



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2013

Ms. Debra L. Goetz
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OR2013-17520

Dear Ms. Goetz:

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# 501694.

The City of Hidalgo (the "city"), which you represent, received a request for five categories of information regarding the city's procurement of and contract with any outside vendor for emergency medical services billing services. You claim the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state the requested information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified Rescue EMS, ProMedic EMS, Valley EMS, Med-Care EMS, and Hidalgo County EMS of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exceptions you claim.

We must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) written comments

stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You inform us the city received the request for information on July 22, 2013. Accordingly, the city's fifteen-business-day deadline was August 12, 2013. However, as of the date of this letter, you have not submitted for our review comments explaining why the stated exceptions apply or a copy or representative sample of the information requested. Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. *See id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.*; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. Because the city has failed to comply with the requirements of the Act, the city has waived its argument under section 552.104 of the Government Code, which is a discretionary exception that does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Furthermore, although the city also raises a mandatory exception to disclosure, because you have not submitted any of the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. You also claim third-party interests are at stake, which can provide a compelling reason to withhold information. However, we have not received comments from any third party explaining how release of the requested information would affect its proprietary interests. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Thus, we have no choice but to order the requested information be released pursuant to section 552.302 of the Government Code. If the city believes the information is confidential and may not lawfully be released, the city must challenge this ruling in court pursuant to section 552.324 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, 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,


Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/tch

Ref: ID# 501694

c: Requestor

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