

WINDERMERE OAKS WATER	§	IN THE DISTRICT COURT
SUPPLY CORPORATION,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	TRAVIS COUNTY, TEXAS
	§	
THE HONORABLE KEN PAXTON,	§	
ATTORNEY GENERAL OF TEXAS,	§	
	§	
<i>Defendant.</i>	§	201 st JUDICIAL DISTRICT

PLEA IN INTERVENTION and
MOTION FOR DISCOVERY UNDER PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Danny Flunker (“Requestor”), as Requestor herein, and files this his Plea in Intervention and Motion for Discovery Under Protective Order herein and would show the Court as follows.

1. On May 28, 2019, Requestor made a request under the Texas Public Information Act (“PIA”) for invoices for legal services (“Invoices”) provided to the Windermere Oaks Water Supply Corporation (“WSC”) and paid with membership funds during the period March 7, 2018 through May 28, 2019. The WSC claimed that the Invoices relate, in whole or in part, to legal services provided in connection with Cause No. 47531, styled *TOMA Integrity, Inc. v. Windermere Oaks Water Supply Corporation*, in the 33rd District Court of Burnet County, Texas. Final Judgment was rendered in the TOMA lawsuit on November 14, 2018 and all appeals have been exhausted.

2. By Letter Ruling OR2019-22667 (“Ruling”), the Attorney General determined that – with certain exceptions – the Invoices are public information and must be provided to Requestor as required by the PIA. The WSC filed this lawsuit in an effort to avoid compliance with the Ruling.

3. Thereafter, the Attorney General apparently determined that additional information could be withheld from disclosure under a claim of privilege. Requestor has received notice of a proposed settlement pursuant to which both the information determined to be privileged under the Ruling and additional information are contemplated to be withheld from disclosure.

4. Pursuant to Section 552.325, Tex. Gov’t Code, as requestor of the public information involved herein Requestor is entitled to intervene in this lawsuit. He hereby exercises such right. Preliminarily, Requestor opposes the proposed settlement.

5. Pursuant to Section 552.322 of the Code, Requestor hereby moves the Court for discovery of the information to be withheld under the proposed settlement, with such discovery to be had under an appropriate protective order. As and to the extent the proposed settlement contemplates that nonexempt public information will be withheld from disclosure, it must be rejected. However, neither Requestor nor his counsel knows (nor can they otherwise ascertain) what information is proposed to be withheld. Accordingly, Requestor moves the Court for an order permitting Requestor’s counsel discovery of the information to be withheld and (as necessary for context) to be disclosed under the proposed settlement under the terms of an appropriate protective order prohibiting further disclosure prior to final judgment other than in connection with this proceeding. Such order is necessary so that Requestor can meaningfully exercise his right to participate in this process.

WHEREFORE, premises considered, Requestor intervenes and makes his appearance herein and respectfully requests (i) discovery of the information to be withheld under the proposed settlement, under an appropriate protective order, as aforesaid, (ii) preliminarily, that the Court enter judgment that the WSC take nothing by its claim herein, and (iii) that Requestor be awarded such other and further relief, at law or in equity, to which he shall show himself justly entitled.

Respectfully Submitted,

THE LAW OFFICE OF KATHRYN E. ALLEN,
PLLC
114 W. 7th St., Suite 1100
Austin, Texas 78701
(512) 495-1400 telephone
(512) 499-0094 fax

By: /s/ Kathryn E. Allen

Kathryn E. Allen
State Bar ID No. 01043100
kallen@keallenlaw.com

Attorneys for Requestor Danny Flunker

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served via electronic service to all lead counsel of record on this 14th day of July 2020.

/s/ Kathryn E. Allen

Kathryn E. Allen