ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2010

Mr. James T. Shelton
P.O. Box 1370
Clarendon, Texas 79226

OR2010-16010

Dear Mr. Shelton:

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# 397595.

The Memphis Police Department (the "department"), which you represent, received a request for: (1) video and audio of a specified incident; (2) paperwork pertaining to the specified incident; (3) the outcome of the complaint filed by a named individual regarding the specified incident; (4) the number of complaints against department officers for a specified time period, copies of those complaints, and the names of the officers in said complaints and the outcomes; (5) the amount of revenue the department has received from the issuance of traffic citations for a specified time frame; (6) the department's written policy on using a Taser/excessive force; and (7) the department's written policy on releasing documents to the public. You indicate you have released Categories 4, 5, and 6 to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the request seeking the department's written policy on releasing documents to the public. To the extent information responsive to that portion of the request existed on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed criminal investigation and a completed internal affairs investigation conducted by the department. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation made by a governmental body is expressly public unless it is either excepted under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 at 475-76; Open Records Decision No. 552 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* ORD 665 at 2 n.5. As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022. Consequently, the submitted information may not be withheld under section 552.103 of the Government Code. However, because section 552.022(a)(1) specifically allows for the exception of information under section 552.108, we will consider your argument under that exception.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is not applicable to records of an internal affairs investigation that is purely administrative in nature and did not involve the criminal investigation or prosecution of an officer's alleged misconduct. *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex.

App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer). You state the submitted information pertains to a criminal investigation that did not result in a conviction or deferred adjudication. Upon review, some of the submitted records reflect they were generated as part of an internal investigation conducted by the department that was purely administrative in nature. You do not provide any arguments explaining how the internal investigation resulted in a criminal investigation or prosecution. Accordingly, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to some of the submitted records, and the department may not withhold them on that basis. However, we have marked the records that were created as part of the criminal investigation of the specified incident, which gave rise to the internal investigation at issue. Based on your representation, we agree section 552.108(a)(2) of the Government Code is generally applicable to this information. We note, however, that this information includes a citation. Because a copy of the citation has been provided to the individual who was cited, we find that the department may not withhold the citation under section 552.108(a)(2) of the Government Code.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2).

We note the submitted citation contains information subject to section 552.130 of the Government Code.[1] Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). Thus, the department must withhold the Texas driver's license and license plate information we have marked in the submitted citation under section 552.130 of the Government Code.[2]

In summary, with the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2). The department must withhold the Texas driver's license and license plate information we have marked in the submitted

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[1]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

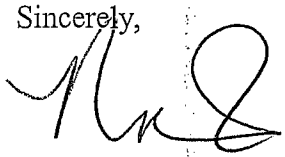
[2]We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

citation under section 552.130 of the Government Code. The remaining information must be released.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 397595

Enc. Submitted documents

cc: Requestor
(w/o enclosures)