



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

May 11, 2020

Michael K. Young, President
Office of the President
1246 TAMU
Texas A&M University
College Station, TX 77843-1246

Re: Notice of Additional 20 U.S.C. § 1011f Investigation and Record Request/Texas A&M University

Dear President Young:

On June 13, 2019, the Department of Education (Department) issued a Notice of Investigation and Record Request to TAMU (2019 Notice), pursuant to Section 117 of the Higher Education Act of 1965, 20 U.S.C. § 1011f, which requires that Texas A&M University (TAMU) disclose system-wide statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with a statutorily defined foreign source, to the U.S. Department of Education. These reports are posted at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

The Department recognizes that the ongoing impact of the Coronavirus on university operations is profound and ongoing. Nonetheless, the Department's investigation into the potential influence of the People's Republic of China (PRC) at TAMU (and other taxpayer-funded universities) may have important national security implications that are not diminished by the crisis we face. Accordingly, the Department is continuing with this investigation.

The Wall Street Journal reported on February 23, 2020, that “[a] review by officials with the Texas A&M University System found that more than 100 faculty at its schools were involved with Chinese talent-recruitment programs, though only five had disclosed their participation.” See <https://www.wsj.com/articles/chinese-military-turns-to-u-s-university-to-conduct-covert-research-11582466400>. A review of the Department's records indicates that TAMU has not otherwise disclosed to the Department the involvement of its faculty with what appears to be a qualifying foreign source gift(s) and/or contract(s), despite the Department's request in item 1 of the 2019 Notice (“All records of (a) gifts to, (b) contracts with, and (c) restricted or conditional gifts to or contracts with, foreign sources.... [from] January 1, 2014, to the present”).

The Department notes TAMU's statement that it “take[s] compliance and security very seriously” (see <https://www.politico.com/story/2019/06/27/university-foreign-gift-reporting-probe-1558688>) following the announcement of the 2019 investigation, although it has reason to

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believe that TAMU has not provided the requisite disclosure, particularly regarding covered gifts, contracts, and/or restricted or conditional gifts or contracts, from or with the PRC, its agencies, and agents.

TAMU's ongoing statutory obligation to fully and timely disclose qualifying foreign source gifts and/or contracts, including those involving the PRC, its agencies, and agents, is of heightened concern in light of well-publicized revelations of PRC infiltration of American institutions of higher education which implicate the national security interests of the United States. For example, on January 27, 2020, federal criminal charges were filed against the Chair of the Department of Chemistry and Chemical Biology at Harvard University in Boston, Massachusetts for making a materially false, fictitious, and fraudulent statement regarding payments by the PRC's Wuhan University of Technology. See <https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related>. The allegations reveal vulnerabilities of American colleges and universities to foreign governments, their agencies, and agents that may be hostile to the interests of the United States and to the taxpayers who support our institutions of higher education.

The PRC has been clear about its intent to acquire high-level scientific foreign talent and knowledge in furtherance of China's high-priority scientific development, national security, and economic prosperity through its "Chinese Talent Programs" (CTP) and other initiatives, both lawful and illicit. One such program, the "Thousand Talents Plan" (TTP), involves the PRC and its agencies and agents offering salaries, research funding, laboratory space, honorary titles, and other incentives in exchange for the commitment of researchers in transmitting and sharing highly-specialized research and knowledge with the PRC. Multiple federal agencies, including the National Institutes of Health (NIH) Federal Bureau of Investigation (FBI), and Department of Energy (DOE), have publicly warned about the potential damage to American national security interests presented by CTPs. TAMU's statutory duty to disclose qualifying foreign source gifts and contracts is required with or without any national security concerns, although disclosure failures to federal agencies including the Department can lead to catastrophic risks to the United States. The failure to be diligent in disclosures could result in, among other possibilities, (a) unintentional transfers of critical research data with multiple applications to hostile foreign entities, (b) loss of public trust in university research enterprises, (c) diversions of proprietary and pre-publication research data to foreign entities, and (d) inaccurately informed decisions by policy makers about the use of taxpayer funding to qualifying universities.

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet the Department's statutory duty to verify compliance prior to any potential referral for enforcement action by the Attorney General, the Department is continuing its administrative investigation of TAMU and requests that you produce the following within thirty (30) calendar days :

1. A complete list of all TAMU faculty and staff (including full and part time employees and contractors) involved in Chinese talent-recruitment and related programs from January 1, 2014, through the present. Provided contact information should include names, position(s) held, email addresses, mailing addresses, and phone numbers.
2. Identification of TAMU administrators or other personnel with responsibility for and/or oversight of faculty and staff (see item 1) involvement in Chinese talent-recruitment programs from January 1, 2014, through the present. Provided contact information should include names, specific responsibilities, position(s) held, email addresses, mailing addresses, and phone numbers.
3. Identification of all known talent-recruitment agencies, agents and/or representatives who facilitated and/or supervised the involvement of TAMU faculty and staff (see item 1) in Chinese talent-recruitment programs from January 1, 2014, through the present. Provided contact information should include names, titles, apparent functions, email addresses, mailing addresses, and phone numbers.
4. All records of, regarding, or referencing communications concerning Chinese talent-recruitment programs and/or the involvement of TAMU faculty and staff (see item 1) in Chinese talent-recruitment programs, from January 1, 2014, through the present.
5. All documents, including all written records, agreements, contracts, and modifications of contracts, evidencing agreements or consideration of agreements between TAMU, its faculty (see item 1), staff (see item 1), and administrators (see item 2), and Chinese talent-recruitment agencies or agents (see item 3).

The Department hereby notifies TAMU of its prospective intent, as informed by TAMU's response to this request and as the investigation warrants, to conduct transcribed interviews with TAMU officials regarding TAMU faculty and staff involvement in Chinese talent-recruitment programs from January 1, 2014, through the present. The Department will provide reasonable notice to TAMU following receipt and examination of TAMU's response to this request, the thoroughness of which will provide guidance to the Department in its investigation.

The Department requests that TAMU's production of records in response to the Department utilize the following procedures:

- Searches for records in electronic form should include searches of all relevant mobile devices, hard drives, network drives, offline electronic folders, thumb drives, removable drives, records stored in the cloud, and archive files, including, but not limited to, backup tapes. Do not time stamp or modify the content, the create date, or the last date modified of any record and do not scrub any metadata. Electronic records should be produced in native format. For e-mails, please place responses in one .pst file per employee. For .pdf files, please provide searchable file format and not image file format.
- All email searches should be conducted by the agency's information technology department, or its equivalent, and not by the individuals whose records are being searched. Please

provide the name and contact information of the individual(s) who conducted the search, as well as an explanation of how the search was conducted.

- To the extent practicable, please produce all records in a searchable electronic format and not hardcopies. Should you have any questions about the method or format of production please contact the undersigned to coordinate.

As used in this Notice of Investigation and Information Request:

“Agencies” include any organizations or entities providing services or performing functions or tasks on behalf of another organization, entity, or individual.

“Agent” has its plain and ordinary meaning, indicating that a person, organization, or entity, is acting on behalf of another person, organization, or entity, whether that agency is disclosed or undisclosed.

“Contract” has the meaning given at 20 U.S.C. § 1011f(h)(1).

“Faculty” refers to all teaching positions at the university (including professors of all ranks, teachers, lecturers, and/or researchers whether in a classroom, laboratory, or other educational environment – whether physically or electronically present).

“Foreign source” has the meaning given at 20 U.S.C. § 1011f(h)(2).

“Gift” has the meaning given at 20 U.S.C. § 1011f(h)(3).

“Institution” has the meaning given at 20 U.S.C. § 1011f(h)(4) and for the purposes of this request includes TAMU, its employees, tenured faculty, non-tenured faculty and lecturers, researchers, fellows, graduate students, and all affiliated entities operating substantially under its control or for its benefit (e.g., centers, schools, boards, foundations, research facilities, laboratories, branches, partnerships, or non-profit organizations).

“Record” means all recorded information, regardless of form or characteristics, made or received, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “recorded information” also includes all traditional forms of records, regardless of physical form or characteristics.

Michael K. Young, President
Texas A&M University
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“Restricted or conditional gift or contract” has the meaning given at 20 U.S.C. § 1011f(h)(5).

“Staff” refers to all members of the university involved in administration of the university and its obligations and commitments (including deans of all ranks, administration officials, and support personnel).

If TAMU asserts attorney-client or attorney-work product privilege for a given record, then it must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the claim’s validity. Please note no other privileges apply here. TAMU’s record and data preservation obligations are outlined at Exhibit A.

This investigation is being directed by the Department’s Office of General Counsel with support from Federal Student Aid. To arrange transmission of the requested information, or should you have any other questions, please contact:

Patrick Shaheen
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., S.W., Room 6E300
Washington, D.C. 20202
Patrick.Shaheen@ed.gov

Sincerely,

Paul Moore

Digitally signed by Paul Moore
Date: 2020.05.13 17:46:57
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Paul R. Moore, Esq.
Office of the General Counsel

Enclosure (Exhibit A)

EXHIBIT A

RECORD PRESERVATION REQUIREMENTS

This investigation requires preservation of all information from your institution's computer systems, removable electronic media, filing systems, and other locations relating to the matters that are the subject of the Notice of Investigation. You should immediately preserve all data and information about the data (i.e., backup activity logs and document retention policies) relating to records maintained in the ordinary course of business and that are covered by the Notice of Investigation. Also, you should preserve information available on the following platforms, whether in your possession or the possession of a third party, such as an employee or outside contractor: databases, networks, computer systems, including legacy systems (hardware and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges and other storage media, laptops, personal computers, internet data, personal digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail). You should also preserve all hard copies of records regardless of location.

The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, you must take every reasonable step to preserve relevant records. "Reasonable steps" with respect to these records include:

- Notifying in writing all potential custodians and IT personnel who may have relevant records of their preservation obligations under this investigation.
- Discontinuing all data and document destruction policies.
- Preserving all metadata.
- Preserving relevant records and/or hardware unless an exact replica of the file (a mirror image) is made.
- Preserving passwords, decryption procedures (and accompany software), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software.
- Maintaining all other pertinent information and tools needed to access, review, and reconstruct necessary to access, view, and/or reconstruct all requested or potentially relevant electronic data.

You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information exist, with all metadata. This includes preserving:

- Active data (i.e., data immediately and easily accessible today).
- Archived/journaled data (i.e., data residing on backup tapes or other storage media).
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques).
- Legacy data (i.e., data created on old or obsolete hardware or software).



Office of General Counsel
THE TEXAS A&M UNIVERSITY SYSTEM

June 4, 2020

Mr. Paul R. Moore
Mr. Patrick Shaheen
Office of General Counsel
U.S. Dept. of Education
400 Maryland Ave. S.W., Room 6E300
Washington, DC 20202-1100

Dear Mr. Moore and Mr. Shaheen:

We have received and carefully reviewed your letter dated May 11, 2020. Your letter references previous correspondence sent by the Department to Texas A&M University (TAMU), a member of The Texas A&M University System (TAMUS), on June 13, 2019. Please note that this office serves as legal counsel to TAMU.

The June 2019 letter informed TAMU that you were initiating an investigation to determine whether TAMU had fulfilled its obligation under 20 U.S.C 1011f to disclose whether the institution had received gifts or entered into any contracts with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year. You requested records of *all* gifts or contracts received or entered into by the institution (TAMU) and foreign sources no matter the amount dating back to 2004. TAMU fulfilled your request and provided your office with over 100,000 pages of documents in July 2019.

Your most recent letter indicates that you do not believe TAMU fully complied with your request in June 2019. This conclusion is based upon a February 2020 Wall Street Journal article that reported officials at TAMUS identified personnel involved with Chinese talent-recruitment programs who had not disclosed their participation. You appear to take the position that any information TAMU had about these relationships should have been included with our response to your June 2019 letter, apparently assuming any such relationships involve gifts to or contracts with TAMU from foreign sources. That is not correct.

TAMUS has identified certain personnel that appear to have relationships with Chinese talent-recruitment programs. These relationships are or have been between TAMU employees and the foreign source, not between TAMU and the foreign source, and the relationships are not on behalf of, or for the benefit of, TAMU.¹ As such, they do not involve gifts or contracts as defined under the Higher Education Act. Also, please note that the comments in the news article referred to personnel across multiple TAMUS institutions that appeared to have such relationships. The comments were not focused on TAMU.

TAMUS, which includes TAMU, is a cleared defense contractor under the National Industrial Security Program (NISP). We take our obligations to protect national security seriously and have developed robust counterintelligence and insider threat programs to effectively address the threats we face from malign foreign actors. Recognizing the serious threat posed by such actors, TAMUS established a Research Security Office (RSO) in 2016 that provides leadership and oversight of security matters for the 11 universities and eight state agencies that comprise the A&M System.

The referenced Wall Street journal article concerns an internal process that is part of our RSO's efforts to discover and take appropriate action regarding any relationships between our personnel and foreign talent recruitment platforms (TRP). This effort is integral to our commitment to understand the threats we face, and work with our federal partners to address those threats. Information derived from this process has been shared with the Defense Counterintelligence and Security Agency (DCSA) and the Federal Bureau of Investigation (FBI).

While we have specific reporting obligations to DCSA and the FBI as a condition of our participation in the NISP, we also report known relationships with foreign governments and talent recruitment programs to other federal agencies. Pursuant to Section 1286 of the National Defense Authorization Act, the Department of Defense issued guidance on March 20, 2019 requiring disclosures "to limit undue influence, including through foreign talent programs, by countries to exploit" technology involved in DOD research. The Department of Energy required similar disclosures through DOE Order 486.1 (June 7, 2019). The National Institutes of Health and the National Science Foundation also issued memos requiring this reporting in 2019. These agencies require the PI to report such ties directly, but also require the University to report those ties that they become aware of. We make such reports.

TAMUS has made notifications to funding agency Inspectors General as required based on information we have derived from our security processes. In contrast to the case at Harvard, where the university was apparently unaware of the professor's relationship with a Chinese TRP, TAMUS is actively engaged in trying to discern and address any inappropriate relationships our employees are engaged in, and we are sharing that information with our federal partners. As part of a comprehensive and integrated effort to ensure we have addressed the foreign interference threat we have also implemented new policies on external employment, financial conflict of interest, and conflict of commitment to provide the tools we need to effectively address this issue through our human resource channels.

¹ See 20 U.S.C 1011f(h)(4) – defining "institution".

The Texas A&M University System is appropriately focused on the threats universities face from malign foreign actors. We established the Academic Security & Counter Exploitation Program that currently has active participation from more than 400 compliance and security professionals from almost 200 universities across the country. We were recognized by DCSA with their Award for Excellence in Counterintelligence in 2017 and 2019. DCSA recognized two cleared defense contractors from amongst more than 12,000 in 2017 and five from more than 10,000 in 2019. The recognition was given based upon the strength of our security program and the contributions our program made to national security.

The information you now request does not concern gifts and contracts from a foreign source to TAMU and is not covered by 20 U.S.C 1011f. This additional information is the product of an internal compliance process and has been referred to the appropriate federal law enforcement agencies. As such, TAMU is not in a position to respond to your latest request and encourages you to speak with the agencies that have jurisdiction over these matters, specifically the Federal Bureau of Investigation and the Defense Counterintelligence & Security Agency, to assure yourself about TAMU's commitment to support the federal government's efforts in this area.

Sincerely,



Ray Bonilla
General Counsel

cc: President Young



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

Ray Bonilla
General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, TX 77840-7896

via electronic mail

June 11, 2020

Dear Mr. Bonilla:

The U.S. Department of Education (“Department”) is in receipt of your letter, dated June 4, 2020, responding to the Department’s letter to Texas A&M University (system) (“TAMUS”), dated May 11, 2020. In the Department’s letter, pursuant to its investigation of undisclosed foreign source gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source(s) involving TAMUS, the Department requested TAMUS’s assistance in disclosing TAMUS’s faculty relationships with Chinese talent-recruitment programs (TRP), which relationships TAMUS had recently acknowledged in response to an investigation by the *Wall Street Journal*.¹ Following the Department’s review of information provided by TAMUS to the Department (July 15, 2019), the Department determined that TAMUS may have failed to fully disclose the involvement of its personnel (including faculty) with China’s TRP.

In your response, you indicated that TAMUS has “identified certain personnel that appear to have relationships with Chinese talent-recruitment programs. These relationships are or have been between TAMUS employees and the foreign source, not between TAMU and the foreign source, and the relationships are not on behalf of, or for the benefit of, TAMU.”

¹ From page 1 of the Department’s May 11, 2020, letter to TAMU: “The Wall Street Journal reported on February 23, 2020, that “[a] review by officials with the Texas A&M University System found that more than 100 faculty at its schools were involved with Chinese talent-recruitment programs, though only five had disclosed their participation.” See <https://www.wsj.com/articles/chinese-military-turns-to-u-s-university-to-conduct-covert-research-11582466400>. A review of the Department’s records indicates that TAMU has not otherwise disclosed to the Department the involvement of its faculty with what appears to be a qualifying foreign source gift(s) and/or contract(s), despite the Department’s request in item 1 of the 2019 Notice (“All records of (a) gifts to, (b) contracts with, and (c) restricted or conditional gifts to or contracts with, foreign sources.... [from] January 1, 2014, to the present”).”

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It concerns the Department that TAMUS appears not to consider its reporting obligations to include these activities of its personnel on behalf of the People's Republic of China. The Department considers that view to be inconsistent with the statutory reporting obligations of TAMUS to disclose the qualifying contractual relations of its personnel (including faculty) with a foreign source(s) pursuant to 20 U.S.C. §1011f. While the Department appreciates TAMUS's acknowledgement of the TRP-related activities of a considerable number of its personnel, it finds remarkable that TAMUS now asserts that these activities are beyond the scope of TAMUS's interests or statutory reporting obligations to the Department.

The Department also notes the assertion contained in your letter that because TAMUS reports "known relationships with foreign governments and talent recruitment programs to other federal agencies," it is not required to disclose those relationships to the Department. Pursuant to the Department's ongoing efforts to verify TAMUS's compliance with its foreign source gifts and contracts disclosure obligations, it has reason to believe that the value of the "known relationships with foreign governments," (particularly the relationships with China's TRP, which TAMUS acknowledges exist across the TAMU system) exceeds the disclosure threshold identified at 20 U.S.C. §1011f. The Department seeks to verify TAMUS's compliance with its statutory reporting obligations and, while commendable, TAMUS's disclosure of qualifying relationships to other federal agencies does not obviate its statutory obligation to disclose that information to the Department.

The Department notes that the original response (July 15, 2019) by TAMUS to the investigation was timely, well-organized, and voluminous and appreciates that effort by TAMUS. Nonetheless, the acknowledgement by TAMUS that it has identified a considerable number of TAMUS personnel who are or were involved in China's talent-recruitment programs but that it will not report what it knows about those involvements to the Department is of tremendous concern.

For these reasons, the Department respectfully invites TAMUS to promptly reconsider its decision not to disclose the information requested by the Department in its May 11, 2020, letter regarding the acknowledged participation of TAMUS personnel (including faculty) in Chinese talent-recruitment programs.

Sincerely,



Paul R. Moore
Chief Investigative Counsel
Office of the General Counsel
(202) 230-0059
Paul.Moore@ed.gov

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



UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

June 13, 2019

Michael K. Young, President
Office of the President
1246 TAMU
Texas A&M University
College Station, TX 77843-1246

Re: Notice of 20 U.S.C. § 1011f Investigation and Record Request/Texas A&M University.

Dear President Young:

Section 117 of the Higher Education Act of 1965, 20 U.S.C. § 1011f, requires certain institutions, including Texas A&M University, to report statutorily defined gifts, contracts, and/or restricted or conditional gifts or contracts, from or with a statutorily defined foreign source, to the U.S. Department of Education. These reports may be found at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

The Department believes that Texas A&M University's reporting may not fully capture all covered gifts, contracts, and/or restricted or conditional gifts or contracts, from or with all foreign sources (*e.g.*, the government of Qatar, its agencies, and agents including but not limited to the Qatar Foundation for Education, Science and Community Development, its employees, subsidiaries, agents, and affiliates; the government of the People's Republic of China, its agencies, and agents, including but not limited to, the persons known as Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., and ZTE Corp, their employees, subsidiaries, agents, and affiliates). For example, Texas A&M University's Section 117 reporting should have included Texas A&M University at Qatar, *see e.g.*, <https://www.qatar.tamu.edu/about/> ("As a branch campus, Texas A&M University at Qatar is included in the institution's accreditation") (last accessed May 28, 2019); all of Texas A&M University's other locations; and all of Texas A&M University's affiliated foundations and non-profit organizations (*e.g.* the Texas A&M Foundation), whether or not organized under the laws of the United States, that (a) receive gifts, enter into contracts, and/or receive or enter into restricted or conditional gifts or contracts from or with a foreign source, and (b) operate substantially for the benefit or under the auspices of Texas A&M University.

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet our statutory duty, the Department has opened an administrative investigation of your institution and requests production of the following records within thirty (30) days:

1. All records of (a) gifts to, (b) contracts with, and (c) restricted or conditional gifts to or contracts with, foreign sources. The time frame for this request is January 1, 2014, to the present.
2. All records of, regarding, or referencing (a) gifts from, (b) contracts with, and (c) restricted or conditional gifts from or contracts with, (i) the government of Qatar, its agencies, and agents including but not limited to the Qatar Foundation for Education, Science and Community Development and (ii) the government of the People's Republic of China, its agencies, and agents, including but not limited to, the persons known as Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., and ZTE Corp, and their subsidiaries, agents, and affiliates. The time frame for this request is January 1, 2014, to the present.
3. All records of, regarding, or referencing the establishment and foreign sources of funding for Texas A&M University at Qatar. The time frame for this request is January 1, 2004, to the present.
4. All records of, regarding, or referencing activities taken by or required of Texas A&M University to comply with 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is January 1, 2014, to the present.
5. All records of, regarding, or referencing communications with the government of Qatar, its agencies, and its agents including but not limited to the Qatar Foundation for Education, Science and Community Development regarding the subject matter of an action titled *Qatar Foundation for Education, Science and Community Development v. Ken Paxton, Texas Attorney General* (No. D-1-GN-18-006240).
6. All records of, regarding, or referencing a "Memorandum of Understanding" between Texas A&M University at Qatar and "Huawei" signed on or about May 31, 2015. See <https://www.gulf-times.com/story/441448/Huawei-supports-Tamuq-s-programme-for-students>. (last accessed June 12, 2019). The time frame for this request is January 1, 2013, to the present.
7. All records of, regarding, or referencing "Hanban", the Office of Chinese Language Council International, or the Confucius Institute, their agents, employees, affiliates, or subsidiaries. The time frame for this request is January 1, 2010 to the present.
8. All records of, regarding, or referencing activities taken by or required of your institution to confirm, foreign sources of gifts, contracts, and/or restricted or conditional gifts or contracts (e.g., the government of Qatar, its agencies, and agents; the Qatar Foundation for Education, Science and Community Development (a) do not engage in, or provide material support to any person who engages in, activities prohibited by 18 U.S.C. §§ 2339, 2339A, 2339B, 2339C, and 2339D; and (b)(i) are not owned or controlled by, (ii) do not act for or

on behalf of, assist, sponsor, or provide financial, material, or technological support or other services to, or in support of, and (iii) are not otherwise associated with, any person who is a “Specially Designated Global Terrorist” under Executive Order 13224. The time frame for this request is January 1, 2009, to the present.

9. All IRS Form 990s and schedules, including but not limited to Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018, for (a) Texas A&M University, (b) the Texas A&M Foundation, located at 401 George Bush Drive, College Station, TX 77840-2811, and (c) Texas A&M University at Qatar.

As used in this Notice of Investigation and Information Request:

“Contract” is defined at 20 U.S.C. § 1011f(h)(1).

“Foreign source” is defined at 20 U.S.C. § 1011f(h)(2).

“Gift” is defined at 20 U.S.C. § 1011f(h)(3).

“Institution” is defined at 20 U.S.C. § 1011f(h)(4) and includes all affiliated foundations and non-profit organizations (*e.g.*, the Texas A&M Foundation), whether or not organized under the laws of the United States, that operate substantially for the benefit or under the auspices of Texas A&M University.

“Restricted or conditional gift or contract” is defined at 20 U.S.C. § 1011f(h)(5).

“Record” means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “recorded information” also includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

Your record and data preservation obligations are outlined at Exhibit A.

Michael K. Young, President
Texas A&M University
Notice of 20 U.S.C. § 1011f Investigation and Record Request
Page 4 of 4

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing the nature of the emails, documents, communications, or tangible things not produced or disclosed in a manner that, without revealing information itself privileged, will enable the Department to assess the validity of your claim. Please note no other privileges apply to this information request.

This investigation will be directed by the Department's Office of General Counsel with support from Federal Student Aid. Your legal counsel should contact:

Reed D. Rubinstein, Acting General Counsel
U.S. Department of Education
400 Maryland Ave., S.W.
Room 6E300
Washington, D.C. 20202
Reed.Rubinstein@ed.gov

Sincerely,



Mitchell M. Zais, Ph.D.

Enclosure

EXHIBIT A

RECORD PRESERVATION REQUIREMENTS

This investigation requires preservation of all information from your institution's computer systems, removable electronic media, filing systems, and other locations relating to the matters that are the subject of the Notice of Investigation. You should immediately preserve all data and information about the data (i.e., backup activity logs and document retention policies) relating to records maintained in the ordinary course of business and that are covered by the Notice of Investigation. Also, you should preserve information available on the following platforms, whether in your possession or the possession of a third party, such as an employee or outside contractor: databases, networks, computer systems, including legacy systems (hardware and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges and other storage media, laptops, personal computers, internet data, personal digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail). You should also preserve all hard copies of records regardless of location.

The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, you must take every reasonable step to preserve relevant records. "Reasonable steps" with respect to these records include:

- Notifying in writing all potential custodians and IT personnel who may have relevant records of their preservation obligations under this investigation.
- Discontinuing all data and document destruction policies.
- Preserving all metadata.
- Preserving relevant records and/or hardware unless an exact replica of the file (a mirror image) is made.
- Preserving passwords, decryption procedures (and accompany software), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software.
- Maintaining all other pertinent information and tools needed to access, review, and reconstruct necessary to access, view, and/or reconstruct all requested or potentially relevant electronic data.

You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information exist, with all metadata. This includes preserving:

- Active data (i.e., data immediately and easily accessible today).
- Archived/journaled data (i.e., data residing on backup tapes or other storage media).
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques).
- Legacy data (i.e., data created on old or obsolete hardware or software).



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

Ray Bonilla
General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, TX 77840-7896

via electronic and first-class mail

July 27, 2020

Dear Mr. Bonilla:

The U.S. Department of Education (“Department”) sent a written request to you on June 11, 2020, urging the Texas A&M University System (“TAMUS”) to promptly reconsider its apparent position denying to the Department information regarding TAMUS personnel (to include **all** faculty, lecturers, adjuncts, teaching assistants, researchers, administrators, staff, and **all** employees whether visiting, permanent, part-time, full-time, or those performing pursuant to contracts) who have been involved in Chinese talent-recruitment programs (TRP) (the involvement of at least 100 faculty having been confirmed by TAMUS to the *Wall Street Journal* in February 2020).¹ It is unacceptable to the Department that TAMUS has failed to respond in any manner to this simple but important request.

As you know, following the Department’s review of information provided by TAMUS to the Department (July 15, 2019), the Department determined that TAMUS failed to fully disclose the involvement of its personnel with China’s TRP. TAMUS is a substantial beneficiary of taxpayer support and remains accountable to the Department’s lawful enforcement efforts. TAMUS’s assertion that its provision of information to other agencies is sufficient to negate the obligation to respond to the Department’s ongoing investigation is not persuasive. Likewise, TAMUS’s assertion that it is not responsible for disclosing the involvement of at least 100 faculty in Chinese talent-recruitment programs is unavailing.

The Department also directs your attention to interagency investigations as well as publicized criminal charges brought by the U.S. Department of Justice against current or former faculty and, most recently, visiting researchers, at several American universities for the involvement of faculty and other personnel with Chinese TRPs. In this environment and with our country’s ongoing national security concerns, it is particularly

¹ From page 1 of the Department’s May 11, 2020, letter to TAMU: “The *Wall Street Journal* reported on February 23, 2020, that “[a] review by officials with the Texas A&M University System found that more than 100 faculty at its schools were involved with Chinese talent-recruitment programs, though only five had disclosed their participation.” See <https://www.wsj.com/articles/chinese-military-turns-to-u-s-university-to-conduct-covert-research-11582466400>. A review of the Department’s records indicates that TAMUS has not otherwise disclosed to the Department the involvement of its faculty with what appears to be a qualifying foreign source gift(s) and/or contract(s), despite the Department’s request in item 1 of the 2019 Notice (“All records of (a) gifts to, (b) contracts with, and (c) restricted or conditional gifts to or contracts with, foreign sources.... [from] January 1, 2014, to the present”).”

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important that TAMUS cooperate in fully disclosing to the Department the involvement of its faculty in Chinese TRPs.

This serves as a final notice to TAMUS that Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request that the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet the Department's statutory duty to verify compliance prior to any potential referral for enforcement action by the Attorney General, TAMUS must provide the information requested by the Department in its letter dated May 11, 2020 (*see* Attachments), regarding the involvement of its faculty (and all other personnel, as described in paragraph 1) in Chinese TRPs no later than August 11, 2020 (fully 3 months after the Department's initial request for this information).

It is distressing to the Department that one of our nation's finest state university systems has failed to timely provide the requested information, despite the Department's patience in the matter, which would be easily remedied by TAMUS's prompt transparency (subject, of course, to appropriate privileges and confidentiality).

As before, I remain available to discuss this matter at your earliest convenience.

Sincerely,



Paul R. Moore
Chief Investigative Counsel
Office of the General Counsel
(202) 230-0059
Paul.Moore@ed.gov

Attachments

(May 11 and June 11, 2020, Department letters to TAMUS)

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

Michael K. Young, President
Texas A&M University System



Office of General Counsel
THE TEXAS A&M UNIVERSITY SYSTEM

August 11, 2020

Mr. Paul R. Moore
Office of General Counsel
U.S. Dept. of Education
400 Maryland Ave. S.W., Room 6E300
Washington, DC 20202-1100

Dear Mr. Moore

We are in receipt of your July 27, 2020 letter demanding further information regarding Texas A&M University (TAMU) personnel that may be involved with Chinese talent recruitment programs. Despite your suggestion that TAMU has failed to respond, we addressed your request in detail in our letter dated June 4, 2020, and clearly stated our position, based on the plain language of the applicable statute, that this information is not within the scope of any relevant disclosures to the Department of Education required under 20 U.S.C § 1011f(f). To the extent that any TAMU personnel have relationships with Chinese talent programs, they are not authorized by or on behalf of TAMU. If these relationships exist, they are between TAMU employees in their individual capacities and the foreign source in violation of TAMU rules and policies. Any such relationships are not between TAMU and the foreign source, nor are they on behalf of, or for the benefit of, TAMU.

It appears that the Department of Education does not have a clear understanding of the nature of the TAMUS internal investigations in this area, including the nature of our information-sharing practices with federal counterintelligence authorities. As a cleared defense contractor under the National Industrial Security Program (NISP), we have obligations to protect national security above and beyond our role as an institution of higher education. It is in that role that we have instigated the robust counterintelligence and insider threat investigations that you seek to access. The information you are requesting is subject to active investigations by federal law enforcement or counterintelligence agencies. We are concerned that providing such information to the Department of Education pursuant to an unrelated and inapplicable provision of the U.S. Code could put those counterintelligence investigations in jeopardy.

Mr. Paul R. Moore
August 11, 2020
Page 2

If you still desire to pursue this matter, I suggest that we arrange a conference call that includes your colleagues at the Department of Justice, Federal Bureau of Investigation, and Defense Counterintelligence and Security Agency to discuss the implications of your request. We stand ready to arrange and participate in such a discussion.

Sincerely,

A handwritten signature in black ink that reads "Ray Bonilla". The signature is written in a cursive, flowing style.

Ray Bonilla
General Counsel

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

Michael K. Young, President
Texas A&M University



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

January 15, 2021

Ray Bonilla, Esq.
General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, TX 77840-7896

via electronic mail

Re: Conclusion of 20 U.S.C. § 1011f Investigation (Texas A&M University System)

Dear Mr. Bonilla:

On June 13, 2019, the U.S. Department of Education (“Department”) notified the Texas A&M University System (“TAMUS”) that it had commenced an investigation of TAMUS pursuant to the disclosure requirements of 20 U.S.C. § 1011f (“Section 117”). The Department’s investigation occurred pursuant to its enforcement authority under Section 117 of the Higher Education Act of 1965, 20 U.S.C. § 1011f, which requires institutions of higher education (“IHEs”) to report statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with a statutorily defined foreign source(s) to the Department.

On July 15, 2019, the Department received the first production of records from TAMUS in response to the Department’s Notice of Investigation and Records Request. The Department notes the timely response and considerable effort made by TAMUS to respond to that records request. Subsequently, on May 11, June 11, and July 27, 2020, the Department requested additional records relating to the Feb. 23, 2020, published revelation by TAMUS that an internal review had revealed the involvement of more than 100 of its faculty with Chinese talent-recruitment programs. The Department was well within its statutory rights to request records related to that serious finding by TAMUS. Despite its ongoing efforts with the U.S. Department of Justice, TAMUS unnecessarily and repeatedly delayed providing confirmation of that effort to the Department. Once the Department knew of and confirmed TAMUS’s commendable efforts with the Department of Justice, the Department had the requisite assurance needed to exercise its discretion to conclude this investigation (it must be noted that had TAMUS simply provided this information to the Department in a timely and helpful manner, the Department’s repeated requests for the additional information would have been unnecessary and the investigation could have been concluded much sooner).

Nonetheless, the Department notes the valuable assistance of TAMUS’s Associate Vice Chancellor for Federal Programs, A. Scott Sudduth, Esq., in facilitating important communication

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Ray Bonilla, Esq.
General Counsel
Texas A&M University System
Section 117 Investigation
Page 2 of 2

between TAMUS and the Department in this matter. The Department also appreciates the helpful and reassuring security briefing then provided by its Facility Security Officer, Dr. Kevin Gamache.

The Department commends TAMUS for its continued commitment to the disclosure requirements of Section 117 and the Department's statutory enforcement obligations. TAMUS's impressive ongoing research and development activities, often supported by federal taxpayer funds, warrant continued heightened vigilance to protect against conversion, misappropriation, or misuse of critical technologies with multiple applications. The Department strongly encourages TAMUS to continue its related security and compliance efforts with all appropriate federal agencies to safeguard against adversarial access to or acquisition of critical technologies.

Please feel free to contact me if you have any questions concerning this matter.

Sincerely,

/s/ Paul R. Moore

Paul R. Moore
Chief Investigative Counsel
Office of the General Counsel
(202) 230-0059
Paul.Moore@ed.gov

cc: Reed D. Rubinstein
Principal Deputy General Counsel
delegated the Authority and Duties of the General Counsel
Office of the General Counsel
U.S. Department of Education

Harley A.J. Methfessel
Senior Counsel for Information and Technology
Office of the General Counsel
U.S. Department of Education

Kevin D. Slupe
Special Counsel
Office of the General Counsel
U.S. Department of Education

A. Scott Sudduth
Associate Vice Chancellor for Federal Programs
Texas A&M University System