



February 19, 2015

Mr. Sam Shobassy  
Assistant City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

OR2015-03286

Dear Mr. Shobassy:

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# 558963.

The Port Arthur Police Department (the "department") received a request for information related to all incidents in which an officer "discharged a firearm resulting in injury or death of a human being" during a specified time period. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains press releases. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the department may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you seek to withhold the previously released information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; ORDs 665 at 2 n.5, 177 at 3. Therefore, the department may not withhold the submitted press releases under section 552.108 of the

Government Code. As you raise no further exceptions to disclosure for the press releases, they must be released.

Next, we note the submitted information contains custodial death reports. Article 49.18(b) of the Code of Criminal Procedure provides the Office of the Attorney General shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Crim. Proc. Code art. 49.18(b). The format of a custodial death report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The Office of the Attorney General has determined the four-page report and summary must be released to the public, but any other documents submitted with the revised report are confidential under article 49.18(b). Although you seek to withhold the custodial death reports under section 552.108 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department must release the submitted custodial death reports pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986).

You state the submitted records pertain to closed investigations that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

However, 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 Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

In summary, the department must release the submitted press releases pursuant to section 552.007 of the Government Code and the submitted custodial death reports pursuant

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 558963

Enc. Submitted documents

c: Requestor  
(w/o enclosures)