



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2010

Ms. Lindas Shepard
City Secretary
Village of Jones Creek
7207 Stephen F. Austin Road
Freeport, Texas 77541

Mr. Wallace Shaw
City Attorney
Village of Jones Creek
P.O. Box 3073
Freeport, Texas 77542

OR2010-17849

Dear Ms. Shepard & Mr. Shaw:

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# 401573.

The Village of Jones Creek (the "village") received a request for a named village council member's handwritten notes taken at two specified budget workshops and one specified meeting. You claim the submitted notes are not subject to the Act, and, in the alternative, that portions of the notes are excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your contention that the submitted notes are not subject to the Act. Section 552.002(a) of the Act provides:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). You state these notes are the personal notes of a village council member that were maintained in the council member's sole possession for use as a memory aid. In support of your position that the notes may be withheld, you cite to Open Records Decision No. 77 (1975) where we concluded that personal notes made by individual faculty members for their own use as memory aids were not subject to the Act. However, since issuing Open Records Decision No. 77, this office has issued numerous rulings concluding that information collected, assembled, or maintained in connection with the transaction of official business, including "personal" notes, is subject to the Act. *See e.g.*, Open Records Decision Nos. 635 (1995) (public official's or employee's appointment calendar, including personal entries, may be subject to Act), 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 327 (1982) (notes made by school principal and athletic director relating to teacher "were made in their capacities as supervisors of the employee" and constitute public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam subject to predecessor of Act).

You argue that because the village does not physically possess and has not seen these notes, they are not subject to the Act. However, the characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an official or employee of a governmental body or whether a governmental body has a particular policy or procedure that establishes a governmental body's access to the information. *See* ORD 635 at 3-4 (finding that information does not fall outside definition of "public information" merely because individual official or employee of governmental body possesses information rather than governmental body as whole). Thus, if the information at issue was collected, assembled, or maintained in connection with the transaction of official village business, the mere fact that the village does not possess the information does not take the information outside the scope of the Act. *See id.* at 6-8 (stating information maintained on a privately-owned medium and actually used in connection with the transaction of official business would be subject to the Act). In this instance, the handwritten notes at issue were created by the named council member in connection with the specified workshops and meeting that pertained to village matters. Additionally, because the information at issue was

created and is maintained by the council member in her capacity as a village official, this information is maintained by the village for purposes of the Act. *See* Open Records Decision No. 425 at 2 (1985) (concluding, among other things, that information received by school trustees in their official capacity was collected by the school district in connection with the transaction of its official business, even though information was mailed to trustees' homes and not held in district offices) (overruled on other grounds by Open Records Decision No. 439 (1986)). Thus, this information was created as part of the village's official business and is maintained by the village for purposes of the Act. *See* Gov't Code § 552.002. Accordingly, we find the submitted notes are subject to the Act and may only be withheld from disclosure if an exception under the Act applies.

You assert the portions of the submitted notes you marked are excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

The information you marked under section 552.111 consists of notes about salary changes for particular village employees and notes about the village's purchase of a private company. Upon review, we have marked the portions of this information that pertain to the village's proposed purchase of a private company. We find this information consists of advice, opinions, and recommendations of the village regarding policy matters concerning matters of broad scope. Accordingly, the village may withhold the information we marked under section 552.111 of the Government Code.¹ Although you generally claim the remaining information you marked concerns particular village employees' salaries, you do not explain how this administrative salary information concerning individual employees is of broad scope

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

such that it affects the village's policy mission. Thus, we conclude you failed to demonstrate the applicability of the deliberative process privilege to this information, and it may not be withheld under section 552.111 of the Government Code. As you raise no other exceptions to disclosure of this information, it must be released along with the remaining submitted information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 401573

Enc. Submitted documents

c: Requestor
(w/o enclosures)