



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1998

Mr. Paul M. González
Matthews and Branscomb
106 South St. Mary's Street, Suite 700
San Antonio, Texas 78205

OR98-0354

Dear Mr. González:

On behalf of the City Public Service Board of San Antonio ("CPS"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112763.

CPS received a request for the monthly bill for each of its large volume gas customers. You assert that the requested information is excepted from required public disclosure based on sections 552.104 and 552.110 of the Government Code.

Section 552.104 states that:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). A governmental body properly may be deemed a competitor for purposes of section 552.104 where competition is authorized by law. *See* Open Records Decision No. 593 (1991). In order to withhold information from disclosure based on section 552.104, a governmental body must show that release of the requested information could cause specific harm to that body's legitimate marketplace interests. *Id.* at 9.

A municipal utility is specifically authorized by statute to engage in competition. *See* Open Records Letter No. 96-1307 (1996). Furthermore, we believe CPS has established that the release of the requested information could cause specific harm to its marketplace interests. Accordingly, we conclude that CPS may withhold the requested information from the requestor based on section 552.104 of the Government Code.

In light of our decision under section 552.104, we need not address your section 552.110 claim. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref: ID# 112763

Enclosures: Submitted documents

cc: Mr. Richard Villarreal
Shadrock Petroleum Products, Inc.
115 East Travis, Suite 533
San Antonio, Texas 78205
(w/o enclosures)