

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

PLAINTIFF'S MOTION TO SEAL COURT RECORDS

TO THE HONORABLE COURT:

Plaintiff, David A. Escamilla, in his capacity as Travis County Attorney, asks the Court to (1) sign an order under Texas Rule of Civil Procedure 76a sealing the following court records permanently and (2) order the courtroom closed when the records are presented in court:

1. Plaintiff's Motion for Summary Judgment with all affidavits and documents attached thereto
2. Defendant's Motion for Summary Judgment with all affidavits and documents attached thereto
3. Plaintiff's response to Defendant's Motion for Summary Judgment
4. Defendant's response to Plaintiff's Motion for Summary Judgment

INTRODUCTION

This suit is brought pursuant to Tex. Gov't Code § 552.324, to challenge a letter ruling of the Attorney General (OR2016-21139) and to seek a judgment that a Deferred Prosecution Agreement made in connection with No. C-1-CR-13-180014, styled *State of Texas v. Chet Edward Cunningham* is not subject to disclosure under the Texas Public Information Act, TEX. GOV'T CODE §§552.001, *et seq.* (the "PIA").



Plaintiff posted notice of this motion on February 1, 2017 on the bulletin board located at the entry to the Heman Marion Sweatt Travis County Courthouse, 1000 Guadalupe St., Austin, Texas, and a verified copy of this notice is attached to this motion as Exhibit A.

PERMANENT SEALING ORDER

Under Texas Rule of Civil Procedure 76a, court records are presumed to be open to the general public. Tex. R. Civ. P. 76a(1). The presumption of openness can be overcome, however, if the party seeking to seal the records establishes that (1) it has a specific, serious, and substantial interest in sealing the records that clearly outweighs the presumption of openness and any probable adverse effect on the general public health or safety and (2) no less restrictive means than sealing will adequately and effectively protect that interest. Tex. R. Civ. P. 76a(1). In determining whether court records should be sealed, the court should balance the public's interest in open court proceedings against a party's personal or proprietary interest in privacy. *General Tire, Inc. v. Kepple*, 970 S.W.2d 520, 526 (Tex. 1998).

Plaintiff has a specific, serious, and substantial interest in preventing disclosure of the court records listed above because they contain information that, if disclosed at this time, will have a substantial likelihood of materially prejudicing an adjudicatory proceeding and might lead to a denial of due process. This interest clearly outweighs the presumption of openness and any probable adverse effect the sealing would have on the general public health or safety. There are no less restrictive means than sealing the records that will adequately and effectively protect this interest.



MOTION TO CLOSE COURTROOM

In addition to sealing the court records, Plaintiff asks the Court to close the courtroom to the public when the records are presented in court. Although the public's right to attend civil proceedings is recognized under Texas law and grounded in the First Amendment, this right is not absolute. A trial court may close its courtroom to protect the dissemination of certain sensitive information to the public. In this case, which centers on Plaintiff's claim that a Deferred Prosecution Agreement is not public information, the courtroom should be closed to the public because to thoroughly explain the basis of Plaintiff's contention, Plaintiff needs to refer to, quote from, and explain the very provisions of this agreement that Plaintiff contends are excepted from disclosure under the Public Information Act.

CONCLUSION

For these reasons, Plaintiff, David A. Escamilla, in his capacity as Travis County Attorney, asks the Court to do the following:

1. After the hearing, seal the records described above permanently.
2. When the sealed records are presented at trial or at a hearing on the motions for summary judgment, close the courtroom to the public.
3. To the extent that the Court denies Plaintiff's request to seal, Plaintiff asks the Court to stay the order until it is considered on appeal.
4. Grant other relief as the Court may find in the interest of justice.

Respectfully submitted,

DAVID ESCAMILLA
TRAVIS COUNTY ATTORNEY



By:



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 on February 1, 2017, the foregoing was emailed, in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure, to:

Matthew Entsminger
Assistant Attorney General
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4151
Facsimile: (512) 457-4686
matthew.entsminger@oag.texas.gov

Laura Bates
lbates@safaustin.org

REQUESTOR

ATTORNEYS FOR DEFENDANT



DAVID A. ESCAMILLA,
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261ST JUDICIAL DISTRICT COURT

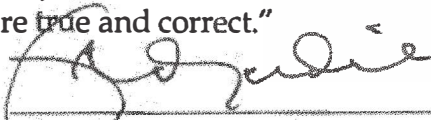
TRAVIS COUNTY, TEXAS

VERIFICATION OF PUBLIC NOTICE OF MOTION TO SEAL COURT RECORDS

STATE OF TEXAS §
TRAVIS COUNTY §

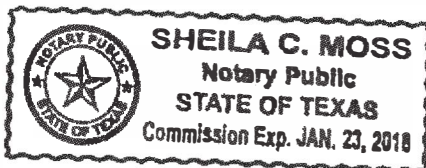
Before me, the undersigned notary, on this day personally appeared Tim Labadie, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

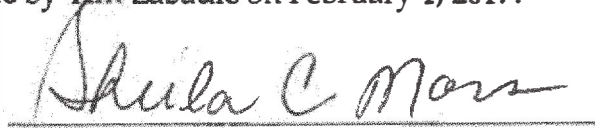
"My name is Tim Labadie. I am capable of making this verification. I certify that the Public Notice of Motion to Seal Court Records, a copy of which is attached as Exhibit A, was posted at the place where notices for meetings of the Travis County Commissioners Court are required to be posted on February 1, 2017. The facts stated in the Public Notice are within my personal knowledge and are true and correct."



Tim Labadie

Sworn to and subscribed before me by Tim Labadie on February 1, 2017.





Notary Public in and for the State of Texas



DAVID A. ESCAMILLA,
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261ST JUDICIAL DISTRICT COURT

TRAVIS COUNTY, TEXAS

PUBLIC NOTICE OF MOTION TO SEAL COURT RECORDS

As required by Texas Rule of Civil Procedure 76a(3), Plaintiff, David A. Escamilla, in his capacity as Travis County Attorney, posts this notice to seal court records.

Plaintiff brought this suit pursuant to Tex. Gov't Code § 552.324, to challenge a letter ruling of the Attorney General (OR2016-21139) and to seek a judgment that the information that is the subject of this ruling is excepted from disclosure under the Texas Public Information Act, TEX. GOV'T CODE §§552.001, *et seq.*

In this case, Plaintiff has filed a motion to seal the following court records:

1. Plaintiff's Motion for Summary Judgment with all affidavits and documents attached thereto
2. Defendant's Motion for Summary Judgment with all affidavits and documents attached thereto
3. Plaintiff's response to Defendant's Motion for Summary Judgment
4. Defendant's response to Plaintiff's Motion for Summary Judgment

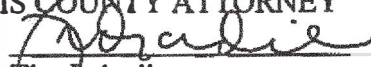
The motion to seal court records will be heard on February 22, 2017 at 9:00 a.m. by the court hearing the civil docket in the Heman Marion Sweatt Travis County Courthouse located at 1000 Guadalupe St., Austin, Texas.

The hearing on the motion to seal court records will be held in open court.

Any person may intervene and be heard on the sealing of court records.

DAVID ESCAMILLA
TRAVIS COUNTY ATTORNEY

By:


Tim Labadie

State Bar No. 11784853

Assistant Travis County Attorney

P. O. Box 1748

Austin, Texas 78767

(512) 854-5864

(512) 854-9316(fax)

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ATTORNEY FOR PLAINTIFF

FILED FOR RECORDS

2017 FEB -1 PM 2:00

DANA DELEAUVIGIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS



EXHIBIT A