

April 24, 2026

The Honorable Attorney General Ken Paxton
Office of the Attorney General of the State of Texas
Attention: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via Electronic Filing

Re: Request for Open Records Decision: Village of Briarcliff/Aitchison_04.02.26
OAG Tracking ID: OR26019648
Texas.gov Request ID: 66402560

Honorable Attorney General Paxton:

On April 2, 2026, the Village of Briarcliff (“Village”) received a public information request from Matt Aitchison (“Requestor”) for the following:

“...please find attached a request for public records in six categories related to the March 25, 2026 Village Council meeting, including records concerning the e-bike/e-motorcycle ordinance, request-to-speak forms, Exhibit A, and Resolution 2026-03-25-06.

Category 1 – Request to Speak Form (March 2026 Meeting) – All “Request to Speak” forms, sign-up sheets, cards, digital submissions, emails, text messages, or any equivalent mechanism - regardless of format - by which any individual requested an opportunity to address the Village Council at the March 2026 meeting, whether accepted or declined, including:

- 1. The first and last name of each individual who submitted a request to speak;*
- 2. The question, topic, or subject matter noted on each submission;*
- 3. For any request that was **denied or declined**: all communications (written, electronic, or verbal memorialized in notes) to the individual explaining why their request was denied, and any internal communications among Village officials, aldermen, or staff regarding the decision to deny their request to speak.*

Category 2 – Legal Counsel Consultation: E-Bike / E-Motorcycle Ordinance - All records reflecting consultation with legal counsel (including but not limited to Bojorquez Law Firm or any other outside counsel) regarding an e-bike, e-motorcycle, or electric vehicle ordinance, **both before and after the March 2026 meeting, including:**

- 1. All billing records, invoices, and fee statements referencing this subject matter, including dates of service, hours billed, and general subject matter descriptions;*

2. *All communications - including emails, letters, text messages, and memoranda – between Village officials, aldermen, staff, or agents and legal counsel on this topic;*
3. *Draft ordinance language prepared, reviewed, or circulated in connection with this topic;*
4. *Any legal research, memoranda, or written opinions provided to the Village on this topic;*
5. *The dates on which any consultation occurred and the identities and capacities of all individuals involved.*

*To the extent the Village believes any responsive records are excepted from disclosure under attorney-client privilege, the Village is required to seek an Attorney General ruling within 10 business days per § 552. 301, demonstrating each element of the privilege for each withheld record. The mere involvement of an attorney does not establish the privilege - the attorney must have been acting in a professional legal capacity, not an administrative or policy advisory role. See *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.- Texarkana 1999).*

Category 3 - Complaints Prompting the Ordinance - *All complaints, reports, incident logs, emails, letters, phone logs, voicemails, verbal complaints memorialized in notes, Facebook messages or comments directed to Village officials, and any other records - regardless of format - received by the Village from citizens, residents, or any other parties regarding e-bikes, e-motorcycles, electric scooters, Sur-Rons, or similar electric vehicles that may have prompted or contributed to the decision to pursue this ordinance.*

This includes complaints received at any time prior to and including the March 2026 meeting, as well as any internal notes or memoranda documenting or summarizing such citizen concerns.

Category 4 – Pre-Meeting Communications & Enforcement Plans - *All communications - including but not limited to emails, text messages, social media messages and posts, direct messages, and verbal communications memorialized in notes - between Village aldermen, officials, employees, contractors, or agents and any third party regarding the e-bike/e-motorcycle ordinance discussed or considered in connection with the March 2026 meeting, including:*

1. **Communications with constables or law enforcement** regarding the ordinance, including any enforcement plans, strategies, jurisdictional discussions, or operational details about how the ordinance would be enforced;
2. **Communications with any individual or party** - including but not limited to constables, Facebook group administrators, community members, or other third parties - in which the substance, purpose, scope, or enforcement of the ordinance was discussed or shared **prior to the March 2026 Council meeting**, including any sharing of ordinance-related information on social media before the agenda was publicly available;

3. **Any communications** explaining or describing the substance of the ordinance to anyone outside the Village Council prior to the public meeting, and any records reflecting how and to whom this information was disseminated.

Note regarding information disseminated before the meeting: Information about this ordinance was shared publicly on Facebook before the March 2026 meeting, indicating that someone with knowledge of the ordinance's content communicated it outside the agenda process. This factual predicate forms the basis of this category.

Category 5 – “Exhibit A” Referenced at March 2026 Meeting - All documents, attachments, or exhibits referred to as "Exhibit A" (or any similar designation) in connection with the e-bike/e-motorcycle ordinance discussed at the March 2026 meeting, including:

1. The document itself in its entirety;
2. Any communications regarding the distribution of Exhibit A to aldermen, including when and how it was provided;
3. Any communications regarding Exhibit A's omission from the publicly posted agenda, despite its inclusion in the meeting packet.

Category 6 - Resolution 2026-03-25-06 (annual Investment Policy) - All records related to the annual investment policy adopted by the Village Council at the March 25, 2026 meeting as Resolution 2026-03-25-06, including:

1. The resolution itself in its entirety;
2. The investment policy document adopted or reaffirmed by the resolution;
3. Any supporting materials, memoranda, or auditor recommendations provided to the Board of Aldermen in connection with this resolution;
4. Any prior versions of the investment policy, if the current version reflects changes from the previously adopted policy”. See **Exhibit A**.

On behalf of the Village, I respectfully submitted a request for a decision from the Office of the Attorney General regarding the Village’s authority to withhold from the public certain requested information on April 17, 2026, *see* **Exhibit C**. This request was submitted pursuant to the Texas Public Information Act, Tex. Gov’t Code §552.301.¹

The Village did not have responsive documents pertaining to Category Nos. 3 and 4. Further Category No. 2, Item 5 is a question asking for “[t]he dates on which any consultation occurred and the identities and capacities of all individuals involved” which the Texas Public Information Act (“Act”) does not require a governmental body such as the Village to create new information, do legal research, or **answer questions**. However, the Village will provide the Requestor with responsive information² pertaining to Category Nos. 1, and 6, concurrently with the filing of this brief.

¹ Please note that the Village was closed for the Good Friday holiday on Friday, April 3, 2026. *See* **Exhibit B**. Therefore, this day was not a “business days” for the purposes of calculating deadlines.

² Information such as email addresses of members of the public and not belonging to the Requestor, will be redacted pursuant to ORD 684 (2009).

The Village believes that the information responsive to requests Category Nos. 2, and 5, submitted as **Exhibit D** is confidential and excepted from public release and therefore requests a decision as to whether the responsive documents are excepted from disclosures pursuant to the following:

- Tex. Gov't Code § 552.107 – Certain Legal Matters
- Tex. Gov't Code § 552.111 – Agency Memoranda

The Village submits the following written comments in support of its reasons why the stated exceptions apply in accordance with Texas Government Code Section 552.301(e) below.

Brief in Support

With regards to Category No. 2 for “All records reflecting consultation with legal counsel (including but not limited to Bojorquez Law Firm or any other outside counsel) regarding an e-bike, e-motorcycle, or electric vehicle ordinance, **both before and after** the March 2026 meeting, including,” only information that was in existence at the time that the Requestor made his request (April 2, 2026) is being provided to the Office of the Attorney General for review.

I. TEX. GOV'T CODE § 552.107 – Certain Legal Matters

The Village asserts that the information at issue (*see Exhibit D*) contains information that is excepted from public disclosure under § 552.107 of the Act because it is “information that an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, the Texas Rules of Criminal Procedure, or the Texas Disciplinary Rules of Professional Conduct.”

It is well established that Section 552.107 limits the information that may be withheld to information that reveals client confidences to the attorney and to information that reveals legal advice, opinions, and recommendations from the attorney. Tex. Atty. Gen. ORD No. 574 (1990) (attorney notes documenting client confidences or the attorney’s legal advice or opinion to the client may be withheld); Tex. Atty. Gen. OR94-163 (1994) (memorandum containing legal advice and recommendations to an ACC official, in the context of an attorney-client relationship with ACC may be withheld).

Specifically, we claim § 552.107(1) – Information Within the Attorney-Client Privilege to withhold the information from public disclosure (*see Exhibit D*). The information included in the documents responsive to this request was produced by attorneys hired to give legal opinions and advice in their capacity as Village Attorneys for the purpose of providing legal services and advice to the Village of Briarcliff, Texas. Tex. R. Evid. 503(b)(1). *See Harlandale Independent School District v. Cornyn*, 25 S.W.3d 328, 333 (Tex. App.—Austin 2000, pet. denied).

Texas Rule of Evidence 503

Additionally, Texas Rule of Evidence 503 enacts the attorney-client privilege. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information

expressly confidential. *In re City of Georgetown*, 53 S. W.3d 328, 336 (Tex. 2001). Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or
- (E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Further, with regards to the attorney-client relationship with the Village, the following individuals, in **Exhibit D**, were named in the aforementioned documents and are considered to be client representatives and are considered privileged parties:

Al Hostetler, Mayor;
Linda Aldrich, Village Alderman (Council Member);
James Johnston, Village Alderman (Council Member);
Jeff Elliott, Village Alderman (Council Member);
Jo Ann Richmond, Village Alderman (Council Member);
Mark Charlesworth, Village Alderman (Council Member);
Aaron Johnson, Village Administrator; and
Amber Rowe, Village Secretary

The Bojorquez Law Firm, PC serves as the Village Attorney in Briarcliff, Texas and the following are lawyers and lawyer representatives that are considered privileged parties:

Erin A. Higginbotham, Village Attorney/Senior Associate Attorney;
Hope Avila, Senior Legal Assistant;
Nicole Hipp-Follweiler, Legal Assistant; and
Jessica Grosek, former Legal Assistant.

The communications in **Exhibit D** include confidential communications summarizing the work done by the law firm for the Village. The information included in the communications are intended to be confidential and is not intended to be disclosed to third persons. Further, these communications were made in furtherance of the rendition of professional legal services to our client, the Village of Briarcliff.

Accordingly, we believe the information in **Exhibit D** must be withheld as it is excepted from disclosure pursuant to section 552.107 and Texas Rule of Evidence 503.

II. TEX. GOV'T CODE § 552.111 – Agency Memorandum

Deliberative Process Privilege

The Village asserts that the documents at issue (*see Exhibit D*) are draft internal materials and should be excepted from disclosure under Texas Government Code § 552.111, which excepts an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency. In Open Records Decision No. 615 (1993), the Attorney General's office examined this exception in light of the decision of the Austin Court of Appeals in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). Open Records Decision No. 615 holds that § 552.111 excepts internal communications consisting of advice, recommendations, opinions, and other materials reflecting the policy making processes of the governmental body. ORD-615 (1993) *at* 1.

In 2000, the Attorney General's office issued OR2000-3226, which recognized a distinction between a final memorandum and the draft of such a document. That opinion found that a draft of a document that has been released or is intended for release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and should therefore be withheld under § 552.111 of the Government Code. OR2000-3226 *at* 1 (citing ORD-599 (1990)). Furthermore, when a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by § 552.111. *Id.*; ORD-559 (1990); *see also* ORD-615(1993), OR99-3694, *and* OR99-3026.

OR2000-3226 involved a request for a “draft copy of the University of Texas-Austin budget for 2000-2001.” OR2000-3226 *at* 1. The University of Texas System claimed the draft was excepted from disclosure under Texas Government Code § 522.111. *Id.* The University stated that the draft budget was a working document which goes through numerous revisions at different levels of the systems administration until it is approved by the Board of Regents in a public meeting, and that the final budget was ultimately subject to release after the Board of Regents' approval. *Id.* *at* 2. Based on those representations and your office's review of that information, your office concluded that the draft copy of the University of Texas-Austin budget for 2000 and 2001 is excepted from public disclosure under § 552.111. *Id.*

Like the University of Texas' draft budget, the Village's draft documents at issue (*see Exhibit D*), are documents going through revisions at the staff level and have not yet been approved by the governing body. This is information that is protected under section 552.111, as

it incorporates the deliberative process privilege into the Public Information Act for intra-agency and interagency communications. *See City of Garland*, 22 S.W.3d at 360; *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 456 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep’t of Pub Safety v. Gilbreath*, 842 S.W.2d 408, 412-13 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 547 at 5-6 (1996). The deliberative process privilege, as incorporated into the Public Information Act, protects from disclosure intra-agency and interagency communications, consisting of advice, opinion, or recommendations on policymaking matters of the governmental body at issue. The purpose of withholding advice, opinion, or recommendations under section 552.111 is to “encourage frank and open discussion within the agency in connection with its decision-making processes” pertaining to policy matters. *Austin v. City of San Antonio*, 630 S.W.3d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); *see also City of Garland*, 22 S.W.3d at 361; *Lett, 917 S.W.3d at 457*; *Gilbreath*, 842 S.W.2d at 412.

The final versions of the requested draft documents will be subject to release after review and approval by the governing body. Therefore, the Village believes that the draft documents at issue (see **Exhibit D**) should be excepted from required public disclosure. The documents at issue (**Exhibit D**) are draft ordinances, reports and/or working papers which consist of internal communications reflecting the advice, recommendation, and opinions of the Village staff and the Village attorney. These drafts reflect recommendations that may or may not end up in the final ordinances or reports. Often times the draft is a recommendation of how a project should be considered. In other words, the manner and form in which the draft legislation, reports and/or working papers proposed are itself an editorial position on how to present the recommendation and opinions of the staff to the Village. Such draft information and working papers are necessarily the opinions, recommendations, and advice of the legal department regarding their consideration of the proposed ordinance and are therefore excepted from disclosure under § 552.111. OR2000-3226 at 2.

To hold otherwise would jeopardize the integrity of any current process and the recommendations of the Village staff. As recognized in *Gilbreath*, § 522.111 “is intended to protect advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.” 842 S.W.2d at 412. The department’s task is to gather the necessary information and draft the analysis to make recommendations regarding approval of the proposed ordinance. Clearly, such a draft would concern matters of policy. *See* OR99-3026 (finding that audit of police department’s recruiting division concerned that city’s policy matters).

For all of these reasons, the requested information should be excepted from disclosure under Texas Government Code § 552.111.

Conclusion

For the reasons explained above, the Village seeks permission to withhold the submitted information. A copy of this correspondence, without exhibits, will be provided to the Requestor. Please contact me if you have any questions regarding this matter. Thank you for your consideration.

The Honorable Attorney General Ken Paxton

April 24, 2026

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Sincerely,



Erin A. Higginbotham

Village Attorney for the Village of Briarcliff

Enclosures: Exhibit A – Original Request
Exhibit B – Holiday Schedule
Exhibit C – 10-day letter
Exhibit D - Documents at Issue

cc: Matt Aitchison, Requestor
(w/o enclosures)

via E-mail: Aitchison.matt@gmail.com