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September 16, 2020

The Honorable Ken Paxton
Office of the Attorney General
Open Records Division
209 W. 14th Street, Suite 600
Austin, Texas 78701

VIA ELECTRONIC FILING

Re: Request for Attorney General Decision Pursuant to Texas Government Code
§ 552.301 on behalf of the Windermere Oaks Water Supply Corporation

Dear Attorney General Paxton:

Our firm represents the Windermere Oaks Water Supply Corporation (“WOWSC”), which is a non-profit water supply corporation operating under Chapter 67 of the Texas Water Code that provides retail water utility service to customers in Burnet County, Texas. On September 1, 2020, WOWSC received an e-mail from Mr. Danny Flunker (the “Requestor”) requesting certain information pursuant to the Texas Public Information Act (the “Act”). A copy of the Requestor’s September 1, 2020 request is enclosed as **Exhibit A**. WOWSC seeks a decision from your office pursuant to Texas Government Code § 552.301 as to whether it must produce public information in response to the September 1, 2020 request that is excepted from disclosure by Texas Government Code §§ 552.022 and 552.101, as well as pursuant to Rule 503 of the Texas Rules of Evidence and Rule 192.5 of the Texas Rules of Civil Procedure. WOWSC was closed for business in observation of Labor Day, September 7, 2020, and thus that date was not included in the calculation regarding the timing of filing a request with your office pursuant to Texas Government Code § 552.301(d).

Texas Government Code § 552.022 identifies certain documents that are categorically “public information” and not excepted from disclosure unless otherwise “made confidential under this chapter or other law.” Tex. Gov’t Code § 552.022(a). The Texas Supreme Court has held that the Texas Rules of Evidence and the Texas Rules of Civil Procedure are “other law” as contemplated by §552.022, and thus information that would otherwise be public pursuant to §552.022 may be withheld from disclosure pursuant to certain privileges established in the Texas Rules of Evidence and the Texas Rules of Civil Procedure. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001); *see also Paxton v. City of Dall.*, No. 06-18-00095-CV, 2019 WL 2119644, at *9-10 (Tex. App.—Texarkana May 15, 2019, pet. denied) (mem. op.) (holding that within information subject to Gov’t Code § 552.022, noncore work product as described in Rule 192.5 of the Texas Rules of Civil Procedure is subject to the same mandatory withholding requirement as core work product); *see also* Tex. Att’y Gen ORD 677 (2002) (“[t]hus, a governmental body may assert Rule 192.5 to withhold section 552.022 information”). Therefore, WOWSC requests a determination that information within responsive documents to which Rule

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503 of the Texas Rules of Evidence (pertaining to the attorney client privilege) and Rule 192.5 of the Texas Rules of Civil Procedure (pertaining to the work product privilege) apply need not be disclosed to the Requestor.

Texas Government Code § 552.101 excepts from public disclosure information “considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Tex. Gov’t Code § 552.101. Certain documents responsive to the September 1, 2020 request include information relating to attorney client communications and litigation strategy, documents which may be confidential by law and thus subject to the exception under Section 552.101. WOWSC requests a determination that information within the responsive documents to which Section 552.101 is applicable need not be disclosed to the Requestor. This is the Requestor’s third request for WOWSC’s attorney fee bills that are subject to the privileges and legal protections cited above (*see* OAG ID# 781033 and OAG ID# 834912).

Pursuant to Texas Government Code § 552.301(e), WOWSC will provide to your office, not later than the fifteenth business day from the date the District received the September 1, 2020 request, the following materials: written comments outlining the reasons why the stated exceptions apply and a copy of the specific information requested or representative samples of such information.

Should you have any questions concerning this request for decision, please contact me at the above number. Thank you for your attention to this matter.

Sincerely,

J. Troupe Brewer

Enclosure

cc via email: Mr. Danny Flunker
dflunker@gmail.com

Mr. Joe Gimenez, Board President & Public Information Officer
Windermere Oaks Water Supply Corporation

Mr. Jose de la Fuente *of the firm*

On Tue, Sep 1, 2020 at 8:42 AM Mister Flunker <dfunker@gmail.com> wrote:
All,

I am respectfully requesting-

ALL Attorney fee bills for the protective order regarding youtube videos to include any attempt at having your deposition videos removed from youtube prior to the decision to file a protective order..

ALL Attorney fee bills regarding SAPA (Pilots Association) request for fencing off Currin Van Emans property.

ALL Attorney fee bills regarding the Attorney General Lawsuit.

ALL Attorney fee bills regarding the PUC rate case

ALL canceled checks paid to any law firm or attorney by WOWSC since July of 2019

Do you understand this request?

I am attaching what attorney fee bills look like unredacted from Lloyd Gosselink more specifically Michael A. Gershon so you understand what I am wanting regarding attorney fee bills. Let me know if you want to see the cancelled checks written by Dick Dial, Bruce Sorgen and Bill Doffing for these services.

Regards