

CAUSE NO. D-1-GN-16-004769

DAVID A. ESCAMILLA,
Travis County Attorney
Plaintiff

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IN THE DISTRICT COURT

v.

OF TRAVIS COUNTY

§

KEN PAXTON
State of Texas Attorney General
Defendant

261st JUDICIAL DISTRICT

**CROSS-PLAINTIFF/ INTERVENOR TARA CORONADO'S
REQUEST FOR ADMISSIONS, INTERROGATORIES, AND PRODUCTION**

Cross-Plaintiff/Intervenor Tara Coronado (herein "Plaintiff") serves the following on Plaintiff/Cross-Defendant Travis County Attorney David Escamilla (herein "Defendant") via his attorney Tim Labadie, Assistant Travis County Attorney, P.O. Box 1748, Austin, Texas 78767.

NOTE: If Travis County Attorney David Escamilla contends that, in order to provide full and appropriate responses to any of the discovery requests listed below, that he must reveal information about the contents of the Deferred Prosecution Agreement that is subject to a Protective Order (Attorney Eyes Only) issued by the Court, then Cross-Plaintiff's attorney, Bill Aleshire, will agree to protect such responses by the County Attorney from disclosure to any persons other than the attorneys in this case by means of a Rule 11 Agreement or extended Protective Order.

I. Instructions

Plaintiff serves these Requests for Admissions, Interrogatories and Requests for Production pursuant to Texas Rule of Civil Procedure 198, 197 and 196. Defendant must admit or deny each Request for Admission. Defendant must timely answer each interrogatory separately, fully, in writing, and under oath. Defendant must produce all requested documents (as they are kept in the ordinary course of business or organized and labeled to correspond with categories in each request) that are in Defendant's actual or constructive possession, custody, control, for inspection and copying. Defendant must serve the answers on Plaintiff's attorney of record, Bill Aleshire, AleshireLAW, P.C., at 700 Lavaca, Suite 1400, Austin, Texas 78701 not more than 30 days after service.

1. All of the Requests must be answered fully and in writing in accordance with Rules 192 and 196 of the Texas Rules of Civil Procedure.
2. For each separately numbered Request below, please delineate each set of responsive Documents so that it can be easily ascertained which Documents relate to which numbered Request(s).

3. If responsive information is contained in data compilations or is stored as electronic, magnetic or computer data from which information or data can be obtained, you are requested to produce the information in hard copy (paper form) and, in addition to produce an electronic native copy of the information including all metadata and to include such information on any reasonably accessible data storage hard drive and to produce instructions on how to access the requested information. If any electronically produced information requires specialized software or other external applications, please provide a copy of such software or other external application, or identify with specificity the software or other external application required to view the information in its native format.

4. In the event you claim a Request is objectionable or inquiries into privileged matters, please state the nature of the objection or the privilege asserted and the reasons for the objection or the claim of privilege. If a portion of the request is not objectionable, then state the objection to the objectionable portion and respond to the remaining portion of the Request. To the extent any responsive information is withheld on the basis of privilege or any related doctrine, please provide a Privilege Log pursuant to Rule 193.3 of the Texas Rules of Civil Procedure within 15 days of your response to these requests.

5. In the event that any document called for by a Request has been discarded, deleted, or destroyed, that document is to be identified as follows: addressor, addressee, indicated or blind copies, date, subject matter, number of pages, attachments or appendices, all persons to whom distributed, shown or explained, date of disposal or destruction, persons authorizing disposal or destruction and persons discarding or destroying the document. This instruction applies to both hard copy Documents and electronic, magnetic or computer data, including any and all deleted email otherwise responsive to a Request.

6. You are to produce all Documents, as defined below, that are in your actual or constructive possession, custody, or control or in the possession, custody, or control of your respective counsel, agents, or representatives, or which can be obtained through reasonably diligent efforts. Without limiting the term "control," a document is deemed to be within one's control if you have ownership, possession or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having a physical possession thereof. The terms "(possession, custody, or control" are to be construed in the broadest manner consistent with Texas law.

7. All duplicates or copies of Documents are to be provided to the extent they have handwriting, additions, or deletions of any kind different from the original document being produced, and vice versa.

8. These Requests shall be deemed continuing so as to require You to produce any additional Documents, objects or tangible things that You discover or obtain between the time that Your responses are served and the time the above-captioned action is concluded.

II. Definitions

The following definitions have the following meanings, unless other required by context:

1. The terms "And" as well as "Or" shall be construed either disjunctively or conjunctively to bring within the scope of these Requests any information which might otherwise be construed to be outside their scope.

2. The terms "Concerning" or "Referring To" or "Relating To" or "Regarding" and their derivations shall mean reflecting, having a relationship to, pertaining to, evidencing, or constituting, in whole or in part, the subject matter of the particular request.

3. "You" or "Your" means Defendant Travis County Attorney David Escamilla, the Office of Travis County Attorney and its officials and employees, including, but not limited to, attorneys, or other persons or entities acting or purporting to act on Your behalf, whether individually or collectively.

4. The term "Document" is used in the broadest sense and shall mean all things described in Rule 192.3(d) of the Texas Rules of Civil Procedure and includes, but is not limited to, any and all papers, files, reports, correspondence, summaries, stenographic or handwritten notes, announcements, drafts, and preliminary copies of Documents, transcripts, minutes, studies, memoranda, notes or memoranda of conversations, telephone messages, transmittal slips, printed literature, brochures, catalogues, advertising of all types, test reports, articles, publications, books, pamphlets, pictures, diaries, appointment books, calendars, minute books, by-laws, stock certificates, statistical compilations, telegrams, telexes, cables, teletypes, mailgrams, facsimiles, graphs, charts, surveys, analyses, compilations, movie films, audiotapes, videotapes, microfilms, slides or still films, statistics, data processing cards, computer records, e-mails, computerized instant messages, .txt messages, SMS files, MMS files, computer tapes, printouts, books of account ledgers, journals, spreadsheets, control sheets, working papers, audits, or any writing or documentation or data of any kind or description, whether handwritten, typewritten, printed, copied, microfilmed, printed on computer cards or tapes or data in existence or available or otherwise retrievable, in Your custody, possession, or control of every type and description, regardless of form or nature, pertaining in whole or in part, directly or indirectly, to the matters referred to in the foregoing Requests. Please note that such definition includes electronic or Videotape recordings electronic data and data compilations. As it relates to information that is stored as electronic or magnetic data on a computer, or any other information storage device, the terms "document," "Documents," or "documentation" includes the raw electronic data and software applications necessary to translate the information into useable form as well as any tangible copies or printouts of such information.

5. The term "Communication" means any oral or written utterance, transfer or exchange of information, notation or statement of any nature whatsoever, by or to whomever made, including, but not limited to correspondence, conversations, dialogues, discussions, interviews, consultations, telephone calls, meetings, telexes, cables, agreements, electronic mail, text messages transmitted by cellular telephone, instant messaging, and/or any other understandings, transmitted from You or received by You.

6. "Lawsuit" refers to all of the claims, whether now asserted or asserted hereafter by amendment, supplement, or otherwise, in the above-styled and numbered cause.

7. The term "Petition" refers to the live petition at the time these Requests are served upon you and every amended or supplemental petition served thereafter.

8. The term "Person" means every natural person, association, firm, partnership, corporation, board, committee, agency, commission, legal entity of any form or type, and every other organization or entity, whether public or private.

9. "Plaintiff" or "Defendant" as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.

10. The term "Produce" means to make available or authorize the obtaining of any requested Documents or other materials for the purpose of inspection and copying by Plaintiff.

11. The plural includes the singular and vice versa.

12. The masculine includes the feminine and vice versa.

13. "Identify" when referring to a person means You must state the following:

- a. The full name.
- b. The present or last known residential address and residential telephone number.
- c. The present or last known office address and office telephone number.
- d. The present occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular interrogatory.
- e. In the case of any entity, identify the officer, employee, or agent most closely connected with the subject matter of the interrogatory and the officer who is responsible for supervising that officer or employee.

"Identify" when referring to a document, means You must state the following:

- a. The nature (e.g., letter, handwritten note) of the document.
- b. The title or heading that appears on the document.
- c. The date of the document and the date of each addendum, supplement, or other addition or change.
- d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered.
- e. The present location of the document, and the name, address, position or title, and telephone number of the person or persons having custody of the document.

14. The following terms describe matters giving rise to this lawsuit:

- a. The "Cunningham Deferred Prosecution Agreement" or "Cunningham DPA" means the agreement at issue in this case between the State of Texas (represented by the Travis

County Attorney) and Chet Edward Cunningham.

REQUEST FOR ADMISSIONS

Defendant is to admit or deny the following statements within 30 days of the service of this request pursuant to TRCP 198:

REQUEST FOR ADMISSION 1: The Cunningham DPA is an agreement between the State of Texas, represented by the Travis County Attorney's Office, and Chet Edward Cunningham as parties to the agreement.

REQUEST FOR ADMISSION 2: The Cunningham DPA settled the matter of the County Attorney's prosecution of Chet Edward Cunningham in Travis County Cause No. C-1-CR-13-180014, subject to certain conditions.

REQUEST FOR ADMISSION 3: In consideration of Chet Edward Cunningham's agreement to certain conditions in the Cunningham DPA, You agreed to conditionally dismiss the criminal charges against Chet Edward Cunningham in Travis County Cause No. C-1-CR-13-180014.

REQUEST FOR ADMISSION 4: On one or more occasions in 2016, Plaintiff Tara Coronado requested a copy of the Cunningham DPA.

REQUEST FOR ADMISSION 5: You refused to supply a copy of the Cunningham DPA to Plaintiff Tara Coronado.

REQUEST FOR ADMISSION 6: On July 12, 2016 Laura Bates requested a copy of the Cunningham DPA.

REQUEST FOR ADMISSION 7: In making the request for the Cunningham DPA, Laura Bates was acting as an attorney for Plaintiff Tara Coronado.

REQUEST FOR ADMISSION 8: You refused to supply Laura Bates with a copy of the Cunningham DPA and requested a ruling from the Texas Attorney General's Office, pursuant to Tex. Gov't Code section 552.301, to withhold the Cunningham DPA, among other records, from Laura Bates.

REQUEST FOR ADMISSION 9: You have disclosed deferred prosecution agreements, either in part or in their entirety, (other than the Cunningham DPA) to persons who were not parties (or their attorneys) to the deferred prosecution agreement.

REQUEST FOR ADMISSION 10: You contend that all pages and every word or marking on the Cunningham DPA is not subject to mandatory disclosure under Tex. Gov't Code section 552.021.

REQUEST FOR ADMISSION 11: You contend that all pages and every word or marking on the Cunningham DPA can be withheld from disclosure to Plaintiff Tara Coronado under Tex. Gov't Code section 552.108(a)(1) and section 552.108(a)(2).

REQUEST FOR ADMISSION 12: The Cunningham DPA is not a record of Your *investigation* of the charges against Chet Edward Cunningham.

REQUEST FOR ADMISSION 13: You have not kept confidential the blank form Your office uses for deferred prosecution agreements.

REQUEST FOR ADMISSION 14: The form Your office has used for one or more deferred prosecution agreements is available for public viewing, including via a link at <http://www.pacefirm.com/faq/deferred.html> .

REQUEST FOR ADMISSION 15: You have provided a copy of the blank form Your office uses for deferred prosecution agreements to one or more persons outside Your office.

REQUEST FOR ADMISSION 16: The United States Department of Justice publicly discloses deferred prosecution agreements on its website, including at <https://search.justice.gov/search?query=deferred+prosecution&op=Search&affiliate=justice>

REQUEST FOR ADMISSION 17: The document attached hereto as "Plaintiff's Discovery 1" is a true and correct copy of emails between Your Assistant County Attorney Neha Naik and Plaintiff Tara Coronado on April 7, 2016 (5:25pm); April 8, 2016 (2:33pm); April 11, 2106 (11:48pm); and April 11, 2016 (2:30pm).

REQUEST FOR ADMISSION 18: You have divulged to Plaintiff Tara Coronado material terms of the Cunningham DPA.

REQUEST FOR ADMISSION 19: The information about the Cunningham DPA that was provided by You to Plaintiff Coronado in the emails in Plaintiff's Discovery 1 was a correct and accurate reflection of some of the terms of the Cunningham DPA.

INTERROGATORIES

Instruction: Provide Your sworn response to the following:

INTERROGATORY NO. 1: What law authorizes You to settle a criminal court case brought against a defendant like Chet Edward Cunningham by means of a deferred prosecution agreement?

INTERROGATORY NO. 2: Identify the records that contain Your policy and procedure for entering in to a deferred prosecution agreement including any policies regarding disclosure of such deferred prosecution agreements.

INTERROGATORY NO. 3: If You did not Admit Request for Admission Nos. 1, 2, or 3, explain Your reason(s) for not admitting the Request

INTERROGATORY NO. 4: In the last 5 years, have You corresponded with other District Attorneys or County Attorneys in Texas about policies or procedures for entering in to deferred prosecution agreements?

INTERROGATORY NO. 5: Do You contend that there are provisions in the Cunningham DPA that, if disclosed, would interfere with the detection of crime? If so, explain how disclosure of the Cunningham DPA would interfere with the detection of crime?

INTERROGATORY NO. 6: Do You contend that there are provisions in the Cunningham DPA that, if disclosed, would interfere with the investigation of crime? If so, explain how disclosure of the Cunningham DPA would interfere with the investigation of crime?

INTERROGATORY NO. 7: Do You contend that there are provisions in the Cunningham DPA that, if disclosed, would interfere with the prosecution of crime? If so, explain how disclosure of the Cunningham DPA would interfere with the prosecution of crime?

INTERROGATORY NO. 8: Do You contend that the disclosure of a blank form of the deferred prosecution agreement used by Your office (with no identifying information of any defendant) would interfere with the detection, investigation, or prosecution of crime? If so, explain the factual basis for your contention.

INTERROGATORY NO. 9: If You did not admit Request for Admission No. 12, explain the basis for Your contention that the Cunningham DPA is part of the records of your “investigation” of a crime?

INTERROGATORY NO. 10: Do You contend that the Cunningham DPA is “confidential” as that term is used in the Texas Public Information Act (including Tex. Gov’t Code section 552.352) as opposed to contending that the DPA is just not subject to mandatory disclosure? If so, explain the basis for your contention that the Cunningham DPA is “confidential.”

INTERROGATORY NO. 11: If You contend that there is a substantive difference between “deferred adjudication” and “deferred prosecution,” explain the ways in which You contend they differ.

INTERROGATORY NO. 12: During a phone call on or about March 24, 2016, what information did Your Assistant County Attorney Neha Naik give Plaintiff Tara Coronado concerning the terms that Chet Edward Cunningham would have to comply with in a deferred prosecution agreement and what would occur to the criminal court case in Travis County Cause No. C-1-CR-13-180014 if a deferred prosecution agreement was entered in to?

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 1: Produce a copy of Your policies and procedures for

CROSS-PLAINTIFF’S FIRST REQUEST FOR DISCOVERY

entering in to a deferred prosecution agreement that were in effect on April 1, 2016.

REQUEST FOR PRODUCTION 2: Produce a copy of any correspondence (email, list-serve, or paper) that You have had in the last 5 years with other District Attorneys or County Attorneys in Texas regarding use of deferred prosecution agreements or the terms thereof.

REQUEST FOR PRODUCTION 3: Produce a copy of a blank form Your office uses for a deferred prosecution agreement.

REQUEST FOR PRODUCTION 4: Produce a copy of any correspondence (email or paper) that You had with Chet Edward Cunningham or his attorney regarding a deferred prosecution agreement. This Request does not include a request for a copy of Cunningham DPA.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document has been served on Defendants by e-mail on this 17th day of April, 2017.

ATTORNEYS FOR PLAINTIFF/CROSS-DEFENDANT

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