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November 8, 2018

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

Dear Open Records Division:

On November 8, the Office of the General Counsel of the Texas A&M University System ("TAMU") sent a request for a decision regarding a Public Information Request (B002165-101618) made on behalf of Zachor Legal Institute.

As we stated in our original correspondence from June 7, 2018 when TAMU denied our original Public Information Request, we believe that the information we are requesting regarding the involvement of a foreign government, and its affiliates, in the operations of a public American university are of interest to the public and at the heart of reasons for why the Texas Public Information Act (the "Act") was enacted.

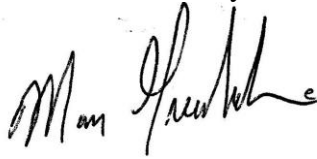
As you also know, one of the Qatari entities that was the subject of our original request has taken the extraordinary step of taking the Texas Attorney General to court to suppress the information that we requested. Now, with the most recent attempt by TAMU to prevent public disclosure of information as to how Qatari entities are involved with a Texas public university, the intrigue grows, and we have to wonder what it is they are trying to keep from the public.

We have no idea what information TAMU has provided to your office for review, but the fact is that the information requested in our most recent submission asked for communications that related to our initial request. The purpose of our most recent information request is to shine light on why there was so much international interest in our initial information request and whether there was a coordinated effort between TAMU and Qatari entities to suppress the disclosure of that information.

Because we don't know what information is at issue in TAMU's November 8 letter, it is impossible for us to present an argument as to why provisions of the Act do not protect the information TAMU is trying to keep from disclosure. However, we urge your office to compel disclosure of all information required to be disclosed by the Act and to the extent there is material that can be withheld under the Act, we ask that such material be redacted and the remainder of the information be produced in as original a form as possible (i.e., if the information is in an email, we ask that the entire email be produced with specific information redacted in as surgical a manner as possible).

Please feel free to contact the undersigned at [marc@zachorlegal.org](mailto:marc@zachorlegal.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Greendorfer", with a stylized flourish at the end.

Marc Greendorfer

November 27, 2018

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

Dear Open Records Division:

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

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

## I. Background

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

47 Offices in 20 Countries

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

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

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

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

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

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



## II. Arguments

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

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

#### i. Trade Secrets

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

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

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

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

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

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

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

a. Compilation of Information in Continuous Use

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

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

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

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

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



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

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

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

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

e. Value of Information to QF and Its Competitors

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

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

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

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

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

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

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

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

ii. Confidential Commercial and Financial Information

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

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

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

iii. Giving Advantage To A Competitor

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

#### C. Documents Whose Disclosure The Qatar Foundation Does Not Oppose

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

### III. Conclusion

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Patrick Long', with a stylized flourish at the end.

D. Patrick Long  
Squire Patton Boggs

Enclosures: Exhibit A

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



# EXHIBIT A

## **DECLARATION OF MICHAEL A. MITCHELL**

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

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

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

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

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

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



12. If the amount of a grant made by QF were disclosed, this would be tantamount to revealing QF's identity. To my knowledge, QF is the only Qatari entity that has the financial capacity to issue grants in the amount and for the duration of the grants Texas A&M University and other non-Qatari major research universities have received from QF.
13. QF competes with similar efforts from governments and foundations in other countries in the region to attract major research universities. These competitors include organizations and governments in Bahrain, Egypt, Kuwait, Lebanon, Oman, Saudi Arabia, Tunisia, the United Arab Emirates, and Yemen.
14. The size of the grant each major research university campus receives is the result of extensive, confidential negotiations, and memorialized in confidential agreements between QF and each university.
15. When QF determines that it will provide a grant to a campus of a major research university, it assesses the commercial and social value of the research that is to be performed. Then, it allocates money to the development of the campus based on the value of the campus's research programs to QF's mission.
16. The amount of grant funding each campus receives varies by major research university, but is substantial as to each campus.
17. The amounts of each grant funded by QF, as well as the negotiations and formal agreements establishing branch campuses, are confidential between QF and each respective university funded.
18. Every agreement to establish a campus or research program with a major research university contains a confidentiality provision restricting disclosure of, among other information,

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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Michael A. Mitchell

CAUSE NO. \_\_\_\_\_

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

\_\_\_\_ JUDICIAL DISTRICT COURT

### **PLAINTIFF'S ORIGINAL PETITION**

Plaintiff Qatar Foundation for Education, Science and Community Development hereby files its Original Petition against Ken Paxton, Texas Attorney General and would show the Court as follows:

#### **I. DISCOVERY**

1. Discovery should be conducted under Level Three pursuant to Texas Rule of Civil Procedure 190.4.

#### **II. PARTIES**

2. Qatar Foundation for Education, Science and Community Development ("QF") is a non-profit organization headquartered in Doha, Qatar, which may be served through its attorney of record in this case.

3. Defendant Ken Paxton, Texas Attorney General, is an elected state official that may be served by delivering citation and a copy of the petition to him at 209 West 14th Street, Austin, Texas 78701.

### **III. NOTICE TO REQUESTOR**

4. Pursuant to section 552.325 of the Public Information Act, Marc Greendorfer of Zachor Legal Institute, who requested the information at issue, is not named here as a defendant. By copy of this petition, he is provided notice as follows: (1) the subject matter and cause number for this lawsuit and the court in which it has been filed; (2) that he may choose not to participate in the case or to intervene in the lawsuit; (3) that the lawsuit is against the Attorney General, who is named as defendant; and (4) that the name and address of the Attorney General are as set forth above. The phone number for the Attorney General is (512) 463–2100.

### **IV. VENUE**

5. Venue is proper in Travis County pursuant to Texas Government Code section 552.325.

### **V. JURISDICTION**

6. The Court has subject matter jurisdiction over this matter pursuant to Texas Government Code section 552.001, *et seq.* and its inherent power to regulate the *ultra vires* acts of governmental agencies. QF has standing to assert these claims pursuant to Texas Government Code section 552.325.

### **VI. BACKGROUND FACTS**

7. This is an action to prevent disclosure of confidential financial information concerning the relationship between QF and Texas A&M University (TAMU). 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.

8. QF operates programs dedicated to education, science, and community development. It is responsible for funding much of the development in Education City, a hub for higher education outside Doha. Over the course of the past twenty years, Education City has grown from a single school to a multi-university campus that hosts students from all over the world. In addition to TAMU, Carnegie Mellon, Cornell, Georgetown, Northwestern, and Virginia Commonwealth University have all established campuses in Education City.

9. 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.

10. Requestor is an attorney associated with the Zachor Legal Institute. According to its website, Zachor Legal Institute is “a legal think tank and advocacy organization . . . taking the lead in creating a framework to wage a legal battle against anti-Israel movements in America.” Its “primary focus is combatting BDS (Boycott, Divestment and Sanctions) anti-Semitic activities in the commercial sector.”<sup>1</sup>

11. On May 23, 2018, Requestor submitted a public records request to TAMU seeking “[a] summary of all amounts of funding or donations received by or on behalf of the University of Michigan [*sic*] from the government of Qatar and/or agencies or subdivisions of the government of Qatar between January 1, 2013 and May 22, 2018,” including QF. *See Exhibit A.*

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<sup>1</sup> See Zachor Legal Institute, About Us, <https://zachorlegal.org/about-us/> (last visited October 10, 2018).



12. On June 7, 2018, TAMU submitted a request for the Attorney General of Texas to determine whether TAMU could exclude donor identities from its response to the request under Texas Government Code section 552.1235. *See Exhibit B.* That section exempts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher learning.” Tex. Gov’t Code § 552.1235(a).

13. On August 14, 2018, the Office of the Attorney General of Texas issued an Open Records Letter Ruling, OR2018-20240. *See Exhibit C.* The Attorney General concluded that TAMU could withhold information identifying “donors” under section 552.1235. *Id.* at 2. 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. *Id.* at 2. In so doing, the Attorney General implicitly ruled that those payments were not “donations,” and therefore not exempt from disclosure under the PIA.

## **VII. DECLARATORY JUDGMENT**

14. The purpose of section 552.1235(a) is to permit a person to make donations, grants, or gifts to an institution of higher learning without revealing his or her identity. Simply because QF agreed to make some “grants,” and memorialized that agreement in a contract, does not mean that QF should be forced to reveal its identity or the amount of money it has contributed to higher education. Tex. Gov’t Code § 552.1235(a). The information related to these grants and donations is also confidential commercial information and constitutes a trade secret. Tex. Gov’t Code § 552.110. It should be exempt from disclosure.

15. For those reasons, and incorporating by reference all preceding paragraphs, QF requests that this Court enter a judgment declaring:

- a. that the information sought by Requestor concerns “grants” and donations” made to TAMU and that neither the amount of payments nor the identity of the grantor or donor should be disclosed. Tex. Gov’t Code § 552.1235.
- b. that the information sought by Requestor is confidential commercial or financial information and should not be disclosed. Tex. Gov’t Code § 552.110(b).
- c. that the information sought by Requestor is tantamount to a trade secret and should not be disclosed. Tex. Gov’t Code § 552.110(a).
- d. that the portion of Attorney General Ruling Letter OR2018-20240 requiring release of all remaining information other than donor identity is incorrect and without force or effect.

### **VIII. PRAYER**

In light of the foregoing, Plaintiff prays that this Court render the declaratory judgment as requested herein and grant such other and further relief, legal and equitable, to which Plaintiff shows itself entitled.

Respectfully submitted,

/s/ D. Patrick Long

D. Patrick Long

Texas State Bar No. 12515500

[pat.long@squirepb.com](mailto:pat.long@squirepb.com)

Alexander J. Toney

Texas State Bar No. 24088542

[alex.toney@squirepb.com](mailto:alex.toney@squirepb.com)

**SQUIRE PATTON BOGGS (US) LLP**

2000 McKinney Ave., Suite 1700

Dallas, Texas 75201

Tel: (214) 758–1500

Fax: (214) 758–1550

ATTORNEYS FOR PLAINTIFF QATAR  
FOUNDATION FOR EDUCATION, SCIENCE  
AND COMMUNITY DEVELOPMENT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served in accordance with the Texas Rules of Civil Procedure on this the 12th day of October, 2018, on the following:

Marc Greendorfer  
Zachor Legal Institute  
5919 US Highway 84  
Red Level, AL 36474  
[info@zachorlegal.org](mailto:info@zachorlegal.org)

/s/ D. Patrick Long

# EXHIBIT A



**B001108-052318 - Public Information Records**

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**Public Information Records Details**

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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.

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 Remaihi;  
Hind bint Hamad Al Thani;  
Sould Al-Tamimi;  
Richard O'Kennedy ;  
Ilias Belharouak;  
Sabah Ismail Al-Haidoos; and  
Faisal Mohammad Al-Emadi

Entities:

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

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

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

Preferred Method to Receive  
Records:

Electronic via Records Center

**Category**

**Clarification(s)**

**OAG decision requested**

**Exceptions**

**Charges**

**Message History**

**Request Details**

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

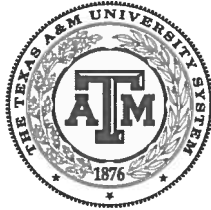
Status: Activity Assigned  
Priority: Medium  
Assigned Dept: TAMU\_Open Records  
Assigned Staff: Open Records University

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

Source: Web

# EXHIBIT B





Office of General Counsel  
THE TEXAS A&M UNIVERSITY SYSTEM

June 7, 2018

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

**via UPS DELIVERY**

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

Dear Open Records Division:

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

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

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

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

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

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

June 7, 2018

Page 2

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

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

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

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

Sincerely, .



Julie A. Masek  
Assistant General Counsel

Enclosure: Exhibits A & B

cc: Marc Greendorfer  
info@zachorlegal.org

TAMU Open Records

# EXHIBIT C



**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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup>We 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).

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

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

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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)