

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mare Baracco,

Plaintiff,

vs.

Charleston Area Convention and Visitors
Bureau,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

CASE NO. 2021-CP-10-02999

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

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Jul 07 2023

SC Court of Appeals

This matter came before the Court pursuant to Defendant Charleston Area Convention and Visitors Bureau's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The motion was supported by a Memorandum in Support. A WebEx hearing was held on April 4, 2023. Based on the record and the respective arguments by the parties, the Court makes the following findings of fact and conclusions of law, and grants Defendant's Motion for Summary Judgment.

FINDINGS OF FACT

Charleston Area CVB is a 501-C-6 not-for-profit designation marketing organization. Charleston Area CVB's primary purpose is to market the greater Charleston areas as an overnight destination. The General Assembly enacted the A-Tax statute, which involves the administration of a state sales tax imposed on sleeping accommodations provided to overnight guests. The A-Tax statutes requires local governments to select at least one organization, known as a designated marketing organization, to manage the expenditure of funds. The local governments must ensure that the funds are only used for advertising and promotion of tourism. Charleston Area CVB

represents ten different funding governments located in Charleston, Dorchester, and Berkeley Counties.

On August 10, 2020, Plaintiff submitted a request to Charleston Area CVB for “copies of all receipts and invoices for all transactions of Charleston County accommodations Tax (ATAX) expenditures by the Agency as they relate to the promotion of tourism related activities for the County of Charleston.” Plaintiff made her request pursuant to the South Carolina Freedom of Information Act (“FOIA”), South Carolina Code Section 30-4-30(c). Upon receipt of Plaintiff’s request, Charleston Area CVB responded to Plaintiff’s FOIA request. The response stated in part, “the Charleston Area Convention and Visitors Bureau does not have any records which fall within the parameters of your request. Although we are not required to, we can provide you with the documentation of the receipt of funds from Charleston County, but the CACVB’s accounting records do not itemize or allocate expenditures according to individual revenue categories.” Plaintiff did not respond to Charleston Area CVB’s response and did not state whether she would like to receive a copy of the documentation of receipt of funds that was referenced in Charleston Area CVB’s correspondence to Plaintiff.

Thereafter, Plaintiff filed a complaint and subsequently filed an amended complaint on July 7, 2021, alleging Charleston Area CVB failed to provide a timely written response to her FOIA request. After Charleston Area CVB produced copies of its August 24, 2020 response to Plaintiff’s inquiry, Plaintiff filed a second amended complaint on March 14, 2022. Plaintiff’s Second Amended Complaint now alleges that Charleston Area CVB “did not provide Plaintiff with all information responsive to her FOIA request” and also alleged that Charleston Area CVB’s “failure to provide all available responsive information to Plaintiff’s request, pursuant to S.C. Code Ann. § 30-4-30(C), is a violation of FOIA.” Plaintiff seeks a declaration by this Court that

Charleston Area CVB violated FOIA and injunction to provide the records and information responsive to Plaintiff's request. Charleston Area CVB promptly moved for summary judgment before this Court.

STANDARD

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The purpose of summary judgment is “to expedite disposition of cases which do not require the services of a factfinder.” *S. G & Plastics Co. v. Duke*, 367 S.C. 421, 626 S.E.2d 19 (Ct. App. 2005). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004) (citing *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001)).

DISCUSSION

In *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber Com.*, the South Carolina Supreme Court unequivocally held that “the General Assembly did not intend [for designated marketing organizations] to be considered a public body for purposes of FOIA as a result of its receipt and expenditure of these specific funds.” 423 S.C. 295, 814 S.E.2d 513 (2018). As the supreme court explained, the FOIA statute is a general provision while the A-Tax statute is a specific provision. As such, “the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006).

The supreme court further explained that the narrower and more targeted A-Tax statute and Proviso 39.2 provides the necessary accountability safeguards for the expenditure of specific

tourism funds while simultaneously protecting the private nature of the designated marketing organizations selected to perform the marketing function. *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber Com.*, 423 S.C. 295, 814 S.E.2d 513 (2018). “[T]he A-Tax statute provides three layers of review for the tourism expenditures—a local advisory committee, a statewide oversight committee, and an expenditure review committee.” *Id.* “[T]he A-Tax statute and Proviso 39.2 set forth the General Assembly's determination of the required level of oversight, transparency, and accountability.” *Id.* These three layers of review provide ample review of the tourism expenditures. And seemingly provides the only review of the tourism expenditures. As a designated marketing organization, Defendant is not a public body for purposes of FOIA and is not subject to FOIA. As such, Plaintiff does not have the right under FOIA to request any documents from Charleston Area CVB.

CONCLUSION

Pursuant to Rule 56, SCRPC, the Court find that there is no genuine issues of material fact, and Defendant is entitled to judgment as a matter of law on the allegations of Plaintiff’s Complaint. Defendant’s motion for summary judgment is GRANTED, and Charleston Area CVB is not subject to FOIA.

AND IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

Dated: _____



Charleston Common Pleas

Case Caption: Mare Baracco VS Charleston Area Convention And Visitors Bureau

Case Number: 2021CP1002999

Type: Order/Summary Judgment

So Ordered

S/George M. McFaddin, Jr., #2759