

DAVID A. ESCAMILLA, TRAVIS COUNTY ATTORNEY	§ § § § § § § §	261ST JUDICIAL DISTRICT COURT
V.		
KEN PAXTON, STATE OF TEXAS ATTORNEY GENERAL		TRAVIS COUNTY, TEXAS

**PLAINTIFF’S REPLY BRIEF**

TO THE HONORABLE COURT:

Plaintiff, David A. Escamilla, in his capacity as Travis County Attorney, files this brief in reply to the pre-trial briefs filed by Tara Coronado and Ken Paxton.

**I. DEFERRED PROSECUTION - ITS CHARACTERISTICS AND USE**

In the first part of Tara Coronado’s brief, written by Bill Aleshire, Mr. Aleshire claims that the Travis County Attorney’s Office uses deferred prosecution to protect those accused of a crime to the detriment of the victims of crime by keeping the conditions of deferred prosecution secret from the victims. Mr. Aleshire then concludes that, “Secrecy of the DPA keeps the victim from knowing whether the defendant is complying with the DPA or not[.]” Coronado Pre-Trial Brief at p. 4. Both statements are incorrect<sup>1</sup> and fail to accurately describe the practice of the Travis County Attorney’s Office.

In reality, when, in the prosecutor’s discretion, deferred prosecution is warranted in a family violence case, for example, the prosecutor explains to the victim the nature of

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<sup>1</sup> It is undisputed that Plaintiff informed Tara Coronado, even before the Deferred Prosecution Agreement was executed, of the conditions that Mr. Cunningham had to fulfill. In fact, Mr. Aleshire argues that Plaintiff’s disclosure of these conditions to Ms. Coronado constitutes a waiver. See Coronado Pre-Trial Brief at pp. 22-23.

deferred prosecution and informs the victim of the conditions being imposed on the defendant. This is done so the victim knows what protections are being afforded to him or her. This is done because, as to some of the conditions, the victim will be in the best position to determine whether the defendant is complying with the agreement.

In line with this practice, Ms. Coronado, both before and after Mr. Cunningham signed the Deferred Prosecution Agreement, was informed that he was required to, "Have no contact through any means with Ms. Coronado and do not go within 200 yards of the following locations: the residence of place of employment of Ms. Coronado unless pursuant to child custody order or related to the safety and welfare of the children." Plaintiff also told Ms. Coronado that the term of the DPA was two years and that Mr. Cunningham had to take a class on domestic violence and complete sixteen hours of parenting classes/counseling.

Deferred prosecution is not a nefarious, secretive scheme concocted by Plaintiff to protect those accused of crimes, as Mr. Aleshire would have this Court believe. Instead, it is one of many tools available to the prosecutor in prosecuting alleged crimes. A prosecutor can use deferred prosecution when, for example, there is some infirmity with the case that, in the prosecutor's estimate, would likely result in a "not guilty" verdict. So, in an assault family violence case for example, rather than run the risk that the defendant will suffer no consequence because of his alleged conduct and thereby be emboldened to continue the behavior, the prosecutor can use deferred prosecution to ensure that the defendant stays away from the victim, gets counseling, takes a domestic violence class, or some other condition designed to stop the violence and alter the defendant's behavior, all

of which protects the victim and provides the defendant with the opportunity to alter his behavior and stop the cycle of violence.

Moreover, Plaintiff has not disclosed to the public deferred prosecution agreements based on numerous rulings by the Attorney General that they are excepted from disclosure. The Attorney General has consistently ruled that §552.108(a)(1) excepts a DPA from disclosure when its term had not concluded, and that §552.108(a)(2) excepts a DPA when its term has concluded. Indeed, the Attorney General initially ruled that the Cunningham DPA should not be disclosed to Ms. Coronado; a ruling the Attorney General unilaterally changed (hence this lawsuit). However, the Attorney General continues to rule that a DPA whose term has expired is excepted from disclosure by §552.108(a)(2). See OR2017-16049 (July 18, 2017). Mr. Aleshire, however, equates withholding information pursuant to an Attorney General ruling to operating under the cloak of secrecy.

Mr. Aleshire is also incorrect when claims that Plaintiff “pledges to support expungement of the criminal records like the offense never happened.” (p.4) Chapter 55 of the Code of Criminal Procedure gives a defendant the right to have all records and files relating to his arrest expunged when the criminal case is dismissed. Since deferred prosecution cases are dismissed, the defendant has the legal right to expunction and there is no statutory requirement to obtain the County Attorney’s support.

The County Attorney does recognize the importance of expunction. Thus, one of the incentives for a defendant to agree to deferred prosecution [REDACTED] is that if he fulfills all the conditions of deferred prosecution, the criminal case will not be refiled,

and the defendant can exercise his legal right to seek expunction. Making the Deferred Prosecution Agreement public would eliminate expunction as an incentive to the defendant [REDACTED]

**II. THE DEFERRED PROSECUTION AGREEMENT IS NOT A SETTLEMENT AGREEMENT**

Mr. Aleshire argues that the Deferred Prosecution Agreement constitutes a settlement agreement that must be disclosed pursuant to section 552.022(a)(18) of the Public Information Act. Notably, the Attorney General has rejected Mr. Aleshire’s argument, finding that deferred prosecution agreements are not settlement agreements. See OR2017-16049 (July 18, 2017).<sup>2</sup>

A settlement agreement is used to effectuate the release of claims and causes of action arising out of a particular occurrence in exchange for a specified consideration. If there is a lawsuit pending, it is dismissed with prejudice. Generally, the parties to a settlement agreement do not admit liability for any of the acts or omissions comprising

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<sup>2</sup> This ruling was issued in response to Plaintiff’s request for a ruling concerning a recent open records request made by Mr. Aleshire, on behalf of Tara Coronado, that Plaintiff release all Deferred Prosecution Agreements made in family violence cases since January 1, 2016.

the claims and causes of action. Moreover, a breach of a settlement agreement can result in a lawsuit for breach of contract.

Criminal cases, of course, are disposed of before trial, but not by a settlement agreement. The State, in a criminal case, does not litigate a claim or cause of action against the defendant. Instead, the prosecutor, on behalf of the people of Texas, prosecutes a criminal charge; a charge that typically originates when a person reports a crime to law enforcement. Thus, the terms “claim” and “cause of action” are foreign to criminal law.

The Deferred Prosecution Agreement at issue in this case does not release Mr. Cunningham from any claims or causes of action (since none were asserted against him), nor was he released from the criminal charge made against him. The term and concept of “release”, while used extensively in civil matters, is foreign to criminal law.

Other indications that the Deferred Prosecution Agreement is not a settlement agreement are that after the DPA was executed, the criminal case against Mr. Cunningham was dismissed, but without prejudice, and that if Mr. Cunningham violates the agreement, Plaintiff will not, and cannot, pursue a breach of contract claim. Instead, Plaintiff will refile the criminal charge and resume the prosecution of Mr. Cunningham.

An additional difference between the Deferred Prosecution Agreement and a settlement agreement is that Mr. Cunningham, [REDACTED]

[REDACTED]

### III. PROVIDING THE AGREEMENT TO MR. CUNNINGHAM DOES NOT MANDATE DISCLOSURE TO THE PUBLIC

In OR2016-21139, the Attorney General found that the agreement is not excepted by section 552.108(a)(1) because Mr. Cunningham was provided a copy of the agreement that he signed. However, in this same ruling, the Attorney General determined that the remainder of the prosecutor's file is excepted by section 552.108(a)(1) even though the County Attorney provided copies of these documents to Mr. Cunningham, through his attorney, as required by the Michael Morton Act. The Attorney General, in his pre-trial brief, explains that information that is disclosed because of a legal mandate can be excepted from public disclosure while information that is voluntarily released must be made available to the public.

The Attorney General claims that the Deferred Prosecution Agreement was voluntarily released. It was not. Since this agreement contains his written confession, Plaintiff was obligated by law to provide Mr. Cunningham with a copy of this agreement. According to the Michael Morton Act, the State must provide the defendant with copies of any "written . . . statements of the defendant." Tex. Code Crim. Pro. article 39.14(a). Therefore, Plaintiff is not precluded from asserting the section 552.108(a)(1) exception. See Tex. Att'y Gen. ORD-454 (1986).

Mr. Aleshire also claims that Plaintiff voluntarily released the agreement to Mr. Cunningham. Since section 552.223 requires a governmental entity to "treat all requests for information uniformly," Mr. Aleshire contends that the agreement must be disclosed to any person who requests it. However, the agreement was not released to

Mr. Cunningham in response to request for information under the PIA, nor was it voluntarily provided to him, as discussed above.

#### **IV. THE DEFERRED PROSECUTION AGREEMENT IS EXCEPTED FROM DISCLOSURE BY SECTION 552.108(a)(1)**

Mr. Aleshire claims that section 552.108(a)(1) is not applicable because the criminal case against Mr. Cunningham was dismissed after the Deferred Prosecution Agreement was executed. However, even the Attorney General disagrees with this position. In OR2016-21139, the Attorney General determined that every document in Plaintiff's file, except the Deferred Prosecution Agreement, was excepted from disclosure by section 552.108(a)(1), even though the criminal case had been dismissed, since there was a possibility that it could be refiled.

Mr. Aleshire also informs the Court that he could find not any "published case where a court has agreed that a settlement agreement with a criminal defendant can be withheld under section 552.108[.]" Coronado Pre-Trial Brief at p. 18. He also will not be able to find a case where the court found that a settlement agreement with a criminal defendant cannot be withheld under section 552.108 because criminal cases are not resolved with settlement agreements, as explained above.

Plaintiff asserts that releasing to the public the Deferred Prosecution Agreement will interfere with Plaintiff's prosecution of crime because it could result in a violation of Mr. Cunningham's due process right to a fair trial [REDACTED]

[REDACTED] That Plaintiff is concerned about Mr.

Cunningham’s due process rights arises out of his “primary duty . . . not to convict, but to see that justice is done.” Texas Code of Criminal Procedure article 2.01.

The Attorney General claims that Plaintiff’s claim that Mr. Cunningham’s right to a fair trial would be impacted by [REDACTED] is “a vague assertion of interference[.]” AG’s Pre-trial Brief at p. 8. However, if the Attorney General’s characterization was correct, the courts would not have found that one of the purposes of the section 552.108 exception is to ensure that excessive publicity does not result in due process violations, thereby endangering the prosecution. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d per curiam*, 538 S.W.2d 559 (Tex. 1976).<sup>3</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thus, protection of one’s right to a fair trial is extremely important. As such, if Mr. Cunningham’s due process rights are violated [REDACTED]

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<sup>3</sup> Mr. Aleshire also cites this case, but does not address this holding. Instead, he quotes, “The City and State have a legitimate interest in preserving the secrecy of their records from the eyes of defendants and their counsel in criminal actions.” *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d at 186. However, the Michael Morton Act prevents such secrecy and requires the State to share its file with the defendant, except for privileged information.

██████████, this disclosure will interfere with Plaintiff's ability to prosecute the charge made against Mr. Cunningham.

The Attorney General argues that Plaintiff is limited to showing that release of the Cunningham agreement would "harm its law enforcement interests in *this* criminal case, or in some specific, presumably related investigation." AG's Pre-trial Brief at p. 9 (emphasis in original). At trial, Plaintiff will present evidence that release of the Deferred Prosecution Agreement will interfere with Plaintiff's prosecution of the criminal charge made against Mr. Cunningham. However, Plaintiff will also show that releasing to the public the Cunningham agreement will also interfere with Plaintiff's ability to prosecute crime and limit his discretion in prosecuting crime in other cases since section 552.108(a)(1) is not as limited as suggested by the Attorney General. Section 552.108(a)(1) it excepts from disclosure information that, if released, "would interfere with the detection, investigation, or prosecution of crime." Absent from the statute is the article "a" in front of crime. Thus, Plaintiff is limited to showing that disclosure would interfere with the prosecution of a single crime.

#### **IV. NO WAIVER**

Mr. Aleshire asserts that Plaintiff has waived his claim to withhold the Deferred Prosecution Agreement because the form agreement has been made public.<sup>4</sup> This case, however, is not about a form, but about a specific agreement. A form is not completed

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<sup>4</sup> Mr. Aleshire accuses Plaintiff of making a false statement in response to Coronado's RFA No. 15 where Plaintiff denied that the form had been provided to the general public, because Plaintiff has provided a copy of the form to a reporter in response to an open records request. However, at the time of Plaintiff's response to RFA No. 15 (May 17, 2017), the form had never been provided to the general public. The open records request was made after May 17, 2017.

and is not applicable to anyone in particular. When the form is used for a specific person, it is possible that some of the terms and conditions will be deleted. Also, the agreement will specify that counseling requirements expected of the defendant and the courses he must take. The agreement will also specify other terms and conditions applicable to the defendant. Moreover, that a generic form is available to the public does not mean that Plaintiff must release the Deferred Prosecution Agreement signed by Mr. Cunningham. *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336, 343 (Tex. 2009).

Mr. Aleshire also asserts that Plaintiff has waived his claim to withhold the Deferred Prosecution Agreement because Plaintiff disclosed some of the agreement's provisions to Tara Coronado. Plaintiff, however, did not disclose these provisions to Ms. Coronado in response to an open records request but in conjunction with preparing the specific conditions that would apply to Mr. Cunningham and informing Ms. Coronado of the protections the agreement would afford her. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Aleshire also argues that the entire agreement should be released because Plaintiff, in an attempt to settle this matter, offer to release to her pages 4 and 5 of the agreement, the pages that contain the specific terms and conditions applicable to Mr. Cunningham, and to inform her of the length of the agreement. This offer was made because it seemed from her *pro se* Motion to Oppose Sealing of Court that Ms. Coronado

was most interested in knowing “the protections afforded me in the agreement[.]” Ms. Coronado rejected this offer.

In the next section of his brief (pages 23-43), Mr. Aleshire explores the form agreement section by section, arguing that each section of the form should be released. However, Plaintiff is not attempting to prevent the release of the form agreement. Instead, Plaintiff contends that the completed agreement signed by Mr. Cunningham is excepted from disclosure. As mentioned above, simply because the generic form agreement is available to the public does not mean the completed agreement signed by Mr. Cunningham must be released. *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336, 343 (Tex. 2009).

**V. Letter Ruling OR2016-10351 is a “Previous Determination” that the Deferred Prosecution Agreement is excepted from release**

Both Mr. Aleshire and the Attorney General dismiss as irrelevant Plaintiff’s assertion that the Attorney General’s ruling on May 6, 2016 that the Deferred Prosecution Agreement is excepted from disclosure is a “previous determination.” They both claim that Plaintiff made a second request for a ruling concerning the agreement and thus, is bound by the second ruling. However, Plaintiff *did not* make a second request for a ruling as to the Deferred Prosecution Agreement.

After the Attorney General ruled on May 6, 2016, that the Deferred Prosecution Agreement (the only information requested by Tara Coronado at that time) is excepted from disclosure pursuant to section 552.108(a)(1), Tara Coronado, through Laura Bates, asked for the same agreement, plus Plaintiff’s entire file relating to the prosecution of

Mr. Cunningham. Had new information not been requested, Plaintiff would have refused to release the agreement based on OR2016-10351, as was done when Ms. Coronado, after the May 6, 2016 ruling, twice requested the agreement, and only the agreement.

However, additional information was requested by Ms. Coronado. Since there was no previous determination about this information, Plaintiff, as required by the PIA, requested a ruling from the Attorney General, quoting the request word for word. Since the Ms. Coronado specifically requested the Deferred Prosecution Agreement, Plaintiff informed the Attorney General that he had previously ruled in OR2016-10351 that the agreement is excepted from disclosure by section 552.108(a)(1). Plaintiff then proceeded to explain why the additional information sought by Ms. Coronado was also excepted from disclosure by section 552.108(a)(1).

When Plaintiff made his July 15, 2016 request for a ruling, the Attorney General understood that Plaintiff was relying on OR2016-10351 as a previous determination rather than seeking a new ruling, as evidenced by the following language:

Initially, you state the agreement was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-10351 (2016). In that ruling, we determined the county attorney's office may withhold the agreement under section 552.108(a)(1) of the Government Code.

OR2016-21139 at p. 1.

If the Attorney General had considered Plaintiff's July 15, 2016 request a second request for a ruling as to the Deferred Prosecution Agreement, the next sentence in

OR2016-21139 would have been something like, “However, because the county attorney’s office has requested a second opinion concerning this agreement, we do not have to follow the previous determination” – the position now being taken by the Attorney General and Mr. Aleshire. But the Attorney General said nothing remotely similar to this. Instead, the Attorney General concluded that OR2016-10351 was not a previous determination because “the law, facts, and circumstances on which the previous ruling was based have changed” – even though there was no basis in law or fact to make such a statement. OR2016-21139 at p. 2. Then, to compound this error, the Attorney General, even though he was not asked to, proceeded to consider whether the agreement was excepted by section 552.108(a)(1); the exception Plaintiff asserted applied to the remainder of the prosecutor’s file.

The Attorney General argues that he “is not and should not be bound by a prior, erroneous determination made in an informal ruling,” implying that OR2016-10351 was an erroneous determination. However, OR2016-10351 is consistent with all of the Attorney General’s prior rulings about deferred prosecution agreements whose terms have not concluded. *See* OR2016-10900, OR2016-06950, OR2016-02695, OR2013-06134, and OR2011-09492. OR2016-21139 deviates from these rulings.

Mr. Aleshire argues that OR2016-10351 is not a previous determination because the facts and circumstances known by the Attorney General had materially changed by the time OR2016-21139 was issued. He claims that the Attorney General did not know when OR2016-10351 was issued that the criminal case against Mr. Cunningham had been dismissed, but did know this when OR2016-21139 was issued. But the Attorney

General is not now, nor has he ever, made such a claim. Indeed, the Attorney General has never explained the basis of this ruling. However, whatever it was, we know it was not because the criminal case had been dismissed, as shown by the following facts.

First, in response to Plaintiff's discovery requests, the Attorney General has admitted that the law on which Letter Ruling OR2016-10351 was based has not changed since its issuance, and does not contend that the facts or circumstances on which Letter Ruling OR2016-10351 was based have changed.

Second, the Attorney General, in OR2016-21139, ruled that the prosecutor's file was excepted from disclosure by section 552.108(a)(1), even after Ms. Coronado provided the Attorney General with a copy of the order dismissing the criminal case against Mr. Cunningham. Thus, the dismissal was immaterial to the Attorney General's decision.

Third, the Attorney General has long known that deferred prosecutions result in the dismissal of the criminal case and the dismissal has never been material to the Attorney General's rulings concerning deferred prosecution agreements. Instead, what has been material to the Attorney General is whether the term of the agreement has concluded or not.

Fourth, the Attorney General has never made the argument that he first learned from Ms. Coronado that Mr. Cunningham's criminal case was dismissed after he signed the Deferred Prosecution Agreement.

Fifth, even if the facts and circumstances known to the Attorney General had changed by the time OR2016-21139 was issued, that would not have sufficed to support

a conclusion that OR2016-10351 was not a previous determination since the ORD No. 673 criterion for a previous determination is that, “the law, facts, **and** circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling.” ORD No. 673 at p. 7 (emphasis added).

## V. CONCLUSION

Accordingly, Plaintiff requests that after all the evidence has been presented to the Court, that the Court find that section 552.108(a)(1) excepts from disclosure the Deferred Prosecution Agreement signed by Mr. Cunningham.

Respectfully submitted,

DAVID ESCAMILLA  
TRAVIS COUNTY ATTORNEY

By: /s/ Tim Labadie  
State Bar No. 11784853  
Assistant Travis County Attorney  
P. O. Box 1748  
Austin, Texas 78767  
(512) 854-5864  
(512) 854-9316(fax)  
tim.labadie@traviscountytexas.gov

ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify by my signature above that, in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure, on July 31, 2017, a redacted version of the foregoing was emailed and an unredacted version was mailed (CM-RRR), to:

Bill Aleshire  
AleshireLAW, P.C.  
700 Lavaca, Suite 1400  
Austin, Texas 78701  
Email: Bill@AleshireLaw.com  
Attorney for Tara Coronado Cunningham, Intervenor

Matthew Entsminger  
Assistant Attorney General  
P. O. Box 12548, Capitol Station  
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Email: matthew.entsminger@oag.texas.gov.  
Attorney for Ken Paxton, Texas Attorney General, Defendant

NO. D-1-GN-16-004769

DAVID A. ESCAMILLA,  
TRAVIS COUNTY ATTORNEY

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261ST JUDICIAL DISTRICT COURT

V.

KEN PAXTON,  
STATE OF TEXAS ATTORNEY GENERAL

TRAVIS COUNTY, TEXAS

**APPENDIX TO PLAINTIFF'S REPLY BRIEF**

EXHIBITS

- A. OR2016-10900
- B. OR2016-06950
- C. OR2016-02695
- D. OR2013-06134
- E. OR2011-09492

# Exhibit A

Tex. Atty. Gen. Op. OR2016-10900 (Tex.A.G.), 2016 WL 3533825

Office of the Attorney General

State of Texas

Informal Letter Ruling No.

**OR2016**

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**10900**

May 12, 2016

\*1 Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County Attorney's Office  
P.O. Box 1748  
Austin, Texas 78767

Dear Ms. Sheely:

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# 610176.

The Travis County Attorney's Office (the “county attorney's office”) received a request for information related to the disposition of two specified criminal cases. You claim the submitted information is excepted from disclosure under [section 552.108 of the Government Code](#). We have considered the exception you claim and reviewed the submitted information.

[Section 552.108\(a\)\(1\) of the Government Code](#) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” [Gov't Code § 552.108\(a\)\(1\)](#). A governmental body claiming [section 552.108\(a\)\(1\)](#) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ [552.108\(a\)\(1\)](#), [.301\(e\)\(1\)\(A\)](#); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked relates to a criminal case which is subject to a deferred prosecution agreement. You state the term of the deferred prosecution agreement has not concluded and, if at the end of the deferred prosecution agreement term the subject fails to comply with the terms of the agreement, the criminal case will be re-filed. Therefore, you claim this information relates to a pending criminal case. Based on this representation and our review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of

crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. — Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find the county attorney's office may withhold the information you have marked under [section 552.108\(a\)\(1\)](#).

[Section 552.108\(a\)\(2\) of the Government Code](#) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. See [Gov't Code § 552.108\(a\)\(2\)](#). A governmental body claiming [section 552.108\(a\)\(2\)](#) must demonstrate the requested information relates to a criminal prosecution that has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked relates to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. Based on your representation and our review, we find the county attorney's office may withhold the information you have marked under [section 552.108\(a\)\(2\)](#).

**\*2** In summary, the county attorney's office may withhold the information you marked under [sections 552.108\(a\)\(1\) and 552.108\(a\)\(2\) of the Government Code](#).

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,

Tim Neal  
Assistant Attorney General  
Open Records Division

Tex. Atty. Gen. Op. OR2016-10900 (Tex.A.G.), 2016 WL 3533825

# Exhibit B

Tex. Atty. Gen. Op. OR2016-06950 (Tex.A.G.), 2016 WL 1597925

Office of the Attorney General

State of Texas

Informal Letter Ruling No.

**OR2016**

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**06950**

March 29, 2016

\*1 Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767-1748

Dear Ms. Sheely:

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# 603338.

The Travis County Attorney's Office (the “county attorney's office”) received a request for surveillance footage and photographs related to a specified incident. You claim the submitted information is excepted from disclosure under [section 552.108 of the Government Code](#). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

[Section 552.108\(a\)\(1\) of the Government Code](#) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]” [Gov't Code § 552.108\(a\)\(1\)](#). A governmental body claiming [section 552.108\(a\)\(1\)](#) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* [§§ 552.108\(a\)\(1\), .301\(e\)\(1\)\(A\)](#); *see also Ex parte Pruitt*, [551 S.W.2d 706 \(Tex. 1977\)](#). You state the submitted information relates to a case where the suspect has been granted a deferred prosecution that is pending. You inform us the case will be refiled if the suspect fails to comply with the terms of the agreement by the end of the deferred prosecution period. Based upon your representation the prosecution is pending and our review of the submitted information, we conclude release of the information will

interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the county attorney's office may withhold the submitted information under [section 552.108\(a\)\(1\) of the Government Code](#).

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,

**\*2** Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

#### Footnotes

- 1 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 those records contain substantially different types of information than that submitted to this office.

**Tex. Atty. Gen. Op. OR2016-06950 (Tex.A.G.), 2016 WL 1597925**

# Exhibit C

Tex. Atty. Gen. Op. OR2016-02695 (Tex.A.G.), 2016 WL 729925

Office of the Attorney General

State of Texas

Informal Letter Ruling No. OR2016-02695

February 4, 2016

\*1 Re: Request for copies of the initial police report, call for service, and complaint filed in relation to case #C-1-CR-10-216075

Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767-1748

Dear Ms. Sheely:

The Office of the Attorney General has received your request for a ruling and assigned your request ID# 599074.

After reviewing your arguments and the submitted information, we have determined your request does not present a novel or complex issue. Thus, we are addressing your claims in a memorandum opinion. You claim the submitted information may be withheld from the requestor pursuant to [section 552.108\(a\)\(1\) of the Government Code](#). We have considered your arguments and the submitted information and have determined that in accordance with [section 552.108\(a\)\(1\)](#) you may withhold the submitted information. However, you must release the basic information pursuant to [section 552.108\(c\) of the Government Code](#).

For more information on the cited exception, please refer to the open government information on our website at <https://www.oag.state.tx.us/open/memorulings.shtml>. You may also contact our Open Government Hotline at 1-877-OPENTEX.

Tex. Atty. Gen. Op. OR2016-02695 (Tex.A.G.), 2016 WL 729925

# Exhibit D

Tex. Atty. Gen. Op. OR2013-06134 (Tex.A.G.), 2013 WL 1783838

Office of the Attorney General

State of Texas

Informal Letter Ruling No.

**OR2013**

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**06134**

April 16, 2013

\*1 Ms. LeAnne Lundy

For the Klein Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

Dear Ms. Lundy:

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# 484200.

The Klein Independent School District Police Department (the “department”), which you represent, received a request for a specified police report. You state the department has released some of the requested information. You claim that the submitted information is excepted from disclosure under [sections 552.101, 552.102, and 552.108 of the Government Code](#). We have considered the exceptions you claim and reviewed the submitted information.

[Section 552.101 of the Government Code](#) excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” [Gov't Code § 552.101](#). [Section 552.101](#) encompasses information other statutes make confidential, such as [section 58.007 of the Family Code](#). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under [section 58.007](#). For purposes of [section 58.007\(c\)](#), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* [Fam. Code § 51.02\(2\)](#). [Section 58.007](#) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by [Section 411.082, Government Code](#), the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

**\*2** *Id.* § 58.007(c), (e), 0)(2). We find the submitted information involves juveniles engaged in delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to [section 58.007](#). We note the requestor is a parent of one of the juvenile offenders listed in the report. Accordingly, she may inspect or copy any law enforcement records concerning her child under [section 58.007\(e\)](#). *Id.* § 58.007(e). [Section 58.007\(j\)](#) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure.

[Section 552.108\(a\)\(1\) of the Government Code](#) excepts from disclosure “[i] nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]” [Gov't Code § 552.108\(a\)\(1\)](#). A governmental body that claims an exception to disclosure under [section 552.108](#) must reasonably explain how

and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim the submitted report relates to a case where the suspect has been granted a deferred prosecution which is still pending. *See Fam. Code* § 53.03 (juvenile may agree to deferred prosecution for period of time not to exceed six months); *see also Letter Opinion No. 98-069 (1998)* (if deferred prosecution was successful, case should be closed and any filed petition should be dismissed). Based on your representations that the prosecution is pending and our review of the submitted documents, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, [section 552.108](#) does not except from disclosure basic information about an arrested person, an arrest, or a crime. [Gov't Code § 552.108\(c\)](#). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Although you seek to withhold the identities of a juvenile suspect that was not arrested and a juvenile witness on the basis of privacy, this information is not basic information and may, therefore, be withheld under [section 552.108](#). *See id.* Thus, with the exception of basic information, the department may withhold the submitted information under [section 552.108\(a\)\(1\) of the Government Code](#).<sup>1</sup>

**\*3** 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

Footnotes

- 1 Because the requestor has a special right of access under [section 58.007\(e\) of the Family Code](#) to the information being released, if the department receives another request for this information from a different requestor, the department must again request an opinion from this office.

Tex. Atty. Gen. Op. OR2013-06134 (Tex.A.G.), 2013 WL 1783838

# Exhibit E

Tex. Atty. Gen. Op. OR2011-09492 (Tex.A.G.), 2011 WL 2681634

Office of the Attorney General

State of Texas

Informal Letter Ruling No.

**OR2011**

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**09492**

July 5, 2011

\*1 Mr. Daniel Bradford  
Assistant County Attorney  
County of Travis  
P.o. Box 1748  
Austin, Texas 78767

Dear Mr. Bradford:

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# 422775.

The Travis County Attorney's Office (the “county attorney”) received a request for any agreements reached in a specified criminal case. You claim the submitted deferred prosecution agreement is excepted from disclosure under [section 552.108 of the Government Code](#). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

[Section 552.108 of the Government Code](#) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” [Gov't Code § 552.108\(a\)\(1\)](#). A governmental body claiming [section 552.108](#) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ [552.108\(a\)\(1\)](#), [.301\(e\)\(1\)\(A\)](#); *see also Ex parte Pruitt*, [551 S.W.2d 706 \(Tex. 1977\)](#). You represent release of the deferred prosecution agreement will interfere with an open criminal investigation by the county attorney. Based on your representations and our review, we conclude the county attorney has demonstrated the applicability of [section 552.108\(a\)\(1\)](#) to the submitted agreement. *See Houston Chronicle Publ'g Co. v. City of Houston*, [531 S.W.2d 177 \(Tex. Civ. App.--Houston](#)

[14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the county attorney may withhold the deferred prosecution agreement under 552.108(a)(1) of the Government Code.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

Kenneth Leland Conyer  
\*2 Assistant Attorney General  
Open Records Division

#### Footnotes

- 1 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 those records contain substantially different types of information than that submitted to this office.

Tex. Atty. Gen. Op. OR2011-09492 (Tex.A.G.), 2011 WL 2681634