OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 24, 2003

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2003-1981

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178412.

The Baytown Police Department (the "Department") received a request for information concerning offense report number DZ 15863. You assert some of the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Sections 552.108(a)(2) and 552.108(b)(2) of the Government Code except from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Govt. Code § 552.108(a)(2), (b)(2). A governmental body claiming either section 552.108(a)(2) or section 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Though you inform us that the submitted documents relate to an inactive theft investigation that did not result in a conviction or deferred adjudication, you subsequently state the case remains pending. As these arguments are inconsistent with each other, you have not met your burden of establishing the applicability of section 552.108(a)(2) or 552.108(b)(2). Therefore, the Department may not withhold the information highlighted in orange based on section 552.108(a)(2) or 552.108(b)(2).

Next, section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license, license plate, or motor vehicle title or registration issued by an agency of this state. In this case, the submitted information contains license plate numbers and driver's license numbers, some of which you have highlighted in pink. Therefore, the Department must withhold the information pertaining to motor vehicle records, which we have marked, under section 552.130.

Finally, the submitted information contains an e-mail address subject to section 552.137 of the Government Code, which makes certain e-mail addresses confidential. Specifically, section 552.137 states the following:

> (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
>
> (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Govt. Code §552.137. You do not inform us that the member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. Therefore, the Department must withhold the e-mail address of the member of the public, which we have marked, under section 552.137of the Government Code.

In summary, the Department must withhold the information we have marked that pertains to motor vehicle records under section 552.130 of the Government Code. Also, the Department must withhold the marked e-mail address under section 552.137 of the Government Code. As the Department did not establish the applicability of section 552.108(a)(2) or 552.108(b)(2) of the Government Code, it must release the remainder of the submitted information to the requestor.

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. Govt. 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 10 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).

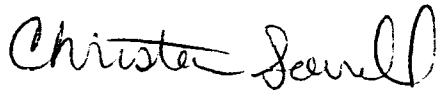
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Govt. Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 178412

Enc: Submitted documents

c: Ms. Sharron Booth
6291 Decker Drive
Baytown, Texas 77520
(w/o enclosures)