



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 4, 2016

Ms. Kaye Edwards  
City Attorney  
City of Big Spring  
310 Nolan Street  
Big Spring, Texas 79720-2657

OR2016-00077

Dear Ms. Edwards:

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# 593066.

The City of Big Spring (the "city") received a request for nine categories of information pertaining to the city fire department, particularly, information relating to its hiring and promotion practices and anti-discrimination policy. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

Initially, we note some of the requested information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-21949 (2014), 2015-21057 (2015), and 2015-26925 (2015). In Open Records Letter No. 2014-21949, we determined the city fire department may withhold the information at issue under section 552.107(1) of the Government Code. In Open Records Letter No. 2015-21057, we determined the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. In Open Records Letter No. 2015-26925, we determined the city may withhold certain information under section 552.103 of the Government Code. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Accordingly, to the extent the requested information is identical to the information previously submitted and ruled on by this office, we conclude the city must continue to rely

on Open Records Letter Nos. 2014-21949, 2015-21057, and 2015-26925 as previous determinations and withhold the information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the requested information is not encompassed by the previous rulings, we will consider whether the requested information is excepted from disclosure.

Next, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records 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* Gov't Code § 552.301(e). The city received the request for information on October 6, 2015. However, as of the date of this letter, the city has not submitted for our review written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the information requested. Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.103 of the Government Code, this section is discretionary in nature and may be waived; as a result, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Because the city has failed to comply with the procedural requirements of the Act, the city has waived its claim under section 552.103 of the Government Code. *See* ORD 663 at 5 (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, to the extent the requested information is identical to the information previously submitted and ruled on by this office in Open Records Letter Nos. 2014-21949, 2015-21057,

and 2015-26925, the city must withhold the information in accordance with those rulings. The remaining requested information must be released pursuant to section 552.302.

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 593066

c: Requestor