ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2006

Ms. Anna Simo
Executive Director
Bee Community Action Agency
P. O. Box 1540
Beeville, Texas 78104-1540

OR2006-00976

Dear Ms. Simo:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 244413.

The Bee Community Action Agency (the "agency") received a request for the requestor's personnel file, documentation pertaining to the requestor's termination of employment, a personnel manual, policies pertaining to Head Start, and the minutes and audio recording of a closed session meeting. You state that the agency is making some of the requested information available to the requestor but claim that the audio recording of the closed session is excepted from disclosure under under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Gov't Code § 552.101. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only *under a court order issued under Subsection (b)(3).*" (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). The audio recording of the closed session must therefore be withheld from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

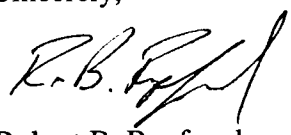
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 244413

c: Ms. Ann M. Scotten
c/o Ms. Anna Simo
Executive Director
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