

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

QATAR FOUNDATION FOR
EDUCATION, SCIENCE AND
COMMUNITY DEVELOPMENT,

Plaintiff,

v.

KEN PAXTON,
TEXAS ATTORNEY GENERAL

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT COURT

FINAL JUDGMENT

On September 14, 2022, the Court heard Plaintiff's Amended Motion for Summary Judgment and Intervenor Zachor Legal Institute's Amended Motion for Summary Judgment. Defendant Ken Paxton did not file a motion for summary judgment or a response to either Plaintiff's or Zachor Legal Institute's motions. The parties appeared through their attorneys of record and announced that they were ready to proceed. The Court heard argument and took the motions under advisement.

By letter dated December 7, 2022, the Court directed that Plaintiff Qatar Foundation for Education, Science and Community Development submit, by December 22, 2022, to the Court for *in camera* review "the documents that they are seeking to withhold from disclosure under the Texas Public Information Act." On December 21, 2022, the Qatar Foundation complied, submitting documents to the Court for *in camera* inspection. The documents were not shared with the other parties or their counsel.

After reviewing the briefing, the arguments, and the evidence, including the documents submitted by the Qatar Foundation for *in camera* review, the Court orders as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that the Zachor Legal Institute's Amended Motion for Summary Judgment shall be and is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's Amended Motion for Summary Judgment shall be and is hereby DENIED.

This summary judgment order is final and appealable and disposes of all claims and all parties. All relief not granted herein is DENIED.

Signed on this the 24th day of February, 2023.



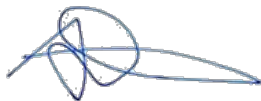
THE HONORABLE AMY CLARK MEACHUM,
JUDGE PRESIDING

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For Intervenor Zachor Legal Institute

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A handwritten signature in blue ink, appearing to read "Steven R. Rech", with a horizontal line drawn underneath it.

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Re: Cause No. **D-1-GN-18-006240 Qatar Foundation for Education, Science and Community Development vs. Ken Paxton, Texas Attorney General**, in the 200th Judicial District Court, Travis County, Texas

Dear Counsel,

Pursuant to the Court's request, counsel for Qatar Foundation sent over two pages of information *for in camera* review. After careful consideration of the evidence, briefing and arguments on the cross-motions for summary judgment, this Court grants Intervenor Zachor's Legal Institute Amended Motion for Summary Judgment and denies Qatar Foundation's Amended Motion for Summary Judgment.

Ms. Riggs, please prepare the order, circulate it to opposing counsel for approval as to form, and submit it to this Court for signature.

This Court apologizes for the delay in the resolution of this matter, it has been a monumental task moving to the new Civil and Family Court Facility, so please pardon the lengthy under advisement of your case.

Thank you.

Sincerely,



Amy Clark Meachum

201st District Court Judge

Travis County, Texas

Original: Velva L. Price, District Clerk

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

ZACHOR LEGAL INSTITUTE'S
AMENDED MOTION FOR SUMMARY JUDGMENT

Intervenor Zachor Legal Institute, pursuant to Rules 166a(c) and 166a(i) of the Texas Rules of Civil Procedure, hereby moves for summary judgment. As grounds thereof, Zachor states as follows:

I. Summary of the Case

This is a Texas Public Information Act (TPIA) case over the terms and amounts of millions of dollars in secret contracts, grants, and “donations” from a foreign entity to Texas A&M University, a public university. The potential influence from such private funding relates to programs at Texas A&M campuses in Texas and to programs at an official degree-conferring campus of Texas A& M in the country of Qatar, a foreign campus created without the approval of the Texas Legislature and without the oversight of the Texas Higher Education Coordinating Board.

The Zachor Legal Institute requested information from Texas A&M about funding and donations received by Texas A&M from Qatar because the Qatari

government is a known to harbor anti-Semitism and radical extremist Islamic terrorist groups.

Texas A&M previously released the same information pursuant to previous requests and decisions from the Attorney General requiring the release of the same information. *See* Tex. Att’y Gen. OR2015-17822 (Aug. 26, 2015)(Exhibit A) and Tex. Att’y Gen. OR2016-03361 (Feb. 11, 2016)(Exhibit B). In 2018, Texas A&M again sought a decision from the Attorney General seeking to withhold the information at issue. In Tex. Att’y Gen. OR2018-20240(Aug. 14, 2018)(Exhibit C), which relates to Zachor’s request, the Attorney General ruled that Texas A &M could withhold the identify of specific donors but that it must release the remaining information. The Qatar Foundation filed this lawsuit to challenge that decision and to prevent disclosure of the information to the public. Zachor intervened to assure that the information continues to be made public.

II. Legal Standard

The TPIA “guarantees access to public information, subject to certain exceptions.” *Texas Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 114 (Tex. 2011). All information that is collected, assembled, or maintained by or for a governmental body must be released unless a TPIA exception applies. Tex. Gov’t Code § 552.002(a); *Boeing Co. v. Paxton*, 466 S.W.3d 831, 833 (Tex. 2015); *In re City of Georgetown*, 53 S.W.3d 328, 331 (Tex. 2001). The TPIA is to be liberally construed in favor of granting requests for information. Tex. Gov’t Code § 552.001(b). Exceptions to the disclosure requirement of the TPIA are to be

narrowly construed. *Arlington Indep. Sch. Dist. v. Texas Att’y Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.).

If a governmental body receiving a request believes an exception applies, and there is no previous determination on whether the information may be withheld, the governmental body must promptly ask the Attorney General for a ruling. Tex. Gov’t Code § 552.301. The governmental body bears the burden of demonstrating that the exceptions claimed apply. Tex. Gov’t Code § 552.301(a),(e); *see also* Tex. Gov’t Code § 552.302 (information presumed public if exceptions not timely claimed). When a request may implicate the privacy or property interests of third parties, however, the TPIA permits the governmental body to defer to the third party to raise the issue and any applicable exception to the information’s disclosure with the Attorney General, in district court, or both. *See* Tex. Gov’t Code §§ 552.305(b) and 552.325; *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015); *Qatar Foundation for Education, Science, and Community Development v. Zachor Legal Institute*, 627 S.W.3d 674 (Tex. App. – Austin, 2021, pet denied). The Qatar Foundation is such a third party.

In such cases, 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's Original Petition asserts that exceptions 552.1235 and 552.110(a) and (b) apply to the requested information.

In general, matters of statutory construction are questions of law. *See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 656 (Tex. 1989). As a result, determining whether information is subject to the TPIA and whether an exception to disclosure applies to the 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). Exceptions such as section 552.110, however, are not “categorical” exceptions; they are fact specific. *Genuine Parts*, 2020 W.L. 3887973, at *2; *Envoy Medical Systems*, 108 S.W.3d at 337. As a result, the Qatar Foundation has the burden of producing admissible summary judgment evidence demonstrating that section 552.110 applies.

Finally, in TPIA cases the courts may have to review the requested information in camera to adjudicate whether the claimed exceptions apply. Tex. Gov't Code §552.3221. That is particularly the case when discreet identifiable categories of information are not at issue, as with claims that section 552.110 apply. The Court may require that the information be produced in discovery pursuant to a protective order under section 552.322 to enable the parties the fair opportunity to address the issues claimed. Zachor has requested the information and proposed a protective order but has yet to obtain the information at issue. Zachor reserves the right to supplement or amend this motion when such information has been produced.

III. TPIA Section 552.301 and “Previous Determinations”

Two “previous determinations” within the meaning of TPIA §552.301 required the release of the information requested by Zachor.

Section 552.301 of the TPIA provides:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C1 must ask for a decision from the attorney general about whether the information is within that exception *if there has not been a previous determination about whether the information falls within one of the exceptions.*

. . . .

(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 (emphasis added).

In 2015, Texas A & M University received a request for all financial contracts related to Texas A&M’s campus in Qatar. *See* Tex. Att’y Gen. OR2015-17822 (August 26, 2015) (copy attached as Exhibit A). Texas A&M notified the Qatar Foundation of the request but the Qatar Foundation did not submit comments opposing release of the requested information. *Id.* Texas A&M did not assert that section 552.1235, the TPIA section that protects the identity of an anonymous

private donor, applies to the information. The Attorney General ordered the information released. *Id.*, at *2. Texas A&M released the information.

Not long after that decision, Texas A&M received a request from the *Washington Post* for the agreement to establish and operate a Texas A&M University campus in Qatar. *See* Tex. Att’y Gen. OR2016-03361 (February 11, 2016) (copy attached as Exhibit B). Texas A&M took no position with respect to whether the information is public. Again, neither Texas A&M nor the Qatar Foundation alleged that section 552.1235 of the TPIA protected the Qatar Foundation as an anonymous private donor.

In connection with that request, however, the Qatar Foundation argued, as it does in this case, that the requested funding information is protected from disclosure by section 552.110 of the TPIA. *Id.* The Attorney General noted that, since the earlier ruling of August 26, 2015, the Qatar Foundation had not disputed the conclusion that funding, contractual, and financial information about the Qatar Texas A&M campus was public information. The Attorney General found that that omission negated the Qatar Foundation’s argument that release of the same information would cause it substantial competitive harm. *Id.*, at *2.

With respect to information not covered by the 2015 decision, the Attorney General concluded that the Qatar Foundation had not shown that section 552.110 applies. *Id.* The Qatar Foundation had not made the specific fact showing necessary to invoke section 552.110. *Id.* In Tex. Att’y Gen. OR2016-03361, the Attorney General also noted that section 552.022(a)(3) expressly makes public the

terms of contracts with governmental bodies. *Id.*, at *3; *see also* Tex. Att’y Gen. ORD 514 (1988). In compliance with the decision, Texas A&M released the requested information.

On March 8, 2016, the requestor in connection with decision OR2016-03361, the *Washington Post*, included the information in an article about the Qatar Foundation and United States universities, including Texas A&M University. (“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/) (hard copy excerpt attached as Exhibit D). Links in the article take the reader to the Qatar Foundation contract with Texas A&M and to Tex. Att’y Gen. OR2016-03361. The current Texas A&M contract with Qatar, dated January 13, 2014, does not expire until June 2023. (*See Id.*)

As a result, the same information is at issue in Zachor’s request. The request and the responsive financial information might be for subsequent years, but the request is for the same information at issue in the previous TPIA decisions, in particular Tex. Att’y Gen. OR2016-03361. The court of appeals in *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316 (Tex. App. – Houston [1st Dist.,] 1984, no writ)(*Chronicle II*) addressed the same kind of situation as follows:

The question of the type of information which is subject to disclosure by reason of the Open Records Act was determined in *Chronicle I. The*

passage of time will not change the type of information which must be disclosed. (Emphasis added.)

Chronicle II, 673 S.W.2d at 321.

In that regard, section 552.007 of the TPIA prohibits selective disclosure:

(b) Public information made available under Subsection (a) must be made available to any person.

TEX. GOV'T CODE §552.007(b).

Tex. Att'y Gen. OR2016-03361 determined that the information is public and required its release. Having failed to dispute making the contract and financial information available, at a minimum, to the *Washington Post*, the Qatar Foundation cannot now attempt to force Texas A&M to run afoul of section 552.007 by picking and choosing those to whom to release the information.

Because there was a previous determination requiring the release of the same information, Texas A&M should not have requested a decision from the Attorney General in response to Zachor's TPIA request. Section 552.301 of the TPIA, quoted above, prohibits seeking redundant, repetitive requests.

Because of section 552.301(f), Texas A&M should simply have released the information to Zachor. Section 552.301(f) prohibited TAMU from seeking another decision and the Attorney General should not have entertained the request.

In addition or in the alternative, for the reasons stated above, the Qatar Foundation waived any protection that might apply under section 552.1235 by

failing to raise that exception in response to the earlier requests and by failing to take any action to dispute the two earlier rulings from the Attorney General or to otherwise prevent disclosure. For the same reasons, the Qatar Foundation has waived any protection that might apply under sections 552.104 and 552.110.

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

IV. TPIA Section 552.1235

The Qatar Foundation contends that TPIA section 552.1235 protects the information requested by Zachor. The Qatar Foundation's petition complains of the Attorney General's decision on section 552.1235 as follows:

As part of its mission, QF (along with other entities) has made grants and donations to TAMU. These grants and donations are designed to further education and research in the region. *Some of these grants and donations are pursuant to contracts between QF and TAMU.*

. . . .

The Attorney General concluded that TAMU could withhold information identifying "donors" under section 552.1235. [] But the Attorney General stated that TAMU would be required to release all remaining information requested, which would include information related to payments made by QF to TAMU pursuant to a contract. [] *In so doing, the Attorney General implicitly rules that those payments were not donations, and therefore not exempt from disclosure under the PIA.*

(Qatar Foundation Original Petition, pp. 3-4, emphasis added)

TPIA 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 of the Education Code.

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

Section 552.1235 was intended to protect only the identity of *anonymous* private donors. It does not protect any other information, including the amount or value of any gift, grant or donation. Tex. Gov’t Code § 552.1235(b). Most important, it does not protect the “strings attached,” i.e. the terms and conditions, if any, imposed on grants or donations. The Qatar Foundation makes a judicial admission in its petition that it has reduced at least some of its grants and donations to contracts.

Moreover, it was a matter of public record that the Qatar Foundation had a multi-million dollar financial relationship with Texas A&M University. The existence of the relationship is described on the Qatar Foundation’s website.

<https://www.qf.org.qa/education/texas-a-m-university-at-qatar>

[https://www.qatar.tamu.edu/programs/science/research/research-sponsors.](https://www.qatar.tamu.edu/programs/science/research/research-sponsors)

(Exhibit E) It also has been made public by the *Washington Post* reporting described above.

The Qatar Foundation contends that “[t]hese grants and donations are designed to further education and research in the region.” (Qatar Foundation

Original Petition, p.3) The Texas Education Code requires that any faculty member or other employee or appointee of an institution of higher education who conducts or participates in sponsored research and discusses in any public communication the results of such research, disclose the sponsor. Tex. Educ. Code § 51.954(a). This specific disclosure requirement, as a matter of law, negates the possibility that the Qatar Foundation's grants and donations that are designed to further particular education and research goals may be anonymous.

In addition, federal law negates any possible finding that a foreign entity such as the Qatar Foundation may be an anonymous donor. *See* 20 U.S.C. §1011f. Texas A&M University has an affirmative duty to submit to the United States Department of Education (USDE) a public disclosure report that includes the Qatar Foundation's identity and related information. *Id.* The statute not only mandates reporting of the foreign source's identity but also mandates that such information be open to the public. *Id.* Federal law clearly recognizes that the public has a substantial interest in inspecting foreign gifts and contracts between institutions of higher education and foreign entities. In a 2019 letter report from the USDE's Office of General Counsel to the United States Senate's Homeland Security and Government Affairs Committee, the USDE chastises "a Texas University" for failing to comply with its clear duty to submit information about Qatar Foundation funding. (Exhibit F)

Zachor is entitled to summary judgment that TPIA section 552.1235 does not apply because: (1) the Qatar Foundation is not the kind of *anonymous* private

donor that the TPIA was intended to protect; (2) TPIA section 552.1235 does not except from disclosure all other relevant information, such as the amount or value of a gift, grant, or donation, much less the conditions imposed on the grant or donation pursuant to a contract, and (3) 20 U.S.C. §1011f prohibits anonymous donations from foreign entities.

V. TPIA Section 552.022

In Tex. Att’y Gen. OR2016-03361, the Attorney General noted that section 552.022(a)(3) expressly makes public the terms of contracts with governmental bodies. *Id.*, at *3. The TPIA provides that certain types of information are “super public,” including information about the receipt and expenditure of public and other funds and about public contracts relating to such funds:

(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;

. . . .

(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).

Section 552.1235 excepts from required public disclosure the identities of anonymous donors, it does not make those identities “confidential.” There is a

difference under the TPIA between information that is excepted from disclosure, making the exception “discretionary,” and information that is made confidential, a “mandatory” exception. *See* Tex. Gov’t Code § 552.007(governmental body may release information unless deemed confidential). The caption for section 552.1235 contains the word “confidential,” but that is not part of the law.

And even if section 552.1235 were deemed to make donor identities “confidential,” section 552.1235 does not extend to anything other than that which identifies or tends to identify private donors. Just because the identity of a donor is known already does not somehow amend, modify, or expand section 552.1235 to encompass other types of information such as the amount of the donation or any conditions attached to its use. As a result, as a matter of law, section 552.1235 does not override section 552.022(a)(3).

VI. TPIA Section 552.104

The Qatar Foundation’s Original Petition does not claim that TPIA section 552.104 applies, but based on the Qatar Foundation’s first motion for summary judgment, Zachor anticipates that Qatar may urge that the exception applies.

Section 552.104 provides in pertinent part as follows:

(a) Information is excepted from the requirements of Section 552.021 if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder *in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.*

(b) Except as provided by Subsection (c), 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 under law does not apply to information that is excepted from required disclosure under this section.

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

In its first motion for summary judgment, the Qatar Foundation states that the information Zachor seeks “relates to confidential research grants, contracts and gifts awarded by the Qatar Foundation to Texas A&M, which among other things, support Texas A&M’s Qatar campus.” (Qatar Motion for Summary Judgment, p. 13) The Qatar Foundation contends that “[b]ecause QF provides funding to many different institutions, QF keeps its negotiations with those institutions, and the amount of money it ultimately provides, in strict confidence.” (Id.).

In its first motion, the Qatar Foundation asserted that the decision in *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015), stood for the proposition that section 552.104 applies both to governmental bodies and to private third parties and that the Qatar Foundation did 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. *Boeing*, 466 S.W.3d at 841. As a result, the *Boeing* case does not support the Qatar Foundation’s position.

In 2019, however, the Texas Legislature amended section 552.104 to make it clear that it applies only to competition involving the governmental body’s

interests and to “a particular ongoing competitive situation” or “a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.”¹ The 2019 amendment changed the applicability of section 552.104. It no longer applies to the competitive interests of third parties. As a result, the Qatar Foundation can no longer rely on TPIA section 552.104.

Moreover, as a matter of law, there cannot be a competitive process for the establishment of Texas A&M campuses, foreign or domestic. 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.

¹ See Acts 2019, 86th Leg., ch. 45 (H.B. 81), § 1, eff. May 17, 2019; Acts 2019, 86th Leg., ch. 1216 (S.B. 943), § 3, eff. Jan. 1, 2020.

Even if one were to assume that the Texas A&M campus in Qatar is not in itself an unauthorized new degree-conferring institution of higher education, even the expansion of academic programs by Texas A&M University requires the approval of the Texas Higher Education Coordinating Board. *See South Texas College of Law v. Texas Higher Educ. Coordinating Bd.*, 40 S.W.3d 130 (Tex. App. – Austin 2000, pets (2) denied). 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.

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

VII. TPIA Section 552.110

The Qatar Foundation’s pleadings allege that section 552.110 protects the requested information from required disclosure. TPIA section 552.110 provides as follows:

(a) In this section, “trade secret” means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

(b) *Except as provided by Section 552.0222, information is excepted from the requirements of Section 552.021 if it is demonstrated based on specific factual evidence that the information is a trade secret.*

(c) *Except as provided by Section 552.0222, 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 the requirements of Section 552.021.*

Tex. Gov't Code § 552.110 (emphasis added). As the emphasized language makes clear, information that could be subject to section 552.110 is limited by TPIA section 552.0222.

With some exceptions not applicable here, TPIA section 552.0222 provides that certain terms of government contracts are always matters of public record:

(a) Contracting information is public and must be released unless excepted from disclosure under this chapter.

(b) *The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:*

. . . .

(3) the following contract or offer terms or their functional equivalent:

(A) any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price;

(B) a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;

- (C) the delivery and service deadlines;
- (D) the remedies for breach of contract;
- (E) the identity of all parties to the contract;
- (F) the identity of all subcontractors in a contract;
- (G) the affiliate overall or total pricing for a vendor, contractor, potential vendor, or potential contractor;
- (H) the execution dates;
- (I) the effective dates; and
- (J) the contract duration terms, including any extension options; or

(4) information indicating whether a vendor, contractor, potential vendor, or potential contractor performed its duties under a contract, including information regarding:

- (A) a breach of contract;
- (B) a contract variance or exception;
- (C) a remedial action;
- (D) an amendment to a contract;
- (E) any assessed or paid liquidated damages;
- (F) a key measures report;
- (G) a progress report; and
- (H) a final payment checklist.

Tex. Gov't Code § 552.0222 (emphasis added).

Under section 552.0222, the total amount of a contract and its basic terms are not protected under section 552.110.² As a result, as a matter of law, the information requested by Zachor must be released.

VIII. Conclusion.

For all the reasons stated above, Zachor respectfully asks the Court to grant its motion for summary judgment.

Respectfully submitted,

/s/Jennifer S. Riggs _____
Jennifer S. Riggs
Texas Bar No. 16922300
RIGGS & RAY, P.C.
506 West 14th Street, Suite A
Austin, Texas 78701
(512) 457-9806
(512) 457-9066 facsimile
jriggs@r-alaw.com

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 26th May, 2022, to:

Steven R. Rech
TBN 16649200
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

² Likewise, the new section 552.1101, for “proprietary” information, is also limited by section 552.0222.

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(512) 320-0167

/s/Jennifer S. Riggs _____
Jennifer S. Riggs

EXHIBIT LIST

Exhibit A OR2015-17822

Exhibit B OR2016-03361

Exhibit C OR2018-20240

Exhibit D The Washington Post article

Exhibit E Texas A&M at Qatar

Exhibit F US Department of Education letter 11/27/19



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, 6th 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, 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, 6th 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, 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

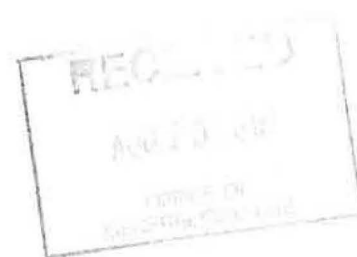
Enc. Submitted documents

c: Requestor
(w/o enclosures)

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



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

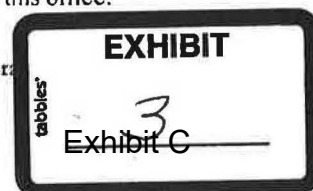
Dear Ms. Masek:

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.



Ms. Julie A. Masek - Page 2

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)

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 Qatari 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

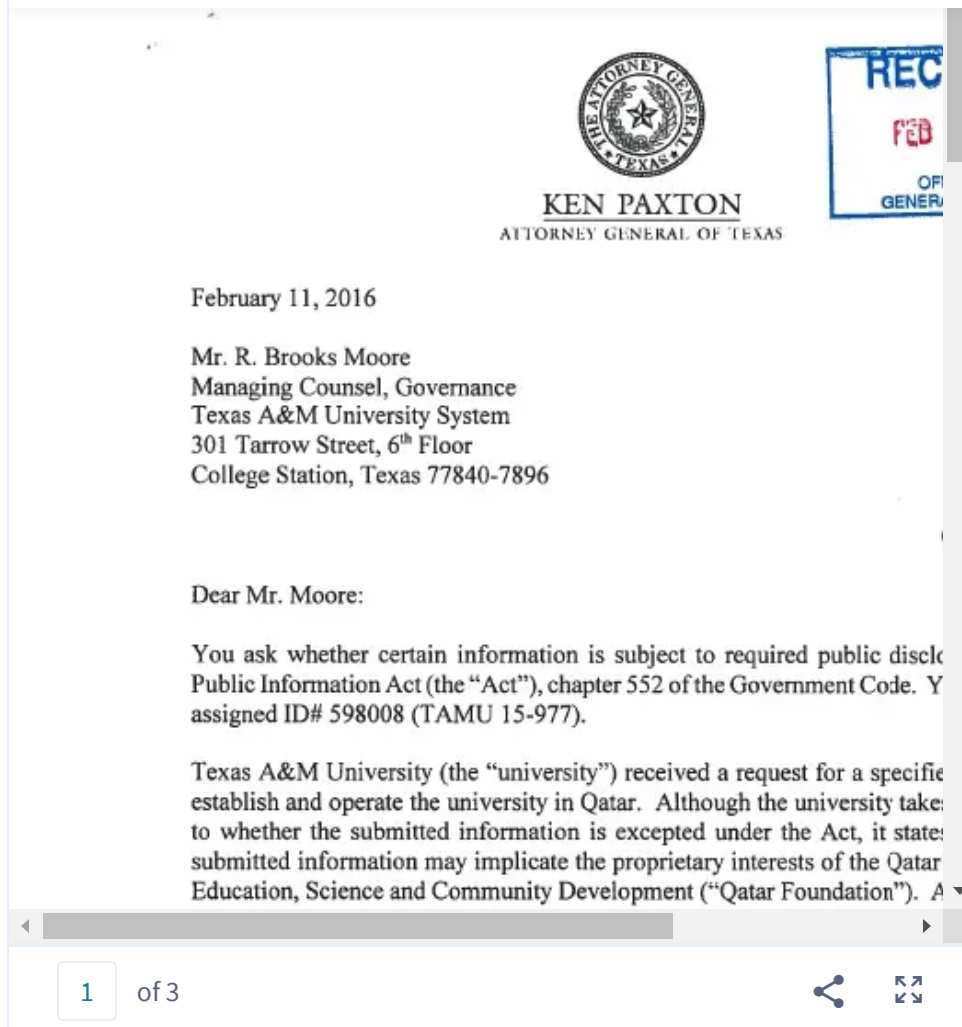
THIS AGREEMENT (the "Agreement") is made this 13th day of January, 2011, between Qatar Foundation for Education, Science and Community Development, a non-profit institution for public benefit existing under the laws of the State of Qatar ("Qatar Foundation") and Texas A&M University ("TAMU"), a public institution of higher education existing under the laws of the State of Texas, United States of America and a member of the Texas A&M University System ("TAMUS"). Qatar Foundation and TAMU shall collectively be referred to as the "Parties" and individually as "Party".

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

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

WHEREAS, on the 17th day of January, 2011 the Parties entered into an Agreement to Establish and Operate a Research Program at Texas A&M University at Qatar (the "Research Agreement")

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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](#)

Texas A&M University at Qatar

If you are interested in pursuing a career in engineering, Texas A&M University at Qatar (TAMUQ) offers one of the world's premier engineering programs, built on its home campus' international reputation in engineering.

Since its establishment in 2003, students at TAMUQ have been learning from some of the world's most acclaimed scholars and researchers. The university dedicates tremendous resources to advanced research, and students work closely with faculty and graduate students throughout their academic career.



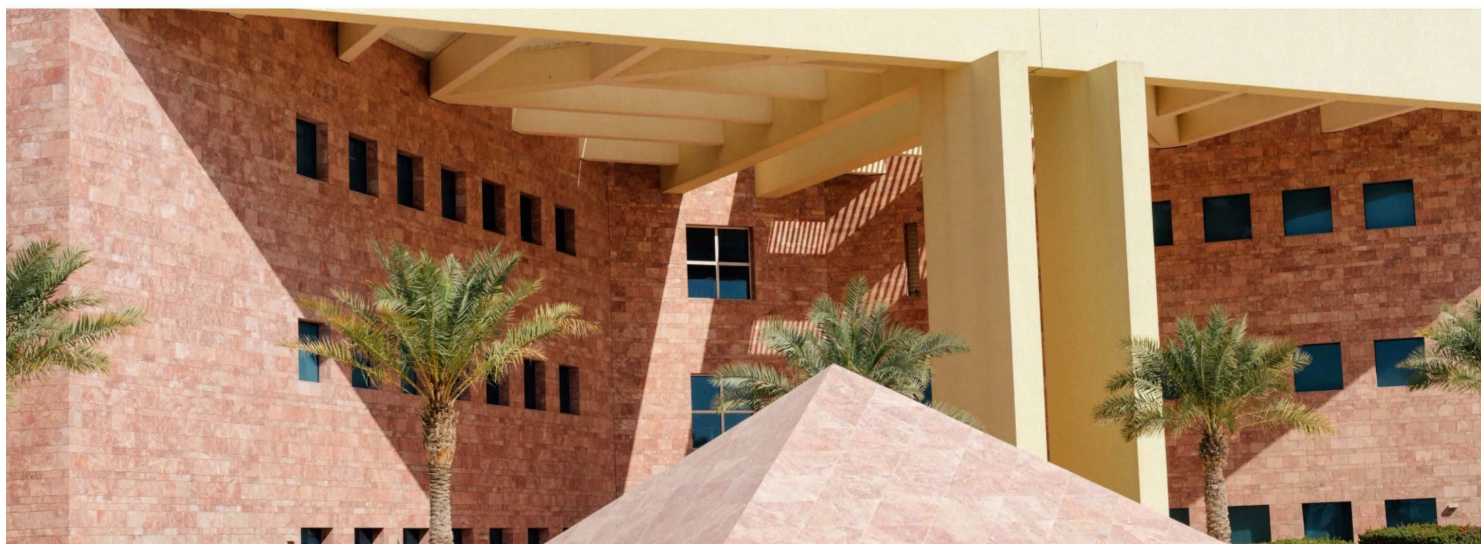
[Go to website](#)

Phone +974 44230201

Fax +974 44230011

Email admissions@qatar.tamu.edu

Address Texas A&M University at Qatar, Manufactory, Education City, PO Box 23874,
Doha, Qatar
[See on map](#)



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/ [RESEARCH SPONSORS \(PROGRAMS/ECEN/RESEARCH/RESEARCH-SPONSORS\)](#)

Research (programs/ecen/research)

[Research Sponsors \(programs/ecen/research/research-sponsors\)](#)

[Center for Remote Healthcare Technology Extension \(programs/ecen/research/center-for-remote-healthcare-technology-extension\)](#)

[Smart Grid Center \(http://www.sgc-q.com/\)](http://www.sgc-q.com/)

[Wireless Research Group \(programs/ecen/research/wireless-research-group\)](#)

[Research Laboratories \(programs/ecen/research/research-laboratories\)](#)

RESEARCH SPONSORS

Qatar National Research Fund (QNRF) (http://www.qnrf.org/)

Founded in 2006 as part of the Qatar Foundation for Education, Science and Community Development, QNRF is the primary research funding component for the State of Qatar. Researchers from Texas A&M University at Qatar and the University's main campus were named recipients of more than \$12 million USD for 20 projects in the first round of funding and \$27 million in funding for 28 new research projects in the second cycle of QNRF funding. QNRF has also awarded \$120,000 USD in Undergraduate Research Experience Program awards to Texas A&M at Qatar students.

Qatar Science & Technology Park (QSTP) (http://www.qstp.org.qa/)

QSTP, a member of Qatar Foundation, was created to bring research and business together. QSTP is home to international technology companies and has a start-up enterprise incubator program. Along with EADS, ExxonMobil, GE, Microsoft, Shell and Total, Texas A&M University at Qatar is proud to support QSTP and work collaboratively to bring the research of our faculty and students to the booming industries of Qatar and the region.

Qtel - Qatar Telecommunication, Doha, Qatar (http://www.qtel.com.qa/)

Qatar Telecommunications (Qtel) started a joint collaboration with Texas A&M University at Qatar (TAMUQ), University of Qatar (UQ) and the College of the North Atlantic at Qatar (CNA-Q) to conduct
Exhibit E

research and studies into third generation (3G) technologies and services. A Memorandum of Understanding was signed for a three-phased (18 months) project, funded by Qtel, that involves 3G experts from Qtel and Electrical Engineering faculty members from TAMUQ, UQ and CNA-Q. The joint program involves short technical courses in 3G and a series of tests and procedures to characterize the functionality of 3G technology and the effects on related services. The project was initiated by Qtel and TAMUQ during the first quarter of 2005.

RasGas Company Limited (<http://www.rasgas.com/>)

RasGas Company Limited (RasGas) has inaugurated several research agreements with Texas A&M University at Qatar. The signed research agreements expand longstanding cooperation between Texas A&M University at Qatar and RasGas, and reflect RasGas commitment to fund and support technology research with Texas A&M University at Qatar as part of the terms of an existing memorandum of understanding signed in 2006.

Agilent Technologies (<http://www.agilent.com/>)

Agilent's electronic test and measurement systems offer leading technology for engineering and science research for university laboratories, classrooms and research facilities. Texas A&M University at Qatar has received a donation of cutting edge equipment which will enhance the University's wireless research. The equipment, a PXB Baseband Generator and Channel Emulator, worth \$ 146,000 was donated by Agilent Technologies Inc.

ABOUT TEXAS A&M AT QATAR



ADMISSIONS



ACADEMIC RESOURCES



EMERGENCY PREPAREDNESS



() ()

[\(http://www.abet.org/\)](http://www.abet.org/)

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

November 27, 2019

The Honorable Rob Portman, Chairman
Permanent Subcommittee on Investigations
Homeland Security and Government Affairs Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Portman:

I write to update you on the U.S. Department of Education's ("Department's") activities under Section 117 of the Higher Education Act, as amended, 20 U.S.C. § 1101f ("Section 117"). A copy of this letter is being transmitted to Ranking Member Carper.

Section 117 does not bar American institutions of higher education from soliciting and accepting money from, or entering into contracts with, foreign governments, companies, persons, or their agents; however, with limited exceptions, Section 117 does require colleges and universities to disclose transparently their foreign money and contracts to the Department and to all American citizens.

By way of background, your Subcommittee released a Staff Report titled "China's Impact on the U.S. Education System" in February 2019. Important findings included: (1) Foreign government spending on U.S. schools generally "is effectively a black hole" because U.S. colleges and universities fail to report foreign money as required by law; (2) the Communist Chinese government invests strategically in U.S. education through Confucius Institutes and other vehicles; (3) the public lacks an accurate or complete picture of China's overall spending because U.S. colleges and universities "routinely" fail to report foreign money (nearly 70% of colleges and universities failed to report in this case); and (4) the Chinese money comes with "strings that can compromise academic freedom." Specifically:

The Chinese government approves all teachers, events, and speakers. Some U.S. schools contractually agree that both Chinese and U.S. laws will apply. The Chinese teachers sign contracts with the Chinese government pledging they will not damage the national interests of China. Such limitations attempt to export China's censorship of political debate and prevent discussion of potentially politically sensitive topics. Indeed, U.S. school officials told the Subcommittee that Confucius Institutes were not the place to discuss controversial topics like the independence of Taiwan or the Tiananmen Square massacre in 1989. As one U.S. school administrator explained to the Subcommittee, when something is "funded by the Chinese government, you know what you're getting."

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

See *CHINA'S IMPACT ON THE U.S. EDUCATION SYSTEM*, Staff Report, Permanent Subcommittee on Investigations, United States Senate at 1, 3, 5, 71-76 (Feb. 2019) available at <https://www.hsgac.senate.gov/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf> (the "China Report").

On February 28, 2019, U.S. Department of Education Deputy Secretary Dr. Mitchell M. Zais testified before the Subcommittee.

Thereafter, responding to Congressional findings and in support of our obligation to enforce Section 117, the Department opened six compliance investigations. See 84 Fed. Reg. 31052 (Jun. 28, 2019); 84 Fed. Reg. 34878 (July 19, 2019); 84 Fed. Reg. 64309 (Nov. 21, 2019); see also <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>. These investigations, though nascent, have revealed disturbing facts.¹

- The six investigated universities collectively failed to report in excess of \$1.3 billion from foreign sources (including China, Qatar, and Russia) over the past seven years despite their clear legal duty to do so under Section 117.
- One university received research funding from a Chinese multinational conglomerate to develop new algorithms and advance biometric security techniques for crowd surveillance capabilities.
- One university had multiple contracts with the Central Committee of the Communist Party of the People's Republic of China ("CPC").
- One university accepted funds from the arm of a foreign government to create an "academic" center expressly for the dissemination of propaganda and to conduct other "soft power" information activities.
- According to a public declaration filed in Texas state court by a high-ranking official of an arm of the Qatari government and a letter from their U.S. law firm, Qatari "donations" to American colleges and universities are made strategically to advance Qatari interests, and recipients of such "donations" agree to keep the purposes and amounts of such donations secret. Apparently, similar provisions are often part of foreign money agreements. Unfortunately, the Department cannot confirm whether donors and recipients use such provisions to justify nonreporting and nondisclosure of foreign source donations to the U.S. government and the American taxpayers.

¹The Department's general policy is not to comment on the status or findings of ongoing investigations. Consequently, at this time we will not publicly disclose the name of the specific university associated with each found fact.

- Another university had a relationship with Kaspersky, a Russian company that has been banned from contracting with the U.S. Government.
- Another university promotes a “Talents” program through a Chinese company with close ties to the Communist government.
- Another university received gifts from a foundation suspected of acting as a propaganda and influence front for the Chinese Communist government.
- Five of six universities reviewed have or had multiple contracts with the Chinese telecommunications company Huawei, a company that has been the subject of U.S. national security and trust concerns and banned from access to federal broadband subsidies for posing a national security risk.²

Although the Department’s investigations are preliminary and few in number, we share our preliminary concerns and conclusions to alert you to what appears to be a problematic lack of transparency and accountability regarding the solicitation and receipt of large amounts of foreign money by at least some of our colleges and universities. The evidence we have reviewed to date tracks Congressional findings that American colleges and universities have provided unprecedented levels of access to foreign governments, corporations, and persons without adequate oversight.³ Therefore, with reference to certain foreign governments, companies, persons, or their agents, Congress may wish to scrutinize more closely the goals and methods of foreign money sources, the significant efforts and corporate mechanisms some colleges and universities take and use to solicit and channel foreign money, the influence and effect foreign money may have on research and curricula, and the extent to which foreign money might provide the means for access to sensitive U.S. government research and/or create insider threats.

The Department believes the facts raise several preliminary concerns:

1. Data reviewed by the Department, including IRS Form 990 tax returns, confirm that many non-profit institutions of higher education (“IHEs”) are multi-national, multi-billion dollar enterprises. These IHEs often operate, *inter alia*, through financially opaque captive foundations, foreign campuses, and other structures to generate revenue, including from foreign sources. With few exceptions, Section 117 requires IHEs to report this revenue.
2. The IHE’s Section 117 reporting has been generally underinclusive and inaccurate. Data received in response to our investigatory demands does not align with data previously reported and submitted to our systems. Several IHEs are correcting their non-compliance

² See generally Federal Communications Comm’n, “*FCC Bars Subsidies for Equipment Posing National Security Threats*” (Nov. 22, 2019) available at <https://www.fcc.gov/document/fcc-bars-subsidies-equipment-posing-national-security-threats>

³ See, e.g., China Report at 79.

as a result of our investigation, apparently anticipating that correcting current non-compliance carries no penalties under existing law. At least some IHEs appear to believe their disclosure and transparency obligations to the U.S. government and U.S. taxpayers must be qualified by their desire to expand financial relationships with foreign governments, corporations, and persons, including anonymous foreign donors. Increased enforcement resources and authorities may be needed to most effectively carry out Section 117's statutory purpose.

3. Although the IHEs investigated by the Department appear to have extremely sophisticated systems for managing, soliciting, and tracking contributions, grants, and contracts over time and from many thousands of sources, foreign and domestic, it appears they have not deployed similar systems with respect to Section 117 reporting. The Department has received data from several IHEs at a very high level of granularity (e.g., individual contributions from foreign sources of \$100 or less), suggesting IHEs certainly have the capability to track and transparently report all foreign sources of money. It does not appear that these IHEs, each financially sophisticated and well-resourced, followed basic American Institute of Certified Public Accountants ("AICPA") guidance for Section 117 financial reporting (e.g., independent third-party audits integrated with contracts, gift agreements and other relevant instruments).
4. The IHEs solicit foreign governments, corporations, and persons in a variety of ways, including institutional fundraising operations, quasi-entrepreneurial activities by professors and administrators, and foundations and alumni organizations. Some of these foreign governments, corporations, and persons are hostile to the United States and may be seeking to project "soft power," steal sensitive and proprietary research and development data and other intellectual property, and spread propaganda.⁴

⁴*Compare* China Report at 3, 75 with Report of the United Kingdom House of Commons Foreign Affairs Committee, "A cautious embrace: defending democracy in an age of autocracies" at 17 (Nov. 4, 2019) ("we were surprised that the FCO...*did not identify academia as being a distinct area at risk of influence by autocracies*") (emphasis added) available at <https://publications.parliament.uk/pa/cm201920/cmselect/cmfaaff/109/109.pdf>; Parton, "China-UK Relations Where to Draw the Border Between Influence and Interference?" Royal United Services Institute for Defence and Security Studies (Feb. 2019) available at https://rusi.org/sites/default/files/20190220_chinese_interference_parton_web.pdf. According to one UK-based source, "There is growing concern that Confucius Institutes are an arm of Chinese 'soft power' and propaganda, aimed at promoting the Chinese Communist Party (CCP)'s propaganda and stifling its critics around the world." "China's Confucius Institutes: A Report of the Conservative Party Human Rights Commission" at 5 (Feb. 2019) available at http://www.conservativehumanrights.com/news/2019/CPHRC_Confucius_Institutes_report_FEBRUARY_2019.pdf. Our preliminary review suggests some American IHEs relentlessly pursue funds from autocracies such as China and Qatar, even opening foreign campuses in exchange for donations, without evident systems in place to mitigate the identified risks, including the heightened insider threat risk, associated with such activities.

5. The IHEs use foreign gifts to subsidize scholarships for foreign students at domestic and foreign campuses, but there is no evidence foreign gifts and contracts correlate with reduced tuition and other costs for American students, parents, and taxpayers who generally subsidize the higher education sector through the Title IV, Higher Education Act student loan program and various Federal research grants.
6. Our investigations do not include cybersecurity practices. However, we note the higher education industry apparently has a poor cybersecurity record and posture. In 2018, the higher education sector was ranked 17th out of 17 major industries by the information technology SecurityScorecard.⁵ This is a matter of concern because IHEs are heavily invested in overseas operations. Evidence from at least one of the investigated IHEs suggests foreign campuses' IT networks are interconnected with the domestic IT networks, with the possibility that foreign persons might have access to the IHE's entire information domain. This creates a risk that students and faculty on foreign campuses may circumvent U.S. government vetting while retaining substantially unrestricted access to IHE information networks. All investigated IHEs receive American government research funding. The insider threat risk presented by hostile foreign actors also may be an appropriate subject for further Congressional inquiry.

Subject to controlling federal and state statutes (including Section 117, the anti-terrorism and material support laws, and applicable international sanctions regimes), IHEs are free to solicit and accept money from any foreign government, corporation, or person they choose. Our statutory duty is appropriately narrow: Enforce Section 117 by collecting information, making that information readily available to the public, and, when appropriate, investigating and referring violators to the Department of Justice to enforce their compliance with their statutory reporting obligations to the Department. Section 117 is clear and all IHEs could have fairly complied with its requirements based on the evidence we have reviewed to date.⁶ Nevertheless, IHE foreign money underreporting demonstrates prior Administrations failed properly to execute the Department's enforcement duty.

⁵ See, e.g., SecurityScorecard, "2018 Education Cybersecurity Report" at 2-3 (Dec. 2018) available at https://explore.securityscorecard.com/rs/797-BFK-857/images/SSC-EducationReport-2018.pdf?mkt_tok=eyJpIjoiTXpreE9HUmxNRFF4TTJVNCIzInQOIjTWnZ2p0ck8yWEErWFFESVJRRIRDQTIbnXM5RU5ZTCs5VFF2U2FIVThYekpPZ21ERHNIQVhvTFZPMVwvVENSrDN4azlvcITK01FVvKRU5DFkU01aNE9QcHp4MTVYZ0pPME4rUG5yZERjZFluYXNM2bEpneitiK2d3eXkreUjVWYifQ%3D%3D.

⁶We have noted industry efforts, including communications with Congress and others, that seemingly blame underreporting on the Department and/or are designed to limit independent oversight of foreign money streams. See e.g., Letter from Terry Hartel, American Council on Education, to Dr. Mitchell Zais, U.S. Department of Education (July 12, 2019) available at <https://www.cogr.edu/sites/default/files/Final%20July%202019%20ACE%20Associations%20Response%20to%20ED%20on%20Section%20117.pdf>. Especially given the higher education industry's evident financial sophistication, we find these efforts and communications puzzling.

Secretary DeVos is correcting this historically lax oversight and under her leadership this Department is moving aggressively to remedy past failings. Specifically:

- The Department continues to investigate IHEs as necessary and appropriate.
- The Department has developed and released for public comment an information collection pursuant to the Paperwork Reduction Act (PRA), 84 Fed. Reg. 46943 (Sept. 6, 2019) to improve reporting accuracy and provide for meaningful public access to the data as required by law. Comments may be found at <https://www.regulations.gov/docket?D=ED-2019-ICCD-0114> and are currently under review. Also, the Department has created a dedicated Section 117 landing page on the Department's website. See <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>. We believe these steps will substantially improve IHE transparency and accountability.
- The Department is expanding the existing inter-agency consultation process to better highlight and address the challenges posed by American IHE's pursuit and receipt of foreign money and entanglements.
- The Department will continue working with your staff and other federal government stakeholders on potential amendatory language to address identified gaps in the statutory scheme.

The possible influence of foreign money over research and curricula at our taxpayer-subsidized colleges and universities is appropriately an issue of concern to Congress and many Executive Branch agencies, including this Department. In this regard, your Subcommittee's recent bipartisan report and hearing on China's Talent Recruitment Programs operating at several prominent U.S. institutions of higher education demonstrate Congress shares our concerns.⁷ Transparency through our proposed information collection and accountability through effective

⁷ See *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans*, Staff Report Permanent Subcommittee on Investigations, United States Senate (Nov. 2019), available at <https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China's%20Talent%20Recruitment%20Plans.pdf>. Notably:

The Chinese Communist Party plays a lead role in administering the Thousand Talents Plan. The Party recognized the need to control overseas talent recruitment efforts to ensure the program served its priorities. The Party created a "complex system of administration and oversight to coordinate its recruitment efforts." The Party is able to "exert exceptional" levels of control over the Thousand Talents Plan and other talent recruitment plans.

Id. at 2. Also, the evidence is Qatar, Saudi Arabia, and other foreign sources use donations and contracts with American IHEs to obtain information, purchase influence, and achieve strategic goals.

The Honorable Rob Portman
November 27, 2019
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government and public oversight are critical to safeguard the integrity of U.S. government-funded research; to preserve our national security and economic primacy; and to protect American students and citizens from the consequences of an imprudent pursuit of money from hostile foreign governments, corporations, and persons.

Going forward, our staff will be glad to work with your staff to schedule a confidential briefing regarding our factual findings and to present our suggestions for improved inter-agency coordination and deliverables.

Please feel free to contact Jordan Harding, Office of Legislation and Congressional Affairs, at 202-401-0020 if you have any questions.

Sincerely

A handwritten signature in black ink, appearing to read "Reed D. Rubinstein", with a large, stylized flourish at the end.

Reed D. Rubinstein
Principal Deputy General Counsel delegated
the Authority and Duties of the General Counsel

Cc: The Honorable Tom Carper, Ranking Member

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