



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 12, 1989

Mr. Donald R. Schnitz
Manager
Gas Engineering and Fuels
City Public Service of
San Antonio, Texas
P. O. Box 1771
San Antonio, Texas 78296

Dear Mr. Schnitz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5800; this decision is OR89-111.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City Public Service Board of San Antonio received a request for the purchase price of a tract of land acquired by the board as part of its ongoing acquisition of lignite properties. The board contends that, because it is in the process of acquiring other properties in the area the purchase price of this property may be withheld under sections 3(a)(4) and/or 3(a)(5) of the Open Records Act. The board fears that releasing the purchase price of this piece of property will impair its ability to negotiate on the price of additional pieces of property.

Section 3(a)(4) protects information that would give advantage to competitors or bidders. The purpose of the section is to protect the government's purchasing interests.

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Section 3(a)(4) does not except purchasing or bid information from disclosure when bidding is over and a contract has been awarded. Open Records Decision Nos. 306 (1982); 184 (1978); Open Records Decision No. 453 (1986); cf. Attorney General Opinion MW-591 (1982).

Section 3(a)(5) protects information about the location and purchase price of real property prior to public announcement or award of the project. The section does not apply once the purchase of a piece of property is complete. Open Records Decision No. 222 (1979). Although we recognize that the board has not completed the purchase of all of the property it desires, section 3(a)(5) does not authorize withholding the amount of public funds spent on a particular piece of property.

This office will not extend sections 3(a)(4) and 3(a)(5) to the situation you describe, particularly in light of section 6 of the Open Records Act. Section 6(3) designates as public records information regarding contracts dealing with the expenditure of public funds. Open Records Decision Nos. 514, 511 (1988). Although section 6 does not limit the exceptions in section 3, it heightens the governmental body's burden of showing how they apply. See id.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-111.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

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