

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

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

**ZACHOR LEGAL INSTITUTE’S  
RESPONSE TO THE QATAR FOUNDATION’S  
AMENDED MOTION FOR SUMMARY JUDGMENT**

Intervenor Zachor Legal Institute (Zachor) hereby files its response to the Qatar Foundation’s Amended Motion for Summary Judgment:

**I. Introduction**

The Qatar Foundation (QF) contends that the Texas Public Information Act (TPIA) “was designed to protect from disclosure sensitive financial information held by institutions of higher education.” (QF Amended MSJ, p. 1) That is *not* the purpose or “design” of the TPIA, the overriding purpose of which bears repeating:

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, *at all times to complete information about the affairs of government and the official acts of public officials and employees.* The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. *The people insist on remaining informed to that they may retain control over the instruments they have created.* The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

Tex. Gov't Code §552.001.

This case is about retaining control over public institutions of higher education. At issue is whether the terms and conditions that govern the receipt and expenditure of public or other funds by Texas A & M University, here and abroad, constitute the trade secrets or the “confidential” commercial information of the Qatar Foundation simply because such funds derive from a gift<sup>1</sup> from the Qatar Foundation. Conditions on the receipt and expenditure of such funds constitute core public information that, as a matter of law, cannot be a private trade secret or confidential. They are no more trade secrets than would be the General Appropriations Act should the Qatar Foundation decide to donate to Texas its entire two-year budget.

The Qatar Foundation cannot show competitive harm because Texas’ institutions of higher education are not “for sale” to the highest bidder.

## **II. The TPIA “Requestor”**

The Qatar Foundation continues to argue that the Zachor Legal Institute lacks standing to intervene in this lawsuit because Marc Greendorfer and not Zachor is the one who requested information from Texas A & M University. (QF Amended MSJ, p. 8 and p. 8, FN 4).

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<sup>1</sup> A gift, grant, or donation ceases to be a gift, grant, or donation and becomes a contract when strings are attached to its receipt. If the strings attached cause recipient public officials to stray from their statutory purpose, it becomes something questionable.

The Zachor Legal Institute is a legal think tank and advocacy organization that has taken a lead in the legal battle against anti-Semitism and the delegitimization of Israel, actively combatting the anti-Semitic movement known as “Boycott, Divestment and Sanctions” (BDS) in the commercial, university and government sectors. (Exhibit Z-1, Affidavit of M. Greendorfer)

Marc Greendorfer founded the Zachor Legal Institute. (Exhibit Z-1) Mr. Greendorfer is an experienced, well-published attorney licensed in the State of California since 2003 and the State of New York since 1998. (*Id.*) He is also admitted to practice before the federal district courts for the Northern District of California and Montana as well as most federal courts of appeal and the United States Supreme Court. (*Id.*)

Mr. Greendorfer is the primary contact at the Zachor Legal Institute, at [Info@Zachorlegal.org](mailto:Info@Zachorlegal.org). (*Id.*) He made the TPIA request at issue in this case on behalf of the Zachor Legal Institute. (*Id.*) His TPIA request was made through his Zachor email. (*Id.*) All of his communications that followed were to or from the Zachor email. (*Id.*)

Texas A&M University treated his request to have been made by Zachor. (*Id.*) The Texas A&M portal for public records requests identifies the requestor as Zachor:

From: Texas A&M University Public Records Support  
Sent: Thursday, June 7, 2018 12:50:31 PM  
To: *Zachor Legal Institute*  
Cc: [openrecords@tamu.edu](mailto:openrecords@tamu.edu); [Open-records@tamu.edu](mailto:Open-records@tamu.edu)  
Subject: Public Information Records :: B001108-052318

(Exhibit B to Exhibit Z-1, emphasis added)

For these reasons, the Qatar Foundation's argument that Zachor lacks standing and that its arguments should not be considered must be rejected.

### **III. The Requested Information**

The Qatar Foundation also asserts that the Zachor request to Texas A&M University did not seek information about funding from or by the Qatar Foundation, only from or by the government of Qatar. (QF Amended MSJ, pp. 8-10) It contends that, as a result, it need not provide any information since no information about the Qatar Foundation is responsive to the request. (QF Amended MSJ, p. 10)

The Qatar Foundation's Original Petition, however, states that

These records are sought by Marc Greendorfer ("Requestor") pursuant to the Texas Public Information Act ("PIA"). *Requestor specifically names QF in his request for information.*

(Qatar Foundation, Original Petition, p. 2, emphasis added)

The Qatar Foundation has judicially admitted that the request specifically sought information about funding by the Qatar Foundation. Assertions of fact in a party's live pleadings that are not pled in the alternative constitute judicial admissions. *Houston First Am. Sav. v. Musick*, 650 S.W.2d 764, 767 (Tex. 1983). A judicial admission is conclusive against the party making the statement and bars the admitting party from disputing the fact or facts admitted. *Mendoza v. Fidelity & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980).

As shown in one of the exhibits relied on by the Qatar Foundation, the request named the Qatar Foundation. (QF Amended MSJ, Exhibit B, p. 3 of 4) (*See also* Exhibit Z-1) Although the request did seek information on funding from or by the government of Qatar and its affiliates, the request explicitly listed the Qatar Foundation as an entity about whom Zachor sought information. (Exhibit Z-1) Whether the Qatar Foundation is in fact an agency or affiliate of the Qatar government is not the issue. The issue is whether the request encompassed funding from or by the Qatar Foundation to Texas A&M University. Clearly it did.

Zachor sought information about foreign influence from Qatar on Texas A&M University and named as many entities as possible through which the funding might have been channeled. A governmental body must make a good faith effort to relate a request for information to information that it holds. Tex. Att’y Gen. Op. No. ORD – 561 (1990). Texas A&M University did so in this case, requesting a decision about whether it must release information about funding it receives from the Qatar Foundation. Texas A&M University submitted information about its relationship with the Qatar Foundation to the Attorney General representing that the information was responsive to the request. (QF Amended MSJ, Exhibit C, Texas A& M June 7, 2018 letter to the Attorney General: “we are requesting a decision regarding the enclosed responsive information. . . .”) The Qatar Foundation filed this lawsuit to prevent disclosure *of that information*. It is too late now to contend that this entire case has nothing to do with the Qatar Foundation.

For these reasons, the Qatar Foundation's argument that information about the Qatar Foundation is not "responsive" to Zachor's request to Texas A&M University must be rejected.

#### **IV. The Legal Standard and the TPIA Judicial Review Process**

The Qatar Foundation's motion must fail because it failed to attach and submit for *in camera* review the disputed information.

TPIA section 552.3221 provides for *in camera* review as follows:

(a) *In any suit filed under this chapter, the information at issue may be filed with the court for in camera inspection as is necessary for the adjudication of the case.*

(b) Upon receipt of the information at issue for in camera inspection, the court shall enter an order that prevents release to or access by any person other than the court, a reviewing court of appeals, *or parties permitted to inspect the information pursuant to a protective order*. The order shall further note the filing date and time.

(c) The information at issue filed with the court for in camera inspection shall be:

(1) appended to the order and transmitted by the court to the clerk for filing as "information at issue";

(2) maintained in a sealed envelope or in a manner that precludes disclosure of the information; and

(3) transmitted by the clerk to any court of appeal as part of the clerk's record.

(d) Information filed with the court under this section does not constitute "court records" within the meaning of Rule 76a, Texas Rules of Civil Procedure, and shall not be made available by the clerk or any custodian of record for public inspection.

(e) For purposes of this section, “information at issue” is defined as information held by a governmental body that forms the basis of a suit under this chapter.

Tex. Gov’t Code §552.3221(emphasis added).

The process under section 552.3221 for judicial review is similar to the process followed by the Attorney General, in which he requires that the information at issue be submitted for review. He did so in this case. *See* Tex. Att’y Gen. Op. No. OR 2018–20240 (2018). That is the decision Zachor challenges in this lawsuit.

In cases such as this, when a third party is resisting public disclosure under the TPIA, the third party bears the burden of establishing that particular exceptions to public disclosure apply to the requested information. *See Genuine Parts Company, Inc., v. Paxton*, (Not reported in S.W.3d) No. 03-19-00441-CV, 2020 W.L. 3887973 (Tex. App. – Austin, July 10, 2020, no pet.) (*citing Texas Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670, 673-74 (Tex. App.—Austin 2010, no pet.); *Envoy Medical Systems, LLC, v. Abbott*, 108 S.W.3d 333, 336 (Tex. App. Austin, 2003, no pet.)). The Qatar Foundation asserts that TPIA exceptions 552.1235, 552.104, and 552.110(a) and (b) apply to the requested information.

Zachor agrees that determining whether a TPIA exception to disclosure applies to requested information ordinarily is a question of law. *See A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 674 (Tex. 1995); *Paxton v. Escamilla*, 590 S.W.3d 617 (Tex. App. – Austin 2019, pet. denied). When TPIA cases address categorical types of information, such as whether a social security number must be

withheld or whether a city budget must be released, *in camera* review might not be necessary.

Exceptions such as sections 552.104 and 552.110, however, are not “categorical” exceptions; they are fact specific. *See Genuine Parts*, 2020 W.L. 3887973, at \*2; *Envoy Medical Systems*, 108 S.W.3d at 337. As a result, submitting the particular information at issue for *in camera* judicial review, is crucial. That does not mean that the decision about their applicability is a question of fact, *see A & T Consultants, Inc. v. John Sharp, Comptroller*, 904 S.W.2d 668 (Tex. 1995)(orig. proceeding), it simply requires review of the actual information in order to fairly judge the arguments made about the exceptions. The Qatar Foundation’s amended motion made no effort to do so here.

Submission of the information at issue for *in camera* review has become the standard in TPIA cases. It is particularly important in cases such as this in which categorical types of information are *not* at issue. *See, e.g., Paxton v. Escamilla*, 590 S.W.3d 617 (*in camera* review on cross motions for summary judgment to determine whether section 552.108, the law enforcement exception, protects various different deferred prosecution agreements); *Paxton v. City of Dallas*, (Not reported in S.W. Rptr.), 2019 W.L. 2119644 (Tex. App. – Texarkana, May 15, 2019, pet. denied)(city submitted information for *in camera* review to sustain burden of proof on showing information was attorney work product); *see also Dominguez v. Gilbert*, 48 S.W.3d 789, 794–95 (Tex. App.—Austin 2001, no pet.) (party who submitted information to trial court *in camera* has burden to ensure appellate



court is able to review such information on appeal); *City of Houston v. Dolcefino Communications, LLC*, (Not reported in S.W. Rptr), 2018 W.L. 5539447 (Tex. App. – Houston [1<sup>st</sup>. Dist.] October 30, 2018, no pet)(dismissing city’s appeal of order requiring city to verify unclear status of information and evasive answers regarding what information had been released and what information had been submitted for *in camera* review); *cf. Roan v. Dean*, (Not reported in S.W. Rptr.), 2020 W.L. 2073736, FN 2 (Tex. App. – Austin, April 30, 2020, no pet.)(distinguishing purpose and procedure for Rule 76a and section 552.3221); *Fallon v. MD Anderson Physicians Network*, (Not reported in S.W. Rptr.), 2019 W.L. 4019687 (Tex. App. – Houston [1<sup>st</sup>. Dist.], August 27, 2019, no pet)(court of appeals declined to address challenge to *ex parte* submission of information *in camera* in support of motion for summary judgment because issue not preserved for appeal).

The Qatar Foundation should have submitted the requested information for *in camera* review to sustain its burden.<sup>2</sup> The documents themselves are the best evidence of whether they fall within the TPIA exceptions to disclosure, particularly under TPIA sections 552.104 and 552.110. That is the only way to evaluate the legal contentions made by the Qatar Foundation.

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<sup>2</sup> But the Qatar Foundation cannot do so *ex parte*. See generally *Remington Arms Co., Inc. v. Canales*, 837 S.W.2d 624, 626 n.3 (Tex. 1992). *Cf. Fallon v. MD Anderson Physicians Network*, (Not reported in S.W. Rptr.), 2019 W.L. 4019687 (Tex. App. – Houston [1<sup>st</sup>. Dist.], August 27, 2019, no pet)(court of appeals declined to address challenge to *ex parte* submission of information *in camera* in support of motion for summary judgment because issue not preserved for appeal).

But it is too late in this case for the Qatar Foundation to do so. Zachor requested copies of the information at issue in discovery, pursuant to protective order, as expressly authorized in TPIA sections 552.322 and 552.3221(b). The Qatar Foundation refused to produce them.

Texas Rules of Civil Procedure Rule 193.6 provides that evidence is generally inadmissible if it is not timely disclosed in response to a discovery request:

A party who fails to make, amend, or supplement a discovery response, including a required disclosure, in a timely manner *may not introduce in evidence the material or information that was not timely disclosed*, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that:

- (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or
- (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.

Tex. R. Civ. P. 193.6(a).

In *Alvarado v. Farah Mfg. Co., Inc.*, the Texas Supreme Court described Rule 193.6 as follows: “The trial court has discretion to determine whether the offering party has met his burden of showing good cause to admit the testimony; but the trial court has no discretion to admit testimony excluded by the rule without a showing of good cause.” *Alvarado*, 830 S.W.2d 911, 914 (Tex. 1992).

Because it is incumbent on the Qatar Foundation to submit the information at issue for review by the Court, because the Qatar Foundation failed to do so, and because the Qatar Foundation is barred from doing so now because it refused to

the produce the information in response to Zachor's discovery request, the Qatar Foundation's Amended Motion for Summary Judgment should be denied.

**V. TPIA Section 552.301(f)**

The Qatar Foundation's amended motion does not address the previous decisions of the Attorney General that ruled that the precise information at issue in this case must be released.

It is undisputed that Texas A&M was directed to release and previously released the same information to the public. *See* Tex. Att'y Gen. OR2015-17822 (Aug. 26, 2015)(Exhibit Z-2) and Tex. Att'y Gen. OR2016-03361 (Feb. 11, 2016)(Exhibit Z-3). The requestor, the *Washington Post*, included the information in links to the contract in an article. (Exhibit Z-4: "Texas University gets \$76 million each year to operate in Qatar, contract says," *Washington Post*, March 8, 2016, [www.washingtonpost.com/news/grade-point/wp/2016/03/08/texas-university-gets-76-million-each-year-to-operate-in-qatar-contract-says/](http://www.washingtonpost.com/news/grade-point/wp/2016/03/08/texas-university-gets-76-million-each-year-to-operate-in-qatar-contract-says/)) The law cannot recall information once it is in the public domain. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992).

Section 552.301(f) of the TPIA provides:

(f) A governmental body must release the requested information *and is prohibited from asking for a decision from the attorney general about whether information requested under this chapter is within an exception under Subchapter C if:*

(1) *the governmental body has previously requested and received a determination from the attorney general concerning the precise information at issue in a pending request; and*

(2) the attorney general or a court *determined that the information is public information* under this chapter that is not excepted by Subchapter C.

Tex. Gov't Code §552.301(f).

Because the Qatar Foundation contract is a 10 year contract, this case involves at least some of the same precise information ruled to be public in Tex. Att'y Gen. OR2015-17822 and OR2016-03361. The latest TAMU/Qatar contract, dated January 13, 2014, does not expire until June 2023. (See Exhibit Z-4) Having failed to dispute making the contract and financial information available, at a minimum, to the *Washington Post*, the Qatar Foundation cannot now claim that any exceptions to disclosure apply.

As a result, the Court should grant summary judgment to Zachor without the need to analyze the applicability of sections 552.1235, 552.104, or 552.110.

## **VI. The TPIA Exceptions Claimed**

### **A. “Core” Public Information**

Exceptions to disclosure under the TPIA must be considered in light of the directive that the TPIA be construed in favor of granting requests and exceptions to the Act must be construed narrowly. *See* Tex. Gov't Code § 552.001; *Thomas v. Cornyn*, 71 S.W.3d 473, 488 (Tex. App.—Austin 2002, no pet.). In addition, the courts must consider section 552.022, which makes certain “core” information public regardless of the applicability of certain exceptions.

Section 552.022 provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

• • • • •

(3) information in an account, voucher, *or contract relating to the receipt or expenditure of public or other funds* by a governmental body;

• • • • •

(11) each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

• • • • •

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, *unless the category of information is confidential under this chapter or other law.*

Tex. Gov't Code § 552.022(emphasis added).

This case is not simply about the fact of or the dollar amount of the “gifts” from the Qatar Foundation to Texas A&M University. The public is entitled to know the terms and conditions that govern the expenditure of the funds received by Texas A&M University, here and abroad. Must the funds be devoted to particular research? Must the funds support student services for students from Qatar? Must the funds support research at the Texas A&M University campus in Qatar? What areas of research? If research is supported, who is entitled to commercially exploit the results? If research is supported, what countries or entities may share in the results? Does the Qatar campus comply with Chapter 51 of the Texas Education Code, i.e. with a uniform admissions policy, required and elective courses, and meetings of the board? Does the Qatar campus comply with

the First Amendment of the United States Constitution with respect to student and faculty rights?

Once funds are gifted, they become public funds. And even if they are not characterized as such for all purposes, subsection (a)(3) of section 552.022 expressly covers “information in an account, voucher, or contract relating to the receipt or expenditure of public *or other funds* by a governmental body.” Tex. Gov’t Code §552.022(a)(3). Government contracts and the expenditure of public and other funds are core public information that, as a matter of law, cannot fall within the claimed exceptions to disclosure.

In *Abbott v. Dallas Area Rapid Transit*, 410 S.W.3d 876 (Tex. App. – Austin, 2013, no pet.), the court addressed the public availability under section 552.022(a)(1) of a completed investigation report regarding claims of racially discriminatory hiring practices. The court held that section 552.022’s “special categories of public information—often referred to as ‘core public information’—are protected from disclosure only if they are ‘expressly confidential under other law.’” *Abbott*, 410 S.W.3d at 880 (citing former Tex. Gov’t Code § 552.022(a) and *Texas Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 114 (Tex. 2011)). The court stated: “[c]ompared to the dozens of exceptions for disclosure of ‘regular’ public information, there is only one exception to the PIA’s mandated disclosure of core public information—if it is ‘expressly confidential under other law.’” *Abbott*, 410 S.W.3d at 880 (*quoting Cox*, 343 S.W.3d at 122 (Wainwright, J., concurring)). “Other law,” as used in former TPIA section 552.022, means law

other than the PIA, which includes “other statutes, judicial decisions, and rules promulgated by the judiciary.” *Abbott*, 410 S.W.3d at 880 (citing *Cox*, 343 S.W.3d at 113–15). The court concluded that the claimed exceptions did not protect the report.

The *Abbott* court did not apply the current version of section 552.022. In 2011, the Texas Legislature changed the phrase “expressly confidential under other law” to its current version “unless made confidential under this chapter or other law.” See Acts 2011, 82d Leg., R.S., ch. 1229, § 2, 2011 Tex. Gen. Laws 3271 (making amendments applicable to requests for information received on or after Sept. 1, 2011). The 2011 changes to subsection (a) also provided that core public information was *not* excepted from disclosure. In *Abbott*, the court stated “[w]e express no opinion regarding how the 2011 changes to section 552.022 would affect our opinion here.” *Abbott*, 410 S.W.3d at 880, FN 2.

The latest version, the 2011 version of section 552.022, applies in this case. Because the exceptions claimed by the Qatar Foundation do not make information “confidential” under either the TPIA or other law, they cannot supersede section 552.022 with respect to this core public information about the expenditure of public or other funds by Texas A&M University. Although the Texas Legislature also amended the titles of a number of TPIA exceptions to include the word “confidential,” including the heading of exceptions 552.1235 and 552.110, that does not control. Nothing in the body of those sections makes the information “confidential.”

The title or heading of an exception does not supplement or supersede its content:

The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Tex. Gov't Code §311.024.

It is undisputed that the information requested by Zachor is “core” public information under section 552.022(a)(3). Historically, true “trade secrets” have been deemed to be information made confidential by judicial decision. That issue will be addressed under the discussion of exception 552.110(a). As a matter of law, however, exceptions 552.1235 and 552.104 simply do not override section 552.022(a)(3).

**B. TPIA Exception 552.1235**

TPIA section 552.1235 provides in full 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 of the Education Code.

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



Exception 552.1235 does not make information “confidential.” As a result, it does not override section 552.022(a)(3). A gift, grant, or donation ceases to be a gift, grant, or donation and becomes a contract when strings are attached to its receipt. The terms and conditions in contracts and other documents that govern or demonstrate the receipt and expenditure of gifts, grants, and donations are core public information and must be released.

The Qatar Foundation’s amended motion addresses a number of aspects of section 552.1235 that need not be addressed by the Court. For example, section 552.1235 does not protect from disclosure gifts, grants, and donations from a “governmental body.” Tex. Gov’t Code § 552.1235(a). The Qatar Foundation devotes a great deal of attention in its amended motion to the argument that it is distinct from the *government* of Qatar. Although that might be disputed, it is not at issue -- Zachor does not allege that the exclusion from the protection afforded by section 552.1235 extends to *foreign* governmental bodies.

Texas A&M University, however, clearly is a governmental body, *as are all of its branches*. Under TPIA section 552.003, a governmental body includes

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members[.]

Tex. Gov’t Code § 552.1235(1)(A)(i).

That includes institutions of higher education, including the Texas A&M University at Qatar. Not only must the Texas A&M Qatar campus comply with all

of the Texas Education Code provisions that apply to Texas A&M University's Texas campuses, it must comply with the TPIA. Any funding that flows back and forth between Texas A&M University at Qatar and Texas A&M University is not protected by section 552.1235.

More important, exception 552.1235 applies only to gifts, grants, and donations that are intended to be made anonymously and that are in fact made anonymously. A donor who might otherwise be able to remain anonymous cannot disclose, much less publicize, its identity and the fact that it made donations in order to hide the details and conditions on those donations from the public. By its plain terms, section 552.1235 does not protect "other information relating to gifts, grants, and donations."

The Qatar Foundation relies on two decisions of the Attorney General that interpreted section 552.1235 to allow withholding "other information" that "tended to identify donors." (QF Amended MSJ, Exhibit H [Tex. Att'y Gen. Op. No. OR2017-05542 (2017)] and Exhibit I, [Tex. Att'y Gen. Op. No. OR2005-05623 (2005)]) Attorney General opinions, although entitled to consideration, are not binding on the courts. *Greater Houston Partnership v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.-Austin 1992, no writ); see also *Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015). The decisions relied on by the Qatar Foundation did not address a situation in which the donor widely publicized the fact that the donor made large donations.

Nor did the decisions referenced by the Qatar Foundation address the interplay between section 552.022(a)(3) and exception 552.1235. The exception simply does not make information “confidential,” as opposed to merely excepted, and, therefore, does not override core public information made public in section 552.022.

### **C. TPIA Exception 552.104**

As a preliminary matter, the Qatar Foundation contends that the old version of exception 552.104, prior to amendment in 2019, applies. Assuming for the sake of argument that to be the case, pre-2019 section 552.104 does not apply.

The Qatar Foundation asserts that the decision in *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015), stands for the proposition that the Qatar Foundation does not have to show any ongoing competition or bidding process. (Id.) In *Boeing*, however, the Court noted that the evidence at trial demonstrated “intense competition,” *Boeing*, 466 S.W.3d at 839, and that leases like those at issue were continually rebid in the military refit market. *Boeing*, 466 S.W.3d at 841. As a result, *Boeing* demonstrated a real potential for actual competitive harm. In contrast, here, the Qatar Foundation provides only conclusory statements about other competition.

Further, as a matter of law, there cannot be a competitive process for the establishment of Texas A&M campuses, foreign or domestic. As noted in Zachor’s Amended Motion for Summary Judgment, establishing campuses for institutions of higher education is a matter for the Texas Legislature, not for Texas A&M to

decide on the basis of some perceived competitive process involving the highest bidder. Chapters 85-89 of the Texas Education Code govern the Texas A&M University System. Section 86.02 of the Education Code describes Texas A&M University as an institution of higher education located in the City of College Station. Tex. Educ. Code §86.02. Chapter 87 of the Education Code describes the other academic institutions of higher education that are part of the Texas A&M University System. Chapter 88 of the Education Code describes the other agencies and services the Texas A&M University System is authorized to provide. No provision of the Education Code provides for a Texas A&M campus in Qatar or grants Texas A&M the authority to create one on its own. *See South Texas College of Law v. Texas Higher Educ. Coordinating Bd.*, 40 S.W.3d 130 (Tex. App. – Austin 2000, pets (2) denied).

There simply is no competitive process by which Texas agrees to “sell” its campuses. Under section 61.002 of the Education Code, the Board’s directive in deciding whether to create or expand academic programs is to establish excellence in education, not to seek the highest bidder. Tex. Educ. Code §61.002. The decision simply is not part of any competitive process in which the Qatar Foundation can show harm.

Finally, the Qatar Foundation’s reliance on *Boeing* is misplaced because, in *Boeing*, a copy of the lease, albeit redacted, was produced. None of the conditions or agreements at issue here have been released. In addition, the *Boeing* case did not address the interplay of section 552.022(a)(3) and section 552.104. As a matter

of law, section 552.104 does not make information “confidential” and does not authorize withholding core public information.

As a result, Zachor is entitled to summary judgment that TPIA section 552.104, old or new version, does not protect the requested information from disclosure.

**D. TPIA Section 552.110**

As a preliminary matter, the Qatar Foundation contends that the old version of exception 552.110, prior to amendment in 2019, applies. Assuming for the sake of argument that to be the case, the old version of section 552.110 does not apply. And even if the new section 552.0222 does not apply, section 552.022(a)(3), which has not changed since 2011, does.

Section 552.110 does not make information expressly “confidential.” Its heading to that effect does not alter its content. *See* Tex. Gov’t Code §311.024. As a result, it does not override section 552.022(a)(3) with respect to the core public information at issue here. To the extent that section 552.110(a) encompasses protection for trade secrets, however, it could implicate information “deemed confidential” by Texas Rules of Evidence Rule 507 or by judicial decision.

The party claiming the existence of a trade secret has the burden of showing its existence. *In re Bass*, 113 S.W.3d 735, 739-40 (Tex. 2003). The question of whether information is in fact a trade secret is a question of fact. Tex. Att’y Gen. ORD – 552 (1990), at \*2; *see Envoy Medical Sys. v. State*, 108 S.W3d 333, 337 (Tex. App – Austin 2003, no pet). Likewise, section 552.110(b) requires a specific

factual showing of substantial competitive harm. Tex. Att’y Gen. ORD – 661 (1999). General conclusory statements will not suffice. *Id.*, at \*6.

Because the Attorney General cannot resolve questions of fact in the TPIA process, the Attorney General simply accepts a party’s *prima facie* assertions in resolving TPIA claims that section 552.110 applies. Tex. Att’y Gen. ORD – 552, at \*5. *Cf.* Tex. Att’y Gen. ORD – 609 (1992) (matter referred back to the governmental body for fact-finding). For that reason, the multitude of decisions from the Attorney General applying section 552.110 are of limited assistance in adjudicating the applicability of the exception to particular information. For the same reason, it is essential to have the information submitted for review by the Court *in camera*.

With respect to the merits of the Qatar Foundation’s argument regarding section 552.110(b), the Qatar Foundation has not produced competent summary judgment evidence of “*specific factual evidence* that disclosure would cause *substantial competitive harm* to the person from whom the information was obtained” as required under the old version of section 552.110(b). Former Tex. Gov’t Code § 552.110(b) (emphasis added). *Compare* Acts 2011, 82nd Leg., ch. 1229 (S.B. 602), § 5, eff. Sept. 1, 2011; *with* Acts 2019, 86th Leg., ch. 1216 (S.B. 943), § 4, eff. Jan. 1, 2020. As noted under the discussion of section 552.104, there is no competitive process by which Texas establishes new university campuses. Nor is there any evidence that Texas A&M University would reject donations for research, building maintenance, or the like from any other entity much less choose

to reject the Qatar Foundation's donations because some other entity offered more. More likely, Texas A&M University would encourage multiple donations.

With respect to the merits of the Qatar Foundation's argument regarding section 552.110(a), for trade secrets, the Qatar Foundation has not produced competent summary judgment evidence of the trade secret factors. Although a party need not show all six of the trade secret factors in the Restatement of Torts as adopted in Texas under *Hyde Corp v. Huffines*, see *In re Bass*, 113 S.W.3d at 740, they can all be relevant in determining the validity of a claim of trade secret protection. A party asserting a trade secret privilege must do so with specificity.

The Qatar Foundation relies on the declaration and supplemental declaration of its General Counsel, Mr. Michael Mitchell. (QF Amended MSJ, Exhibits A, J) Those declarations, however, are replete with legal conclusions and general, speculative statements about general competitive harm. The declarations fail to name one competitor that has attempted to persuade Texas A&M University to reject the Qatar Foundation's donations. The declarations assert that the Qatar Foundation uses a secret strategy in its negotiations with Texas A&M University but fails to show how that secret strategy has found its way into the final negotiated agreements. Presumably, the agreements are *the result* of the strategy; they do not contain it. Nor does the Qatar Foundation show how the amount of money devoted to particular research issues, the social and commercial value of which are assessed by the Qatar Foundation (QF Amended MSJ, Exhibit A, para. 13), are trade secrets.

The Qatar Foundation's reliance on the decisions in *Waste Management of Texas, Inc., v. Abbott*, 406 S.W.3d 626 (Tex. App. – Eastland 2013) and *Taco Cabana Int'l, Inc. v. Two Pesos, Inc.*, 932 F.2d 1113, 1124 (5th Cir.1991) is misplaced. In *Waste Management*, a case that related to the Waste Management's agreement with Williamson County to use the county landfill, the pricing information deemed to constitute a trade secret was pricing under the contracts between Waste Management and the companies to whom it provided waste disposal services. Those were contracts to which Williamson County was not a party. As a result, core public information under section 552.022(a)(3) was not an issue.

Likewise, in *Taco Cabana*, the Fifth Circuit found that the company did not lose trade secret protection for information in architectural plans that it was required to file with a municipality to obtain a building permit. The architectural plans were not part of an agreement that directed how public or other funds were to be spent by the municipality. As a result, core public information under section 552.022(a)(3) was not an issue.

Finally, the public has a substantial interest in knowing whether it is Texas A&M University that approves expenditures on research, on student services, on capital improvements and the like, or the Qatar Foundation? The public is entitled to know whether Texas A&M University has abdicated its responsibility and ceded control to a private entity in exchange for a bunch of money. For that matter, the Court should question whether the terms and conditions that apply to the receipt



and expenditure of foreign gifts, grants, or donations may ever be deemed a trade secret. Zachor contends they cannot.

## **VII. Conclusion.**

For all the reasons stated above, Zachor respectfully asks that the Court deny the Qatar Foundation's Amended Motion for Summary Judgment.

Respectfully submitted,

/s/Jennifer S. Riggs \_\_\_\_\_

Jennifer S. Riggs  
Texas Bar No. 16922300  
RIGGS & RAY, P.C.  
506 West 14<sup>th</sup> Street, Suite A  
Austin, Texas 78701  
(512) 457-9806  
(512) 457-9066 facsimile  
[jriggs@r-law.com](mailto:jriggs@r-law.com)

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served by e-service on this 23<sup>rd</sup> day of June, 2022, on:

Steven R. Rech  
Texas Bar # 6649200  
VORYS, SATER, SEYMOUR AND PEASE LLP  
909 Fannin Street, Suite 2700  
Houston, Texas 77010  
(713) 588-7000 Telephone  
(713) 588-7050 Fax  
[srech@vorys.com](mailto:srech@vorys.com)

Daniel E. Shuey  
Ohio Bar #0085398  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
Columbus, OH 43216-1008

(614) 464-8277 (phone)  
(614) 719-4616 (fax)  
[deshuey@vorys.com](mailto:deshuey@vorys.com)

William G. Porter  
Ohio Bar #0017296  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
Columbus, OH 43216-1008  
(614) 464-5448 (phone)  
(614) 719-4911 (fax)  
[wgporter@vorys.com](mailto:wgporter@vorys.com)

Kimberly Fuchs  
Texas Bar No. 24044140  
Assistant Attorney General  
[Kimberly.fuchs@oag.texas.gov](mailto:Kimberly.fuchs@oag.texas.gov)  
Open Records Litigation  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 475-4195  
(512) 320-0167

/s/Jennifer S. Riggs \_\_\_\_\_  
Jennifer S. Riggs

## EXHIBIT LIST

Exhibit Z-1	Affidavit of M. Greendorfer
Exhibit Z-2	OR2015-17822
Exhibit Z-3	OR2016-03361
Exhibit Z-4	Washington Post March 8, 2016 article

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

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

**AFFIDAVIT OF MARC GREENDORFER**

COUNTY OF GALLATIN

STATE OF MONTANA

BEFORE ME, the undersigned authority, personally appeared MARC GREENDORFER, who, being by me duly sworn on his oath states:

1. “I am founder of the Zachor Legal Institute, Intervenor in the above-captioned cause, and am authorized to submit this affidavit on its behalf;
2. “I am over the age of 21 years of age and fully competent to make this statement;
3. “I have personal knowledge of the matters asserted in this affidavit and such matters are true and correct.
4. “I am an experienced, well-published attorney, licensed in the State of California since 2003 and the State of New York since 1998. I am also admitted to practice before the federal district courts for the Northern District of California

and Montana as well as most federal courts of appeal and the United States Supreme Court.

5. “The Zachor Legal Institute is a legal think tank and advocacy organization that has taken a lead in the legal battle against anti-Semitism and the delegitimization of Israel, actively combatting the anti-Semitic movement known as “Boycott, Divestment and Sanctions” (BDS) in the commercial, university and government sectors.

6. “The Qatar Foundation asserts that my request to Texas A&M University did not seek information about funding from or by the Qatar Foundation, only from or by the government of Qatar. That is not the case. My request specifically named the Qatar Foundation. (Exhibit A) Although the request did seek information on funding from or by the government of Qatar, the request explicitly listed the Qatar Foundation as an entity about whom Zachor sought information. Whether the Qatar Foundation is in fact an agency or affiliate is not the issue. The issue is whether the request encompassed funding from or by the Qatar Foundation to Texas A&M University. Clearly it did.

7. “The Qatar Foundation also questions whether the Zachor Legal Institute is the “Requestor” under the Texas Public Information Act (TPIA) and is, therefore, entitled to intervene in this lawsuit. As indicated, I am the founder and primary contact for the public at the Zachor Legal Institute, at [Info@Zachorlegal.org](mailto:Info@Zachorlegal.org). I made the request on behalf of Zachor. My TPIA request was made through my

Zachor email. All of my communications that followed were to or from the Zachor email.

8. "Texas A&M University obviously considered the request to have been made by Zachor. The Texas A &M portal for public records requests identifies the Requestor as Zachor:

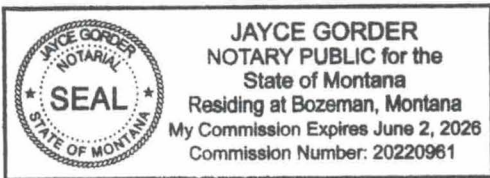
From: Texas A&M University Public Records Support  
Sent: Thursday, June 7, 2018 12:50:31 PM  
To: Zachor Legal Institute  
Cc: openrecords@tamus.edu; Open-records@tamu.edu  
Subject: Public Information Records :: B001108-052318

(Exhibit B, emphasis added)

"Further, affiant sayeth not."

  
\_\_\_\_\_  
Marc Greendorfer

SUBSCRIBED AND SWORN TO before me on this 22<sup>nd</sup> day of June, 2022.



  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF MONTANA

**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)

Exhibit A

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;  
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;  
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 Remailhi;  
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-'Amm
  - Al Jazeera Balkans (Balkans)
  - Sports- beIN Media Group
  - Educational- Al Jazeera Documentary Channel
  - JeemTV

EXHIBIT A  
Greendorfer (B001108-052318)

Exhibit A



- 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

EXHIBIT A  
Greendorfer (B001108-052318)

Status: Activity Assigned  
Priority: Medium  
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

Search

My Papers :: SSRN

Service Request Edit Page

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not create an attorney/client relationship with any recipient.

From: Texas A&M University Public Records Support  
 Sent: Thursday, June 7, 2018 12:50:31 PM  
 To: Zachor Legal Institute  
 Cc: openrecords@tamus.edu; Open-records@tamu.edu  
 Subject: Public Information Records :: B001108-052318

Attachments:  
 BRIEF\_(B1108\_Greendorfer).pdf

On 6/7/2018 2:49:06 PM, Texas A&M University Public Records Support wrote:

CC: openrecords@tamus.edu; Open-records@tamu.edu

6/07/18

**For Requestor: Marc Greendorfer (B001108-052318): SEEKING OAG DECISION**

The Texas A&M University System is seeking a decision from the Office of the Attorney General of Texas regarding your open records request to Texas A&M University. Attached is a copy of our correspondence being submitted today.

Thank you.  
Dana Sweet

On 5/24/2018 5:10:59 PM, Marc Greendorfer wrote:

On 5/24/2018 4:58:38 PM, Texas A&M University Public Records Support wrote:

[Click Here to View Entire Message](#)

On 5/23/2018 5:40:42 PM, Texas A&M University Public Records Support wrote:

Dear Marc Greendorfer:





**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 26, 2015

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2015-17822

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# 577181 (TAMU 15-510).

Texas A&M University (the "university") received a request for all financial contracts pertaining to the university's payments to the Qatar Foundation for Education, Science and Community Development (the "foundation") that related to the university's campus in Qatar during a specified time period. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of 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 reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the foundation explaining why the submitted information should not be released. Therefore, we have no basis to conclude the foundation has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision

Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest the foundation may have in the information. As no exceptions to disclosure have been raised, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/som

Ref: ID# 577181

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Dr. Ahmad M. Hasnah  
President of Hamad bin Khalifa University  
Qatar Foundation for Education, Science & Community Development  
P.O. Box 5825  
Doha, Qatar  
(w/o enclosures)



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2016

Mr. R. Brooks Moore  
Managing Counsel, Governance  
Texas A&M University System  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2016-03361

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# 598008 (TAMU 15-977).

Texas A&M University (the "university") received a request for a specified agreement to establish and operate the university in Qatar. Although the university takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of the Qatar Foundation for Education, Science and Community Development ("Qatar Foundation"). Accordingly, the university states, and provides documentation showing, it notified Qatar Foundation of the request for information and of its right to submit arguments to this office as to why the submitted information 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 Qatar Foundation. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note at least some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-17822 (2015). In Open Records Letter No. 2015-17822, we determined the university must release the submitted information. However, Qatar Foundation now argues the submitted information is excepted from disclosure under section 552.110 of the Government Code. Although the university notified Qatar Foundation pursuant to section 552.305 of the Government Code when the university received the previous request for information, Qatar Foundation did not submit comments objecting to the release of the submitted information in the previous ruling. Accordingly, in our previous ruling, we determined the university must release the submitted information. Section 552.007 of the

Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. We note, because information subject to section 552.110 is deemed confidential by law, we will address Qatar Foundation's claim under this exception for the previously released information. We will also consider Qatar Foundation's argument under section 552.110 of the Government Code for any of the submitted information that was not at issue in the previous ruling.

Qatar Foundation contends the submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

As mentioned above, Qatar Foundation's information was subject to Open Records Letter No. 2015-17822. In the prior ruling, the university notified Qatar Foundation of the request for information pursuant to section 552.305 of the Government Code. Qatar Foundation did not object to the release of the information at issue. Since the issuance of the previous ruling on August 26, 2015, Qatar Foundation has not disputed this office's conclusion regarding the release of the information. In this regard, we find Qatar Foundation has not taken any measures to protect the information at issue in order for this office to conclude the information now either qualifies as commercial or financial information, the release of which would cause Qatar Foundation substantial harm. *See* Gov't Code § 552.110(b); *see also* ORD 661. Accordingly, we conclude the university may not withhold the information that was at issue in Open Records Letter No. 2015-17822 under section 552.110(b) of the Government Code.

To the extent the submitted information was not at issue in Open Records Letter No. 2015-17822, we address Qatar Foundation's submitted arguments. Qatar Foundation argues the submitted information consists of commercial information, the release of which would cause it substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Qatar Foundation has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its information would cause the company substantial competitive harm. *See* ORD 661. We note this office considers the prices charged in government contracts to be a matter of strong public interest; thus, pricing information is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of

Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (public has interest in knowing terms of contract with state agency). Therefore, the university may not withhold any of the submitted information under section 552.110(b). As no other exceptions are raised, the university must release the submitted 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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 598008

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Legal Department  
Qatar Foundation for Education  
Science and Community Development  
P.O. Box 5825  
Doha, Qatar  
(w/o enclosures)



# The Washington Post

*Democracy Dies in Darkness*

# Texas university gets \$76 million each year to operate in Qatar, contract says

By [Nick Anderson](#)

March 8, 2016 at 6:47 a.m. EST

The total annual bill for six prominent U.S. universities to run branches in the wealthy Arabian emirate of Qatar comes to more than \$400 million.

That sum includes more than \$76.2 million a year to operate Texas A&M University at Qatar — a previously undisclosed figure that The Washington Post recently obtained through a public records request in Texas.

The university provided The Post with a copy of its contract to operate in Doha, Qatar, as well as budget estimates and other documents, after the state attorney general's office ruled that the documents are public records and must be released. A Qatari foundation had petitioned Texas authorities to keep the documents secret.

*[Read the documents]*

Texas A&M's branch is part of Education City, a massive venture to import elite higher education from the United States to Doha using the oil and natural gas riches of the tiny Persian Gulf nation. Others in Doha are Cornell, Georgetown, Carnegie Mellon, Northwestern and Virginia Commonwealth universities.

Education City is something of a gamble for the U.S. schools. Leaders of the universities say they pay nothing to operate in Doha because their expenses are covered by the Qatar Foundation for Education, Science and Community Development.

But the schools also must safeguard their reputation. They are prominent representatives of the Western liberal academic tradition operating in a country with tight controls on political expression and other public speech. Qatar, predominantly Muslim and culturally conservative, takes Islamic law seriously and is careful to protect the royal family's power. Anti-sedition laws make it a crime to publicly insult the emir.

Many details of Education City's operations are opaque. The foundation — chaired by Sheikha Moza bint Nasser, wife of the previous emir and mother of the incumbent — discloses few financial details. Four of the six U.S. universities involved are private, and they all declined Post requests to view copies of their contracts.

But The Post pieced together a picture of the financial operation through U.S. tax records, U.S. Education Department data and public records in Virginia and Texas.

Here are estimated total annual expenses in 2014:

- Weill Cornell Medical College — \$121.7 million
- Texas A&M — \$76.2 million
- Carnegie Mellon — \$60.3 million
- Georgetown — \$59.5 million
- Northwestern — \$45.3 million
- VCU — \$41.8 million

The total: \$404.8 million.

But those are just operating expenses for the six university branches. There likely are other capital and operating expenses for Education City as a whole. The figures suggest that the foundation has spent several billion dollars to develop and operate the complex during the past 15 years. The first of the six branches to open in Doha was VCU's in 1998, but the venture accelerated after Cornell agreed in 2001 to launch a medical school there.

Each branch focuses on a specialty. VCU does fine arts; Georgetown, foreign service; Northwestern, communication and journalism; and Carnegie Mellon, business and computer science.

Texas A&M's specialty in Qatar is engineering. Since 2003, the Doha branch has awarded 635 diplomas. This school year it has 508 students and 81 faculty members. The branch offers bachelor's degrees in engineering (chemical, mechanical, petroleum and electrical/computer), as well as a master's degree in chemical engineering.

When The Post asked VCU last fall for a copy of its contract with the Qatar Foundation, the public university in Richmond provided one. But Texas A&M at first declined to do so, instead referring the request to the Texas attorney general's office. Attorneys for the Qatar Foundation told the attorney general's office that release of the records "would cause substantial competitive harm."

An assistant attorney general, David L. Wheelus, concluded in a letter to Texas A&M on Feb. 11 that the records must be disclosed. "We note this office considers the prices charged in government contracts to be a matter of strong public interest," Wheelus wrote.

*[Read the contract, as well as attached budget estimates and other documents.]*

The latest Texas A&M contract, dated Jan. 13, 2014, expires in June 2023. In many aspects it resembles VCU's contract.

Key provisions stipulate that Texas A&M shall operate in Doha with "the same standards of quality for faculty, staff, students and curricula that apply on the main campus" and that the branch will follow "the educational, employment, academic freedom, nondiscrimination and quality standards observed at the main campus."

Other provisions:

- Degrees awarded in Doha are to be "identical in all material respects" to those awarded in College Station, Texas.
- Texas A&M agreed to set a goal that 70 percent of its undergraduates in Doha would be Qatar citizens.

- Courses are to be coeducational and delivered in English.
- The campus dean reports directly to top officials of Texas A&M in College Station.
- Faculty and key administrators are eligible for a salary premium of up to 30 percent of their base pay.
- The Qatar Foundation retains approval authority over budgets and business plans.
- Texas A&M is eligible for a management fee for running the branch — an amount set at \$8.2 million in fiscal 2014.
- Students pay tuition to the Qatar Foundation, and the foundation reimburses the university for expenses.

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**AGREEMENT TO CONTINUE TO OPERATE THE  
UNDERGRADUATE AND GRADUATE PROGRAMS AT  
TEXAS A&M UNIVERSITY AT QATAR**

**THIS AGREEMENT** (the "Agreement") is made this 13<sup>th</sup> day of January, 20 between Qatar Foundation for Education, Science and Community Development, institution for public benefit existing under the laws of the State of Qatar ("Qatar Fou and Texas A&M University ("TAMU"), a public institution of higher education orga existing under the laws of the State of Texas, United States of America and a memb Texas A&M University System ("TAMUS"). Qatar Foundation and TAMU shall colle referred to as the "Parties" and individually as "Party".

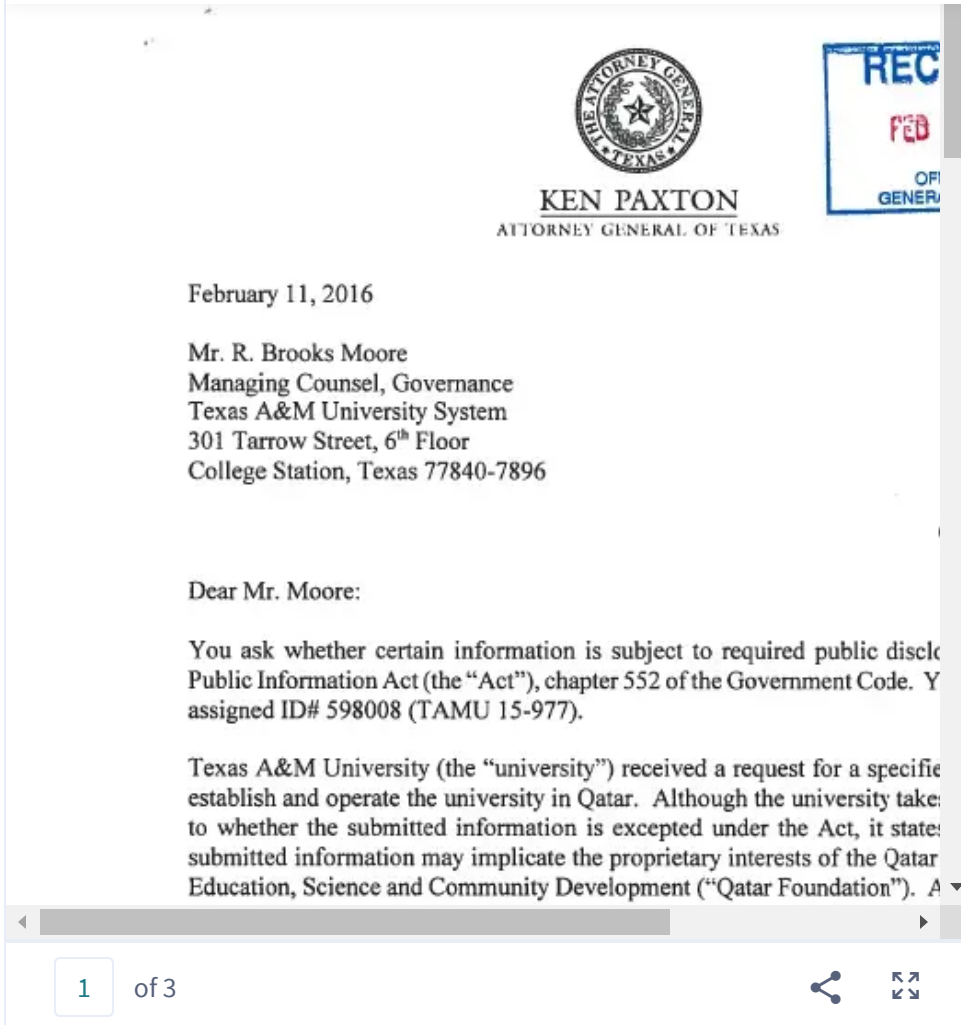
**WHEREAS**, on the 25<sup>th</sup> day of May, 2003 the Parties entered into an Agr Establish and Operate Texas A&M University at Qatar (the "Original Agreement established a branch campus of TAMU, known as "Texas A&M University : ("TAMUQ"), which offered undergraduate degree programs in chemical, electrical, m and petroleum engineering.

**WHEREAS**, on the 13<sup>th</sup> day of October, 2010 the Parties entered into a Supp the Agreement to Establish and Operate Texas A&M University at Qatar – Establis Graduate Studies Programs in Engineering (the "Graduate Agreement"), which esta graduate studies program at TAMUQ with the Master of Science research degree, both non-thesis, and the Master of Engineering professional degree to be offered in disciplines established in the Undergraduate Agreement consistent with establishe demand.

**WHEREAS**, on the 17<sup>th</sup> day of January, 2011 the Parties entered into an Agr Establish and Operate a Research Program at Texas A&M University at Qatar (the ' ▾



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**Read more:**

[Northwestern University will stay a decade longer in Qatar](#)

[The Education City contracts: A case study from VCU in Qatar](#)