



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 1, 2015

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

OR2015-08491

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# 561971.

The Texas Association of School Boards, Inc., custodian of records for the Texas Local Government Purchasing Cooperative d/b/a BuyBoard (the "cooperative"), received two requests from the same requestor for the latest contracts, price lists, and negotiated discounts for seven named vendors. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of American Seating Company; Contrax Group, L.L.C.; Foliot Furniture Pacific, Inc.; Hertz Furniture Systems, L.L.C.; Krueger International, Inc.; School Speciality, Inc.; and Sedia Systems, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the requests for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the interested third parties explaining why their information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. *See id.* § 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. Accordingly, the cooperative may not withhold any of the submitted information on the basis of any proprietary interest any of the interested third parties may have in it.

Section 552.104 of the Government Code excepts 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).

You assert the cooperative 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 through an independent procurement process." You further assert the cooperative "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 us the submitted information "reveals information solicited from vendors and provided specifically to the [c]ooperative in a competitive proposal invitation process." You argue the release of this information would "provide competitors with an unfair advantage by enabling them to determine prices, terms, and conditions necessary to beat the cooperative's prices, terms, and conditions, which would harm the cooperative's competitive interests in this marketplace." Upon review, 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. Therefore, we find 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/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,



Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

Ref: ID# 561971

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

American Seating Company  
Attn: Mr. Nelson Wilfore, Mr. Matthew Corl and Ms. Betsy Howell  
401 American Seating Center  
Grand Rapids, Michigan 49504  
(w/o enclosures)

Contrax Group, L.L.C.  
Attn: Mr. James A. Land and Mr. Josh Rollins  
690 NE 23rd Avenue  
Gainesville, Florida 32609  
(w/o enclosures)

Foliot Furniture Pacific, Inc.  
Attn: Ms. Marie-Eve Folio and Ms. Mylene Tetreault  
7000 Placid Street  
Las Vegas, Nevada 89119-4239  
(w/o enclosures)

Hertz Furniture Systems, L.L.C.  
Attn: Mr. David Azer  
95 McKee Drive  
Mahwah, New Jersey 07430  
(w/o enclosures)

Krueger International, Inc.  
Attn: Mr. Guy Patzke and Mr. Paul Schueller  
1330 Bellevue Street  
Green Bay, Wisconsin 54302  
(w/o enclosures)

School Speciality, Inc.  
Attn: Mr. Douglas Barnd  
100 Paragon Parkway  
Mansfield, Ohio 44903  
(w/o enclosures)

Sedia Systems, Inc.  
c/o Ms. Andrea Sheehan  
Assistant General Counsel  
Texas Association of School Boards  
P.O. Box 400  
Austin, Texas 78767-0400  
(w/o enclosures)