

Exhibit F

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*Affiliations appear only
for purposes of identification.*

September 29, 2020

VIA EMAIL

Jennifer A. Sink
Chief Legal Officer
City of Memphis
Memphis, TN 38103
jennifer.sink@memphistn.gov

Re : Denial of Public Records Requests W015761-071620 by Marc
Perrusquia.

Dear Ms. Sink:

I represent Marc Perrusquia, the Director of the Institute for Public Service Reporting at the University of Memphis, in his capacity as a freelance journalist. I write regarding the City of Memphis' (the "City") improper withholding of public records responsive to W015761-071620, Mr. Perrusquia's public records request for copies of the video in ISB case I2019-024 involving officer Colin Berryhill (the "Berryhill Video Request").

In response to the Berryhill Video Request, the Public Records Office claimed that "[p]er the custodian, no responsive records exist at this time due to an Administrative investigation." When Mr. Perrusquia requested the legal basis for the denial, the Public Records Coordinator responded: "[t]he request was not denied. There is nothing responsive available at this time until MPD concludes the administrative investigation." Regardless of how the Public Records Coordinator characterized the response, it was a denial. When Mr. Perrusquia responded on July 28, 2020, seeking "the applicable legal provision you are relying on," the Public Records Coordinator responded the same day, saying "I will send this inquiry to the City Attorney's Office and update you accordingly." After two months, Mr. Perrusquia has still not received a response from your office.

The TPRA creates "a presumption of openness and express[es] a clear legislative mandate favoring disclosure of governmental records." *Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007). There is no exemption under the TPRA for records relating to an ongoing administrative investigation conducted by the Memphis Police Department's Inspectional Services Bureau ("ISB") Internal Affairs office. Nor does Tenn. R. Crim. P. 16 provide a basis for withholding the public records Mr. Perrusquia has requested. Rule 16 only applies to criminal investigations and does not encompass administrative investigations.

The 2020 Memphis Police Department Policy and Procedure Manual (the “MPD Policy Manual”) sets forth a clear division between (i) investigations into complaints of criminal misconduct involving MPD Officers and employees, which are to be conducted by ISB’s Security Squad, and (ii) investigations into administrative complaints of violations of MPD and City Policy and Procedure, which are to be conducted by ISB’s Internal Affairs office. *See* MPD Policy Manual at Ch. I, Section 2, pp. 2–3.

This divide between administrative investigations and criminal investigations is reinforced by recent changes to ISB’s intake procedures. Now, when citizens make excessive force complaints, ISB provides them with a “Complainants Rights Form,” on which the complainant is asked to sign a statement saying that they “have been advised of my right to have a criminal report taken in addition to my complaint of excessive force made in the Inspectional Services Office.”

“Facilitating access to governmental records promotes public awareness and knowledge of governmental actions and encourages governmental officials and agencies to remain accountable to the citizens of Tennessee.” *Schneider*, 226 S.W.3d at 339 (citing *Memphis Publ’g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74-75 (Tenn. 2002)). And indeed, the TPRA constitutes “a clear mandate in favor of disclosure,” *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297, 305 (Tenn. 1998), which must be “broadly construed so as to give the fullest possible public access to public records.” Tenn. Code Ann. § 10-7-505(d). As there is no legal basis for withholding the records requested by Mr. Perrusquia in the Berryhill Video Request, copies of these records should be provided immediately. Thank you for your consideration of this matter. I look forward to your timely response.

Best regards,

A handwritten signature in blue ink that reads "Paul R. McAdoo". The signature is written in a cursive, flowing style.

Paul R. McAdoo
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Local Legal Initiative Staff Attorney (Tennessee)
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