

Velva L. Price
District Clerk
Travis County
D-1-GN-18-006240
Nancy Rodriguez

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR	§	IN THE DISTRICT COURT
EDUCATION, SCIENCE AND	§	
COMMUNITY DEVELOPMENT,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	200TH JUDICIAL DISTRICT
	§	
KEN PAXTON,	§	
TEXAS ATTORNEY GENERAL,	§	
<i>Defendant.</i>	§	OF TRAVIS COUNTY, TEXAS

ORIGINAL PLEA IN INTERVENTION

NOW COMES the Zachor Legal Institute, INTERVENOR, and, pursuant to Texas Rule of Civil Procedure 60, as a matter of right files this Plea in Intervention and would respectfully show as follows:

NATURE OF THE CASE

1. This case is about potential influence by foreign government funding of certain Texas A & M University programs. The Zachor Legal Institute made requests under the Texas Public Information Act (TPIA), Tex. Gov't Code §§552.-001 *et seq.*, for information about funding or donations made to Texas A & M University by "the government of Qatar and/or agencies and subdivisions of the government of Qatar." Discovery in this case should be under Level 2, as described in Texas Rule of Civil Procedure 190.3.

PARTIES

2. Plaintiff is the Qatar Foundation for Education, Science and Community Development. Qatar may be served through its attorneys of record in this case.

3. Defendant is the Honorable Ken Paxton, Texas Attorney General. Paxton has filed an answer and may be served through his attorneys of record.

4. Intervenor Zachor Legal Institute (Zachor) is an advocacy group based in the United States dedicated to combatting the spread of anti-Semitism. Zachor may be served through its attorneys of record.

5. Texas A &M University (TAMU) is the governmental body from which Zachor requested the Qatar government information, but which Qatar did not name or serve in its lawsuit.

VENUE

6. Venue in this lawsuit is proper and mandatory in Travis County.

JURISDICTION

7. Qatar filed this lawsuit pursuant to TPIA “section 552.001, *et seq.*,” the court’s “inherent power to regulate the *ultra vires* acts of governmental agencies,” and “section 552.325.” As indicated, however, Qatar does not name TAMU as a party and does not plead how any act or omission by TAMU was *ultra vires*. Nor does Qatar plead how the Texas Attorney General, by exercising his authority under the TPIA to issue decisions, has acted *ultra vires*.

8. The only section of the TPIA that references any right of a third party seeking to prevent disclosure is section 552.325. Under subsection (a) of that section, Zachor, as the TPIA requestor, has a right to intervene in this lawsuit. The Court, however, has no jurisdiction to award affirmative relief *against* Zachor. *See* Tex. Gov’t Code §552.325 (parties may not file suit against

requestor); §552.324 (only suit governmental body may file is against attorney general); §552.323 (limited basis for award of attorneys' fees against governmental body in lawsuit filed under sections 552.321 or 552.3215 and to plaintiff or defendant that substantially prevails in lawsuit filed under section 552.324).

STATEMENT OF FACTS

I. The first TPIA request

9. On May 24, 2018, Zachor submitted to TAMU a request for

[A]ll amounts of funding or donations received by or on behalf of the University from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018.

(Exhibit 1)

10. On June 7, 2018, after seeking clarification of the request, TAMU sought an open records decision from the Texas Attorney General, raising one exception to required public disclosure, section 552.1235 of the TPIA. (Exhibit 2) Section 552.1235 provides as follows:

(a) The name or other information that would tend to disclose the identity of a person, *other than a governmental body*, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

(b) Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), *including the amount or value of an individual gift, grant, or donation*.

(c) In this section, “institution of higher education” has the meaning assigned by Section 61.003, Education Code.

Tex. Gov’t Code §552.1235 (emphasis added). The language emphasized above makes it clear that the section does not protect from required disclosure any information about donations from a governmental body and that the section does not protect any information about gifts, grants, or donations other than the identity of private donors.

11. In response to TAMU’s request for a decision, the Attorney General issued Tex. Att’y Gen. OR2018-20240 (August 14, 2018). That decision concluded that

[T]he university must withhold the donors’ identifying information, which you marked, under section 552.1235 of the Government Code. The university must release the remaining information.

(Exhibit 3) That decision did not discuss the fact that the Zachor request expressly sought information about funding or donations *from the government* of Qatar or one of its agencies or subdivisions, categories of information expressly excluded from the scope of section 552.1235.

12. On or about October 12, 2018, Qatar filed this lawsuit to prevent the release of *any* information about the foreign government funding of TAMU programs or operations. In this lawsuit Qatar also attempts to add exceptions to disclosure not timely raised in response to the May 2018 Zachor request. In specific, Qatar argues that the identity of the donor, the amount of the donation, and “information related to these grants and donations” is confidential

commercial information, “tantamount to a trade secret,” protected from disclosure under section 552.110 of the TPIA.

13. Zachor intervened because, as will be shown, neither section 552.1235 nor section 552.110 (nor any other TPIA exception) protect any of the requested information from required public disclosure.

II. The second TPIA request

14. On October 17, 2018, Zachor submitted a TPIA request for additional information, in specific for (1) communications between TAMU and third parties about the earlier TPIA request and (2) communications relating to TAMU funding, programs, and activities between TAMU and the persons and entities listed as affiliated with Qatar in the first TPIA request. TAMU responded that it could not search by the name of TAMU alone. Zachor responded with a narrowing clarification, a list of TAMU persons whose communications were subject to the request. (Exhibit 4)

15. TAMU initially submitted a request to the Texas Attorney General for a decision that sections 552.101, 552.103, 552.104, 552.107, and 552.110 protect the requested information from required public disclosure. (Exhibit 5) TAMU, however, followed that request by submitting information to the Attorney General indicating that it took no position as to whether the information it submitted for *in camera* review is excepted from required disclosure under the TPIA. (Exhibit 6) In other words, TAMU made no claim that the requested information implicated any proprietary interests of TAMU. Instead, TAMU

deferred to Qatar to make arguments about why the information might implicate Qatar's proprietary interests.

16. Qatar submitted its comments objecting to the disclosure of all but a small portion of the information requested. (Exhibit 7) Qatar also attempted to re-argue the first open records decision. (Id.) In specific, Qatar urged that sections 552.104, 552.110, and 552.1235 protect the requested information from required public disclosure. (Id.)

17. In response, the Attorney General issued Tex. Att'y Gen OR2019-01288 (January 15, 2019). (Exhibit 8) The Attorney General declined to revisit the issues decided in Tex. Att'y Gen. OR2018-20240 and indicated that this Court is the appropriate place to make those arguments. (Id.) The Attorney General, however, accepted Qatar's arguments that section 551.104 protects the amount of its donations and the details about them.

18. Zachor contends that sections 552.1235, 552.104, and 552.110 do not protect any of the requested information from required public disclosure and that federal law expressly makes the requested information public.

ARGUMENT AND AUTHORITIES

I. The TPIA presumptions and burdens

19. All information collected, assembled, or maintained by a governmental body is public unless it falls within one of the TPIA's exceptions to disclosure. The party seeking to withhold information has the burden of proving in a judicial proceeding under the TPIA that requested information is excepted from

disclosure. *Texas Dept. of Public Safety v. Abbott*, 310 S.W.3d 670, 673-74 (Tex. App.—Austin 2010, no pet.); *Thomas v. Cornyn*, 71 S.W.3d 473, 488 (Tex. App.—Austin 2002, no pet.) (citing Tex. Gov't Code Ann. § 552.001 (requiring that Act be liberally construed in favor of granting requests for information), § 552.006 (West 2004) (prohibiting the withholding of public information except as expressly provided), § 552.302 (West Supp.2009) (creating presumption, absent compelling reason, that information is public where governing body fails to request attorney general opinion)). Exceptions to the Act should be construed narrowly. *Thomas v. Cornyn*, 71 S.W.3d at 488.

II. TPIA Section 552.1235 does not apply

20. Section 552.1235 does not apply to donations by a governmental body:

(a) The name or other information that would tend to disclose the identity of a person, *other than a governmental body*, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

Tex. Gov't Code §552.1235 (emphasis added).

21. As indicated, the Zachor request expressly sought information about funding or donations *from the government* of Qatar or one of its agencies or subdivisions, categories of information expressly excluded from the scope of section 552. 1235. TAMU did not respond by stating that it had no information responsive to the request. Instead, TAMU had a duty to and did in fact submit samples of documents for the Attorney General's *in camera* review that were

responsive to the request. For that reason, it is now too late to contend that the identity of the Qatar Foundation as a donor is confidential.

22. The two TPIA decisions that have been issued failed to properly apply section 552.1235 because they failed to address the issue of whether the Qatar Foundation is a governmental body or an agency or subdivision of one. Nor did they address whether the protection, if any, of section 552.1235 has been waived.

23. Moreover, based on its website and publicly available records, the Qatar Foundation was created by the Emir of Qatar, is Chaired by his consort, and is sponsored and supported by the government of Qatar, a monarchy. At no point did the Qatar Foundation demonstrate that it is not an agency or subdivision of the government of Qatar. As a result, section 552.1235 simply does not apply.

24. Section 552.1235 applies only to the identities of private donors who wish to remain anonymous and have in fact remained anonymous. The Qatar Foundation website takes public credit for creating the Qatar campus of TAMU at Education City. The affidavit of the Qatar Foundation's General Counsel, an affidavit submitted to the Attorney General to support withholding the requested information supports that fact. (Exhibit 7, Exhibit "A" [to Exhibit 7], page 2, Affidavit of M. Mitchell ["QF routinely distributes grants to non-Qatari research universities such as Texas A & M University for the purpose of operating Qatar-based campuses of those research universities." "It allocates money to the development of the campus based on the value of the campus's research programs to QF's mission."])

25. Section 552.1235 does not protect details about grants and donations:

(b) Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), *including the amount or value of an individual gift, grant, or donation.*

Tex. Gov't Code §552.1235 (emphasis added).

26. The public has a substantial interest in knowing what Qatar paid for TAMU programs here or in Qatar to have a degree-conferring TAMU campus in Qatar (called "TAMUQ"), what contractual "strings" are attached to such payments, who owns the results of research and new technology at TAMUQ, whether the same academic standards apply to degrees conferred there, and whether the same religious, political, and anti-discrimination freedoms apply at the TAMUQ campus. Section 552.1235 does not protect such information from public disclosure.

III. Federal Law prevents withholding the requested information

27. In fact, TAMU has an affirmative duty to make a public disclosure report to the United States Secretary of Education about gifts from and contracts with foreign sources, whether government or non-government. 20 U.S.C. §1011f; *see also* 31 U.S.C. §5316 (reports to Secretary of the Treasury of amounts over 10,000.00 to or from a foreign country). Section 1011f provides in pertinent part as follows:

(a) Disclosure report

Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign

source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.

(b) Contents of report

Each report to the Secretary required by this section shall contain the following:

(1) For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.

(2) For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.

(3) In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.

(c) *Additional disclosures for restricted and conditional gifts*

Notwithstanding the provisions of subsection (b), whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose the following:

(1) For such gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of such conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

(2) For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.

• • • •

(e) Public inspection

All disclosure reports required by this section shall be public records open to inspection and copying during business hours.

20 U.S.C. §1011f (emphasis added).

28. At one point, Texas had an affirmative, parallel reporting requirement in the Texas Education Code. Tex. Educ. Code §§51.571 – 51.575 (repealed as redundant by Acts 2013, 83rd Leg., Ch. 1312 (SB 59) §99(3)(p. 52)) The rules of the Texas Education Agency, however, were not repealed and recognize the federal reporting requirement:

(a) The governing board of an institution required to file a statement disclosing a conditional gift from a foreign person with the Office of the Secretary of State under Texas Education Code Annotated, § 51.572, shall file such statement in the same form as that required to be filed with the Federal Department of Education pursuant to 20 United States Code 1011f.

(b) An institution shall make the filing required under subsection (a) of this section with the Office of the Secretary of State on the dates specified for the filing to be made with the Federal Department of Education pursuant to 20 United States Code 1011f.

1 T.A.C. §73.91.

29. Information that must be disclosed under federal law cannot be withheld under section 552.1235 (or any other section) of the TPIA. Section 552.1235 should be interpreted as has been the federal Family Educational Rights and Privacy Act (FERPA) under section 552.114 of the TPIA. The Attorney General

has ruled that information that must be disclosed under the FERPA to students and/or parents must be disclosed under section 552.114 of the TPIA to students and/or parents (see Tex. Att’y Gen ORD 431 (1985) and that information that must be protected under the FERPA may be withheld from the public under section 552.114 of the TPIA. (Id.) Similar considerations apply here – federal law controls the interpretation of the TPIA to the grants and contracts between TMA and Qatar.

30. Neither of the TPIA decisions at issue here, Tex. Att’y Gen. OR2018-20240 and Tex. Att’y Gen OR2019-01288, addressed the applicability of 20 U.S.C. §1011f. It was plain error to fail to do so.

IV. TPIA Section 552.104 does not apply

31 In its submission to the Attorney General and in this lawsuit, Qatar contends that TPIA sections 552.110 and 552.104 also apply because Qatar has a competitive interest in the “donations” it made to purchase a TAMU campus for Qatar. The problem with that argument is that TAMU is a public university subject to the TPIA. Those sections do not apply.

32. Section 552.104 provides as follows:

(a) 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.*

(b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential by law does not apply to information that is excepted from required disclosure under this section.

Tex. Gov't Code §552.104(emphasis added).

33. Qatar attempts to analogize its situation with that addressed by the Texas Supreme Court in *Boeing Co. v. Paxton*, 466 S.W.3d 831. Although it is true that the Court in *Boeing* changed a number of things about the interpretation and application of section 552.104, most notably that private entities may claim its protection, the Court did not eliminate the requirement that release of the information must give advantage to a competitor. In order to claim the exception, there must be some actual competitor for the legitimate establishment of a TAMU campus in some other foreign country. Qatar cannot meet that test.

34. In *Boeing*, although the Court noted that proof of a specific, on-going bidding process is not required, 466 S.W.3d at 840-841, the Court did require proof of competition in the industry:

The record establishes that Boeing's work for the federal government is continually re-bid, and that contracts have been lost to competitors over as little as one percent. The record also demonstrates that the major bid component that a competitor does not know is the contractor's overhead costs—precisely the information Boeing wishes to withhold. No reasonable trier of fact could conclude that Boeing has no competitors, that the Defense Department won't re-bid its contracts, or that the physical plant is not the biggest variable cost in such bids. The undisputed evidence allows only a single logical inference—that the information at issue “if released would give advantage to a competitor or bidder.” TEX. GOV'T CODE § 522.104(a); *see also City of Keller v. Wilson*, 168 S.W.3d 802, 814 (Tex.2005).

Because Boeing has demonstrated that the information at issue is competitively sensitive and will give advantage to its competitors if released and because section 552.104's exception applies to both the government and to private parties, Boeing has the right to protect its own privacy and property interest through the judicial remedy section 552.325.

Boeing, 466 S.W.3d 831, 841-842.

35. In order to accept that analogy here, however, the Court would have to find that TAMU will only accept a limited number of donations and/or that there is only one foreign TAMU campus for sale. In order for TPIA section 552.104 to apply, there must be some competitive process in which Qatar can show that its bid to purchase TAMU is at a disadvantage if it is disclosed. What other foreign government was bidding for a TAMU campus *and research* to support the “mission” of the foreign country or of the foreign country’s education system? There is no legal competitive bidding process by which a TAMU campus is available to the highest bidding foreign government. Qatar may well be able to show that other foreign countries wish to buy American university campuses, but they cannot show a specific competitive process for buying TAMU campuses because no such process has been authorized by the Texas Legislature.

36. The Texas Legislature has not authorized the establishment of a degree-conferring Texas A & M University in a foreign country. As with most state agencies and institutions, TAMU must have a grant of authority from the Texas Legislature to do anything. Even with such authority, TAMU can only do that which is expressly authorized or that which is “necessarily implied” from an express grant of authority.

37. TAMU was created by and is governed by the Texas Education Code. Chapter 85 of the Code governs administration, Chapter 86 governs Texas A & M

University specifically, Chapter 87 governs “other academic institutions in the Texas A & M system, Chapter 88 governs the agencies and services Texas A & M provides (i.e. like the Texas Forrest Service and the Texas Veterinary Medical Diagnostic Lab), and Chapter 89 governs the A & M Health Science Center. Academic Institutions that are authorized include details such as the degrees to be conferred and whether the university may offer advanced degrees. Nowhere is the Qatar campus even mentioned, much less authorized.

38. From its website, however, Education City claims that in 2003 Texas A & M established a campus in Qatar that now grants Bachelor of Science degrees in Chemical Engineering, Electrical Engineering, Mechanical Engineering, and Petroleum Engineering. Since 2011, advanced degrees have been offered in Chemical Engineering. Apparently, over 975 degrees have been conferred.

39. Aside from the fact that Qatar apparently already bought its TAMU campus, meaning that there is no continuing danger another country will buy it out from under Qatar, the public has a substantial interest in knowing how much Qatar paid and how this happened without the involvement of the Texas Legislature.

40. Finally, regardless of whether section 552.104 might otherwise apply, information expressly made public under federal law, in specific 20 U.S.C. §1011f (e), cannot be withheld under section 552.104 of the TPIA.

V. TPIA Section 552.110 does not apply

41. Section 552.110 provides:

(a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from [required public disclosure].

(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that *disclosure would cause substantial competitive harm to the person from whom the information was obtained* is excepted from [required public disclosure].

Tex. Gov't Code §552.110 (emphasis added).

42. As indicated, Qatar apparently already bought its TAMU campus, in 2003, meaning that there is no continuing danger another country will buy it out from under Qatar. Qatar has the burden of showing that risk and of showing how the disclosure of the amount paid and being paid for the TAMU campus would cause “substantial competitive harm” to Qatar.

43. Nor is the funding of a public university a trade secret or the confidential commercial information of a foreign country. The funding of a public university in Texas is governed by Chapter 51 of the Texas Education Code, which imposes numerous financial reporting requirements to assure that the university is accountable and complies with state law. Nothing exempts the TAMU foreign campus from those requirements or from any other Education Code requirements, such as having a uniform admissions policy.

44. As a result, regardless of whether Qatar “competes” with other nations in buying American universities and their research “based on the value of the campus’s research programs to QF’s mission” as stated by Qatar’s General

Counsel, the amount paid, the details of the donation, and any resulting contracts are matters of public record. TAMU is, after all, a public university subject to the TPIA.

45. Finally, section 552.1235 expressly provides that the amount of donations is to be made public. Likewise, all communications by TAMU about sponsored research must identify the sponsor. Tex. Education Code. §51.954. The public has a substantial interest in knowing how much Qatar paid for the TAMU campus and for TAMU research, and how this happened without the involvement of the Texas Legislature.

46. Finally, regardless of whether section 552.110 might otherwise apply, information expressly made public under federal law, in specific 20 U.S.C. §1011f (e), cannot be withheld under section 552.110 of the TPIA.

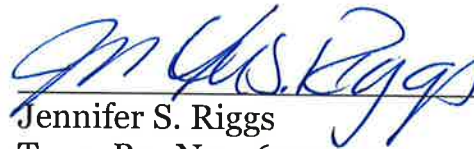
ATTORNEYS FEES

47. Pursuant to section 552.323, Zachor seeks recovery of its reasonable attorneys' fees.

PRAYER

For these reasons, Intervenor Zachor Legal Institute respectfully asks that the Court enter judgement that Plaintiff Qatar take nothing by this lawsuit, that the Court review the information requested in both TPIA requests *in camera* and rule that it is public information, and that the Court award court costs and reasonable attorney fees to Intervenor Zachor and award all other relief to which Intervenor Zachor is entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded by e-service on this 29th day of April, 2019, to:

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JENNIFER S. RIGGS

8001108-052318 - Public Information Records

Public Information Records Details

This request is for:

Texas A&M University

Summary of Request:

A summary of all amounts of funding or donations received by or on behalf of the University from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018.



EXHIBIT A
Greendorfer (B001108-052318)

Describe in detail the Record(s)
Requested:

A summary of all amounts of funding or donations received by or on behalf of the University of Michigan from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018.

For purposes of this request, please include the following individuals and entities as being affiliated with the government of Qatar:

Individuals:

Tamim bin Hamad Al Thani;
Hamad bin Khalifa bin Hamad bin Abdullah bin Jassim bin Mohammed Al Thani;
Jawaher bint Hamad bin Suhaim;
Al Mayassa bint Tamim bin Hamad Al Thani;
Hamad bin Tamim bin Hamad Al Thani;
Jassim bin Tamim bin Hamad Al Thani;
Aisha bint Tamim bin Hamad Al Thani;
Anoud bint Mana Al Hajri;
Naylah bint Tamim bin Hamad Al Thani;
Abdullah bin Tamim bin Hamad Al Thani;
Rodha bint Tamim bin Hamad Al Thani;
Al-Qaqa bin Tamim bin Hamad Al Thani;
Noora Bint Hathal Aldosari;
Joan bin Tamim bin Hamad Al Thani;
Mohammed bin Tamim bin Hamad Al Thani;
Abdullah bin Nasser bin Khalifa Al Thani;
Ahmad bin Abdullah Al Mahmoud;
Ashraf Muhammad Yusuf 'Uthman 'Abd al-Salam;
Abd al-Malik Muhammad Yusuf 'Uthman 'Abd al-Salam;
Mubarak Alajji;
Sa'd bin Sa'd al-Ka'bi;
Abd al-Latif bin 'Abdallah al-Kawari;
Abu Abdulaziz al-Qatari;
Mohammad Bin Saleh Al-Sada;
Saad Sherida Al-Kaabi;
Abdullah Mohd Essa Al-Kaabi;
Faisal Bin Qassim Al-Thani;
Kamel El-Agela;
Fatma Al Remaihi;
Hind bint Hamad Al Thani;
Sould Al-Tamimi;
Richard O'Kennedy ;
Ilias Belharouak;
Sabah Ismail Al-Haidoos; and
Faisal Mohammad Al-Emadi

Entities:

- Qatar Ministry of Foreign Affairs
- Qatar Minister of State for Foreign Affairs
- Qatar Minister of Defense
- Qatar Minister of the Interior
- Qatar Ministry of Public Health
- Qatar Ministry of Energy and Industry
- Qatar Ministry of Municipal and Urban Planning
- Qatar Ministry of Environment
- Qatar Ministry of Finance
- Qatar Ministry of Culture, Arts and Heritage
- Qatar Ministry of Labor and Social Affairs
- Qatar Ministry of Education and Higher Education
- Qatar Ministry of Awqaf and Islamic Affairs
- Amiri Diwan -- Sheikh Abdullah bin Khalifa Al Thani
- Qatar Investment Promotion Department
- Qatar Supreme Council for Family Affairs
- Qatar Supreme Judiciary Council
- Al Jazeera Media Network, including the following subsidiary organizations:
- News- Al Jazeera Arabic
- Al Jazeera English
- Al Jazeera Mubasher Al-'Amma
- Al Jazeera Balkans (Balkans)
- Sports- beIN Media Group
- Educational- Al Jazeera Documentary Channel
- JeemTV

- Other- AJ+
- Aljazeera.com
- Jetty
- Al Jazeera Mobile
- Al Jazeera New Media
- Al Jazeera Center for Studies
- Al Jazeera International Documentary Film Festival
- beIN Media Group
- Miramax Films
- Qatar Petroleum
- Sidra Medical and Research Center
- RasGas Company Limited
- Al Faisal Holding Co
- Doha Film Institute
- Qatar Environmntl & Energy Res Inst
- Silatech
- Qatar Airways
- Qatar National Research Fund
- Jasoor Institute
- Qatar Foundation
- Qatar University
- Hamad Medical Corporation
- Qatar Biomedical Research Institute
- Construction Development Co LLC
- Qatar Leadership Center
- Ooredoo
- Maersk Oil Qatar
- Aramco Services co
- Qatar Computing Research Institute
- Education Above All
- Al Fakhoora
- Qatar Charity

Please also include any funding received from the above sources by or on behalf of student groups affiliated with, or operating with the consent of, the University.

Preferred Method to Receive Records:

Electronic via Records Center

Category

Clarification(s)

OAG decision requested

Exceptions

Charges

Message History

Request Details

Reference No: B001108-052318
Create Date: 5/23/2018 5:40 PM
Update Date: 5/24/2018 5:11 PM
Completed/Closed: No
Required Completion Date: 6/8/2018

Status: Activity Assigned
Priority: Medlum
Assigned Dept: TAMU_Open Records
Assigned Staff: Open Records University

Customer Name: Attorney Marc Greendorfer
Email Address: info@zachorlegal.org
Phone: 6502799690
Group: TAMU

Source: Web



Office of General Counsel
THE TEXAS A&M UNIVERSITY SYSTEM

June 7, 2018

Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

via UPS DELIVERY

Re: Request for a Decision regarding a Public Information Request from Marc Greendorfer to Texas A&M University (B001108-052318)

Dear Open Records Division:

On May 24, 2018,¹ Texas A&M University (the “university”) received a public information request from Mark Greendorfer (the “Requestor”). The request, enclosed as Exhibit A, seeks information regarding certain funding and donations.

We believe that a portion of the information requested, a representative sample of which is enclosed as Exhibit B, contains information that is excepted from disclosure under section 552.1235 of the Texas Public Information Act, Chapter 552, Government Code (Act). Accordingly, we are requesting a decision regarding the enclosed, responsive information as we believe it is excepted from disclosure the Act.

Section 552.1235 – Confidentiality of Identity of Private Donor to Institution of Higher Education

We believe that the marked information in Exhibit B is excepted from public disclosure under section 552.1235 of the Act. This section provides:

- (a) The name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

¹ The request was originally received on May 23, 2018 and a request for clarification was emailed to the Requestor on May 24, 2018. On May 24, 2018, the Requestor responded and clarified the request, making this the date of receipt of the request. The first business day after receipt of the clarified request was Friday, May 25, 2018. Texas A&M University was also closed for Memorial Day on May 28, 2018 by order of the A&M System Board of Regents. Thus, the 10th business day after the receipt of the request is Friday, May 8, 2018.



- (b) Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation.
- (c) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

TEX. GOV'T CODE ANN. § 552.1235 (West 2012).

Here, the marked information, enclosed as Exhibit B, identifies donors to the university. Therefore, we believe that these donor identities are confidential and excepted from disclosure under section 552.1235(a) of the Act.

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me.

Sincerely,



Julie A. Masek
Assistant General Counsel

Enclosure: Exhibits A & B

cc: Marc Greendorfer
info@zachorlegal.org

TAMU Open Records



KEN PAXTON
ATTORNEY GENERAL OF TEXAS



August 14, 2018

Ms. Julie A. Masek
Assistant General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2018-20240

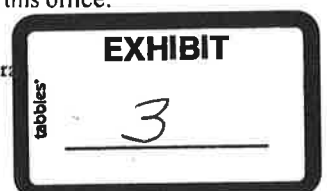
Dear Ms. Masek:

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# 723308 (B001108-052318).

Texas A&M University (the "university") received a request for information pertaining to certain funding or donations received for a period of time.¹ You claim some of the submitted information is excepted from disclosure under section 552.1235 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹We note the university 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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²We 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 that those records contain substantially different types of information than that submitted to this office.



Section 552.1235 of the Government Code excepts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). For purposes of this exception, “institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as meaning “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” Educ. Code § 61.003(8). Because section 552.1235 does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See* Gov’t Code § 311.005. “Person” includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2). You state the information you marked in the submitted information identifies donors to the university. Thus, the university must withhold the donors’ identifying information, which you marked, under section 552.1235 of the Government Code. The university must release the remaining information.

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, 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 723308

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Paul Orfanedes

From: Zachor Legal Institute <info@zachorlegal.org>
Sent: Wednesday, October 17, 2018 3:40 PM
To: Texas A&M University Public Records Support
Cc: open-records@tamu.edu
Subject: Re: Public Information Records :: B002165-101618

With regard to identifying specific Texas A&M employees/affiliates for the request, please use the following (titles of each individual are in parentheses):

Michael K. Young (President);
John Sharp (Chancellor);
Charles W. Schwartz (Regent-Chairman);
Elaine Mendoza (Regent-Vice Chairman);
Phil Adams (Regent);
Robert L. Albritton (Regent);
Anthony G. Buzbee (Regent);
Morris E. Foster (Regent);
Tim Leach (Regent);
Bill Mahomes (Regent);
Cliff Thomas (Regent);
Ervin Bryant (Student Regent);
Carol A. Fierke (Provost & Executive Vice President);
R.C. Slocum (Special Advisor to the President);
Kevin McGinnis (Chief Compliance Officer);
Elizabeth Schwartz (Interim VP for HR & Organizational Effectiveness);
Michael O'Quinn (VP for Government Relations and Strategic Initiatives);
Michael J. Hardy (Assistant Vice President for Government Relations);
Dr. Stanton Calvert (Special Advisor to the Vice President for Government Relations and Vice Chancellor Emeritus);
Dr. Anne Reber (Dean of Student Life);
Dr. Karen Butler-Purry (Associate Provost for Graduate and Professional Studies);
Dr. Cynthia L. Hernandez (Associate Vice President);
Tom Reber (Associate Vice President);
Dr. C.J. Woods (Associate Vice President);
Alyssa Leffall (Special Assistant to the Vice President for Student Affairs);
Matt Jennings (Senior Director of Development);
Christine Gravelle (Director, Student Activities);
Peggy Zapalac (Associate Vice President for Finance);
Dr. Daniel Pugh, Sr. (VP for Student Affairs);
M. Dee Childs (Information Technology and CIO);
Amy B. Smith (Senior VP and Chief Marketing & Communications Officer);
Dr. Jeffrey B. Strawser (EVP and CFO);
John H. McCall, Jr. (Associate Vice President for Accounting and Financial Services and Controller);
Dr. Michael Benedik (Vice Provost);
Joseph P. Pettibon II (VP of Enrollment and Academic Services);



Dr. Mark Barteau (VP of Research);
Dr. Robin Means Coleman (VP & Associate Provost for Diversity);
Andrew P. Morris (VP of Entrepreneurship and Economic Development);
Dr. César O. Malavé (Dean, Qatar campus);
Dr. Ioannis G. Economou (Dean, Qatar Campus);
Dr. Hassan S. Bazzi (Dean, Qatar Campus);
Dr. Hazem Nounou (Dean, Qatar Campus);
Rosalie Nickles (Dean, Qatar Campus);
His Excellency, Dr. Mohammed bin Saleh Al-Sada (Joint Advisory Board Member, Qatar Campus);
Dr. M. Katherine Banks (Joint Advisory Board Member, Qatar Campus);
Dr. Olivier Dubrule (Joint Advisory Board Member, Qatar Campus);
Dr. Ahmad Hasnah (Joint Advisory Board Member, Qatar Campus);
Dr. Marc Vermeersch (Joint Advisory Board Member, Qatar Campus);
Dr. Robert Gordon Moore (Joint Advisory Board Member, Qatar Campus);
Dr. G.P. Peterson (Joint Advisory Board Member, Qatar Campus);

With regard to identifying specific individuals at the Qatari institutions named in the original request, below are additional Qatari individuals to be included in the search (in addition to all those named in the original request)

Moza bint Nasser;
Hamad Bin Khalifa Al Thani;
Hind bint Hamad Al Thani ;
Al Mayassa bint Hamad Al-Thani;
Jassim Bin Abdulaziz Al Thani;
Saad Ebrahim Al Muhannadi;
Mohammed Saleh Al Sada;
Abdullah Bin Hussain Al-Kubaisi;
Mazen Jassim Jaidah;
Omran Hamad Al-Kuwari;
Mohammed Al Nuaimi;
Mayan Zebeib;
Jim Beck;
Michael Mitchell;
Buthaina Al Nuaimi;
Ahmad M. Hasnah;
Machaille Al-Naimi;
Richard O'Kennedy;
Mohammed bin Abdulrahman Al-Thani;
Soltan bin Saad Al-Muraikhi;
Ahmad Hassan Al-Hamadi;
Mohammed bin Hamad bin Soud Al-Thani;
Khalid bin Fahad Al Khater;
Abdulrahman Bin Saad Ahmad Al-Sulaiti;
Zayed Bin Rashid Al-Mansour Al-Nuaim;
Yousef bin Sultan Yousef Laram;
Tariq Ali Faraj Hashim Alansari;
Faisal bin Abdullah Al-Henzab;

Muhammad Abdullah Saeed Al-Subaei;
Saad Muhammad Al-Tamimi;
Ahmed Mohammed Abdullah Al Atiyya;
Abdullah Abdulrahman Naser Fakhro;
Ali Bin Abdullah Al Mahmoud;
Saad bin Ali Hilal Al-Mohannadi;
Salim Abdullah Sultan Al Jaber;
Khalid bin Mohammad Al Attiyah;
Mohammed Abdul Wahed Al Hammadi;
Mohammed bin Abdulrahman Al Thani;
Ali Shareef Al Emadi;
Gaith bin Mubarak Al Kuwari;
Salah bin Ghanem Al Ali;
Ahmed bin Jassim Al Thani;
Hassan Lahdan Saqr Al Mohannadi;
Issa Saad Al Jafali Al Nuaimi;
Saleh bin Mohammed Al Nabit
Jassim bin Saif Al Sulaiti;
Hanan Mohamed Al Kuwari;
Mohammed bin Abdullah Al Rumaihi; and
Ahmed bin Jassim bin Mohammed Al Thani.

Since you indicate that it is not possible to search for communications solely entity name, please include the following entity names as search terms within Texas A&M's records:

"Foundation for Education, Science and Community Development"

"Ministry of Foreign Affairs"

"Ministry of Defense"

"Ministry of the Interior"

"Ministry of Public Health"

"Ministry of Energy and Industry"

"Ministry of Municipal and Urban Planning"

"Ministry of Environment"

"Ministry of Finance"

"Ministry of Culture, Arts and Heritage"

"Ministry of Labor and Social Affairs"

"Ministry of Education and Higher Education"

"Ministry of Awqaf and Islamic Affairs"

"Investment Promotion Department"

"Supreme Council for Family Affairs"

"Supreme Judiciary Council"

Regards,
Marc Greendorfer

From: Texas A&M University Public Records Support <texasam@mycusthelp.net>

Sent: Wednesday, October 17, 2018 12:25:36 PM

To: Zachor Legal Institute
Cc: open-records@tamu.edu
Subject: Public Information Records :: B002165-101618

--- Please respond above this line ---



10/17/2018

RE: PUBLIC RECORDS REQUEST of October 17, 2018, Reference # B002165-101618

Dear Mr. Greendorfer,

Texas A&M University received a public information request from you on October 17, 2018. Your request mentioned:

"All correspondence and communications between Texas A&M and third parties relating to Public Information Records request B001108-052318.

All communications relating to Texas A&M funding, programs and activities between Texas A&M, on the one hand, and the parties listed in B001108-052318, on the other hand, between 2013 and the current date. For clarity, we are seeking communications between Texas A&M and the following parties:

Individuals:

- Tamim bin Hamad Al Thani;
- Hamad bin Khalifa bin Hamad bin Abdullah bin Jassim bin Mohammed Al Thani;
- Jawaher bint Hamad bin suhaim;H.E. Sheikha Al Mayassa bint Tamim bin Hamad Al Thani (born 2006)
- Hamad bin Tamim bin Hamad Al Thani;
- Jassim bin Tamim bin Hamad Al Thani;
- Aisha bint Tamim bin Hamad Al Thani;
- Anoud bint Mana Al Hajri;
- Naylah bint Tamim bin Hamad Al Thani;
- Abdullah bin Tamim bin Hamad Al Thani;
- Rodha bint Tamim bin Hamad Al Thani;
- Al-Qaqa bin Tamim bin Hamad Al Thani;
- Noora Bint Hathal Aldosari;
- Joaan bin Tamim bin Hamad Al Thani;
- Mohammed bin Tamim bin Hamad Al Thani;
- Abdullah bin Nasser bin Khalifa Al Thani;
- Ahmad bin Abdullah Al Mahmoud;
- Ashraf Muhammad Yusuf 'Uthman 'Abd al-Salam;
- Abd al-Malik Muhammad Yusuf 'Uthman 'Abd al-Salam;
- Mubarak Alajji;

- Sa'd bin Sa'd al-Ka'bi;
- Abd al-Latif bin 'Abdallah al-Kawari; and
- Abu Abdulaziz al-Qatari

Entities:

- Qatar Foundation for Education, Science and Community Development
- Qatar Ministry of Foreign Affairs
- Qatar Minister of State for Foreign Affairs
- Qatar Minister of Defense
- Qatar Minister of the Interior
- Qatar Ministry of Public Health
- Qatar Ministry of Energy and Industry
- Qatar Ministry of Municipal and Urban Planning
- Qatar Ministry of Environment
- Qatar Ministry of Finance
- Qatar Ministry of Culture, Arts and Heritage
- Qatar Ministry of Labor and Social Affairs
- Qatar Ministry of Education and Higher Education
- Qatar Ministry of Awqaf and Islamic Affairs
- Amiri Diwan – Sheikh Abdullah bin Khalifa Al Thani
- Qatar Investment Promotion Department
- Qatar Supreme Council for Family Affairs
- Qatar Supreme Judiciary Council
- Al Jazeera Media Network, including the following subsidiary organizations:
 - News- Al Jazeera Arabic
 - Al Jazeera English
 - Al Jazeera Mubasher Al-'Amma
 - Al Jazeera Balkans (Balkans)
 - Sports- beIN Media Group
 - Educational- Al Jazeera Documentary Channel
 - JeemTV
 - Other- AJ+
 - Aljazeera.com
 - Jetty
 - Al Jazeera Mobile
 - Al Jazeera New Media
 - Al Jazeera Center for Studies
 - Al Jazeera International Documentary Film Festival
 - beIN Media Group
 - Miramax Films

On Reference Number B002165-101618, there were additional individuals that should have been included. The following are those individuals and we are seeking communications between Texas A&M, on the one hand, and the following individuals (or communications that refer to these individuals), on the other hand, with respect to the subject of funding received by Texas A&M from Qatar and the Qatar-affiliated entities referenced in the original public information request (including, but not limited to, the Qatar Foundation for Education, Science and Community Development). Individuals: Brendan Steinhauer, Karl Notturmo, Aryeh Lightstone, Alan Dershowitz, Chase Untermyer, Patrick Theros, Rick Perry, Michael McCaul, Ted Cruz, Jason Johnson, Jeff

Roe, Nick Muzin, Joseph Allaham, Chris Berardini, James Frinzi, James Christopherson, Alex Shively and Robert "Beto" O'Rourke

However, we are in need of clarification/narrowing regarding the information requested. The university is unable to conduct a search for responsive information using the term "Texas A&M" as it is too broad. Please identify the Texas A&M University employee(s), so that an accurate search for responsive information can be conducted.

In addition to the identities of the Texas A&M University employees, the names of the specific individuals at the entities listed above will also be needed. Please note, we are unable to conduct a search for communications solely by entity name.

As provided by section 552.222(d) of the Texas Public Information Act, your request will be considered withdrawn if we do not receive a response from you by the 61st day after the date of this request for clarification.

Sincerely,
Open Records Office

To monitor the progress or update this request please log into the [Public Records Center](#).





Office of General Counsel
THE TEXAS A&M UNIVERSITY SYSTEM

November 1, 2018

Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

via UPS DELIVERY

Re: Request for a Decision regarding a Public Information Request from Marc Greendorfer to Texas A&M University (B002165-101618)

Dear Open Records Division:

On October 16, 2018, Marc Greendorfer ("requestor") submitted an open records request to Texas A&M University ("TAMU"). The request, enclosed as Exhibit A, seeks information regarding certain correspondence.

At this time, we are in the process of gathering and reviewing information responsive to this request. We believe the requestor seeks records that may include information excepted from disclosure pursuant to the Texas Public Information Act, Government Code, Chapter 552 (the Act), sections 552.101 through 552.151, including, but not limited to, sections 552.101, 552.103, 552.104, 552.107, and 552.110. Therefore, we are requesting a decision regarding this request.

In accordance with section 552.301(e) of the Act, we will submit, as soon as possible and no later than November 8, 2018, the 15th business day after the receipt of the request, a labeled copy of the requested information, or representative samples thereof, along with our written comments stating the reasons the stated exceptions would allow all or part of the requested information to be withheld from disclosure.

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me.

Sincerely,

R. Brooks Moore
Deputy General Counsel





Office of General Counsel
THE TEXAS A&M UNIVERSITY SYSTEM

November 8, 2018

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

via UPS DELIVERY

Re: Request for a Decision regarding a Public Information Request from Marc Greendorfer to Texas A&M University (B002165-101618)

Dear Open Records Division:

On November 1, 2018, we requested a decision regarding an open records request Marc Greendorfer submitted to Texas A&M University on October 18, 2018.¹ The request, enclosed as Exhibit A, seeks certain correspondence.

We believe that the information responsive the request, which is enclosed as Exhibit B, may be excepted from disclosure under the Texas Public Information Act, chapter 552, Texas Government Code, (the "Act") as explained below. Therefore, we request a decision concerning this information.

Third-Party Proprietary Information. Section 552.104. Exception: Information Relating to Competition or Bidding; Section 552.110. Exception: Confidentiality of Trade Secrets; Confidentiality of Certain Commercial or Financial Information

The information enclosed as Exhibit B may include commercial or financial information excepted from disclosure as third-party proprietary information under sections 552.104 and/or 552.110 of the Act. Regarding the application of these provisions to the information at issue, we note that the Act provides:

- (a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under section 552.101, 552.104, 552.110 or 552.114, a governmental body

¹ The request was originally received on October 16, 2018. The university requested clarification, and the requestor modified the request after the close of business hours on October 17, 2018. Therefore, the request is deemed received on October 18, 2018.



may decline to release the information for the purpose of requesting an attorney general decision.

- (b) a person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general that person's reasons why the information should be withheld or released.
- (c) the governmental body may, but is not required to, submit its reasons why the information should be withheld or released.
- (d) If release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:
 - (1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and
 - (2) include:
 - (A) a copy of the written request for the information, if any, received by the governmental body; and
 - (B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:
 - (i) each reason the person has as to why the information should be withheld; and
 - (ii) a letter, memorandum, or brief in support of that reason.
- (e) A person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.

TEX. GOV'T CODE ANN. § 552.305 (West 2012).

The university is declining to release the information to the requestor pending a decision from your office, and we are sending the letter prescribed by the attorney general to an entity as notice of its right to object to the release of materials containing proprietary information. A copy of this letter is enclosed as Exhibit C. The university also takes no position regarding the application of sections 552.104 or 552.110 to the information and declines to submit reasons why all or part of the marked information should or should not be considered proprietary to this entity.

Open Records Division (B002165-101618)
November 8, 2018
Page 3 of 3

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me.

Sincerely,



R. Brooks Moore
Deputy General Counsel

Enclosures: Exhibits A, B, C

cc: Marc Greendorfer
info@zachorlegal.org

Michael A. Mitchell
General Counsel
Qatar Foundation for Education, Science and Community Development

TAMU Open Records

November 27, 2018

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Dear Open Records Division:

On November 8, 2018, Deputy General Counsel for Texas A&M University (“A&M”) notified the Qatar Foundation for Education, Science and Community Development (“Qatar Foundation”) that it received a Public Information Request from requestor Marc Greendorfer (“Requestor”) on October 18, 2018. The information sought is related to donations and confidential grants that the Qatar Foundation awards to A&M, and is exempt from disclosure under three provisions of the Texas Public Information Act:

- Tex. Gov’t Code § 552.104, excepting disclosure of information that, if released, would give advantage to a competitor or bidder;
- Tex. Gov’t Code § 552.110, preventing disclosure of trade secrets and confidential commercial and financial information; and
- Tex. Gov’t Code § 552.1235, excepting from disclosure the name or other information that would tend to disclose the identity of a person who makes a gift, grant, or donation of money or property to an institution of higher education.

I. Background

The October 18, 2018 request is not the first request for information submitted to A&M by Requestor—the first came on May 23, 2018. That request sought “[a] summary of all amounts of funding or donation received by or on behalf of the University of Michigan [*sic*] from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018,” including the Qatar Foundation. On June 7, 2018, A&M submitted a request to the Office of the Attorney General of Texas to decide only whether A&M could exclude donor identities from its response to the request. A&M did not notify the Qatar Foundation of this Public Information Request at the time, and the Qatar Foundation did not have the opportunity to timely present arguments to the Office of the Attorney General.

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Please visit squirepattonboggs.com for more information.



On August 14, 2018, the Office of the Attorney General of Texas issued an Open Records Letter Ruling, OR2018-20240. The ruling stated that A&M could withhold donors' identifying information under Tex. Gov't Code §552.1235, but required it to provide all other information, including the identity of those entities providing "funding," but not "donations." *Id.* at 2.

The Qatar Foundation first learned of the May 23, 2018 request and subsequent ruling on October 5, 2018. Because the Qatar Foundation was not aware of that request until after the ruling was issued, it was never able to present to the Attorney General its arguments that the requested information was excepted from disclosure under provisions of Texas law independent of those raised by A&M. On October 12, 2018, the Qatar Foundation filed suit against the Attorney General of Texas to prevent disclosure of the information deemed responsive to the May 23, 2018 Request. *See Qatar Foundation v. Paxton*, Cause No. D-1-GN-18-005240.

After the Qatar Foundation filed suit in accordance with the Public Information Act to prevent disclosure of information responsive to the May 23, 2018 Request, Requestor filed this *second* Public Information Request on October 18, 2018. The second Request seeks all correspondence and communications between A&M and third parties, including the Qatar Foundation, relating to the first Request. The second Request also seeks all communications relating to A&M funding, programs, and activities between A&M and the parties listed in the May 23, 2018 Request between 2013 and the present.

On November 1, 2018, A&M requested a decision from the Office of the Attorney General as to whether the information sought in the October 18, 2018 Request was excepted from disclosure. On November 8, 2018, A&M notified the Office of the Attorney General that the Qatar Foundation also had interests that would prevent disclosure of the information Requestor seeks. A&M provided seven batches of responsive documents to the Office of Attorney General with the November 8, 2018 letter, identified as follows:

1. Smith Response (84 pages)
2. President Response (4 pages)
3. Scanned Copies of Correspondence (13 pages)
4. Malave Response (26 pages)
5. Greendorfer Response (257 pages)
6. Bazzi Response: (6 pages)
7. Nickles Response: (22 pages)

Also on November 8, 2018, A&M notified the Qatar Foundation of the October 18, 2018 Request and A&M's November 1 and November 8, 2018 requests for a decision from the Attorney General. The Qatar Foundation now joins A&M in requesting that this sensitive information be excepted from disclosure.

II. Arguments

A. The Responsive Documents Contain Information That Constitutes Trade Secrets And/Or Confidential Commercial and Financial Information That, If Released, Would Give Advantages to Competitors.

The information Requestor seeks relates to confidential grants awarded by the Qatar Foundation to A&M. These grants support A&M's Qatar campus. Because the Qatar Foundation awards grants to many different institutions, it keeps its negotiations with those institutions, and the amount of grant money it ultimately provides, in strict confidence. The Qatar Foundation considers this information both confidential commercial and financial information and trade secrets. Tex. Gov't Code § 552.110. If the information were disclosed, it would give advantages to the Qatar Foundation's competitors. Tex. Gov't Code 552.104. It should be excepted from disclosure.

i. Trade Secrets

The Public Information Act exempts from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision.” Tex. Gov't Code § 552.110(a). Under Texas law, a trade secret is “any formula, pattern, device or compilation of information which is used in one's business and presents an opportunity to obtain an advantage over competitors who do not know or use it.” *Computer Assocs. Intern. v. Altai*, 918 S.W.2d 453, 455 (Tex. 1994). “A trade secret is a process or device for continuous use in the operation of the business . . . such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.” RESTATEMENT OF TORTS § 757 cmt. b. Texas courts apply a six-factor test to determine whether a trade secret exists. *In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003). Those six factors are:

- (1) the extent to which the information is known outside of his business;
- (2) the extent to which it is known by employees and others involved in his business;
- (3) the extent of the measures taken by him to guard the secrecy of the information;
- (4) the value of the information to him and to his competitors;
- (5) the amount of effort or money expended by him in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

These are factors to be balanced, rather than mandatory requirements that must be met. *Id.* at 740.

The information contained in the Malave Production, pages 1–17 of the Nickles Production, the Bazzi Production, and the Greendorfer Production all constitute trade secrets of the Qatar Foundation. Each set of documents relates to efforts to negotiate funding for, maintain, and administer the activities at A&M's branch campus in Qatar's Education City. Their disclosure would expose confidential information to the Qatar Foundation's competitors and grantees, and would cause substantial and irreparable competitive harm to the Qatar Foundation's business.

Education City is the Qatar Foundation's largest and most important project. Education City is a hub outside Doha where some of the world's most respected universities have established campuses. The Qatar Foundation awards grant money to each campus based on the research the campus performs and the services the campus provides to students. The negotiation of these grants is a confidential process, as is the amount of each grant awarded. If the negotiation process, or the amount of the grant, were disclosed it would cause competitive harm to the Qatar Foundation and to Texas A&M.

The Qatar Foundation competes with private organizations and governments throughout the Middle East to attract major research universities to their home countries. These organizations and governments have expended substantial time, effort, and money to establish over fifty branch campuses of foreign major research universities throughout the region.¹

Courts have held that the confidential practices and acquired information unique to nonprofits like the Qatar Foundation are considered trade secrets. *Religious Tech. Ctr. v. Netcom On-Line Commc'n Servs.*, 923 F. Supp. 1231, 1251-52 (N.D. Cal. 1995); *United Christian Scientists v. Christian Science Bd. of Dir.*, 829 F.2d 1152, 1169 (D.C. Cir. 1987); *accord Am. Red Cross v. Palm Beach Blood Bank, Inc.*, 143 F.3d 1407 (11th Cir. 1998). Analysis under Texas's trade secret test demonstrates that the same result should apply here. The arguments below are supported by the declaration of Michael A. Mitchell, General Counsel of the Qatar Foundation. See **Exhibit A**.²

a. Compilation of Information in Continuous Use

Information related to the negotiation and award of grants between the Qatar Foundation and A&M is in continuous use by both parties. This is because the grant process is ongoing as A&M develops new research avenues and services for its students. When it does so, the Qatar Foundation determines how much grant money would be appropriate to award. The decision-makers at the Foundation consider not only how much they have awarded A&M in the past, but also how much they have awarded other universities for similar projects or services. Because the Qatar Foundation is almost always in the process of determining whether to award a grant to some institution, this confidential information is in almost constant use.

b. Extent to Which the Information Is Known Outside the Business

Both A&M and the Qatar Foundation keep the amount of grant money awarded, and the negotiations surrounding those grants, in strict confidence. Every agreement to provide grant money contains a confidentiality provision restricting disclosure of the Qatar Foundation's business methods, financial information, trade secrets, and financial and accounting policies. Both A&M and the Qatar Foundation abide by that provision, and do not share this information.

¹ See *Arab Region Branch Campuses*, U.S. News & World Report, <https://www.usnews.com/education/arab-region-universities/branch-campuses>.

² The attached declaration is unsigned. The undersigned will supplement this filing with a signed declaration within a few days.

c. Extent to Which the Information Is Known by Employees and Others Involved in the Business

The Qatar Foundation also keeps this information confidential internally. Only those employees who need to know the information to perform their job duties are provided access to it. Negotiation and strategy related to the grants is restricted to a small team of decision-makers. The number of people with access to this information is 20. The Qatar Foundation has 3,400 total employees.

d. Extent of Measures Taken to Guard the Secrecy of the Information

The Qatar Foundation has substantial measures in place to protect information related to grant funding. Physical files related to grant funding, and the negotiations surrounding the award of grants, are kept in a safe. Electronic copies of those files are stored on a secure server with strict security requirements.

e. Value of Information to QF and Its Competitors

The value of this information both to the Qatar Foundation and its competitors is substantial. If the Qatar Foundation's negotiation strategies were disclosed, or the precise amount of grant funding released, it would cause serious competitive harm to the Foundation. Rival organizations and governments would attempt to provide funding to lure universities away from Education City. The universities, themselves, will also gain leverage of the Foundation if they are aware how much grant money their counterparts receive. This could reduce the amount of grant funding the Qatar Foundation provides to Texas A&M.

f. Amount of Effort or Money Expended in Developing the Information

The Qatar Foundation has spent over two decades attracting top-tier universities to Education City. The Foundation employs hundreds of people to this end and has expended thousands of man-hours and millions of dollars in support of its efforts to do so. The approach to negotiating the award of grants has been refined by experience, and the Qatar Foundation considers its process an asset of substantial value.

g. Ease or Difficulty with Which the Information Could Be Acquired or Duplicated.

It is not possible for a third party to determine how much grant funding the Qatar Foundation distributes to A&M or any other university. The amounts are not apparent from any form of observation of the routine operation of the campus. Unless A&M or the Qatar Foundation discloses this information, it is virtually impossible to obtain.

In sum, the Qatar Foundation's strategy for negotiating the award of grants is crucial to its business. The process is a closely guarded secret and effective in large part because it is not disclosed. The precise amount of money the Qatar Foundation awards to an institution is also

highly sensitive. The release of this information could seriously compromise the work of the Qatar Foundation and of A&M's Qatar Campus.

This type of trade secret is akin to the one found in another Texas Public Information Act case. *See Waste Mgmt. of Texas v. Abbott*, 406 S.W.3d 626 (Tex. 2013). In that case, Waste Management showed that it engaged in confidential pricing negotiations with each of its customers. *Id.* at 635. Its compilation of volume and pricing information was essential to that process, and allowed it to compete for customers in the relevant market. *Id.* at 673. For that reason, the Court concluded that Waste Management's pricing information was protected from disclosure. *Id.* This case is of a piece. The information related to the Qatar Foundation's issuance of grants is essential to its ability to compete. It should be protected from disclosure. Tex. Gov't Code § 552.110(a).

ii. Confidential Commercial and Financial Information

The Texas Public Information Act also exempts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Tex. Gov't Code § 552.110(b). “[T]he Act excepts the information if its release would even just ‘give advantage to a competitor.’” *Greater Hous. P'ship v. Paxton*, 468 S.W.3d 51, 93 (Tex. 2015). Texas courts have also found that when the dissemination of “pricing and cost structures of projects completed by [a party]” would cause substantial competitive harm, they may be sealed. *Boccard United States Corp. v. Raytheon Co.*, No. 2004-18474, 2008 Tex. Dist. LEXIS 3102, at *1-2 (Tex. Dist. Ct. May 23, 2008).

The information sought by Requestor is confidential commercial and financial information for the same reasons it is a trade secret.

As set forth above and in the Mitchell Declaration, the Qatar Foundation expends significant resources to attract branch campuses of major research universities to Qatar. Release of the documents at issue would cause substantial competitive harm to the Qatar Foundation by giving its competitors insight into the Foundation's strategic, operational, and funding choices in providing grants to A&M.

iii. Giving Advantage To A Competitor

The Mitchell Declaration, along with the trade secret analysis above, detail the ways in which release of the Qatar Foundation's information would have a negative competitive impact on its business. The Qatar Foundation does not need to demonstrate that there is an ongoing competition or bidding process in order to have information excepted under Tex. Gov't Code § 552.104. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015).

When evaluating potential competitive harm or advantage, the Office of the Attorney General should not substitute its general business knowledge for the specific evidence and information the Qatar Foundation has provided. *See id.* (holding that a court of appeals erred in assuming certain hypothetical factors were more important than others “based on their own general

business knowledge”). Further, when a competitive environment is governed by unique factors or characteristics, such as the Qatar Foundation’s competition across international borders with both private non-profit organizations and the governments of several other countries, those considerations should be given priority over general business factors. *Id.* Finally, the Attorney General should only consider whether disclosure of this information “would be *an* advantage, not whether it would be a decisive advantage.” *Id.* (emphasis added).

The Qatar Foundation competes with numerous other public and private organizations throughout the Middle East to attract major research universities to Qatar. The information described above as trade secrets and confidential commercial and financial information would give each of those competitors an advantage if disclosed. Disclosure would give those competitors access to information that could be used to outbid the Qatar Foundation when negotiating with universities such as A&M, or to appropriate the Qatar Foundation’s confidential methods of approving, allocating, and managing major research university campuses. Release of the information would also damage A&M, and potentially make less grant money available for its use.

B. The Responsive Documents Contain Identifying Information Of A Donor and Grantor And Should Be Excepted From Disclosure Under Tex Gov’t Code § 552.1235

Section 552.1235(a) of the Public Information Act exempts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher learning.” The Qatar Foundation is not a “governmental body” within the meaning of the Public Information Act. Tex. Gov’t Code § 552.003(1)(A).

The Act does not define “grant.” However, in common usage a grant is “a sum of money given by the government, a university, or a private organization to another organization or person for a special purpose.” *See Cambridge English Dictionary*, “grant,” available at <https://dictionary.cambridge.org/us/dictionary/english/grant>.

The Qatar Foundation has no relationship with A&M except as grantor or donor. The Attorney General has already agreed, in response to Requestor’s first request, that the Foundation has the right to prevent disclosure of its name. But withholding the Foundation’s name alone is not enough. The Public Information Act also protects “information that would tend to disclose the identity” of a donor or grantor from disclosure. Here, all the documents sought by Requestor would tend to identify the Qatar Foundation. All the documents at issue either directly discuss a grant or donation the Qatar Foundation has made to A&M, or concern the administration of programs and contracts the Qatar Foundation has funded through grants and donations.

Requestor should not be able to bypass the protections of the statute by characterizing his inquiry as a request about a request, particularly after litigation has been filed. What Requestor wants is information related to the amount of donations and grant money the Foundation provides to A&M. He should not be able to obtain by circumvention what he cannot obtain directly.

This request is unusual for two reasons. First, the information at issue is especially sensitive because of the substantial amount of donation and grant money the Qatar Foundation provides to A&M. As the Mitchell Declaration states:

If the amount of a grant made by QF were disclosed, this would be tantamount to revealing QF's identity. To my knowledge, QF is the only Qatari entity that has the financial capacity to issue grants in the amount and for the duration of the grants Texas A&M University and other non-Qatari major research universities have received from QF.

Second, Requestor identifies the Qatar Foundation in his request. The Office of the Attorney General has before concluded that when a request names a specific donor or grantor, redacting that donor or grantor's name from the produced documents does no good: the admission that the documents are responsive is an admission that they relate to the donor or grantor named in the request. As the Attorney General has stated, in a case where a donor or grantor is named:

Although the amount or value of an individual gift, grant, or donation is not excepted from disclosure by section 552.1235, in this case there is no way for the university to release the requested dollar amounts without disclosing the identity of the donor.

See OR2017-05542; *accord* OR2005-05623. Here, Requestor did not simply seek all communications related to open records requests in a given year: he requested all communications related to a Public Information Request concerning the Qatar Foundation. This request is now the subject of litigation. Redacting the Foundation's name from the documents will fool no one, and would turn the Public Information Act on its head.

Here, because of the amount of the donations and grants at issue, and because the Qatar Foundation is already identified in the underlying request, the documents sought by Requestor should be withheld in their entirety. Anything less would "tend to disclose the identity" of the Foundation. *See* Tex. Gov't Code § 552.1235(a).

C. Documents Whose Disclosure The Qatar Foundation Does Not Oppose

The Qatar Foundation does not oppose disclosure of pages 18-22 of the Nickles Production.

III. Conclusion

For the reasons set forth above, the Qatar Foundation requests that the Attorney General except from disclosure the entirety of the President, Malave, Bazzi, Greendorfer, Smith, and Correspondence Productions, and pages 1-17 of the Nickles Production.

Please feel free to contact us if you have any questions. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Patrick Long". The signature is stylized and written in a cursive-like font.

D. Patrick Long
Squire Patton Boggs

Enclosures: Exhibit A

cc: Marc Greendorfer
Texas A&M University Office of General Counsel

EXHIBIT A

DECLARATION OF MICHAEL A. MITCHELL

1. My name is Michael A. Mitchell. My date of birth is February 26, 1964, and my address is P.O. Box 5825, Office of the General Counsel, Doha, Qatar.
2. I am General Counsel of the Qatar Foundation for Education, Science and Community Development (“QF”), located in Doha, Qatar. I have held this position since 2016.
3. I previously held the position of Vice President and Senior Associate General Counsel at the Ohio State University from 2013 until 2016, and the position of Associate Vice President and Associate General Counsel at the Ohio State University from 2004 until 2013. In that capacity, I participated in the negotiation and administration of numerous grant contracts, including provisions designed to protect confidential commercial and financial information and trade secrets.
4. QF is a private, non-profit organization that aims to lead human, social, and economic development in Qatar through investment in education, science, and research.
5. An important component of QF’s mission is the development known as Education City. Launched in 1997 by QF, Education City now houses education facilities from school age to research level and branch campuses of some of the world’s major universities. In addition to serving as the home to research centers and laboratories, it also serves as a forum where universities share research and forge relationships with businesses and institutions in public and private sectors. Education City is home to students from over 50 countries and offers opportunities for the advancement of knowledge and research across many disciplines.
6. In my role as General Counsel, I possess first-hand knowledge of the negotiations and contractual relationships between QF and non-Qatari major research universities for the purpose of providing grants to universities within Education City.

7. In my time with QF, I have personally participated in or provided guidance regarding grants made to non-Qatari major research university campuses in Education City, including Texas A&M University. Other such campuses in Qatar include Carnegie Mellon University, Georgetown University School of Foreign Service, Northwestern University, Virginia Commonwealth University, Weill Cornell Medical College, HEC Paris, and University College London.

8. In my role as General Counsel, I oversee the drafting, negotiation, and execution of contracts providing grants to Qatari campuses of non-Qatari major research universities. I participate in every major stage of the grant contract process, including ensuring that both QF and non-Qatari major research universities such as Texas A&M University abide by agreements to establish campuses. I am familiar with the terms and requirements of these contracts. I provide guidance and interpretation regarding contractual relationships with all non-Qatari major research universities. I perform all of these duties as a routine and continual part of QF's business.

9. QF expends substantial time, effort, and financial resources to attract major research universities to Qatar, and has continually done so since 1997. QF considers its expertise in attracting non-Qatari research universities to Qatar to be an asset of immense value.

10. QF routinely distributes grants to non-Qatari research universities such as Texas A&M University for the purpose of operating Qatar-based campuses of those research universities.

11. QF currently provides grants to eight (8) non-Qatari major research universities for the special purpose of establishing and maintaining campuses in Education City. The amount of each grant is a substantial portion of all funds QF distributes.

12. If the amount of a grant made by QF were disclosed, this would be tantamount to revealing QF's identity. To my knowledge, QF is the only Qatari entity that has the financial capacity to issue grants in the amount and for the duration of the grants Texas A&M University and other non-Qatari major research universities have received from QF.

13. QF competes with similar efforts from governments and foundations in other countries in the region to attract major research universities. These competitors include organizations and governments in Bahrain, Egypt, Kuwait, Lebanon, Oman, Saudi Arabia, Tunisia, the United Arab Emirates, and Yemen.

14. The size of the grant each major research university campus receives is the result of extensive, confidential negotiations, and memorialized in confidential agreements between QF and each university.

15. When QF determines that it will provide a grant to a campus of a major research university, it assesses the commercial and social value of the research that is to be performed. Then, it allocates money to the development of the campus based on the value of the campus's research programs to QF's mission.

16. The amount of grant funding each campus receives varies by major research university, but is substantial as to each campus.

17. The amounts of each grant funded by QF, as well as the negotiations and formal agreements establishing branch campuses, are confidential between QF and each respective university funded.

18. Every agreement to establish a campus or research program with a major research university contains a confidentiality provision restricting disclosure of, among other information,

QF's business methods, financial information, trade secrets, and financial and accounting policies.

19. Even within QF, knowledge of negotiations, the content of formal agreements, and precise grant amounts to non-Qatari major research universities is limited to a subset of employees who have a need to know the information in order to execute their job duties. The number of employees who are aware of this information is under 20 people. QF has 3400 total employees.

20. Within QF, we consider this information highly confidential. We protect the confidentiality of this information by restricting access, marking it as confidential, requiring employees to acknowledge confidentiality obligations, storing the originals in a secure environment (a safe), and storing electronic versions pursuant to strict IT security requirements.

21. The negotiations, formal agreements, and specific amounts of the various grants provided have substantial value to QF and also to its competitors. First, this information evidences QF's strategic choices regarding investments in research programs at these campuses. Second, the secrecy of this information gives QF a strategic advantage in negotiating with non-Qatari major research universities and preventing competitors from offering larger grants to lure non-Qatari major research universities out of Qatar.

22. QF has spent over two decades attempting to attract non-Qatari major research universities to Qatar. QF has a headquarter staff of hundreds of people dedicated to negotiating, establishing, and maintaining campuses of these universities in Qatar, and has expended thousands of man-hours and millions of dollars supporting these efforts.

23. It would be virtually impossible for a competitor of QF to determine how much grant funding QF distributes to a non-Qatari major research university, or to learn the particulars of

negotiations and formal agreements between QF and the universities. Both QF and the universities treat the information as confidential and do not disclose it. It is also not possible to determine how much grant funding QF provides to a campus through any form of observation of the routine operation of the campus.

24. If the above information were disclosed to the public, it would cause QF substantial competitive harm.

25. This competitive harm would include damage caused by rival organizations and governments, which would gain a competitive advantage through disclosure by having the information necessary to offer grants greater than the amount QF currently provides, or to offer other, more favorable terms to universities. If competitors were able to provide grants greater than those provided by QF or offer other incentives, they could lure campuses and programs out of Qatar. This is especially damaging after QF has made a substantial investment in developing them.

26. The number of foreign major research university campuses in the United Arab Emirates, for example, is greater than the number in Qatar, reflecting the substantial investment the United Arab Emirates has made to attract those campuses. QF considers the United Arab Emirates a major competitor.

27. QF's confidential bargaining and contracting process permits QF to efficiently allocate its grants and support research efforts based on the value of those efforts to QF's mission.

28. If non-Qatari major research universities with which QF has a relationship become aware of the amount of grant funding other major research universities have received from QF and the manner in which that funding is determined, the major research universities will use that

knowledge as leverage against QF in future negotiations. This could reduce the amount of grant funding QF provides to Texas A&M University.

29. If non-Qatari major research universities that QF wishes to attract to Qatar become aware of the amount of grant funding other major research universities have been given and the manner in which that funding is determined, QF will lose substantial bargaining power in negotiating the level and duration of grant funding to those universities.

30. Disclosure of this confidential information is highly likely to hamper QF's ability to achieve its mission to further education in the region.

31. If QF is forced to provide grant funding for non-Qatari major research university campuses that it would not otherwise provide if this information had remained confidential, QF will ultimately fund less research than it otherwise would have, diminishing its ability to compete.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Doha, Qatar, on the 26th day of November, 2018.

Michael A. Mitchell



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

RECEIVED
JAN 18 2019
OFFICE OF
GENERAL COUNSEL

B2165

January 15, 2019

Mr. R. Brooks Moore
Deputy General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

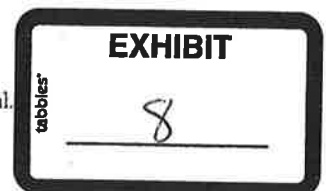
OR2019-01288

Dear Mr. Moore:

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# 746064 (Internal File No. B002162-101618).

Texas A&M University (the "university") received a request for certain information during a defined time period pertaining to the university, multiple named individuals, and specified entities and search terms.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of the Qatar Foundation for Education, Science, and Community Development (the "foundation"). Accordingly, you state you notified the foundation of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the foundation. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't

¹You provide documentation showing the university sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).



Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note, and the foundation informs us, some of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-20240 (2018). We also note some of the information pertaining to the foundation that was at issue in Open Records Letter No. 2018-20240 is currently the subject of pending litigation (the “pending litigation”) between the foundation and the Office of the Attorney General. See *Qatar Foundation for Education, Science and Community Development v. Paxton*, No. D-1-GN-18-006240 (200th Dist. Ct., Travis County, Tex.). Accordingly, to the extent the submitted information is subject to the pending litigation, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. To the extent the submitted information is not encompassed by the pending litigation, we will consider the submitted arguments against disclosure.

Next, we note you have submitted information created after the university received the instant request for information. Thus, this information, which we marked, is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the university is not required to release such information in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 (governmental body not required to disclose information that did not exist at time request was received).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. The foundation states it has competitors. In addition, the foundation states release of the information at issue would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find the foundation has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude, the university may withhold the information we indicated under section 552.104(a) of the Government Code.² As we received no other arguments against disclosure of the remaining responsive information, the university must release this information.

²As our ruling is dispositive, we need not address the foundation’s remaining arguments against disclosure of this information.

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, 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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive, slightly slanted style.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/mo

Ref: ID# 746064

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)