost, contractor, and contract, after all discussions and decisions were made – as stated by the mayor on the videotape and by the city manager in the agenda item description. The final vote in open session was a sham to placate the watchdogs in Llano. Many citizens had valid concerns about not using real dredging techniques that would work in critical areas, whereas the chosen vendor's technique would not.

I believe the Assistant District Attorney's investigation was superficial and flawed. Of course the city manager and city attorney will deny they had an illegal meeting. The mayor and council members would have also had they been asked. Teenagers will say they weren't speeding when stopped for speeding. This is not evidence. Stopping the investigation at this point is grossly insufficient.

ADA Bunyard states that the mayor "misspoke" and used a "poor choice of words." Where is the evidence of that? What did the mayor mean to say? Which words did he misspeak? What words were poor and what were the better words? Were his statements unclear or ambiguous? ADA Bunyard didn't even question the mayor, so any assertion of misspeaking is hearsay, nor did he question council members or the vendors. Thus, we don't know when/how they learned about dredging, when/how they choose the vendor, or when/why they agreed to spend \$50K. It wasn't in an open meeting.

Further, there were errors in ADA Bunyard's statements and he has an admitted conflict of interest. For example,

1. ADA Bunyard, in "conclusions on complaints – first series", page 2, item #1, says that he "believes that no secret, illegal meeting has taken place," yet he goes on to show in his analysis that it had.
2. ADA Bunyard, in "conclusions on complaints – first series", page 3, item #2 references the Attorney General Open Meetings Handbook which seems to substantiate my argument. It would be helpful if he had stated what meetings were held, what phone calls

were placed and who participated in each. The mayor and council clearly had decided this issue before the open meeting. When and where did they get that information and how did they decide – before the open meeting?

3. ADA Bunyard , on page 5 item #5 states that an internet search only shows two dredging companies in our area, one being Chanas, but would not/could not produce the search results. I used two search engines and Chanas is not a listed dredger. This is significant in that a company that does not specialize in dredging, using a non-traditional dredging approach, was chosen over other real dredging companies for the purpose of “testing for best dredging procedures” as stated in the agenda. Why would one choose a company that was not experienced in any real dredging procedures to select the “best” procedure and how would those best dredging procedures be tested by a company who did not do dredging or have dredging equipment? As it turns out, Chanas merely removed and sold material and the City paid them for a resource that was said to be depleted on Chanas property.
4. The remainder of ADA Bunyard’s document is equally shallow and flawed. I will gladly go through it thoroughly should you assign an investigator.
5. ADA Bunyard has stated that he did not interview the mayor because he had personal and business relationships with the mayor. This conflict of interest alone should justify an investigation.

To extend the teenage speeding analogy, if a teenager can wave away a speeding ticket by lying about speeding, what is the impediment to their repeating both crimes? Not only would there be none, but they would be emboldened to do it again. It is important to the citizens of Llano that this behavior be punished to discourage further lawbreaking.

I have documented 22 other incidences of violations of 25 discrete criminal violations. I believe this constitutes corruption. I would be glad to work with investigators to stop corruption in Llano, but giving them a “speeding ticket” on this one would a positive step in that direction.

My request is that a proper, thorough investigation be done.

Sincerely,

Attachment: Complaint filed with Llano District Attorney’s Office which includes DVD

Attachment: Llano Assistant District Attorney Gary Bunyard response