



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2014

Ms. Andrea Sheehan  
Assistant General Counsel  
Texas Association of School Boards  
P.O. Box 400  
Austin, Texas 78767-0400

OR2014-15358

Dear Ms. Sheehan:

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# 534780.

Texas Association of School Boards, Inc., custodian of record for the Texas Local Government Purchasing Cooperative d/b/a BuyBoard (the "cooperative") received a request for (1) information pertaining to purchase orders during a specified time period, including the vendor name, purchase order number, purchase order date, purchase order total, and a basic description of purchase; and (2) a separate report of active vendors.<sup>1</sup> You state you will release some responsive information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note the cooperative sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.104 of the Government Code exempts from public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

The cooperative asserts it has specific marketplace interests in the submitted information because “the various commodities and services available for purchase through the BuyBoard may also be available for purchase not only through other purchasing cooperatives, but also in the general marketplace from private sellers and service providers.” The cooperative further asserts it “is one of multiple intergovernmental purchasing cooperatives that eligible entities might choose to join and through which they may opt to make purchases of commodities and services.” You inform this office the submitted information contains details about purchase orders, purchase history, and vendor information that “reveals which Cooperative members are making and have made purchases through the BuyBoard for multiple years, which Cooperative members are buying which commodities and services, which contracts on the BuyBoard have a high volume of purchases, which specific vendors are being utilized by Cooperative members and other information[.]” You explain if this competitive information was made public, it would give competitors detailed knowledge of the cooperative’s member base in order to target the cooperative’s members. Having carefully considered all of your arguments, we find you have demonstrated the cooperative has specific marketplace interests and the prospective release of the submitted information poses a specific threat of harm to the cooperative’s interests in a particular competitive situation. We therefore conclude the cooperative may withhold the submitted information under section 552.104 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/>

[url\\_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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 534780

Enc. Submitted documents

c: Requestor  
(w/o enclosures)