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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan.....Appellant,

v.

Kershaw County South Carolina.....Respondent.

RETURN IN OPPOSITION TO
MOTION TO DISMISS APPEAL

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Appellant Christine Jernigan (“Appellant” or “Mrs. Jernigan”), pursuant to Rule 240(e), SCACR, respectfully submits this Return in Opposition to the June 2, 2025, Motion to Dismiss for alleged lack of appellate jurisdiction filed by Respondent Kershaw County South Carolina (“Respondent” or “KCSC”).

I. INTRODUCTION

Respondent’s Motion to Dismiss asserts that Appellant’s Monday, October 28, 2024, Rule 59(e) Motion to reconsider the circuit court’s October 17, 2024, Written Order – which was indisputably “timely” pursuant to Rules 203(b)(1) & 263(a), SCACR, subsequently became “not timely filed,” and therefore did not stay the time for appeal, due to alleged later-occurring procedural missteps or deficiencies. (MTD at 5). As a result, Respondent contends that Appellant’s December 16, 2024, Notice of Appeal also became not timely filed, “and for that reason, this Court lacks appellate jurisdiction.” (MTD at 2).

Rather than applying Rules 203(b)(1) & 263(a), SCACR, to the calendar – which clearly establish that Appellant’s Monday, October 28, 2024, Rule 59(e) Motion was filed prior to expiration of Rule 203(b)(1)’s 10-day deadline – Respondent instead contends that “the law of the case ... holds that the Appellant’s motion to reconsider was not timely.” (MTD at 2). Specifically, because the November 21, 2024, Form 4 Order states that the “Motion to Reconsider (filed on [Monday] 10/28/24) is DENIED. The motion was not timely filed and is not meritorious,” Respondent argues Appellant was required to thereafter file another Rule 59(e) motion to reconsider the November 21, 2024, Form 4 Order, and to specifically seek reversal of the November 21, 2024, Form 4 Order on appeal (i.e., in Appellant’s April 2, 2024, Initial Brief). (MTD at 3).

In sum, Respondent's Motion contends that this Court lacks appellate jurisdiction to hear the present appeal because Appellant is procedurally barred from obtaining reversal of the November 21, 2024, Form 4 Order denying Appellant's timely-filed Monday, October 28, 2024, Rule 59(e) Motion as "not timely filed and [] not meritorious." In other words, Respondent's Motion argues that this Court must ignore the actual facts and Rules 203(b)(1) & 263(a), SCACR, and instead find that this Court lacks appellate jurisdiction based on the circuit court's November 21, 2024, Form 4 Order denying Appellant's Rule 59(e) Motion.

As an initial matter, Respondent's arguments claiming that the circuit court's November 21, 2024, Form 4 Order is an "unappealed ruling," and therefore unassailable as "the law of this case," are incorrect. (MTD at 2-3). Appellant has, *inter alia*, raised Issues on Appeal concerning whether the circuit court's underlying October 17, 2024, Written Order erred by dismissing this action. If this Court reverses the underlying Order's dismissal of this action, alleged errors in the November 21, 2024, Form 4 Order denying Appellant's October 28, 2024, Rule 59(e) Motion to reconsider the underlying Order become irrelevant. In other words, if the underlying Order is reversed, there is no need for this Court to then correct alleged errors in the circuit court's Form 4 Order declining to reconsider the underlying Order.

As discussed in detail herein below, this Court should deny Respondent's Motion to Dismiss for lack of appellate jurisdiction because: (i) Appellant's Monday, October 28, 2024, Rule 59(e) Motion was indisputably "timely" pursuant to Rules 203(b)(1) & 263(a), SCACR, and controlling precedent; (ii) Respondent's arguments for dismissal are based on purported procedural missteps/deficiencies which do not affect this Court's appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCACR; and (iii) The alleged procedural missteps or deficiencies

argued by Respondent are secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address.

II. BACKGROUND

The Background Section of Respondent’s Motion to Dismiss for alleged lack of appellate jurisdiction (quoted below) is incomplete, and the allegations contained therein are not supported by affidavit or other documents as required pursuant to Rule 240(c)(3), SCACR.

This is an appeal from a Freedom of Information Act action. By Order filed October 17, 2024, the trial court granted a motion to dismiss for failure to prosecute when the Appellant failed to appear at trial scheduled on August 27, 2024. The trial court also granted the Respondent’s motion for judgment on the pleadings in that same order. On October 28, 2024, the Appellant filed a motion to reconsider pursuant to Rule 59(e), SCRPC. Thereafter, the trial court issued a Form Order filed November 21, 2024, and ruled that “[t]he motion was not timely filed and is not meritorious.” The Appellant then filed a notice of appeal on December 16, 2024.

(MTD at 1-2).

As discussed in the Statement of the Case section of Appellant’s April 2, 2025, Initial Brief, this Appeal arises from a two-count action seeking declaratory/equitable relief pursuant to the Freedom of Information Act (“FOIA”), S.C. Code Ann. §§ 30-1-10, *et seq.* (Count I), and the Public Records Act, S.C. Code Ann. §§ 30-1-10, *et seq.* (Count II). (Appx., pp. 1-2, 137-38). Appellant’s April 2, 2025, Initial Brief raises the below Issues on Appeal:

A. Whether the circuit court erred in denying Appellant’s Motion for Equitable Relief

1. The circuit court erred by finding that Appellant, a life-long resident of South Carolina, lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A)
2. Appellant’s Motion for Equitable Relief established a *prima facie* showing of likelihood of success on the merits to the requested relief
 - a. KCSC’s August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c)

- b. The record establishes that KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted
- B. **Whether the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)**
- C. **Whether the circuit court erred in granting Respondent's oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds**
 - 1. The circuit court's application of FOIA, Section 30-4-100(A)'s statutory standing provision leads to a result that is plainly absurd
 - 2. There was no basis for a non-jury trial on August 27, 2024, that could support the circuit court's Dismissal for Failure to Prosecute

(Appx, p. 137).

The Statement of the Case section of Appellant's April 2, 2025, Initial Brief discusses the relevant underlying facts and procedural history "insofar as necessary to an understanding of" the Issues on Appeal pursuant to Rule 208(b)(1)(C), SCRAP. Portions of Appellant's Statement of the Case (*see* Appx., pp. 145-50) are quoted below with citation to the Appendix of Exhibits submitted herewith in brackets:

Appellant's July 24, 2023, Complaint requests that the circuit court schedule 'an initial hearing within ten days of the date of service of this Complaint upon KCSC' pursuant to the legal requirements of FOIA, Section 30-4-100(A). [Appx., pp. 15, 17] ...

Appellant filed an expedited Motion on July 28, 2023, requesting: (i) the initial ten-day hearing required by Section 30-4-100(A); (ii) injunctive/equitable relief ordering KCSC to fully respond to and disclose the records of the FOIA Request pursuant to the legal requirements of FOIA, Section 30-4-30(c); and (iii) a scheduling order to conclude proceedings in this case within six months of filing (the "Motion for Equitable Relief"). [Appx., pp. 21-22, 31]. ...

Pursuant to FOIA, Section 30-40-100(A), "[a] citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter." At the initial hearing on August 8, 2023, Judge Newman issued rulings from the bench denying Appellant's July 28, 2023, Motion for Equitable Relief on grounds that Appellant Mrs. Jernigan, who is a

life-long resident of this State [Appx., pp. 2, 106], lacks standing to proceed with this case because she was not specifically listed as “requester” on the FOIA Request [Appx., p. 47, lns. 23-25; p. 48, lns. 3-5; p. 50, lns. 10-16]. ...

Judge Newman entered a Form 4 Order on August 8, 2023, stating: “Following a hearing on August 8, 2023, Plaintiffs ‘...Motion for...Equitable Relief...’ (filed on 7/28/23) is DENIED.” [Appx., p. 61]. ...

The circuit court’s August 8, 2023, Form 4 Order denied Appellant’s [July 28, 2023,] Motion for Equitable Relief on lack-of-FOIA-requester standing grounds, effectively ending the present case. The August 8, 2023, Form 4 Order is also an appealable order, as a matter of right, pursuant to S.C. Code Ann. § 14-3-330(4). ...

Appellant timely-filed an August 15, 2023, Motion, and September 11, 2023, supporting Memorandum with Exhibits J to L, seeking clarification and reconsideration of the August 8, 2023, Form 4 Order pursuant to Rules 52(a), (b) (“in granting or refusing interlocutory injunctions the court shall ... set forth the findings of fact and conclusions of law which constitute the grounds of its action”), & 59(e), SCRCP (collectively, the “Motion to Clarify/Reconsider”). [Appx., pp. 64-78 (Motion)]. ...

Rather than issuing a ruling on Appellant’s pending [August 15, 2023,] Motion to Clarify/Reconsider, however, the present case was instead placed on the circuit court’s non-jury roster calendar for the August 27, 2024, term. Given that the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and no ruling on the pending August 15, 2023, Motion to Clarify/Reconsider had been entered, there was no basis for the circuit court to schedule or conduct a non-jury trial on August 27, 2024. [Appx., pp. 101-02]. Unfortunately, due to a docketing error/mistake, undersigned counsel neglected to contact the circuit court and opposing counsel regarding these matters prior to the scheduled August 27, 2024, term of non-jury court. [Appx., pp. 102-03]. After realizing this error/mistake, undersigned counsel promptly contacted the court and opposing counsel on August 30, 2024. [Appx. pp. 101-02, 106-07, 109].

On October 17, 2024, the circuit court entered an Order denying Appellant’s [August 15, 2023,] Motion to Clarify/Reconsider, and granting KCSC’s August 27, 2024, oral Motion for Judgment on the Pleadings, on grounds that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A); *i.e.*, lack-of-FOIA-requester standing. [Appx., pp. 86-90]. The October 17, 2024, Order states in part: ‘The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.’ [Appx., p. 87].

Despite affirming the August 8, 2023, Form 4 Order’s determination that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A), the October 17, 2024, Order also grants KCSC’s August 27, 2024, oral Motion to Dismiss for Failure to Prosecute on grounds that neither Appellant nor undersigned counsel appeared for the scheduled non-jury trial on August 27, 2024. [Appx., p. 86]. ...

On October 28, 2024, Appellant timely-filed a Motion to Reconsider the October 17, 2024, Order pursuant to Rule 59(e), SCRCF (the “Rule 59(e) Motion to Reconsider”). [Appx., pp. 90-105]. The circuit court denied Appellant’s Rule 59(e) Motion to Reconsider via a Form 4 Order entered on November 21, 2024. [Appx., p. 113]. Appellant timely-filed and served a Notice of Appeal on December 16, 2024. [Appx., pp. 116-132]. The orders subject to appeal include (i) the August 8, 2023, Form 4 Order; (ii) the October 17, 2024, [Written] Order, and (iii) the November 21, 2024, Form 4 Order. [*Id.*].

(Appx., pp. 145-50 (emphasis added)).

III. ARGUMENT

A. Appellant’s Monday, October 28, 2024, Rule 59(e) Motion was indisputably “timely” pursuant to Rules 203(b)(1) & 263(a), SCACR, and controlling precedent

Our Supreme Court has held that “[t]imely” is a temporal term,” and as used in Rule 203(b)(1), SCACR, “it means only that the post-trial motion – in this case a Rule 59(e) motion – was served ... not later than ten days from the date of receipt of written notice of the entry of the order the merits of which the [post-trial] motion purports to address.” *Swing v. Swing*, Op. No. 28266, *5 (S.C. Sup. Ct. filed Mar. 12, 2025) (Davis Adv. Sh. No. 11 at 11) (emphasis added, internal fn omitted). The grounds for Respondent’s Motion to Dismiss – that Appellant’s Monday, October 28, 2024, Rule 59(e) Motion was “not timely filed” – conflict with this controlling precedent holding that “timely is a temporal term.”

Appellant’s Monday, October 28, 2024, Rule 59(e) Motion was obviously timely filed/served not later than ten days from entry of the circuit court’s October 17, 2024, Written Order in accord with the requirements of Rules 203(b)(1) & 263(a), SCACR. (Appx., pp. 86-90 & 91-112). The calendar establishes that October 27, 2024, was a Sunday and, accordingly, the

ten-day deadline ran until the end of the next day; i.e., Monday, October 28, 2024. Appellant's Monday, October 28, 2024, Rule 59(e) Motion was, indisputably, a timely-filed motion pursuant to the requirements of Rules 203(b)(1) & 263(a), SCACR. *See Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 810 S.E.2d 856, 858, 422 S.C. 211, 215 (2018) (holding that "the South Carolina Appellate Court Rules control" with respect to determining whether an appeal was timely for purposes of establishing appellate jurisdiction).

In *Swing*, our Supreme Court reiterated the "fairly emphatic explanation [previously] given by the *Elam* Court" holding that "timely post-trial motions always stay the time for appeal unless the motion fits into one of the two 'exceptions' initially set forth in *Coward Hund* and *Quality Trailer*." *Swing*, Op. No. 28266 at *8 (emphasis added). The two potential exceptions are not relevant to Respondent's Motion to Dismiss for alleged lack of appellate jurisdiction. *See id.* (citing cases where Rule 59(e) motions were inappropriately successive or procedurally improper).

Appellant's timely filed/served Monday, October 28, 2024, Rule 59(e) Motion stayed the time for appeal; Appellant's December 16, 2024, Notice of Appeal was timely filed/served within thirty (30) days after receipt of the November 21, 2024, Form 4 Order denying Appellant's Rule 59(e) Motion (Appx., pp. 113, 116-32); and, accordingly, this Court clearly has appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCRAP. Appellant respectfully requests that this Court deny Respondent's Motion to Dismiss for alleged lack of appellate jurisdiction.

B. Respondent’s arguments for dismissal are based on alleged procedural missteps or deficiencies which do not affect this Court’s appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCACR

As noted above, our Supreme Court has held “that ‘timely’ is a temporal term,” and as used in Rule 203(b)(1), SCRAP, “it means only that the post-trial motion” was filed/served not later than ten days from receipt/entry of the order the post-trial motion purports to address. *Swing*, Op. No. 28266 at *5 (emphasis added). The *Swing* Court reiterated the *Elam* Court’s prior holding that “timely post-trial motions always stay the time for appeal unless the motion fits into” one of the two previously-recognized “exceptions” which are not relevant or at issue with respect to Respondent’s Motion to Dismiss for alleged lack of appellate jurisdiction. *Swing*, Op. No. 28266 at *8 (emphasis added, citations omitted).

The *Swing* Court explicitly rejected the parties’ position that “the question as to the timeliness of the appeal is whether any Rule 59(e) motion somehow runs afoul of a rule of procedure.” *Id.* at *9. As the *Swing* Court explained, “[i]t should simplify the matter for everyone to learn that this is not the correct view. Rather, the ‘rule’ is Rule 203(b)(1), which provides in plain language that a ‘timely’ motion stays the time for appeal for all parties.” *Id.*

Respondent’s Motion to Dismiss contends that this Court lacks appellate jurisdiction, because Appellant did not (i) file another Rule 59(e) motion requesting reconsideration of the November 21, 2024, Form 4 Order’s statements that “the motion was not timely filed and is not meritorious;” and (ii) specifically seek and argue for reversal of the November 21, 2024, Form 4 Order on appeal (i.e., in Appellant’s April 2, 2024, Initial Brief). (MTD at 3). Therefore, rather than answering the question as to the timeliness of this appeal based on Rule 203(b)(1), SCACR, as required by *Swing*, Respondent’s arguments for dismissal are based on purported subsequent procedural missteps or deficiencies which do not affect this Court’s appellate jurisdiction.

This is not a case where, pursuant to timeliness requirements of Rule 203(b)(1), SCACR, “this Court lacks [appellate] jurisdiction to take any corrective action even if it may wish to do so.” (MTD at 5). Appellant respectfully requests that this Court deny Respondent’s Motion to Dismiss for lack of appellate jurisdiction because Respondent’s arguments for dismissal are based on purported subsequent procedural missteps or deficiencies which do not affect this Court’s appellate jurisdiction pursuant to Rule 203(b)(1), SCACR.

C. The alleged procedural missteps or deficiencies argued by Respondent are secondary/remaining issues, or purported other grounds to affirm appearing in the Record (see Rule 220(c), SCACR), which this Court is not required to address

As set forth in Section II above (p. 6), Appellant’s Statement of the Case includes, *inter alia*, the below facts and procedural history:

On October 28, 2024, Appellant timely-filed a Motion to Reconsider the October 17, 2024, Order pursuant to Rule 59(e), SCRCP (the “Rule 59(e) Motion to Reconsider”). [Appx., pp. 90-105]. The circuit court denied Appellant’s Rule 59(e) Motion to Reconsider via a Form 4 Order entered on November 21, 2024. [Appx., p. 113]. Appellant timely-filed and served a Notice of Appeal on December 16, 2024. [Appx., pp. 116-132]. The orders subject to appeal include (i) the August 8, 2023, Form 4 Order; (ii) the October 17, 2024, [Written] Order, and (iii) the November 21, 2024, Form 4 Order. [*Id.*].

(Appx., pp. 150 (emphasis added)).

Appellant respectfully submits that her timely filed/served December 16, 2024, Notice of Appeal, and April 2, 2025, Initial Brief, comply with the applicable South Carolina Appellate Court Rules. (Appx., pp. 116-32 & 133-168). Notably, Appellant respectfully submits that her April 2, 2025, Initial Brief properly raises, explains, and argues the Issues on Appeal in accord with the requirements of Rule 208(b)(1), SCACR. As set forth in Section II above (pp. 3-4), the three primary Issues on Appeal are:

(A) Whether the circuit court erred in denying Appellant’s [July 28, 2023,] Motion for Equitable Relief;

(B) Whether the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A); and

(C) Whether the circuit court erred in granting Respondent's oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds

(Appx, p. 137).

In summary, the Issues on Appeal concern whether the circuit court erred in denying Appellant's July 28, 2023, Motion for Equitable Relief, and in dismissing this case via its October 17, 2024, Written Order, by finding that Appellant, a life-long resident of South Carolina, lacks standing to proceed with this case pursuant to FOIA, Section 30-4-100(A) (i.e., lack-of-FOIA-requester standing). (*Id.*). Pursuant to Rule 208(b)(1)(B), SCACR, "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal."

A potential exception to Rule 208(b)(1)(B) is provided by Rule 220(c), which states that the appellate court *may* "affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." This Court "may review additional sustaining grounds raised by a respondent, and 'if convinced it is proper and fair to do so, rely on them or any other reason' raised on appeal and appearing in the record to affirm the lower court's judgment." *Cowburn v. Leventis*, 366 S.C. 20, 35 n.4, 619 S.E.2d 437, 446 n.4 (Ct. App. 2005) (citation omitted) (declining to address additional sustaining grounds because the court was "not convinced it [was] proper and fair to do so"). Moreover, an appellate court is not required to address unnecessary secondary or remaining issues raised by the appellant on appeal when the disposition of a prior issue raised on appeal is dispositive. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

Appellant respectfully submits that this Court should resolve this appeal based on the Issues on Appeal that have been raised Appellant. *See* Rule 208(b)(1)(B), SCACR. In the present case, if this Court reverses the circuit court's underlying Orders denying Appellant's Motion for Equitable Relief and dismissing this action, it would then be unnecessary for this Court to address and correct a remaining issue raised on appeal arguing that the circuit court erred by denying the Monday, October 28, 2024, Rule 59(e) Motion to reconsider the reversed underlying Order. Thus, the alleged procedural missteps and deficiencies argued by Respondent's Motion to Dismiss concern secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address.

Once this Court reverses an erroneous underlying order dismissing an action, alleged errors in the order denying the appellant's Rule 59(e) motion to reconsider the reversed underlying order become irrelevant. For instance, in *Osmundson v. School District 5* this Court interpreted FOIA, Section 30-4-100(A) based on its plain meaning, as a matter of first impression. 443 S.C. 610, 614-16, 905 S.E.2d 418 (Ct. App. 2024). This Court's decision in *Osmundson* is also cited/discussed in Appellant's April 2, 2025, Initial Brief. (Appx., pp. 9, 23-25). The *Osmundson* Court held, pursuant to Section 30-4-100(A), that the circuit court erred in dismissing the FOIA action on technical/procedural grounds because the circuit court is responsible for scheduling the required initial hearing within ten days of service on all parties. 905 S.E.2d at 419-21.

The appellant in *Osmundson* had also raised a secondary or remaining issue on appeal arguing that the circuit court erred in denying his Rule 59(e) motion to reconsider on procedural grounds; i.e., his failure to provide a copy of the motion to the court within ten days of filing

pursuant to Rule 59(g), SCRCP. 905 S.E.2d at 421. The appellant in *Osmundson* had not, however, filed another Rule 59(e) motion challenging the denial of his first Rule 59(e) motion based on Rule 59(g), SCRCP, prior to raising the issue on appeal. The *Osmundson* Court held that, [b]ecause we reverse and remand based on the circuit court’s erroneous dismissal of the action, we need not address this argument.” 905 S.E.2d at 421 (citing *Futch*, 335 S.C. at 613, 518 S.E.2d at 598). After reversing the circuit court’s underlying order dismissing the action, the alleged errors in the order denying the appellant’s Rule 59(e) motion to reconsider the reversed underlying order became irrelevant. *Id.*

Appellant respectfully requests that this Court deny Respondent’s Motion to Dismiss for lack of appellate jurisdiction because the alleged procedural missteps or deficiencies argued by Respondent are (i) secondary/remaining issues, or (ii) purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address to resolve this appeal.

IV. CONCLUSION

For the reasons set forth herein, Appellant respectfully requests that this Court deny Respondent’s Motion to Dismiss for lack of appellate jurisdiction. In summary, Appellant respectfully submits that: (i) Appellant’s Monday, October 28, 2024, Rule 59(e) Motion was indisputably “timely” pursuant to Rules 203(b)(1) & 263(a), SCACR, and controlling precedent; (ii) Respondent’s arguments for dismissal are based on purported procedural missteps or deficiencies which do not affect this Court’s appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCACR; and (iii) The alleged procedural missteps or deficiencies argued by Respondent are secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address to resolve this appeal.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

June 12, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan.....Appellant,

v.

Kershaw County South Carolina.....Respondent.

APPENDIX OF EXHIBITS TO RETURN
IN OPPOSITION TO MOTION TO DISMISS APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

**IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

Christine Jernigan,

Plaintiffs,

V.

Kershaw County South Carolina,

Defendant.

NO. 2023-CP-28-_____

SUMMONS
Freedom of Information Act
Public Records Act
(Non-Jury)

TO: DEFENDANT KERSHAW COUNTY SOUTH CAROLINA

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint on Plaintiff Christine Jernigan (“Mrs. Jernigan”), via undersigned counsel Justin A. Jernigan, at 7148 Stirrup Ct., Weddington, NC 28104, within thirty (30) days from the date of such service, and if you fail to answer the Complaint within this time period, Plaintiff will apply to the Court for judgment by default for the relief requested.

Respectfully submitted,

By: /s/Justin A. Jernigan

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This 24th day of July 24, 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

**IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

Christine Jernigan,

Plaintiff,

V.

Kershaw County South Carolina,

Defendant.

NO. 2023-CP-28-_____

COMPLAINT
Freedom of Information Act
Public Records Act
(Non-Jury)

Plaintiff Christine Jernigan (“Mrs. Jernigan” or “Plaintiff”), via undersigned counsel,
respectfully submits this Complaint alleging as follows:

PARTIES

1. Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee.
2. Defendant Kershaw County is a political subdivision of the State of South Carolina.
3. Defendant Kershaw County maintains its principal offices at 515 Walnut Street, Camden, South Carolina, 29020.
4. Defendant Kershaw County may be served with process at the above-referenced address via its Chief Administrative Officer, County Administrator Danny Templar, or via a clerk thereof.
5. Defendant Kershaw County, South Carolina, acts by and through its County Council, Chief Administrator, department directors, employees, agents, and attorneys; including its E-911 Communications Director Patricia Crawford and the dispatch operator employees of its E-911 Central Communications Department (collectively, “KCSC”).

JURISDICTION AND VENUE

6. This is an action pursuant to this Court's authority under S.C. Code Ann. §§ 15-3-310, *et seq.*, §§ 15-53-10, *et seq.* (the Uniform Declaratory Judgements Act), §§ 30-1-10, *et seq.* (the Public Records Act), and §§ 30-4-10, *et seq.* (the Freedom of Information Act ("FOIA")).

7. This Court has personal jurisdiction over KCSC, and venue is proper pursuant to S.C. Code Ann. §§ 15-7-10, *et seq.*, because KCSC generates and maintains communications related public records in Kershaw County and within this Judicial Circuit.

ALLEGATIONS

8. KCSC meets the definition of a public body pursuant to the Public Records Act at S.C. Code Ann. §§ 30-1-10(b) & (d), and FOIA at S.C. Code Ann. § 30-4-20(a).

9. KCSC generates and maintains "public records" as defined by FOIA at S.C. Code Ann. § 30-4-20(a) and pursuant to the Public Records Act at S.C. Code Ann. § 30-1-10(a).

10. Public records, as defined by FOIA and the Public Records Act, include all materials – regardless of physical form or characteristics – that are prepared, owned, used, in the possession of, or retained by a public body, including KCSC.

11. FOIA at S.C. Code §§ 30-4-20(b) & 30(a)(1) provides every "person," including Plaintiff and undersigned counsel, the right to request and inspect, copy, or receive a copy of any public record – regardless of physical form or characteristics – prepared, owned, used, in the possession of, or retained by a public body, including KCSC.

12. KCSC generates and maintains public records pursuant to the Public Records Act and provisions of S.C. Code of Ann. Regs., Chapter 12.

13. KCSC generates and maintains emergency (E-911), dispatch operator, and other communications records, including audio recordings, pursuant to the Public Records Act and provisions of S.C. Code of Ann. Regs., Chapter 12.

14. KCSC provides communications and dispatch operator services for and/or on behalf of the Kershaw County Sheriff's Department and/or Office (collectively, "KCSO").

15. Upon information and belief, authorizing documents and/or agreements exist by and between KCSC and KCSO with respect to law enforcement communication standards, dispatch operator standards, communication records generation, communication record maintenance, and/or communication records access by and between KCSO and KCSC.

16. Upon information and belief, KCSC is KCSO's partner and/or authorized agent for law enforcement communication related services.

17. Upon information and belief, KCSC generates and maintains law enforcement communication records for and/or on behalf of KCSO pursuant to the Public Records Act and provisions of S.C. Code Ann. Regs., Chapter 12.

18. FOIA imposes "an affirmative duty on the part of public bodies," including KCSC, "to disclose [public] information" and records in response to a person's FOIA requests, including in response to Plaintiff and undersigned counsel's FOIA requests. *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991).

19. The essential purpose of FOIA "is to protect the public," of which Plaintiff and undersigned counsel are members, from "secret government activity" by public bodies, including by KCSC and KCSO. *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843 (1994) (citations omitted).

20. Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), KCSC is required – within ten business days for public records less than two years old or within twenty business days for public records greater than two years old – to notify Plaintiff in writing regarding KCSC’s determination, reasoning, and final opinion regarding the public availability of each public record of Plaintiff’s FOIA requests.

21. Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), if KCSC does not provide the required written determination, reasoning, and final opinion as to the public availability of each relevant public record of Plaintiff’s FOIA requests, the requests must be considered approved as to all such nonexempt relevant public records or information.

22. Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), all nonexempt public records and information of Plaintiff’s FOIA requests must be disclosed – within thirty or thirty-five calendar days as applicable – after KCSC delivers its written determination as to public availability of requested public records to Plaintiff.

23. KCSC may claim exemptions for specific public records of Plaintiff’s FOIA requests pursuant to FOIA at S.C. Code Ann. §§ 30-4-40, or pursuant to other state or federal laws.

24. Any exemptions claimed by KCSC in response to Plaintiff’s FOIA requests must be narrowly interpreted and applied to specific relevant public records of the requests. *Evening Post Publ’g. Co. v. City of N. Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (citations omitted).

25. KCSC bears the burden of proof with respect to any alleged FOIA exemptions that it claims for specific public records of Plaintiff’s FOIA requests.

26. To claim an exemption for specific public records of Plaintiff's FOIA requests, KCSC "must show the applicability of a specific FOIA exemption to each requested public record." *Pope v. Wilson*, 431 S.E.2d 432, 448, 427 S.C. 377, 388 (Ct. App. 2019) (citations omitted).

27. KCSC cannot lawfully withhold or redact any non-exempt public records or information, including any audio recordings, of Plaintiff's FOIA requests.

28. Electronic mail correspondence from late July 2022 to late August 2022 by, between, and amongst Plaintiff's undersigned counsel, KCSO, KCSC, and both KCSO and KCSC's pre-suit counsel, County Attorney H. Thomas Morgan, Jr., Esq. ("Tommy Morgan" or "Attorney Morgan"), are attached hereto as Exhibit A.

29. On August 11, 2022, undersigned counsel, as a person under FOIA and as an attorney on behalf of Plaintiff Mrs. Jernigan, submitted a written FOIA Request (Ex. B, hereto) to KCSC. Ex. A at 15-17.

30. Specifically, on August 11, 2022, Plaintiff's FOIA Request (Ex. B) was submitted to KCSC's Clerk to Counsel Merri Seigler and also to Assistant County Administrator Lauren Reeder ("Mrs. Reeder"). Ex. A at 15-17.

31. On the afternoon of August 11, 2022, Mrs. Reeder responded by indicating that Attorney Morgan should provide instructions for KCSC to proceed in response to Plaintiff's FOIA Request (Ex. B). Ex. A at 15-16.

32. On August 12, 2022, Attorney Morgan responded by indicating that he would investigate the matter and respond on behalf of KCSC with respect to Plaintiff's FOIA Request (Ex. B). Ex. A at 15.

33. Prior to submission of Plaintiff's FOIA Request (Ex. B) to KCSC on August 11, 2022, the Request had been submitted to KCSO on July 22, 2022. Ex. A at 32-33.

34. KCSO's Records Department responded on July 25, 2022, by indicating that KCSO could not provide any of the communication or dispatch related records of Plaintiff's FOIA Request (Ex. B), and that these records must instead be obtained from KCSC pursuant to FOIA. Ex. A at 32.

35. KCSO's July 25, 2022, FOIA Response stated, in full, as follows (Ex. A at 32):

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

36. Plaintiff's FOIA Request (Ex. B) seeks communication related records, dating from June 2022 to present, that concern: (i) Plaintiff, (ii) undersigned counsel, (iii) Plaintiff Mrs. Jernigan's mother Ann Martin ("Mrs. Martin"), (iv) third parties that contacted KCSC and accused Plaintiff and undersigned counsel of improper or unlawful conduct, (iv) the KCSC dispatch operators personally involved with the incidents described therein, and (v) the KCSO officers personally involved with the incidents described therein.

37. Mrs. Martin chose to travel away from a privately-owned, for-profit assisted living facility located in Kershaw County – known as Pinedale Residential Center ("Pinedale") – with her daughter Plaintiff Mrs. Jernigan on the morning of June 29, 2022. *See* Ex. B at 3.

38. After Mrs. Martin chose to travel away from the privately-owned, for-profit Pinedale facility with her daughter Plaintiff Mrs. Jernigan on the morning of June 29, 2022, KCSO officers pursued and stopped Plaintiff Mrs. Jernigan's vehicle after she and Mrs. Martin had traveled approximately one mile from Pinedale's exit. *See* Ex. B at 3.

39. Plaintiff's FOIA Request (Ex. B at 4) states that undersigned counsel was available to answer any questions, and would gladly explain, limit, and/or clarify the FOIA Request as may be appropriate.

40. KCSC's pre-suit counsel Attorney Morgan never indicated that Plaintiff's FOIA Request (Ex. B) needed to be further explained, limited, and/or clarified for KCSC to fully satisfy its written determination and disclosure obligations pursuant to FOIA. *See* Ex. A at 2-34.

41. KCSC did not request a hearing before this Court, pursuant to FOIA at S.C. Code Ann. § 30-4-110(a), seeking relief from fully complying with its written determination and disclosure obligations on grounds that Plaintiff's FOIA Request (Ex. B) was allegedly unduly burdensome, overly broad, vague, repetitive, or otherwise improper.

42. KCSC did not request a hearing before this Court, pursuant to FOIA at S.C. Code Ann. § 30-4-110(a), seeking relief from complying with its legally required written determination and disclosure obligations on grounds that KCSC was allegedly unable to make a good faith determination as to whether requested information of Plaintiff's FOIA Request (Ex. B) was exempt from disclosure.

43. KCSC provided its only Response to Plaintiff's FOIA Request (Ex. B) on August 18, 2022. Ex. C, hereto.

44. KCSC's August 18, 2022, FOIA Response states as follows in response to Plaintiff's FOIA Request (Ex. B): "Please find enclosed herewith *all* documents *not subject to exemption* under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* as well as a CD containing the audio. If you have any other questions or concerns, do not hesitate to contact me." Ex. C at 2 (emphasis added).

45. KCSC's August 18, 2022, FOIA Response (Ex. C at 2) did not provide the written determination as to the public availability of each public record of Plaintiff's FOIA Request (Ex. B) as legally required pursuant to S.C. Code Ann. § 30-4-30(c).

46. KCSC's August 18, 2022, FOIA Response (Ex. C at 2) did not attempt to explain how any FOIA exemptions could potentially apply to any specific public records of Plaintiff's FOIA Request (Ex. B). *Cf. Pope*, 431 S.E.2d at 448, 427 S.C. at 388 (citations omitted).

47. It is impossible to determine which, if any, specific public records of Plaintiff's FOIA Request (Ex. B) were withheld as potentially exempt by KCSC based upon the bare assertion that *all* public records and audio recordings *not subject to exemption* were being provided with its August 18, 2022, FOIA Response (Ex. C at 2). *See Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 554-55, 762 S.E.2d 687, 688-89 (2014) (holding that the equivocal and evasive FOIA response provided was "manifestly at odds with the clarity mandated by section 30-4-30(c)").

48. Plaintiff's FOIA Request (Ex. B) must be considered approved as to all nonexempt public records and information pursuant to S.C. Code Ann. § 30-4-30(c) because KCSC's August 18, 2022, FOIA Response (Ex. C at 2) did not provide the legally required written determination as to the public availability of each public record of Plaintiff's FOIA Request (Ex. B).

49. KCSC's August 18, 2022, FOIA Response disclosed one responsive public document, CFS2022-39001, which states that it was printed on August 18, 2022. *See* Ex. C at 4-5.

50. Upon information and belief, the August 18, 2022, CFS2022-39001 document (Ex. C at 4-5) provided by KCSC is known or referred to as a Call for Services (“CFS”) Log and/or a Computer-aided Dispatch (“CAD”) Report.

51. KCSC omitted certain fields and/or categories of available public information from the August 18, 2022, CFS2022-39001 document that would have disclosed additional communication related public information that is included within Plaintiff’s FOIA Request (Ex. B).

52. KCSC’s August 18, 2022, CFS2022-39001 document, for instance, omits all public information concerning the respective KCSC dispatch operators who were personally involved with the relevant communications of the August 18, 2022, CFS2022-39001 document. *Compare* Ex. C at 4-5 *with* Ex. E, hereto.

53. The CD optical disc provided by KCSC with its August 18, 2022, FOIA Response Letter (Ex. C at 3) contains a total of twelve individual audio recording files, and/or portions of phone calls, Audio File Nos. 0 to 11.

54. The first four audio recording files, Audio File Nos. 0 to 3, are redacted and/or incomplete portions of one phone communication by KCSO Officer #15 Courtney Cochran to KCSC dispatch operator Tina Hand beginning at 9:44am on the morning of June 29, 2022, and ending between 9:46am and 9:47am. *See* Ex. C at 5 & Ex. E at 2.

55. The subject matter of the four Audio File Nos. 0 to 3, or phone call portions, concerns undersigned counsel’s reporting to KCSO on June 28, 2022, pursuant to the South Carolina Omnibus Adult Protection Act, S.C. Code Ann. §§ 43-35-5, *et seq.*

56. Audio Files Nos. 4 to 11 are redacted and incomplete audio recordings of undersigned counsel’s phone communications with several respective KCSC dispatch operators

and one of the two KCSO officers with whom undersigned communicated, respectively, on the afternoon and evening of June 29, 2022, unsuccessfully attempting to obtain a public record or records documenting the relevant June 29, 2022, police-involved incidents. *See* Exs. C at 4-5 & E.

57. Portions of undersigned counsel's communications with KCSO Officer #32 Dustin Tate on the evening of June 29, 2022, were redacted and/or removed from the August 18, 2022, Audio Files by KCSC. *See* Exs. C & E, hereto.

58. Undersigned counsel's phone communications with KCSO Officer #45 Joseph Branham on June 29, 2022, were omitted from the CD optical disc containing the audio recordings, Audio File Nos. 0 to 11, by KCSC. *See* Exs. C at 4-5 & E, hereto

59. KCSC's August 18, 2022, FOIA Response (Ex. C), obviously, unlawfully withheld all the public records and audio recordings relating to the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, accusing Plaintiff and undersigned counsel of improper or unlawful conduct, and thereby triggering KCSO's subsequent police-actions.

60. Plaintiff's counsel offered to extend the relevant FOIA deadlines of S.C. Code Ann. § 30-4-30(c) for all additional public records of Plaintiff's FOIA Request (Ex. B) if KCSC would simply provide, as soon as possible, the public records and audio recordings relating to the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, accusing Plaintiff and undersigned counsel of improper or unlawful conduct, and triggering KCSO's police-actions. *See* Ex. A at 23-24.

61. KCSC, via Attorney Morgan, rejected Plaintiff's above proposal and stated that "I take no position as to your legal representations or arguments surrounding actions involving Pinedale." Ex. A at 22-23.

62. To fully resolve the FOIA matters, undersigned counsel then offered to personally inspect and make copies of the public records of Plaintiff's FOIA Request (Ex. B). Ex. A at 21.

63. KCSC never responded to Plaintiff's above follow-up proposal requesting an appointment to personally inspect and make copies of the public records of Plaintiff's FOIA Request (Ex. B).

64. KCSC was not interested in settling the FOIA matters described herein on reasonable terms.

65. Undersigned counsel, individually and as an attorney for Plaintiff, submitted a follow up FOIA Request to KCSC via email on August 24, 2022. Ex. A at 22.

66. Plaintiff's follow up FOIA Request seeks, *inter alia*, a copy of Attorney Morgan's employment agreement with KCSC. Ex. A at 22.

67. Attorney Morgan's employment and representation of KCSC is governed by the South Carolina Rules of Professional Responsibility.

68. On December 2, 2022, KCSO belatedly disclosed the KCSC CFS2022-39009 document (Exhibit D, hereto) to Plaintiff and undersigned counsel, which indicates that it was printed on November 17, 2022.

69. The November 17, 2022, CFS2022-39009 document demonstrates that Pinedale's Administrator Phillip Hudson called KCSC E-911 on the morning of June 29, 2022, and alleged that Plaintiff Mrs. Jernigan and undersigned counsel had committed improper or unlawful acts, and thereby triggering KCSO's subsequent police actions. Ex. D at 1.

70. Mr. Hudson's E-911 call on June 29, 2022, to KCSC totaled approximately one hour, lasting from 10:55am to 11:53am. Ex. D.

71. KCSC unlawfully withheld the public records and audio recordings of Mr. Hudson's June 29, 2022, E-911 call to KCSC from Plaintiff and undersigned counsel.

72. Upon information and belief, Attorney Morgan provided counsel or assistance to KCSC to obstruct Plaintiff's access to the records of Mr. Hudson's E-911 call to KCSC on the morning of June 29, 2022.

73. On December 2, 2022, KCSO disclosed the KCSC CFS2022-39001 document to Plaintiff and undersigned counsel, attached as Exhibit E hereto, which indicates that it was printed on November 17, 2022.

74. The November 17, 2022, KCSC CFS2022-39001 document disclosed by KCSO on December 2, 2022, includes additional responsive public information to Plaintiff's FOIA Request (Ex. B) that was omitted from the August 18, 2022, CFS2022-39001 document previously provided by KCSC. *Compare* Ex. C at 4-5 with Ex. E, hereto.

75. At the hearing before the Honorable Jocelyn C. Newman on December 19, 2022, KCSO's counsel of record David Morrison, Esq. stated with respect to the audio recording of Mr. Hudson's June 29, 2022, E-911 call to KCSC (*see* Ex. D) that Mr. Morrison and his associate were "going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that." Ex. F at 7:6-10.

76. Over seven months have passed since the December 19, 2022, hearing before Judge Newman and the June 29, 2022, E-911 audio recording has not been disclosed to Plaintiff and undersigned counsel.

77. KCSC's August 18, 2022, FOIA Response (Ex. C) did not disclose any of the public records and audio recordings relating to Mr. Hudson's E-911 allegations as dispatched by

KCSC operators to KCSO officers for investigation and police-action on the morning of June 29, 2022. *See* Ex. D.

78. Moreover, KCSC's August 18, 2022, FOIA Response (Ex. C) did not disclose any of the audio recordings of the KCSO officer communications before, during, or after the relevant police actions taken on June 29, 2022, for the officers involved. *See* Ex. D.

COUNT I
S.C. Code Ann. §§ 30-4-100(a), (b) & 110(f) (FOIA)

79. Plaintiff incorporates each of the allegations of the foregoing Paragraphs 1 to 79 by reference as if fully set forth herein.

80. KCSC's evasive response and incomplete disclosure of relevant public records of Plaintiff's FOIA Requests (Exs. B & A at 22) do not meet the statutory requirements of FOIA.

81. KCSC's FOIA violations must be considered irreparable injuries for which no adequate remedy at law exists pursuant to S.C. Code Ann. § 30-4-100(a).

82. An actual, present, and justiciable controversy exists concerning Plaintiff's FOIA Requests (Exs. B & A at 22).

83. Plaintiff seeks a declaration from this Court that KCSC has violated the provisions of FIOA pursuant to S.C. Code Ann. § 30-4-100(a).

84. Plaintiff seeks injunctive relief from this Court requiring KCSC to provide unredacted copies of all relevant KCSC public records, including all relevant audio recordings, of Plaintiff's FOIA Requests (Exs. B & A at 22), including:

- Complete, unredacted records and audio recordings of the communications of Pinedale Administrator Phillip Hudson with KCSC and/or KCSO, and all other communication records associated with CFS2022-39009. *See* Ex. D.
- Complete, unredacted records and audio recordings of Audio File Nos. 0 to 11, and all other communication records associated with CFS2022-39001. *See* Exs. C at 3-5 & E.

- Complete, unredacted records and audio recordings by, between, and amongst KCSO officers personally involved with the relevant incidents on and around June 29, 2022, which include KCSO Officer #45 Joseph Branham; KCSO Officer #42 Grant Arledge; KCSO Officer #15 Courtney Cochran; KCSO Officer Miles Taylor; and KCSO Officer #40 Brian Morris. *See* Exs. C at 3-5, D & E.
- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on and around June 29, 2022, including those listed above, and the other KCSO officers personally involved after the relevant incidents occurred, which include KCSO Officer West – who discussed and/or prepared a report on behalf of Pinedale’s Administrator Mr. Hudson – and Officer #32 Dustin Tate. *See* Exs. C at 4-5 and E.
- Complete, unredacted records and audio recordings by, between, and amongst the KCSO dispatch operators personally with the relevant incidents on and around June 29, 2022, and the KCSO officers personally involved, including those listed above, which include KCSC Dispatch Operators Tracie Friday and Tina Procter. *See* Ex. D.
- Personnel and training information for the KCSC dispatch operators personally involved with the relevant incidents on and around June 29, 2022, including KCSC Dispatch Operators Tracie Friday and Tina Procter. *See* Ex. D.

85. Plaintiff seeks a declaration from this Court that KCSC has arbitrarily and capriciously violated the provisions of FOIA by its refusal and/or delay in disclosing relevant public records of Plaintiff’s FOIA Requests pursuant to S.C. Code Ann. § 30-4-110(f).

86. Plaintiff seeks an order from this Court imposing a civil fine of five hundred dollars upon KCSC for each public record that KCSC has arbitrarily and capriciously refused and/or delayed disclosing pursuant to S.C. Code Ann. § 30-4-110(f).

87. Plaintiff seeks an order from this Court scheduling an initial hearing within ten days of the date of service of this Complaint upon KCSC pursuant to S.C. Code Ann. § 30-4-100(a).

88. Plaintiff seeks an order from this Court awarding Plaintiff all costs and expenses incurred in this action including reasonable attorney fees pursuant to S.C. Code Ann. § 30-4-100(b).

COUNT II
Declaratory Judgment (Public Records Act)

89. Plaintiff incorporates each of the allegations of the foregoing Paragraphs by reference as if fully set forth herein.

90. Pursuant to the Public Records Act and S.C. Code of Ann. Regs. 12-500, “Before disposing of public records under these general schedules, county governments,” including KCSC, “should [e]nsure that the records have no further audit, legal, or fiscal value.”

91. Upon information and belief, KCSC has unlawfully concealed, destroyed, and/or rendered unavailable public records of Plaintiff’s FOIA Request (Ex. B).

92. Upon information and belief, KCSC has violated the Public Records Act and/or provisions of S.C. Code of Ann. Regs., Chapter 12, by concealing, destroying, and/or failing to maintain public records, including audio recordings, of Plaintiff’s FOIA Request (Ex. B).

93. An actual, present, and justiciable controversy exists concerning Plaintiff’s FOIA Request (Ex. B) and whether KCSC has concealed, destroyed, failed to maintain, and/or otherwise rendered unavailable requested public records in violation of the legal requirements of FOIA, the Public Records Act, and/or provisions of S.C. Code of Ann. Regs., Chapter 12.

94. Plaintiff seeks a declaration from this Court that KCSC has violated the legal requirements of FOIA, the Public Records Act, and/or provisions of S.C. Code of Ann. Regs., Chapter 12, with respect to public records, including audio recordings, of Plaintiff’s FOIA Request (Ex. B) that KCSC has concealed, destroyed, failed to maintain, and/or otherwise rendered unavailable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

A. Schedule an initial hearing within ten days of the date of service of this Complaint pursuant to FOIA at S.C. Code Ann. § 30-4-100(a);

B. Declare that KCSC's response, written determination, incomplete disclosures, and redacted disclosures of public records in response to Plaintiff's FOIA Requests violate FIOA;

C. Declare that any exemptions claimed by KCSC are invalid and/or in violation of FOIA;

D. Declare that KCSC has violated the Public Records Act and/or provisions of S.C. Code of Ann. Regs., Chapter 12, with respect to public records of Plaintiff's FOIA Requests it has rendered has concealed, destroyed, failed to maintain, and/or otherwise rendered unavailable;

E. Issue an order restraining and enjoining KCSC from continuing to violate FOIA with respect to matters described herein;

F. Issue an order restraining and enjoining KCSC from continuing to violate the Public Records Act and/or provisions of S.C. Code of Ann. Regs., Chapter 12, with respect to matters described herein;

G. Issue an order requiring that KCSC immediately disclose all of the relevant public records requested by Plaintiff;

H. Issue an order awarding Plaintiff all costs and expenses incurred in this action including reasonable attorney fees; and

I. Grant such other or further relief to which Plaintiff may be entitled as a matter of law or equity, and/or which the Court may deem just and proper under the circumstances.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

By: /s/Justin A. Jernigan

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This 24th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE. JERNIGAN

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Christine Jernigan,

Plaintiff,

v.

Kershaw County, South Carolina,

Defendant.

) **CASE NO. 2023-CP-28-00538**
)
) **NOTICE OF MOTION AND MOTION**
) **FOR 10-DAY HEARING PURSUANT TO**
) **FOIA, S.C. CODE ANN. § 30-4-100(a);**
) **EQUITABLE RELIEF; AND**
) **SCHEDULING ORDER**
)
)
)

TO: DEFENDANT KERSHAW COUNTY, SOUTH CAROLINA ("KCSC"), AND DAVID
MORRISON, ESQ., ANTICIPATED ATTORNEY OF RECORD FOR KCSC

Respectfully submitted,

By: /s/Justin A. Jernigan

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This 28th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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APPENDIX OF EXHIBITS

Plaintiff’s July 24, 2023, Complaint

Ex. A: Pre-suit email correspondence between undersigned counsel, KCSO, KCSC, and both KCSO and KCSC’s pre-suit counsel from late July 2022 to late August 2022

Ex. B: Plaintiff’s FOIA Request submitted to KCSC on August 11, 2022

Ex. C: KCSC’s August 18, 2022, FOIA Response, CD Optical Disc, and CFS2022-39001

Ex. D: November 17, 2022, CFS2022-39009, disclosed by KCSO on December 2, 2022

Ex. E: November 17, 2022, CFS2022-39001, disclosed by KCSO on December 2, 2022

Ex. F: December 19, 2022, Hearing Transcript before Judge Jocelyn Newman, in *Christine Jernigan, et al. v. KCSO*, 2022-CP-28-00782 (filed Sept. 12, 2022) (“782 case”)

Plaintiff’s July 28, 2023, Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order

Ex. G: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret’d, in *Christine Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) (“967 case”)

Ex. H: July 28, 2023, Affidavit of Plaintiff’s Undersigned Counsel Justin A. Jernigan, Esq.

Ex. I: Feb. 23, 2023, Affidavit of Plaintiff Christine Jernigan in the 967 case

PLEASE TAKE NOTICE THAT Plaintiff Christine Jernigan (“Mrs. Jernigan”) respectfully moves the Honorable Jocelyn C. Newman, current Chief Administrative Judge of this Circuit Court: (i) to schedule an initial hearing within ten days of service on Defendant Kershaw County, South Carolina (“KCSC”); (ii) to order KCSC to fully respond to and disclose all the records/information of Plaintiff’s FOIA Requests within a reasonable time (e.g., ten days) after the 10-Day initial hearing (*see infra* & Compl. ¶84); and (iii) to enter a scheduling order at or after the 10-Day initial hearing. This Court’s authority to grant the requested relief of the present Motion is provided by the South Carolina Freedom of Information Act (“FOIA”) at S.C. Code Ann. § 30-4-100(a), which states in pertinent part (emphasis added):

Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must schedule an initial hearing within ten days of the service on all parties*. If the hearing court is unable to make a final ruling at the initial hearing, the court shall *establish a scheduling order* to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this [six month] time period upon a showing of good cause. The court may *order equitable relief* as it considers appropriate, and a violation of this chapter *must* be considered to be an *irreparable injury* for which no adequate remedy at law exists.

In summary, Plaintiff respectfully requests that the Court order KCSC to fully respond to Plaintiff’s FOIA Requests and to disclose all public records/information of Plaintiff’s FOIA Requests (Compl., Exs. B & A at 22) within ten days after the initial hearing, and particularly the following records that have been unlawfully withheld to date:

- Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson’s communications with KCSC and the Kershaw County Sheriff’s Office (“KCSO”) accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.
- Complete, unredacted records and audio recordings of KCSC’s previously disclosed, and incomplete, Audio File Nos. 0 to 11, as well as all other records associated with CFS2022-39001. *See* Ex. H, hereto, ¶¶10-20, 22; Compl., ¶¶49-58, 73-74, Exs. B at 3-5, C at 3-5 & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, which includes: (i) KCSO Officer #45 Joseph Branham (Primary); (ii) KCSO Officer #42 Grant Arledge; (iii) KCSO Officer #15 Courtney Cochran; (iv) KCSO Officer #40 Brian Morris; and (v) KCSO Officer/Investigator Miles Taylor. *See* Ex. H, hereto, ¶¶10-22; Compl., Exs. B at 3-5, C at 3-5, D & E.
- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, including those officers listed above, and the other KCSO officers personally involved after or around the time the relevant incidents occurred, which includes (i) KCSO Lieutenant West – who discussed and/or prepared a report on behalf of Pinedale’s Administrator and “owner” Phillip Hudson against undersigned counsel – and (ii) KCSO Officer #32 Dustin Tate. *See* Ex. H, hereto, ¶¶10-11, 19, 22; Compl., Exs. B at 3-5; C at 4-5 & E.
- Complete, unredacted records and audio recordings by, between, and amongst the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, and the KCSO officers personally involved, including those officers listed above, which includes KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.
- Personnel and training information for the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, including KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.

I. PROCEDURAL HISTORY

The Complaint in the above-captioned case was filed on July 24, 2023. Count I of the Complaint requests, *inter alia*, declaratory/equitable relief pursuant to FOIA, S.C. Code Ann. §§ 30-4-100(a) & (b), for all of the unlawfully withheld records (e.g., audio recordings) of Plaintiff’s FOIA Requests. Compl. ¶¶79-88, Exs. B at 3-5 & A at 22. For records/information of Plaintiff’s FOIA Request that have been destroyed or otherwise rendered unavailable by KCSC, Count II seeks declaratory/equitable relief pursuant to the Public Records Act, S.C. Code Ann. §§ 30-4-10, *et seq.* Compl. ¶¶89-94, Ex. B at 3-5.

II. BACKGROUND

On June 28, 2022, Plaintiff’s counsel Justin A. Jernigan, Esq. (“Mr. Jernigan” or “undersigned counsel”) left messages with KCSO officers/investigators to report concerns

relating to his grandmother, and Plaintiff Mrs. Jernigan's mother, Ann Martin ("Mrs. Martin"), who is a vulnerable adult pursuant to the Omnibus Adult Protection Act ("OAPA"), S.C. Code Ann. §§ 43-35-5, *et seq.* Ex. H, hereto, ¶¶10-11, 16-17, 22; Compl. ¶¶54-55, Exs. B at 3, C at 4-5, & E. At around 9:44am on June 29, 2022, KCSO Officer #15 Courtney Cochran contacted KCSC Dispatch Operator Tina Hand via phone regarding undersigned counsel's phone messages/reporting to KCSO on June 28, 2023. *Id.* KCSC Operator Tina Hand dispatched/assigned KCSO Officer #45 Joseph Branham (Primary) who – at around 10:30am on June 29, 2022 – spoke with undersigned counsel via phone regarding his grandmother Mrs. Martin and the OAPA criminal/felony concerns. Ex. H, hereto, ¶¶10-11, 20, 22; Compl. ¶58, Exs. B at 3, C at 4-5, & E.

At around 11:00am on the morning of June 29, 2022, Mrs. Martin chose to exercise her right and well-known wish to travel away from a privately-owned, for-profit (~\$5,000/month) assisted living facility located in Kershaw County, known as Pinedale, with her daughter Plaintiff Mrs. Jernigan. Ex. H, hereto, ¶¶10, 25-27, Ex. G, hereto, ¶¶12-14 & Ex. I, hereto, ¶¶8, 10-11, 13-14, and 16-17; Compl., ¶37-38, Ex. B at 3-4. After Mrs. Martin chose to travel away from Pinedale with her daughter Plaintiff Mrs. Jernigan, KCSO Patrol Officers #45 Joseph Branham (Primary), #42 Grant Arledge, and #40 Brian Morris were dispatched/assigned by KCSC to pursue them in their respective police vehicles. Ex. H, hereto, ¶¶10, 21; Compl., ¶37-38, Exs. B at 3-4 & D. The KCSO Officers stopped Plaintiff Mrs. Jernigan's vehicle after she and Mrs. Martin traveled away from Pinedale. *Id.*

Undersigned counsel Mr. Jernigan drove to KCSO's primary office in Lugoff, South Carolina, and attempted to intervene on behalf of his mother and grandmother. Ex. H, hereto, ¶¶10, 21; Compl., Ex B at 3-4 & D. Despite undersigned counsel's in-person appeals on behalf

of his mother and grandmother – and KCSO Officer #15’s associated communications, via KCSC Dispatch Operator Tina Procter, that “Justin [Jernigan] is at the Sheriff Dept. and wants to let 42 and 40 know” – KCSO remanded Mrs. Martin to the Pinedale facility. Compl., Ex. D at 2. KCSO indicated that Plaintiff Mrs. Jernigan needed to “contact the court” with respect to her mother Mrs. Martin being remanded to the privately-owned, for-profit Pinedale facility.¹ *See id.*, Exs. D at 2 & E.

We are fortunate to live in a country where we are born with inalienable natural rights. After the police-involved incidents of June 29, 2022, however, neither KCSO nor its attorneys would agree to contact Pinedale and explain that they had made a mistake. Instead, KCSC and KCSO have concealed/destroyed public records and abused the discovery/FOIA process. KCSC and KCSO’s goal has been to cover up the true facts and details of their actions on and around June 29, 2022.

III. LEGAL STANDARDS

The below provisions set forth the purpose and intent of the South Carolina Freedom of Information Act.

The General Assembly finds that it is *vital* in a democratic society that public business be performed in an open and public manner so that citizens *shall* be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter *must be construed* so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a *minimum cost or delay* to the persons seeking access to public documents.

S.C. Code Ann. § 30-4-15 (emphasis added).

¹ A related case is pending before this Court, *Christine Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) (the “967 case”). Ex. H, hereto, ¶¶25-27. A Motion for Temporary Relief was filed in the 967 case on December 6, 2023. The Motion for Temporary Injunction was heard by the Honorable Clifton B. Newman in March 2023. The Motion for Temporary Injunction presently remains pending before Judge Clifton Newman.

Pursuant to FOIA, all “persons” have the right to inspect, copy, or receive an electronic version of any “public record.” S.C. Code Ann. §§ 30-4-20(b) & (c), 30(a)(1). “[P]ublic record” is broadly defined to include all records, regardless of physical form or format, that are “prepared, owned, used, in the possession of, or retained by a public body.” S.C. Code Ann. § 30-4-20(c). FOIA is remedial in nature and must “be liberally construed to carry out the purpose mandated by the legislature.” *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 281, 580 S.E.2d 163 (Ct. App. 2003).

The essential purpose of FOIA “is to protect the public from secret government activity.” *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843 (1994) (citations omitted). FOIA imposes “*an affirmative duty* on the part of public bodies to disclose information.” *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (emphasis added).

Pursuant to FOIA at S.C. Code Ann. § 30-4-30(c), a public body is required – within ten business days for public records less than two years old or within twenty business days for public records greater than two years old – to notify the requestor in writing regarding the public body’s determination, reasoning, and final opinion regarding the public availability of each public record requested. If the public body does not provide the required written determination as to the public availability of each public record requested, the FOIA request must be considered approved as to all such nonexempt public records/information. S.C. Code Ann. § 30-4-30(c); *Sloan v. South Carolina Dep’t of Revenue*, 409 S.C. 551, 554-55, 762 S.E.2d 687, 688-89 (2014) (holding that the equivocal and evasive FOIA response provided was “manifestly at odds with the clarity mandated by section 30-4-30(c)”).

After the public body delivers the required written response/determination to the FOIA requestor – or if the public body fails to do so – all nonexempt public records/information must thereafter be disclosed within thirty calendar days for public records less than two years old or thirty-five calendar days for public records greater than two years old. S.C. Code Ann. § 30-4-30(c). Any exemptions claimed by the public body in response to a FOIA request must be narrowly interpreted and applied to specific public records of the request. *Evening Post Publ’g. Co. v. City of N. Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005) (citations omitted). Thus, to claim an exemption for specific records of Plaintiff’s FOIA requests, KCSC “must show the applicability of a specific FOIA exemption to each requested public record.” *Pope v. Wilson*, 431 S.E.2d 432, 448, 427 S.C. 377, 388 (Ct. App. 2019) (citations omitted).

IV. DISCUSSION

Prior to submitting Plaintiff’s FOIA Request to KCSC, the Request had initially been submitted to KCSO on July 22, 2022. Ex. H, hereto, ¶¶9-10; Compl., ¶¶33-35, Ex. A at 7-8 & Ex. B. KCSO’s Records Department responded on July 25, 2022, by indicating that KCSO could not, and would not, provide any of the communication/dispatch related records of Plaintiff’s FOIA Request, and that these records must instead be obtained from KCSC pursuant to FOIA. *Id.* KCSO’s evasive/deceptive July 25, 2022, FOIA Response stated in full as follows:

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

Id.

On August 11, 2022, Plaintiff’s FOIA Request was submitted to KCSC’s Clerk to Counsel Merri Seigler and to Assistant County Administrator Lauren Reeder (“Mrs. Reeder”).

Ex. H, hereto, ¶¶9-10; Compl. ¶¶29-32, Exs. A at 12, 15-17 & B. KCSC provided its only Response to Plaintiff's FOIA Request on August 18, 2022. Ex. H, hereto, ¶11; Compl. ¶43-44, Ex. C at 2. KCSC's August 18, 2022, FOIA Response, via its pre-suit counsel County Attorney Tommy Morgan, Esq. ("Attorney Morgan"), stated in full as follows:

I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith all documents *not subject to exemption* under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* as well as a CD containing *the audio*. If you have any other questions or concerns, do not hesitate to contact me.

Compl., Ex. C at 2 (emphasis added).

KCSC's August 18, 2022, FOIA Response did not attempt to address the availability of the requested records, or to explain how any FOIA exemptions could potentially apply to any of the specific records of Plaintiff's FOIA Request, pursuant to S.C. Code Ann. § 30-4-30(c). *See* Compl., Exs. B at 3-5 & C at 2; *Pope*, 431 S.E.2d at 448, 427 S.C. at 388 (holding that a public body "must show the applicability of a specific FOIA exemption to each requested public record"). It is obviously impossible to determine which specific records of Plaintiff's FOIA Request were available, not available, and/or withheld as potentially exempt by KCSC based upon the bare assertions of its August 18, 2022, Response Letter stating that all public records and audio recordings *not subject to exemption* were provided therewith. *Id.*; *Sloan*, 409 S.C. at 554-55, 762 S.E.2d at 688-89 (holding that the public body's equivocal/evasive FOIA response was "manifestly at odds with the clarity mandated by section 30-4-30(c)"). Plaintiff's FOIA Request must be considered approved as to all nonexempt public records/information because KCSC's August 18, 2022, FOIA Response did not even attempt to provide the legally required written determination as to the public availability of each public record of Plaintiff's FOIA Request pursuant to S.C. Code Ann. § 30-4-30(c). *Id.*

KCSC's August 18, 2022, FOIA Response attached/disclosed one responsive public document, CFS2022-39001, which states that it was printed on August 18, 2022. Ex. H, hereto, ¶¶11; Compl., ¶49, Ex. C at 4-5. KCSC's August 18, 2022, CFS2022-39001 document, however, surreptitiously omitted (at least) all of the public information concerning the respective KCSC dispatch operators that were personally involved with the associated CFS2022-39001 communications. Compl. ¶¶51-52, *compare* Ex. C at 4-5 with Ex. E.

The CD optical disc disclosed by KCSC with its August 18, 2022, FOIA Response Letter contains a total of twelve individual audio recording files of phone calls concerning or involving undersigned counsel, Audio File Nos. 0 to 11. Ex. H, hereto, ¶¶11-20; Compl. ¶53, Ex. C at 3-5. The first four audio recording files, Audio File Nos. 0 to 3, are redacted, incomplete portions of the phone call by KCSO Officer #15 Courtney Cochran to KCSC Dispatch Operator Tina Hand beginning around 9:44am on the morning of June 29, 2022, and ending between 9:46am and 9:47am. Ex. H, hereto, ¶¶13-17; Compl., Exs. C at 3-5 & E. The subject matter of the four redacted/incomplete Audio File Nos. 0 to 3 relates to undersigned counsel's messages/reporting to KCSO on June 28, 2022, relating to his grandmother Mrs. Martin and criminal/felony OAPA exploitation concerns. *Id.*

Audio Files Nos. 4 to 11 are incomplete audio recordings of undersigned counsel's own personal phone communications with several respective KCSC dispatch operators, and one of the two KCSO officers with whom undersigned counsel communicated, respectively, on June 29, 2022. Ex. H, hereto, ¶¶18-20; Compl., Ex. C at 4-5 & E. Specifically, Audio File Nos. 4 to 11 are certain of undersigned counsel's phone communications with KCSC and KCSO on the afternoon and evening of June 29, 2022, unsuccessfully attempting to obtain a public record documenting the relevant June 29, 2022, police-involved incidents of that morning. Ex. H,

hereto, ¶¶18-20; Compl., Exs. C at 4-5 & E. Portions of undersigned counsel's communications with KCSO on June 29, 2022, were omitted, redacted, and/or removed from the August 18, 2022, Audio Files disclosed by KCSC. *Id.*

KCSC's August 18, 2022, FOIA Response unlawfully withheld all the public records and audio recordings relating to the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, accusing Plaintiff and undersigned counsel of improper or unlawful conduct, and thereby triggering KCSO's police-actions. Compl. ¶¶59-61, Ex. A at 22-24 & Ex. B at 3-5. Undersigned counsel offered to extend the relevant FOIA disclosure deadlines of S.C. Code Ann. § 30-4-30(c) for all of the additional public records (e.g., personnel records) of Plaintiff's FOIA Request (Compl., Ex. B) if KCSC would simply provide the public records and audio recordings of the third-party E-911 call(s) KCSC received on the morning of June 29, 2022, as soon as possible. *Id.* KCSC, via its pre-suit counsel Attorney Morgan, rejected Plaintiff's proposal and stated, "I take no position as to your legal representations or arguments surrounding actions involving Pinedale." *Id.*

To fully resolve the FOIA matters, undersigned counsel then offered to personally inspect and make copies of the public records of Plaintiff's FOIA Request. Compl. ¶¶62-64, Ex. A at 21. KCSC and Attorney Morgan never even bothered to respond to Plaintiff's request for an appointment to personally inspect and make copies of the public records of Plaintiff's FOIA Request. KCSC was obviously not interested in resolving the FOIA matters in good faith and on reasonable terms. *Id.* Instead, KCSC adopted a "so sue me" attitude in an effort to cover up the true facts and details.

Over three months later, on December 2, 2022, KCSO belatedly disclosed the CFS2022-39009 document to Plaintiff, which indicates that it was printed on November 17, 2022. Ex. H,

hereto, ¶¶21; Compl., Ex. D. The November 17, 2022, CFS2022-39009 document demonstrates that Pinedale’s Administrator Phillip Hudson (“Mr. Hudson”) called KCSC E-911 on the morning of June 29, 2022, and asserted that Plaintiff and undersigned counsel had committed improper or unlawful acts. *Id.* Mr. Hudson’s E-911 call to KCSC on the morning of June 29, 2022, totaled approximately one hour, lasting from 10:55am to 11:53am. *Id.* The November 17, 2022, CFS2022-39001 document – which was also disclosed by KCSO on December 2, 2022 – includes additional requested public information that was surreptitiously hidden/concealed by KCSC from the August 18, 2022, CFS2022-39001 document it disclosed with its FOIA Response. Ex. H, hereto, ¶¶21; *compare* Compl., Ex. C at 4-5 with Ex. E.

At the initial hearing before Judge Jocelyn Newman on December 19, 2022, in the related FOIA case *Christine Jernigan, et al. v. KCSO*, 2002-CP-28-00782 (filed Sept. 12, 2022) (“782 case”), KCSO’s counsel of record David Morrison, Esq. discussed the still yet-to-be disclosed audio recordings of Mr. Hudson’s E-911 call to KCSC on the morning of June 29, 2022. Compl., Ex. F at 7:6-10. Specifically, with respect to Mr. Hudson’s approximately one-hour E-911 call to KCSC on the morning of June 29, 2022, Mr. Morrison stated at the December 19, 2022, hearing that he and his associate Cameron DeBoy, Esq. were “going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don’t know. But we’re going to Kershaw County Dispatch to get that.” *Id.*

Over seven months have now passed since the December 19, 2022, initial FOIA hearing before Judge Jocelyn Newman in the 782 case. Over the past seven plus months, KCSO’s counsel has never indicated that he attempted to obtain – much less actually disclosed – the June 29, 2022, E-911 audio recording as he indicated that he was going to do at the December 19, 2022, hearing before Judge Jocelyn Newman. Under the circumstances, Plaintiff questions

whether the audio recording of Mr. Hudson's June 29, 2022, E-911 call to KCSC still exists or if it has been destroyed to cover up the true facts and details.

V. CONCLUSION

Upon the foregoing, Plaintiff respectfully requests that this Court schedule an initial hearing within ten days of service on KCSC; (ii) order KCSC to fully respond to and disclose the records/information of Plaintiff's FOIA Requests within ten days after the 10-Day initial hearing; and (iii) to enter a scheduling order at or after the 10-Day initial hearing.

Notably, Plaintiff respectfully requests that the Court order KCSC to fully respond to Plaintiff's FOIA Requests (Compl., Exs. B & A at 22), to disclose all public records and information of Plaintiff's FOIA Requests, and to specifically disclose the following records that have been unlawfully withheld by KCSC to date:

- Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and the Kershaw County Sheriff's Office ("KCSO") accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.
- Complete, unredacted records and audio recordings of KCSC's previously disclosed, and incomplete, Audio File Nos. 0 to 11, as well as all other records associated with CFS2022-39001. *See* Ex. H, hereto, ¶¶10-20, 22; Compl., ¶¶49-58, 73-74, Exs. B at 3-5, C at 3-5 & E.
- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, which includes: (i) KCSO Officer #45 Joseph Branham (Primary); (ii) KCSO Officer #42 Grant Arledge; (iii) KCSO Officer #15 Courtney Cochran; (iv) KCSO Officer #40 Brian Morris; and (v) KCSO Officer/Investigator Miles Taylor. *See* Ex. H, hereto, ¶¶10-22; Compl., Exs. B at 3-5, C at 3-5, D & E.
- Complete, unredacted records and audio recordings by, between, and amongst the KCSO officers personally involved with the relevant incidents on June 29, 2022, including those officers listed above, and the other KCSO officers personally involved after or around the time the relevant incidents occurred, which includes (i) KCSO Lieutenant West – who discussed and/or prepared a report on behalf of Pinedale's Administrator and "owner" Phillip Hudson against undersigned counsel – and (ii) KCSO Officer #32 Dustin Tate. *See* Ex. H, hereto, ¶¶10-11, 19, 22; Compl., Exs. B at 3-5; C at 4-5 & E.

- Complete, unredacted records and audio recordings by, between, and amongst the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, and the KCSO officers personally involved, including those officers listed above, which includes KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.
- Personnel and training information for the KCSC dispatch operators personally involved with the relevant incidents on June 29, 2022, including KCSC Dispatch Operators Tracie Friday, Tina Hand, and Tina Procter. Ex. H, hereto, ¶¶10, 21; Compl., Exs. B at 3-5 & D.

Respectfully submitted,

By: /s/Justin A. Jernigan

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Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 28th day of July 2023

ATTORNEY FOR PLAINTIFF CHRISTINE. JERNIGAN

RULE 11(a), SCRCP CERTIFICATION

Counsel for KCSC has not made an appearance in the above-captioned case and undersigned counsel therefore believes that consultation pursuant to Rule 11(a), SCRCP, is not required. In any case, undersigned counsel of record, by the signing and filing the above-captioned Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order in the above-captioned case, certifies pursuant to Rule 11(a), SCRCP, that he maintains a good faith belief that attempts to resolve this matter with KCSC's anticipated counsel of record prior to the filing of this Notice of Motion and Motion would serve no useful purpose.

CERTIFICATE OF SERVICE

Undersigned counsel of record certifies that he served Plaintiff's above-captioned Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order in the above-captioned case by depositing in the U.S. Mail, with proper postage attached, to KCSC and KCSC's anticipated counsel of record on this 28th day of July 2023, as follows:

Defendant KCSC:

Danny Templar
County Administrator
515 Walnut Street
Camden, SC 29020

Defendant KCSC's Anticipated Counsel:

David Morrison, Esq.
Morrison Law Firm, LLC
7453 Irmo Dr., Ste. B
Columbia, SC 29212

Respectfully submitted,

By: /s/Justin A. Jernigan

EXHIBIT J

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA
) CIRCUIT COURT 5
COUNTY OF KERSHAW) C.A. NO. 2023-CP-28-00538

Christine Jernigan,)
)
)
 Plaintiff,)
Vs.)
)
Kershaw County South Carolina,)
)
)
 Defendant.)

H E A R I N G

PRESENT: Justin Jernigan, Esq. and David Morrison, Esq.

DATE: August 8, 2023

LOCATION: South Carolina Circuit Court
 5 1701 Main Street
 Columbia, SC 29202

JUDGE: The Honorable Jocelyn C. Newman

REPORTED BY:

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
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APPEARANCES:

Justin A. Jernigan, Esquire
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Attorney for the Plaintiff.

David Morrison, Esquire
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Columbia, SC 29212

Attorney for the Defendant.

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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDING

2 THE COURT: This was not put on any docket due to the
3 lack of scheduling of it. This is 2023-CP-28-00538, Jernigan
4 versus Kershaw County -- yeah, Kershaw County. This is
5 plaintiff's motion for equitable relief under FOIA and a
6 scheduling order. Mr. Jernigan -- did y'all work anything out
7 or are we still have --

8 MR. MORRISON: We haven't talked at all.

9 THE COURT: Okay. All right. Mr. Jernigan, and let
10 me hear your motion.

11 MR. JERNIGAN: Okay, Judge, I do not know, like you
12 said, this was scheduled and I appreciate the prompt scheduling
13 and decided I needed to be kind of the squeaky wheel here so I
14 thank you for indulging this motion. Have you had a chance to
15 look at the motion or read the materials, Your Honor?

16 THE COURT: Yes, sir, and I'm familiar with it from
17 the 2022 case as well.

18 MR. JERNIGAN: Okay. Yes. I thought you might be and
19 in hindsight I did not do a good job of preparing the Court for
20 that hearing. And being an outsider I thought this was done
21 common -- not all the time, but commonly and I've learned to get
22 a motion in ten days, three months is kind of standard, I guess.

23 So that's kind of what I went with last time, but it
24 kind of got that case behind in scheduling in procedure from my
25 perspective. It's still pending with not much happening so far.

1 So I wanted to get this one on an expedited schedule and this
2 time have some specific relief that I'm looking for, rather than
3 a more general, you know, it's the officers involved.

4 It's me, it's my mom, it's my grandma, it's the
5 dispatch operators involved. I want to get the communications
6 between them. I want to get the audio, the 911 call. You know,
7 it's all the records I asked for. I did not think this was
8 going to require filing two lawsuits to get this information.

9 As I noted in the brief, and I had somewhat forgotten
10 this, but Mr. Morrison represented -- it's on page 10 of the
11 brief and it's in the transcript if you look through the
12 transcript at the last hearing that he was going to get this 911
13 call, which was one of the main or important things I was
14 looking for, but nothing has happened in the past seven months.

15 Mr. Morrison has not offered to get the -- I asked him
16 at the last hearing in April if we could go to the communication
17 center right then to get that 911 tape and I don't know what's
18 going on. We were told at the hearing that tape was coming and
19 it's never been given to me.

20 As noted, the only audio recordings I got were
21 primarily myself. They primarily involved myself. I did not
22 call 911 on myself. I was told these are all the records by the
23 county, the Sheriff's office. So that's why we're here, you
24 know, almost a year later after the prior case was filed to get
25 some specific relief on these communication records that I'm not

1 sure why I have not received them to date.

2 But any other questions, everything is in the motion,
3 I believe, but I'm willing to go into detail in any way I can
4 help the Court on this.

5 THE COURT: Mr. Morrison, let me hear from you on the
6 status of where we are, specifically after the 911 call.

7 MR. MORRISON: Judge, when I got this, I didn't know
8 this hearing was going to take place. I learned about seven
9 o'clock last night that I was going to be covering this hearing
10 today and I --

11 THE COURT: Let me just -- I'm sorry. I know I
12 interrupted you. Let me just apologize for that. Mr. Jernigan
13 filed this matter and asked for a hearing in 10 days. I believe
14 he filed it maybe on the Friday before I went on vacation. I
15 was out for a week, or maybe it was the Monday of that vacation.

16 I forget, but it was right at the beginning of my
17 vacation. I then returned to work for two days and it just
18 wasn't on my mind before going to the (indiscernible) convention
19 and then the South Carolina Association for Justice convention,
20 and then I'm scheduled to be out of the Fifth Circuit this week.

21 I just happened to not have court today and it popped
22 up yesterday. My law clerk reminded me I think we're on day 10,
23 so that's why it was scheduled for last minute just because I've
24 been here, there and everywhere and I was reminded by my clerk
25 yesterday afternoon.

1 We then scheduled this last-minute hearing. So I
2 apologize to both of you for the delay in getting it scheduled
3 but also for the last-minute notice, and I understand it's last-
4 minute.

5 MR. MORRISON: And I'm not fussing about it. I'm just
6 saying I haven't had a chance to look at this very much because
7 it was nine o'clock last night before I got home. I was out of
8 town and I looked at this this morning.

9 THE COURT: Yes, sir.

10 MR. MORRISON: I'm fully up to speed on all of this,
11 but I can't address parts of it.

12 THE COURT: Okay.

13 MR. JERNIGAN: And just before Mr. Morrison starts I
14 just wanted to say, yeah, the filing of the complaint, you know,
15 I did include the notes this time that the clerk's office
16 recommended because what we learned, or I learned, is that
17 there's no -- there is no -- and I would -- I don't know if we
18 need a committee -- there is no drop-down to say.

19 I mean I've been going to the end and it's other
20 administrative because there is no solid -- there is no real way
21 to docket this that I can see without filing the ten-day motion.
22 And I did note, you know, the current -- the last clerk that I
23 dealt with like I mentioned everything.

24 So I don't know if they did flag it to you but, you
25 know, when there hadn't been a motion -- and I have been copying

1 Mr. Morrison on the correspondence. I honestly did not -- I
2 assumed he would cover this but then when you guys had the
3 county attorney Tommy who I dealt with before this was filed, I
4 did not know that -- I thought that they had worked that out
5 between themselves.

6 So, yeah, I'm not trying to delay telling Mr. Morrison
7 about any of this. This has been a known thing that's been
8 available.

9 MR. MORRISON: I'm not accusing you of that. Not at
10 all. I was just trying to explain my lack of preparation for
11 this --

12 MR. JERNIGAN: No problem.

13 MR. MORRISON: Judge, this is very confusing and in
14 this new suit he has used the terms KCSC, which is Kershaw
15 County and KCSO which is Kershaw County Sheriff's office
16 interchangeably. And I get very confused trying to read through
17 these facts because it goes back and forth.

18 So I thought the best way for me to look at it this
19 morning with the short time to get prepared was to look at it
20 starting with count one and look at it what he's asking and what
21 the basis is. So if you look at count one, in paragraph A he
22 said that the county has been evasive and has been incomplete in
23 disclosing public records and he bases it on Exhibits B and A at
24 page 22.

25 If you look at Exhibit B, who is the complaint,

1 Exhibit B is the FOIA request from July 2022 to the Kershaw
2 County Sheriff's office. That's the subject of the other
3 lawsuit. So that really has nothing to do with Kershaw County
4 because the Sheriff is a constitutional officer of the state.

5 He's not a county employee. His deputies are employed
6 by the sheriff and they're not county employees. There's lots
7 of law out there saying that the sheriff and his deputies are
8 not county employees. They're not part of the county. It's a
9 separate entity.

10 So I really can't base count one for relief against
11 Kershaw County on a Kershaw County freedom of information
12 request to the Sheriff's department. So then if you go to count
13 -- to the other thing he's relying on, Exhibit A of page 22, if
14 you look at that, it actually starts at page 21.

15 It is a follow-up email to Tommy Morgan following up
16 on the same freedom of information request to the Kershaw County
17 Sheriff's department. And then on page two, page 22 of the
18 exhibit, in the middle of that email is what is called a new
19 FOIA request to Kershaw County and its related or sub agencies,
20 including Kershaw County Sheriff's office -- Kershaw County
21 Sheriff's office request of Justin Jernigan.

22 And that request, if you look at the first paragraph
23 it's all about the relationship between Tommy Morgan and the
24 county. The second paragraph is all about records regarding
25 training, certification, that relates to Kershaw County

1 Sheriff's office law enforcement authority to take police action
2 in civil matters involving the power of attorney, or to give
3 legal opinions on powers of attorney, or training regarding the
4 Bill of Rights.

5 Again, that's all Kershaw County. I'm sorry, I'm
6 getting confused now. That's all Kershaw County Sheriff's
7 Department and the training records and personnel files for
8 those people, those deputies, have been produced in the other
9 litigation.

10 I'm really confused about where we're going with this
11 because he seems to be trying to enforce things against the
12 Sheriff's department through this lawsuit against the county.
13 What he does want from the county is records regarding his
14 dispatch records and those, I think I produced dispatch records
15 in the other suit because I went to the county and got them and
16 produced dispatch logs.

17 He did ask if there were any recordings and I did drop
18 the ball on that. I did represent in December I would go to the
19 county and see if I could get those, even though I wasn't
20 representing the county and they weren't a party to that suit.
21 I was going to see if I could get those.

22 When we came back from that hearing I had discovery
23 requests that turned out to be a lot more onerous than I
24 thought, and we ended up taking several meetings in Kershaw at
25 the Sheriff's Department, several meetings to -- and through the

1 process of doing all that I simply forgot.

2 I don't recall any reminders from Justin about that.
3 Maybe he gave me one but I don't recall it, but I will go get
4 those. Like I said, because I said I would. I will go get --
5 see if there are any tapes remaining, but otherwise I'm not sure
6 of what this suit is asking for from Kershaw County when all
7 that seems to be based upon is documents served on Kershaw
8 County Sheriff's Department or records that the Sheriff's
9 department would have.

10 THE COURT: Mr. Jernigan?

11 MR. JERNIGAN: Yes. This is a pretty basic question I
12 feel like and to confuse the two -- so maybe the best way I got
13 the motion up and there is a summary that starts on page -- the
14 discussion that starts on page six of the motion describes the
15 history of the first submission on July 22 to the Kershaw County
16 Sheriff's office to which they responded we do not have any
17 records.

18 We have no dash camera. We have no nothing. You have
19 to contact the county to get anything. So I was put in touch
20 with the county attorney. The county attorney did not contact
21 me. He missed two meetings we were supposed to talk, so I
22 followed up by sending my request to the county.

23 It's a written request, the names on it, yes, I was a
24 little confused who I was dealing with. I did not know that
25 there were these separate entities and there are authorizing

1 documents between the two, that I've asked for in discovery.
2 There is no way that the Sheriff's office does not have access
3 to 911 calls, but that's what I've been told.

4 The statute of limitations was one year. I haven't
5 got any of the communication records for the third parties for
6 the officers involved. I've got communication records that I
7 was involved in myself and those have been redacted. So, you
8 know, I appreciate Mr. Morrison's representation that now, after
9 seven months, after he told us he would get us the 911 call
10 files, he's offering to do it.

11 I would like an order that all of that stuff
12 specifically be produced. All of these communication records
13 that are in the -- they're at least in the county's possession.
14 So that's why I'm proceeding against the county because the
15 Sheriff's office has given me the runaround and said they can't
16 get them, they can get them, they will get them.

17 Now they're saying again they're going to get them for
18 us. I am skeptical at this point and I believe it's proper to
19 have an order, as in the December hearing -- there's really a
20 problem with response with these people as well. It's not the
21 production. It's also the response.

22 When you file a response, you're supposed to address
23 the record as you ordered as explained at the last hearing. It
24 doesn't do any good to send me a notice that's here's all the
25 records and then send me incomplete records. I don't know what

1 you did, what you searched, what you're leaving out.

2 All I really wanted was a print out with the names of
3 the officers involved, the names of the dispatch operators
4 involved, their addresses and contact info, and I wanted a list
5 of like their CLE training on this fourth amendment stuff. I
6 did not want them to scan their high school diplomas, and send
7 me all of this -- you know, there has been no communication on
8 this and there's been no participation.

9 This is a one-way kind of conversation here. So I
10 need help from the Court to get these records. You know, I
11 don't know why it's been such a problem, but it's been a
12 problem.

13 MR. MORRISON: Judge, I would like to respond to two
14 things there.

15 THE COURT: Okay.

16 MR. MORRISON: (Indiscernible) no communication.
17 We've had at least seven or eight phone calls that lasted over
18 an hour each, and generally this generates to a Justin rant. I
19 guess me and the county against everybody else and after a while
20 you just don't want to put up with that anymore.

21 I'm happy to work with him as long as we can keep it
22 on a civil level and not to degenerate to something like that.
23 Second, the email or the FOIA request that's contained in the
24 middle of that email says the requester is Justin Jernigan.
25 Justin Jernigan is a resident of North Carolina.

1 Under FOIA 3-4-100, any citizen of the state may apply
2 to the Circuit Court for both declaratory and injunctive relief
3 and enforce the provisions of this chapter. Justin Jernigan is
4 not a citizen of the state, and I don't believe he -- it says
5 requester in that email.

6 I'm not sure that's proper service of a FOIA request
7 anyway, to stick it in the middle of an email where you're
8 responding following up on something against a different entity,
9 but even if it were, Justin Jernigan is not a citizen of South
10 Carolina that can come to this court seeking injunctive and
11 declaratory relief as the requester for that FOIA request.

12 I still will be happy -- because I said I would, I
13 still would be happy to go and see if there are -- if there is
14 audio. We produced what they produced to us when we requested,
15 but I will go back and see if there is audio just so that we've
16 got that covered.

17 I think we can work that out very easily, but as far
18 as this proceeding, I don't think he's got a leg to stand on,
19 but I don't think there's any way that the Court can certainly
20 order relief in the plaintiff's favor here today.

21 The only thing I can see that the Court could do here
22 today is to find that he's not a proper party to bring this
23 proceeding in South Carolina since he's not a resident of South
24 Carolina.

25 THE COURT: Mr. Jernigan.

1 MR. JERNIGAN: I guess, I don't know, Judge. I think
2 that my mom is a resident of South Carolina and I think I'm a
3 person. So if you read FOIA at 30-4-20, it's on page five of
4 the brief in the legal standards. FOIA says all persons, all
5 persons.

6 It doesn't and limit it to citizens. I mean I'm a
7 citizen of the country. I mean I guess I'm not a resident of
8 the state because I live 15 miles on the other side of the
9 border, but I am an attorney. And FOIA says all persons have
10 the right to inspect and obtain documents.

11 It doesn't limit it. So this standing argument that I
12 don't have standing to file a FOIA request on behalf of my mom
13 as an attorney, and on behalf of myself, and then bring a
14 lawsuit to enforce it when it's not complied with is -- I mean
15 if Mr. Morrison wants to brief that issue then, you know, I
16 guess we can.

17 It's a plaintiff's job to allege standing and file
18 their complaint and make their complaint. It's their job to
19 answer it. I'm not sure if he's asking you to dismiss the case,
20 but the case is properly filed. I'm not sure what the holdup
21 would be. We're going to have a hearing in 10 days.

22 What can't be resolved at the 10 day hearing can be
23 put on a schedule to resolve later. And mainly I want the
24 specific documents and the recordings I'm asking for. If
25 they're not there, I believe they -- if there's stuff that's not

1 there, like the 911 call, that stuff has been improperly
2 destroyed. So I want a ruling that the public records act was
3 violated for anything they don't give me that's on that list.

4 MR. MORRISON: Judge, just to rebut that briefly.

5 THE COURT: Well, before you get there, if you would
6 direct me to the citizen of this state. Where is that?

7 MR. MORRISON: 30-4-108.

8 THE COURT: Okay. Now, go ahead with whatever else
9 you were going to say.

10 MR. MORRISON: All right. The FOIA request that you
11 see in exhibit -- it's in the middle of the email says requester
12 Justin Jernigan. It does not say Christine Jernigan. It says
13 Justin Jernigan. Justin Jernigan is the requester. Justin
14 Jernigan is not a citizen of the state and injunctive and
15 declaratory relief under 30-4-100 is limited to that lawsuit
16 being brought by any citizen of the state.

17 So I think that's where he opened his shot. In any
18 event, I don't think it's necessary that the Court would make
19 any rulings here today because there are issues there as to
20 whether they can bring it. I think that's purely a legal issue,
21 but in the meantime I will go -- I'll try to get it done this
22 week because I'm getting ready to start a two week trial later
23 this month in federal court and I want to get as much done now
24 as I can.

25 I'll try to get it done this week and go to Kershaw

1 County and see if there are any audio recordings and if there
2 are I will send them to him. Maybe that will resolve this. I
3 don't know.

4 MR. JERNIGAN: Judge, I would direct your attention
5 back to the statute that defines persons. All persons have the
6 right to inspect, copy or receive an electronic version of any
7 public record. Now, he's talking about an old statute that said
8 a citizen of the state, which I read to be an attorney of the
9 state.

10 There used to be citizenship requirements. It used to
11 be a part of Rule 11. If you look at the comments, to be an
12 attorney in court you needed to be a resident of the state. The
13 Bar did not handle that.

14 There was sort of a legislature and a Bar kind of
15 component of practice before the Court and the rules have been
16 changed to give this -- the discretion to manage who can file a
17 case in this court is mandated by the Supreme Court. If there
18 is a statute that says you have to be an attorney, a resident of
19 the state to bring a FOIA action on behalf of a resident of this
20 state, that is a proposition that I don't know, maybe I should
21 take it up with the Bar because I'm a Bar member and I live 15
22 minutes across the border, but if you want to read that
23 requirement today that I don't have standing to bring a lawsuit
24 on behalf of my mom because it says on the request my name, any
25 -- there is a conflict in the statute if it says I'm entitled as

1 a person to file this request.

2 I'm entitled to get the documents and so there is no
3 dispute that I filed it at least on behalf of my mom. So if
4 there needs to be like a factual issue here and we need to brief
5 this, I'm fine with doing that, but I have a motion. There is a
6 10 day hearing requirement.

7 What can't get resolved at the hearing needs to be put
8 on an expedited schedule to be resolved within six months. I'm
9 not sure that that would be helpful dealing with Mr. Morrison
10 unless we put some guidelines in there that when he responds to
11 discovery it's going to be under oath because he's never
12 actually given any discovery answers under oath that say we
13 destroyed all of the body camera stuff.

14 It's all attorney argument coming from him so far and
15 there's nothing stopping the Court from issuing an order today
16 for those specific things. I do not see any reason why we can't
17 enter that order and if there is an order, it's not going to
18 take seven months, I assume.

19 THE COURT: So the problem, Mr. Jernigan, as I see it,
20 is not you acting as counsel on behalf of your mother. If your
21 mother had made the FOIA request and you are simply representing
22 her, and requesting injunctive relief on her behalf --

23 MR. JERNIGAN: That's what I'm doing in this case.

24 THE COURT: Well, no, sir, because the FOIA request is
25 made by you. You are the requester.

1 MR. JERNIGAN: Okay. I'm not sure that this issue is
2 before the Court today, but I would be happy to explain or
3 brief. So if I put my name as an attorney on behalf of my mom
4 on a FOIA request and ask for information, if I were to make a
5 FOIA request of my own, there's nothing in the statute that says
6 I have to be a citizen or resident of the state to do that.
7 It's not in the definition.

8 THE COURT: You are correct. What the statute does
9 say is that a citizen of the state may apply to the Circuit
10 Court for a declaratory judgment, injunctive relief, et cetera,
11 et cetera.

12 MR. JERNIGAN: Yeah. And my mom is applying for
13 relief. I'm her attorney.

14 THE COURT: Show me where your mom made a FOIA
15 request?

16 MR. JERNIGAN: She made a FOIA request through me.
17 I'm representing her as an attorney. There's attorneys that
18 bring these cases. There are South Carolina attorneys pro se on
19 behalf of their client. I've cited those cases in the other
20 case.

21 This fiction that somehow this whole thing is like it
22 wasn't a FOIA request, they don't have to answer it, it can't be
23 enforced, I do not see where that's a problem, but if this is an
24 issue that the Court wants to rule on, I would like to be able
25 to brief the issue.

1 MR. MORRISON: Judge, (indiscernible) rule on anything
2 here today.

3 THE COURT: All right. And I'm going to take all
4 factors into consideration of what you have provided me is a
5 FOIA request that says that Justin Jernigan is the requester.
6 It mentions nothing about a representative capacity whatsoever.

7 You request documents and then this is -- so that's
8 the initial matter is that you are the requester and not in a
9 representative capacity. There is no indication of that and I'm
10 looking at the document before me. That's the initial matter.
11 The secondary matter is that you're making a request, a FOIA
12 request, is to the Sheriff's Department and not to the county
13 which is a separate entity.

14 MR. JERNIGAN: Can I please explain? I submitted the
15 same request. There is not a requirement that it be on any kind
16 of particular form. It's just a request in writing. It can be
17 made by email. Okay, yes, I sent it to the Sheriff's Department
18 first. I was told I needed to send it to the county. I sent it
19 to the county employees.

20 I discussed with the county attorney. I got a letter
21 back from the county attorney. To question whether this was
22 properly submitted to the county when they provided a limited
23 response and said here is all of the recordings and dropped them
24 off, is -- I mean it's insane.

25 They didn't know this was a FOIA request. It was a

1 written FOIA request properly submitted to the county and to the
2 Kershaw County Sheriff's office. Their same attorney
3 represented both of them during the pre-suit. Now Mr. Morrison
4 is involved. So whatever the issue is with I need to write
5 my -- like my mom's name on it or it's not a proper FOIA
6 request, I do not see where the statute says that and I did say
7 I was doing this to protect my family to get this information to
8 see who accused us of crimes and sent the Sheriff's office to
9 pull my mother and my grandmother over and make my grandmother
10 go back to an assisted living facility.

11 These matters of I am -- I don't understand what the
12 issue is with this requester name because there is not a
13 requirement that the requester be a resident of the state of
14 South Carolina or they can just ignore the request.

15 I do not think that the General Assembly would have
16 written the statute the way they did if they can then decide
17 later they're just going to ignore the request and not provide
18 the documents because the guy that made the request it turns out
19 he lives in North Carolina and he can't enforce that.

20 Anyone in the state could file this FOIA case. It's a
21 matter of public information that everyone has the right to.
22 You don't need a specific -- this is probably a special case
23 where I a specific interest in these documents. I don't need a
24 specific interest in the documents.

25 They are everyone's documents. They're public

1 documents made with public money. So if there's some kind of
2 hoots that maybe there is in FOIA that I didn't follow
3 correctly, I do not see what they are and so that's why I would
4 say, sure, you can rule on anything at the hearing, but I would
5 like to be heard on what the specific problem is and if there's
6 any way to construe a statute like FOIA to have these some kind
7 of loopholes where this is not a valid case.

8 That seems like pretty extreme position when I am the
9 plaintiff and I have alleged these things. If there's any
10 allegations that don't stand up, you know, I'm not sure what to
11 say about that now.

12 THE COURT: Okay. Well, I was headed down the road on
13 more than one occasion to explain to you what I think the issue
14 is. I've been interrupted now twice while trying to do that.
15 I'm looking at the plain language of the statute that as far as
16 I can tell requires no interpretation.

17 They could have written a person. They could have
18 written anyone. They could have written a number of things but
19 what is written in the statute is a citizen of the state, which
20 has a very clear meaning. You know, I'm not suggesting -- I'm
21 sorry. Go ahead.

22 MR. JERNIGAN: I don't know that citizen of the state
23 has a clear meaning, either, because we are citizens of a
24 country. We reside in whichever state we reside in. I don't
25 know that the term citizen of the state -- we're talking about a

1 resident of the state, I believe, which is -- I think that's an
2 open question of why did they say citizen of the state.

3 It's defined as person. There is no citizenship
4 requirement to submit a FOIA request. This is a standing
5 requirement to bring a FOIA request so, okay, whatever we need
6 to do on this, if we need to dismiss it and then I'll ask
7 somebody else, like I'm not sure where to go from here on this.

8 THE COURT: I don't find that there's a standing
9 requirement to submit a FOIA request. We're dealing with a very
10 specific subsection or subsection of the statute with respect to
11 your request for declaratory or injunctive relief, but now three
12 times I've tried to explain and three times I've been
13 interrupted, so I will not explain.

14 I will simply deny your request, sir. I will put on
15 the record that I'd like a secondary matter -- well, I think
16 I've already said it, requesting documents of the Sheriff's
17 Department, documents reporting, et cetera. There are some
18 things that must be gotten from the Sheriff's Department which
19 is a separate entity of the Sheriff as a constitutional officer.

20 All of the things that Mr. Morrison indicated
21 earlier. Mr. Morrison is going to get you those recordings,
22 those 911 recordings as he said he would. He doesn't have a
23 requirement to do so as far as I can tell, and I could be wrong
24 about that, Mr. Morrison (indiscernible).

25 MR. MORRISON: I am not aware of the requirement

1 existing at this point in time but I will go get -- I'll report
2 to Justin by the end of the week as to my progress.

3 THE COURT: All right. So I'm not going to order him
4 to do that because I don't believe that he has a requirement,
5 that there is a requirement under the law for him to do that,
6 but he will do that for you, Mr. Jernigan, and really I think
7 that Mr. Morrison is correct in his argument. I'll just say
8 that for purposes of the record so that I'm not interrupted
9 again, but your motion is effectively denied, Mr. Jernigan.

10 MR. JERNIGAN: I understand. Should I propose an
11 order on that or how do you want to handle it?

12 THE COURT: No, sir. I will do as short form order,
13 just probably a single sentence that indicates -- because when I
14 denied the motion I don't waive any requirement that I make any
15 specific findings of fact or conclusions of law, therefore I
16 won't. I will do a very short order that just simply denies the
17 motion.

18 MR. JERNIGAN: Okay. I would ask for there to be some
19 findings so there's a record of what I asked for and why it was
20 denied, if that's -- because otherwise I don't know how to move
21 forward with this.

22 THE COURT: Well, as I said, I don't think I'm
23 required to make those findings of fact and conclusions of law.
24 I'm sure if I am or should have, an appellate court will remand
25 it to me for that very reason. They do that all the time.

1 You know, as a -- I don't want to call it a courtesy,
2 but to educate you, Mr. Jernigan, on the reasons I have now
3 three times attempted to explain to you and three times been
4 interrupted. I'm not going to try it again. I don't think that
5 the law requires me to.

6 It would have been certainly for your benefit for me
7 to do that, but I'm not going to go down that road again unless
8 the appellate court instructs me too. All right? Thank you
9 both.

10 MR. MORRISON: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. JERNIGAN: Thank you, Judge.

CERTIFICATE OF TRANSCRIBER

I, BARBARA J. ENNEKING, CVR-M, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5 for Kershaw County, South Carolina, on the 8th day of August, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 4, 2023

Barbara J. Enneking, CVR-M

Barbara J. Enneking, CVR-M

Transcriber

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Kershaw
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/08/2023 .

Kershaw County South Carolina

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2023-08-08 11:45:31 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Christine Jernigan,

Plaintiff,

v.

Kershaw County, South Carolina,

Defendant.

) **CASE NO. 2023-CP-28-00538**

)
) **NOTICE OF MOTION AND MOTION**
) **FOR CLARIFICATION AND**
) **RECONSIDERATION PURSUANT TO**
) **RULES 52(a), (b), & 59(e), SCRCP**

TO: DAVID MORRISON, ESQ., ATTORNEY OF RECORD FOR KERSHAW COUNTY,
SOUTH CAROLINA ("KCSC")

Respectfully submitted,

By: /s/Justin A. Jernigan

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)

7148 Stirrup Court, Weddington, NC 28104

Ph: 864-710-5029

Email: justin.a.jernigan@gmail.com

This 15th day of August 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

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APPENDIX OF EXHIBITS

Plaintiff’s July 24, 2023, Complaint

- Ex. A:** Pre-suit email correspondence between undersigned counsel, KCSO, KCSC, and both KCSO and KCSC’s pre-suit counsel from late July 2022 to late August 2022
- Ex. B:** Plaintiff’s FOIA Request submitted to KCSC on August 11, 2022
- Ex. C:** KCSC’s August 18, 2022, FOIA Response, CD Optical Disc, and CFS2022-39001
- Ex. D:** November 17, 2022, CFS2022-39009, disclosed by KCSO on December 2, 2022

Ex. E: November 17, 2022, CFS2022-39001, disclosed by KCSO on December 2, 2022

Ex. F: December 19, 2022, Hearing Transcript before Judge Jocelyn Newman, in *Christine Jernigan, et al. v. KCSO*, 2022-CP-28-00782 (filed Sept. 12, 2022) (“782 case”)

Plaintiff’s July 28, 2023, Notice of Motion and Motion for 10-Day Hearing, Equitable Relief, and Scheduling Order

Ex. G: Nov. 21, 2022, Affidavit of Lt. Col. Billie Schreck, USAF, Ret’d, in *Christine Jernigan, et al., v. Wright*, 2022-CP-28-00967 (filed Nov. 2, 2022) (“967 case”)

Ex. H: July 28, 2023, Affidavit of Plaintiff’s Undersigned Counsel Justin A. Jernigan, Esq.

Ex. I: Feb. 23, 2023, Affidavit of Plaintiff Christine Jernigan in the 967 case

PLEASE TAKE NOTICE THAT, pursuant Rules 52(a), (b) & 59(e), SCRPC, Plaintiff respectfully moves this Court and the Honorable Jocelyn C. Newman, Chief Administrative Judge ("CAJ"), as follows:

- to provide, pursuant to Rule 52(a), SCRPC, findings and conclusions which constitute the grounds for the Court's August 8, 2023, Order (copied below) denying Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order; and
- to reconsider, amend, and/or alter the Court's August 8, 2023, Order (copied below) pursuant to Rules 52(b), 59(e), SCRPC, the underlying record, and the governing law, including S.C. Code Ann. § 30-40-100(a).

FORM 4	
STATE OF SOUTH CAROLINA COUNTY OF Kershaw IN THE COURT OF COMMON PLEAS	JUDGMENT IN A CIVIL CASE CASE NO. 2023CP2800538
<u>Christine Jernigan</u> PLAINTIFF(S)	<u>Kershaw County South Carolina</u> DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

I. INTRODUCTION

Following an 11:00am initial hearing on August 8, 2023, Judge Newman issued rulings from the bench at around 11:45am. The Court's oral rulings denied Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order on the grounds that Plaintiff Christine Jernigan ("Mrs. Jernigan" or "Plaintiff") lacks standing to proceed with this case pursuant to the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-40-100(a). The Court's bench rulings following the hearing were implicitly incorporated into the Court's 11:59am Form 4 Order (*see supra*, page 1). Judge Newman's August 8, 2023, Form 4 Order, however, also states that the Court's Order "does not end the case."

This order ☐ ends ☒ does not end the case.

The Court's August 8, 2023, Form 4 Order is in conflict with the grounds that were announced at the hearing finding that Plaintiff lacks standing and, therefore, cannot proceed with this case. The Court's basis for the August 8, 2023, Form 4 Order is presently in doubt. Plaintiff respectfully requests that Judge Newman clarify the Court's August 8, 2023, Order (*see supra*, page 1) pursuant to Rule 52(a), SCRCF. *See also* S.C Code Ann. 14-3-330.

For the reasons discussed herein below at Section III (page 8), Plaintiff submits that the underlying record and the governing law do not support the announced reasons that Plaintiff lacks standing under FOIA. For example, *compare* S.C. Code Ann. § 30-40-100(a) ("A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both") *with* Compl. ¶1 ("Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee").

In summary, the present Motion seeks clarification of the August 8, 2023, Order pursuant to Rule 52(a), SCRCF, and reconsideration pursuant to Rules 52(b), 59(e), SCRCF, in view of the underlying record and the governing law, including S.C. Code Ann. § 30-40-100(a).

II. BACKGROUND

A. FOIA Request Submitted to Defendant Kershaw County, South Carolina (“KCSC”) on August 11, 2022

A written FOIA Request was submitted to KCSC on August 11, 2022. *See* Compl. ¶30, Exs. A at 15-17 & B. Relevant portions of email correspondence of record between Plaintiff’s counsel, KCSC’s Clerk to Counsel Merri Seigler, KCSC’s Assistant County Administrator Lauren Reeder, and KCSC’s pre-suit counsel County Attorney Tommy Morgan, Esq. – dating from August 11 to 12, 2022 – are copied below.

From: Justin Jernigan
Sent: Thursday, August 11, 2022 11:56 AM
To: merri.seigler@kershaw.sc.gov
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

I submitted the attached FIOA request to KCSO on 7/22/22 and received the below email response from Alisha indicating to contact you regarding certain County public records. Can you please provide me with copies of the County call related public records falling within my FOIA Request? Would prefer electronic copies sent via email if possible.

----- Forwarded message -----

From: Justin Jernigan <jjernigan@apwlaw.us>
Date: Thu, Aug 11, 2022 at 12:24 PM
Subject: RE: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan
To: merri.seigler@kershaw.sc.gov <merri.seigler@kershaw.sc.gov>, lauren.reeder@kershaw.sc.gov <lauren.reeder@kershaw.sc.gov>

Lauren,

I’m copying you in on my below email also as your name is listed “for questions” regarding County FOI.

Thanks,

From: Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Sent: Thursday, August 11, 2022 1:30 PM
To: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>
Subject: Fwd: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Please let me know how you'd like to proceed.

LAUREN

From: Tommy Morgan <tommy@smithrobinsonlaw.com>
Sent: Friday, August 12, 2022 8:18 AM
To: Justin Jernigan <jjernigan@apwlaw.us>
Cc: Tommy Morgan <tommy@smithrobinsonlaw.com>; Shelley Dabney <shelley@smithrobinsonlaw.com>; Lauren Reeder <lauren.reeder@kershaw.sc.gov>
Subject: FW: ATTN: FOIA Officer; 7.22.22 FOIA Request; Requestor: Justin Jernigan

Justin,

I am back in the office and am trying to play catch up. 2 weeks and 2 trips (Denver and Boston) and it's real easy to fall behind.

Let me look into the status of the records themselves. I know you wanted to chat about your concerns. I will do my best to give you a call today but my calendar is pretty tight. Next week it opens back up, however.

I appreciate your understanding.

As demonstrated by the email portions of record that are shown above, KCSC's Assistant County Administrator Lauren Reeder responded on August 11, 2022, by asking County Attorney Tommy Morgan, Esq. to provide instructions for proceeding with respect to the communications-related public records requested. Compl., Exs. A at 15-17 & B. KCSC's pre-suit counsel Attorney Morgan then replied on August 12, 2022, by indicating that he would, in fact, investigate and disclose the requested communications-related public records on behalf of KCSC pursuant to the legal requirements of FOIA. *Id.*

B. Plaintiff's July 24, 2023, Complaint (Counts I & II)

Plaintiff's Complaint was filed on July 24, 2023. Count I seeks declaratory and injunctive relief pursuant to FOIA, S.C. Code Ann. §§ 30-4-100(a) & (b), for requested communications (e.g., E-911 audio recordings) and other records being withheld by KCSC.

Compl. ¶¶79-88. Count II alternatively seeks declaratory and equitable relief pursuant to the Public Records Act, S.C. Code Ann. §§ 30-1-10, *et seq.* Compl. ¶¶89-94.

C. Formal Service of Process upon KCSC on July 28, 2023

On July 28, 2023, Plaintiff's Summons, Complaint, and Exhibits A to F were formally served upon KCSC. *See* July 31, 2023, Aff. of Service (copied below, in part).

Recipient Name / Address: Lauren Reeder, Branch: 515 Walnut St, Camden, SC 29020
Manner of Service: Registered Agent, Jul 28, 2023, 12:55 pm EDT
Documents: 7.24.23 Ex. F, 12.19.22 Transcript.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. E, CFS2002-39001.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. D, CFS2022-39009.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. C, 8.18.22 KCSO FOIA Response.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. B, FOI Request to KCSC.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 Ex. A, July, Aug 2022 Emails.pdf (Received Jul 27, 2023 at 12:00am EDT), 7.24.23 KCSC FOIA Summons_Compl.pdf (Received Jul 27, 2023 at 12:00am EDT)
Additional Comments:
 1) Successful Attempt: Jul 28, 2023, 12:55 pm EDT at Branch: 515 Walnut St, Camden, SC 29020 received by Lauren Reeder. Ethnicity: Caucasian; Gender: Female;

D. Plaintiff's July 28, 2023, Motion for 10-Day Hearing, Injunctive/Equitable Relief, and Scheduling Order pursuant to S.C. Code Ann. § 30-40-100(a)

Plaintiff's Motion for Injunctive/Equitable Relief, with further supporting Exhibits G to I, was filed on July 28, 2023, pursuant to S.C. Code Ann. § 30-40-100(a) which states, in pertinent part:

[T]he chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing.

There are six categories of withheld KCSC E-911/Dispatch records for which Injunctive/Equitable Relief is requested by Plaintiff in this case, and the requested injunctive relief is necessary to require KCSC to disclose undisputedly public records that have been withheld by KCSC for the past approximately one-year. The categories of unlawfully withheld records are listed in Plaintiff's July 28, 2023, Motion at pages 1-2. *See also* Compl., ¶84. The

first – and most important – public records for which Injunctive/Equitable Relief is necessary to require KCSC to disclose are:

Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson’s communications with KCSC and the Kershaw County Sheriff’s Office (“KCSC”) accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.

ELECTRONICALLY FILED - 2023 JUL 28 5:58 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

KCSC’s counsel of record in this case, David Morrison, Esq., previously *agreed* to provide the above, first listed June 29, 2022, E-911 recordings at the December 19, 2022, initial hearing in the related 782 FOIA case. *See* Compl, Ex. F at 7:6-10, Dec. 19, 2022, Hearing Tr. Specifically, regarding the still yet-to-be disclosed KCSC June 29, 2022, E-911 recordings, Mr. Morrison stated on the record that he and his associate were “going to [KCSC] central dispatch to get that additional recording, if it exists. I presume that it does, but I don’t know. But we’re going to Kershaw County Dispatch to get that.” *Id.*

Almost eight months have now passed since the initial hearing on December 19, 2022, in the related 782 FOIA case. *Id.* KCSC is “arbitrarily and capriciously” violating FOIA by refusing to disclose what are *undisputedly and admittedly* public records. S.C. Code Ann. § 30-40-110(f). Injunctive/equitable relief requiring disclosure of these public records is necessary.

E. Follow-up August 7, 2023, Letter to Judge Newman re: Initial Hearing

On August 7, 2023, Plaintiff filed/submitted a follow-up Letter (copied below, in part) regarding the initial hearing for Plaintiff’s July 28, 2023, Motion for Injunctive/Equitable Relief pursuant to S.C. Code Ann. § 30-40-100(a) (*see* below, in part).

The chief administrative judges (“CAJs”) of the circuit courts were assigned to implement the accelerated track of 30-4-100(a) by, *inter alia*, scheduling an initial hearing within ten days of service of a FOIA-related summons/complaint upon the defendant(s). *See* S.C. Code Ann. § 30-4-100(a) (1976 & Supp. 2017) (“Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. ...”).

We do not believe a FOIA plaintiff is required to take affirmative post-filing steps – beyond service-of-process and filing proof thereof – to obtain, *inter alia*, the initial hearing within ten days of service of the FOIA-complaint upon the defendant(s). The above-referenced formal notice of motion and motion in this case is, however, respectfully submitted and directed to your Honor’s attention as CAJ for the South Carolina Circuit Court of Common Pleas for the Fifth Judicial Circuit.

We respectfully request that your Honor move this FOIA-case forward in a manner consistent with S.C. Code Ann. § 30-4-100(a).

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Given that Plaintiff’s Complaint was served upon KCSC on July 28, 2023, it seems that the initial ten-day hearing should have been docketed by the Clerk’s Office to take place on August 7, 2023, based on S.C. Code Ann. § 30-40-100(a) and Rule 6(a), SCRCF.

F. The 11:00am August 8, 2023, Hearing and Ruling/Order Denying Plaintiff’s Requested Relief for Lack of Standing under FOIA

On August 7, 2023, the initial hearing of S.C. Code Ann. § 30-40-100(a) was scheduled for 11:00am on August 8, 2023. Plaintiff’s undersigned counsel and KCSC’s counsel of record Mr. Morrison appeared at the August 8, 2023, 11:00am hearing on behalf of the respective Parties via WebEx.

At around 11:45am on August 8, 2023, Judge Newman announced oral rulings from the bench. The Court’s bench rulings denied Plaintiff’s July 28, 2023, Motion for 10-Day Hearing, Injunctive/Equitable Relief, and Scheduling Order, filed pursuant to S.C. Code Ann. § 30-40-100(a), on grounds that Plaintiff lacks statutory standing to proceed with this case under FOIA.

Judge Newman entered a Form 4 Order at 11:59am on August 8, 2023 (*see supra*, page 1). The Form 4 Order indicates that Plaintiff's Motion is denied but also states, however, that the Order "does not end the case."

This order ☐ ends ☒ does not end the case.

If Plaintiff lacks standing to proceed with this case as the Court ruled at the hearing, then the August 8, 2023, Order would end the case unless it is reconsidered or amended. If the Court's Order did not end the case for lack of standing, the grounds for denying the Injunctive/Equitable Relief and Scheduling Order are presently unclear and unknown to Plaintiff. Plaintiff respectfully notes, albeit without the benefit of the official hearing transcript, that the Court's comments at the end of the hearing also raise questions regarding how the Court's decision is supported in view of the underlying record and the governing law.

III. ARGUMENT

As Plaintiff's counsel indicated at the hearing, and for the reasons discussed below, FOIA standing is not an issue that can reasonably be subject to dispute in the present case. Plaintiff respectfully submits, however, that the standing issue is not a "simple" issue because it does require a certain amount of statutory interpretation as well as consideration of controlling case law. For these reasons, Plaintiff's counsel previously requested an opportunity at the hearing to address and resolve the standing issue via briefing prior to the Court issuing a ruling on these grounds.

Over 40 years ago – when FOIA was originally enacted – the legislature found that its "provisions must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay." S.C. Code Ann. § 30-4-15. An essential purpose of FOIA "is to protect the public from secret

government activity,” and that is why the Injunctive/Equitable Relief and Scheduling Order requested by Plaintiff’s July 28, 2023, Motion is necessary. *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843, 846 (1994) (citation omitted).

Under FOIA, all “persons” are provided with the statutory “right to inspect, copy, or receive” a “public record of a public body” upon submission of a “written request for records” to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). The definition of “person” broadly encompasses any “individual, corporation, partnership, firm, organization or association” without limitation. *Id.*, § 30-4-20(b).

There is not, for example, any statutorily required form that a person needs to use to submit a request for records to a public body pursuant to FOIA. All that is statutorily required by S.C. Code Ann. § 30-4-30(c) is that a “written request” be submitted to a public body by a person (i.e., any individual or entity without limitation). Therefore, the written FOIA request that is submitted to the public body could be a typed or handwritten request for records that is submitted by mail or that is submitted electronically.

The South Carolina Supreme Court has previously addressed the statutory standing requirements that are needed for a plaintiff to seek/obtain declaratory or injunctive relief as a remedy for FOIA-violations under S.C. Code Ann. § 30-40-100(a). In *Freemantle v. Preston*, the Court reversed and remanded the trial court’s dismissal of the plaintiff’s FOIA claim for lack of standing, holding as follows:

The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act’s requirements. S.C. Code Ann. § 30-4-100(a)....
...

The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive

relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims. On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012); *see also Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) (“this Court has held that standing under FOIA does not require the information seeker to have a ‘personal stake in the outcome’”) (citation omitted).

As the South Carolina Supreme Court held in *Freemantle*, a FOIA-plaintiff need only plead: (i) citizenship/residency of the State, and (ii) that FOIA has been violated to establish statutory standing pursuant to S.C. Code Ann. § 30-40-100(a). 398 S.C. at 95, 728 S.E.2d at 45. The *Freemantle* Court explicitly stated that “[n]othing more is required.” *Id.* Plaintiff, as a citizen/resident of South Carolina, certainly meets the statutory standing requirements in the present FOIA case. *See* Compl., ¶¶1 (“Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee”), 79-88. As a result, Plaintiff respectfully requests that the Court reconsider, alter, or amend the findings/conclusions of its August 8, 2023, Order (*see supra*, page 1). Plaintiff believes that any outstanding issues have been appropriately addressed herein.

The statutory language of S.C. Code Ann. § 30-4-100(a) requires that the CAJs of the circuit courts either (i) “make a final ruling at the initial hearing,” or (ii) “establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing.” Plaintiff requests that the Court provide clarification as to what is required moving forward and to place this case on track for final resolution within six months of initial filing pursuant to the requirements of S.C. Code Ann. § 30-4-100(a). Plaintiff will appropriately address any

outstanding issues as necessary in order to move this FOIA case forward to resolution “at a minimum cost or delay” as mandated by the legislature. S.C. Code Ann. § 30-4-15.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests clarification, reconsideration, and amendment of the Court’s August 8, 2023, Order pursuant to Rules 52(a), (b) & 59(e), SCRCF, the underlying record, and the governing law, including S.C. Code Ann. § 30-40-100(a).

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 15th day of August 2023

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

RULE 11(a), SCRCP, CERTIFICATION

Plaintiff's counsel attempted to contact KCSC's counsel Mr. Morrison twice via phone on the afternoon of Tuesday, August 8, 2023, to discuss the subject matter of the present Motion and the E-911 audio recordings Mr. Morrison again agreed to disclose again at the hearing. Undersigned counsel's phone calls/messages were not returned. Undersigned counsel certifies that he maintains a good faith belief that additional attempts to resolve this time-sensitive matter with KCSC's counsel prior filing the above-captioned Notice of Motion and Motion would serve no useful purpose.

Respectfully submitted,

By: s/Justin A. Jernigan

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 2 COUNTY OF KERSHAW * TRANSCRIPT OF RECORD
 3 -----X
 4 CHRISTINE JERNIGAN, *
 5 Plaintiff, *
 6 vs. * Case No. 2023-CP-28-00538
 7 KERSHAW COUNTY, SOUTH *
 8 CAROLINA, *
 9 Defendant. *
 10 -----X

August 27, 2024

B E F O R E:

The Honorable Jocelyn Newman, Presiding Judge

A P P E A R A N C E S:

Justin A. Jernigan, Esq.
 Attorney for the Plaintiff

David L. Morrison, Esq.
 Attorney for the Defendant

Recorded by: DCRP Court Monitor Renee Standera

Transcribed by: Bobbi Fisher, RPR
 SC Official Court Reporter III

I N D E X

DESCRIPTION

PAGE

Proceedings

3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech

Ellipses (...) Indicates trailing off in speech

(ph) Indicates phonetic word

[Verbatim] Indicates the word is said as written

(Indiscernible)[Transcription] Indicates word(s) is not
known due to audio recording quality

P R O C E E D I N G S

(The following proceedings started at 9:10 a.m.):

THE COURT: Just for the record, this is
2023-CP-28-00538, Jernigan versus Kershaw County.

Why can I hear myself?

COURT MONITOR: It's coming through the mic.

THE COURT: Okay. Yes, sir?

MR. MORRISON: Good morning, Judge. We're here for a
trial on this matter. I have two motions to make prior to
trial, but I have a different motion to make now.

THE COURT: Okay.

MR. MORRISON: I don't know -- I have not heard from
Mr. Jernigan. I texted him Saturday night to give him a
heads-up on one of the motions I was going to make today. The
motions I was going to make today were a motion for judgment
on the pleadings on the same grounds that you heard during the
sanctions motion some time ago and ruled upon, although
Mr. Jernigan wouldn't let you state your ruling. That's part
of the root of the problem in a lot of this case, Judge.

The other motion I was going to make was a motion to
disqualify Mr. Jernigan as the attorney in this case because
he can't be an attorney and a lawyer in the -- an attorney and
a witness in the same case.

I guess it's not necessary to make either of those, but I
will move to dismiss the case now, since we're here for trial,

1 and they're not here.

2 THE COURT: Yeah. Mr. Jernigan has not appeared, nor has
3 Christine Jernigan, the plaintiff. They both received --
4 well, at least Mr. Jernigan has received notice of Christine,
5 through her attorney. And so, they have not appeared.

6 I have not received any communication, correspondence,
7 phone calls, anything, so the motion to dismiss is granted.

8 MR. MORRISON: Judge, let me add one more ground to that.

9 THE COURT: Yes, sir.

10 MR. MORRISON: I also move to dismiss for judgment on the
11 pleadings under the ground that the complaint is in the name
12 of Christine Jernigan. The FOIA request is in the name of
13 Justin Jernigan. Christine Jernigan didn't bring a FOIA
14 request, so there's nothing for her to enforce.

15 Justin Jernigan is not a citizen of the state of South
16 Carolina, and the enforcement of a FOIA request under the
17 statute 30-4-100 is limited to citizens of this state. Justin
18 is not a citizen of this state. So, even if he were a
19 plaintiff, he can't bring an enforcement action under the FOIA
20 statute, and I would move to dismiss on that ground as well.
21 You've already ruled on that ground in a prior hearing,
22 although you didn't get to state it in the record or put it in
23 your order because Mr. Jernigan wouldn't let you.

24 THE COURT: Right. I think what I was doing -- now, I
25 needed to make sure that that was clear in the pleadings. I

1 know I've heard that assertion, but...

2 MR. MORRISON: Judge, the summons and complaint is
3 entitled, "Christine Jernigan."

4 THE COURT: Yes, sir.

5 MR. MORRISON: The exhibits to the summons and complaint
6 -- let me get the right one -- I think it's E.

7 THE COURT: A, B, C, D, E.

8 MR. MORRISON: I'm sorry; that's not the right one.

9 THE COURT: No.

10 MR. MORRISON: Let me get the right one. It's Exhibit B,
11 is the FOIA request. It's addressed to Kershaw County
12 Sheriff's Department.

13 THE COURT: I see it.

14 MR. MORRISON: And the requestor on the FOIA request is
15 Justin Jernigan.

16 THE COURT: Yes, sir. So, your motion for judgment on
17 the pleadings is granted. So, we're going to dismiss, failure
18 to prosecute. In the alternative, motion for judgment on the
19 pleadings is granted. Because it's a dismissal, I will need a
20 proposed order.

21 MR. MORRISON: Okay.

22 THE COURT: If you would e-File that.

23 MR. MORRISON: I'll be glad to.

24 THE COURT: Thank you.

25 MR. MORRISON: Thank you, Judge.

1 THE COURT: All right. Thank you, folks.
2 (The above hearing was adjourned at 9:47 a.m.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Christine Jernigan v. Kershaw County

3 2023-CP-28-00538

4 DATE OF HEARING: 8/27/24

5 COURT REPORTER/MONITOR: DCRP

6 *****

7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.

14
15 16
17 /s/ Bobbi Fisher_____

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Prepared: 12/27/24

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	
Christine Jernigan,	)	C/A #: 23-CP-28-00538
	)	
Plaintiff,	)	
	)	ORDER GRANTING MOTION TO DISMISS
v.	)	FOR FAILURE TO PROSECUTE AND
	)	GRANTING JUDGMENT ON THE
Kershaw County South Carolina,	)	PLEADINGS AND DISMISSING THIS
	)	CASE WITH PREJUDICE
Defendant.	)	
_____	)	

This matter came before the court on Tuesday, August 27, 2024, for a non-jury trial term of court. Two cases appeared on the roster for trial. All parties were properly notified of the term of court.

Neither Plaintiff, Christine Jernigan, nor her counsel, Justin Jernigan appeared. The Defendant and their witnesses were present and ready to proceed to trial. Plaintiff had not communicated with the Court or with Defendant's counsel and had not requested a continuance.

At the call of the case, counsel for Kershaw County made two motions. Both motions were heard and granted. Counsel moved to dismiss the case for failure to prosecute. The Defendant was present with their witnesses and ready to proceed. Due to the absence of Plaintiff for a properly noticed non-jury trial term of court and the lack of communication from Plaintiff, that motion is granted. *See, McComas v. Ross*, 626 S.E.2d 902, (Ct.App. 2006). Normally, this motion would result in the case being dismissed without prejudice. If this were the only motion pending, that normal result would follow. However, the ruling on the motion for judgment on the pleadings, addressed below, dictates that this case must be dismissed with prejudice.

Kershaw County also moved for judgment on the pleadings. This is a Freedom of Information enforcement action that is highly disputed. Christine Jernigan is the Plaintiff. Justin Jernigan represents her but is not a party to the action.

Plaintiff attached the Freedom of Information Act request to the complaint as Exhibit B. That request was originally served upon the Kershaw County Sheriff's Department. Subsequently, the same FOIA request was served upon Kershaw County by Justin Jernigan. The Court has examined the request. The request clearly indicates that the requestor is Justin Jernigan, not Christine Jernigan. Mr. Jernigan did not indicate that the request was made in a representative capacity.

Kershaw County moved for judgment on the pleadings on these grounds: (1) Christine Jernigan, plaintiff, never made a FOIA request and therefore had no FOIA request to enforce; (2) Justin Jernigan, who made the FOIA request, was not a party to this litigation and therefore could not enforce the FOIA request; (3) Even if he were a party, Justin Jernigan, who resides in North Carolina, cannot bring an enforcement action pursuant to S.C. Code Section 30-4-100. The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.

As to ground (1), the record clearly reflects that Christine Jernigan is the sole plaintiff. However, the record also reflects that the FOIA request she seeks to enforce was made by Justin Jernigan. Christine Jernigan did not make a FOIA request. Therefore, she has no FOIA request to enforce.

As to ground (2), Justin Jernigan is not a plaintiff in this case. Instead, he is counsel of record for Christine Jernigan. Christine Jernigan is the sole plaintiff. However, he is the

requestor on the FOIA request attached to the complaint and served upon Kershaw County. He cannot prosecute this case as a party to the litigation when he is not a party.

As to ground (3), even if Justin Jernigan were a party to this case, he cannot bring a FOIA enforcement action since he is not a citizen of the State of South Carolina. The court's file clearly shows that his address is in Weddington, N.C. The Freedom of Information Act specifically describes who can bring an enforcement action. While the act allows any person to make a FOIA request, enforcement is governed by Section 30-4-100 which states:

(A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter....

A Freedom of Information Act with enforcement limited to state citizens is appropriate and lawful. The United States Supreme Court denied a challenge to Virginia's citizens-only FOIA statute. *See, McBurney v. Young*, 133 S.Ct. 1709, 569 U.S. 221 (2013). The reporter's summary of the opinion states in the syllabus:

Virginia's FOIA exists to provide a mechanism for Virginia citizens to obtain an accounting from their public officials; noncitizens have no comparable need. Moreover, the distinction between citizens and noncitizens recognizes that citizens alone foot the bill for the fixed costs underlying recordkeeping in the Commonwealth.

McBurney, 569 S.Ct. 1709, 1711.

The Court has repeatedly stated that the Constitution does not guarantee the existence of FOIA laws.

569 S.Ct. @ 1712.

Insofar as there is a "market" for public documents in Virginia, it is a market for a product that the Commonwealth has created and of which the Commonwealth is the sole manufacturer. A State does not violate the dormant Commerce Clause when, having created the market through a state program, it "limits benefits generated by (that) state program to those who fund the state treasury and whom the State was created to serve.

569 S.Ct. @ 1712-1713.

The United States Supreme Court stated that a citizen-only FOIA enforcement provision “provides a service that is related to state citizenship.” 569 S.Ct. @ 1713. South Carolina’s FOIA does the same thing. Enforcement is limited to citizens of South Carolina. South Carolina citizens foot the bill for the infrastructure for the recordkeeping and are the recipients of state services. Since Justin Jernagin is not a resident of South Carolina, even if he were a plaintiff in this action, he cannot bring an enforcement action.

Consequently, Defendant’s motion for judgment on the pleadings is granted on all grounds asserted. This case is dismissed with prejudice.

AND IT SO ORDERED.

Honorable Jocelyn Newman

_____, 2024



Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Dismissal

So Ordered

Jocelyn Newman

Electronically signed on 2024-10-17 15:20:03 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	CASE NO. 2023-CP-28-00538
Christine Jernigan,	)	
	)	<u>PLAINTIFF'S</u>
Plaintiff,	)	<u>MOTION TO RECONSIDER</u>
v.	)	
	)	
Kershaw County, South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Please take notice that, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff Christine Jernigan ("Plaintiff") respectfully moves this Court and the Honorable Jocelyn C. Newman, Chief Administrative Judge ("CAJ"), to alter or amend the Court's October 17, 2024, Order:

(i) dismissing this action for failure to prosecute because neither Plaintiff nor undersigned counsel appeared for the August 27, 2024, scheduled term of non-jury court which, as communicated to the Court on August 30, 2024, was due to a docketing error/oversight by undersigned counsel; and

(ii) granting Defendant Kershaw County South Carolina's ("KCSC's") motion for judgment on the pleadings, denying Plaintiff's August 15, 2023, Motion for Reconsideration, and dismissing this case with prejudice, because Plaintiff was not specifically designated or listed as the "requestor" on the FOIA requests at issue; i.e., dismissing due to alleged lack-of-FOIA-requestor statutory standing by Plaintiff, who is a life-long resident of this State, to proceed with this case under S.C. Code Ann. § 30-4-100(A) ("A *citizen of the State* may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter [i.e., FOIA].") (emphasis added).

As noted above, the October 17, 2024, Order denied Plaintiff's August 15, 2023, Motion for Reconsideration of the August 8, 2023, Form 4 Order denying Plaintiff's "...Motion for Equitable Relief..." pursuant to S.C. Code Ann. § 30-4-100(A) (filed on July 28, 2023). Plaintiff's August 15, 2023, Motion for Reconsideration was denied in connection with granting judgement on the pleadings due to lack-of-FOIA-requestor standing under S.C. Code Ann. § 30-4-100(A). This issue was first raised at the hearing on August 8, 2023, and was briefed in Plaintiff's August 15, 2023, Motion. Disposition of the first August 15, 2023, Motion for Reconsideration has resulted in a substantively altered judgment. *Compare* August 8, 2023, Form 4 Order *with* October 17, 2024, four-page written Order. Plaintiff respectfully notes that issues raised on reconsideration herein, including but not limited to those relating to subsequently decided authority (e.g., *Osmundson v. School District 5*, App. No. 2023-000104 (Ct. App., June 26, 2024)), could not have been raised previously in an initial/first motion for reconsideration.

The grounds for this Motion are, among others, as follows:

1. Rule 59(e) of the South Carolina Rules of Civil Procedure allows a party to file a motion to alter or amend the judgment no later than ten days after receipt of the written notice of the entry of the order.
2. "A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004).
3. Rule 59(e) allows a party "to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously made." *Id.* at 21, 602 S.E.2d at 779. "A party may wish to file [a 59(e)] motion when she believes the court has misunderstood, failed to

fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780.

4. “A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* (emphasis in original).

5. “Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and [that] a second motion is not required if the trial court does not specifically rule on the issue so raised.” *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56 (Ct. App. 1999) (citation omitted).

6. The Complaint in the present case (the “538 FOIA case”) was filed on July 24, 2023, in the Court of Common Pleas for the Fifth Judicial Circuit, Kershaw County.

7. Count I seeks declaratory and injunctive relief pursuant to FOIA, S.C. Code Ann. §§ 30-4-100(a) & (b), for requested communications (e.g., E-911 audio recordings) and other indisputable public records that have been unlawfully withheld by KCSC. Compl. ¶¶79-88.

8. Count II seeks – for records of the FOIA Request that have potentially been destroyed by KCSC – declaratory and equitable relief pursuant to the Public Records Act, S.C. Code Ann. §§ 30-1-10, et seq., and Declaratory Judgments Act. Compl. ¶¶89-94.

9. The Public Records Act precedes FOIA at Chapter 1, Title 30 and incorporates FOIA’s definition of “public record” therein. *See* S.C. Code Ann. §§ 30-1-10(a), 30-4-20(c). FOIA would be rendered meaningless if public bodies could simply destroy, rather than disclose, requested “public record(s)” in violation of the legal requirements of FOIA and the Public Records Act. *Id.*; *Ballard v. Newberry Cnty.*, 432 S.C. 526, 534, 854 S.E.2d 848, 852 (Ct. App. 2021) (holding that “[d]estruction of pertinent documents covered by a then-pending FOIA request could very well present” a viable cause of action).

10. “The interpretation of a statute is a question of law.” *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016) (citations omitted).

11. “[W]e must first attempt to construe a statute according to its plain language, and if the language of a statute is plain, unambiguous, and conveys a clear meaning, ‘the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’” *Odom v. Town of McBee Election Comm’n*, 427 S.C. 305, 310-11, 831 S.E.2d 429, 432 (2019) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

12. The prevailing rule of statutory interpretation is that “use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (citation omitted). Moreover, statutory provisions are generally regarded as mandatory when, as in the present case, the power or duty to which it relates is for the security or protection of important rights. *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) (citation omitted).

13. Our Legislature’s findings regarding the purpose of FOIA are as follows:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter *must* be construed so as to make it possible *for citizens, or their representatives*, to learn and report fully the activities of their public officials *at a minimum cost or delay* to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (emphasis added).

14. The South Carolina Supreme Court has held that FOIA is remedial in nature and should be liberally construed to carry out its purpose. *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001). An essential purpose of FOIA “is to

protect the public from secret government activity.” *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843, 846 (1994) (citation omitted).

15. Pursuant to FOIA, all “persons” have the statutory “right to inspect, copy, or receive” a “public record of a public body” upon submission of a “written request for records” to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). FOIA’s definition of “person” broadly encompasses any “individual, corporation, partnership, firm, organization or association” without limitation. *Id.*, § 30-4-20(b).

16. The original version of Section 30-4-100(A) provided all citizens of the State with the right “to apply to the circuit court for injunctive relief to enforce the provisions of [FOIA].” 1978 Act No. 593, Section 11.¹

17. Effective May 26, 1987, the General Assembly amended Section 30-4-100(A) to mandate that all FOIA violations “must be considered an irreparable injury for which no adequate remedy at law exists.” 1987 Act No. 118, Section 8.

18. During the 2017 round of updates, the General Assembly amended S.C. Code Ann. § 30-4-100(A) (effective May 19, 2017, emphasis added) to include the below procedural mandates and deadlines that the CAJ’s of the circuit courts are required to follow upon the filing of a FOIA case:

Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

¹ H*2727 (Rat #0739, Act #0593 of 1978) General Bill.

19. The above-noted 2017 FOIA amendments impose “time constraints within which determinative hearings on the requests for relief *must* be made.” 2017 Act No. 67 (H. 3352), Section 4, Effect of Amendment (emphasis added). The CAJ’s of the circuit courts were assigned to fulfill the expedited scheduling/time requirements via the last round of amendments to H. 3352. *See* S. Journal (Wed., May 10, 2017), 122d Gen. Assemb., 1st Reg. Sess., at 36-39 (S.C.).

20. On May 2, 2017, when H. 3352 was considered by the Judiciary Committee, Senator Margie Bright Matthews, Esq., of Colleton County, noted that the CAJs were available to decide FOIA matters locally on an expedited basis. Senator Matthews explained that adding the scheduling/time constraints would “create an avenue of filing FOIA requests like a temporary [injunction] motion so that it would have [to be] fast-tracked within ten days.” S. Judiciary Comm. Meeting, 122d Gen. Assemb., 1st Reg. Sess. (S.C. May 2, 2017), available at <https://www.scstatehouse.gov/video/archives.php>, at 01:53:00 to 1:54:50; Rule 65, SCRCF.

21. The General Assembly also provided public bodies with a corresponding right to seek declaratory relief and an expedited hearing under Section 30-4-110(A) via the 2017 FOIA amendments. Accordingly, the public body has a duty to file an action seeking declaratory relief with respect to: (i) alleged “unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests,” or (ii) where the public body “received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.” S.C. Code Ann. § 30-4-110(A). KCSC did not request a hearing or seek declaratory relief pursuant to Section 30-4-110(A) in this case.

22. “The General Assembly has the power and authority to change the statutes in any manner in which, in its best judgment, it may deem wise.” *Fort Sumter Hotel v. S.C. Tax*

Comms., 201 S.C. 50, 60, 21 S.E. 2d 393, 397 (1942). The circuit courts can “now only carry out by its order the plain meaning and intent of the statutes as they appear on the books today. That course alone constitutes the cornerstone of constitutional government.” *Id.*²

23. The South Carolina Court of Appeals, on June 26, 2024, reversed and remanded a prior dismissal (on technical/procedural grounds) of Plaintiff Osmundson’s FOIA action for failure to request and have the court hold the initial hearing within 10 days of service. *Osmundson*, App. No. 2023-000104. Osmundson argued that the statute imposes the duty on the court to schedule the 10-day hearing without a requirement for the FOIA plaintiff to do anything further other than to request it (which the plaintiff did in his complaint). *Id.* at *3.

24. Our Court of Appeals found that “the legislative intent behind the ten-day requirement was to benefit FOIA applicants;” “A review of the legislative history indicates the amendments to the FOIA since its enactment have been to expand rights; thus, we find the purpose of the ten-day requirement was to expedite resolution, not to erect a procedural barrier;” and held that the circuit court erred in dismissing the FOIA action on technical/procedural grounds. *Osmundson*, App. No. 2023-000104.

25. The Court of Appeals in *Osmundson* held, pursuant to the plain and unambiguous language of Section 30-4-100(A), that the circuit court is responsible for scheduling an initial hearing within ten days of the service on all parties. Based on the plain and unambiguous language of Section 30-4-100(A), if the hearing court is unable to make a final ruling at the initial 10-day hearing, as in the present case, the court must thereafter establish a scheduling

² Quoting Judge Grimball (Charleston County) compelling compliance with procedural due process rights of the 1935 Alcoholic Liquors Act.

order and conclude actions brought pursuant to this chapter within six months of initial filing; i.e., by January 24, 2024.

26. An initial written FOIA Request was submitted to KCSC by undersigned counsel in this case (at least) as early as August 11, 2022. *See* Compl. ¶30, Exs. A at 15-17 & B.

27. On July 28, 2023, Plaintiff's Summons, Complaint, and Exhibits A to F were formally served upon KCSC. *See* July 31, 2023, Aff. of Service.

28. Plaintiff requested that the court schedule/hold an initial 10-day hearing and proceed pursuant to the procedures/deadlines of Section 30-4-100(A).

29. On July 28, 2023, Plaintiff filed an expedited Motion requesting: (i) the initial ten-day hearing required by Section 30-4-100(A); (ii) injunctive/equitable relief ordering KCSC to fully respond to, and disclose the records of, the FOIA Requests; and (iii) a scheduling order to conclude proceedings within six months.

30. Plaintiff's July 28, 2023, Motion establishes that KCSC's August 18, 2022, FOIA Response was conclusory and evasive, and that its corresponding disclosure was incomplete and surreptitiously redacted.

31. On August 7, 2023, Plaintiff filed/submitted a follow-up Letter to CAJ Newman regarding the initial hearing on Plaintiff's July 28, 2023, Motion for Injunctive/Equitable Relief and Scheduling Order, and requested that the court proceed and bring this case to a final resolution in accord with the procedural requirements and deadlines set forth at S.C. Code Ann. § 30-40-100(A).

32. Six categories of unlawfully withheld KCSC E-911/Dispatch records, for which Injunctive/Equitable Relief will apparently be necessary to ever obtain, are set forth in Plaintiff's

July 28, 2023, Motion at pages 1-2. Compl., ¶84. The first – and most important – of the specific public records for which Injunctive/Equitable Relief is necessary are:

Complete, unredacted records and audio recordings of the communications of CFS2022-39009, including Pinedale Administrator Phillip Hudson’s communications with KCSC and the Kershaw County Sheriff’s Office (“KCSO”) accusing Plaintiff and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022. *See* Ex. H, hereto, ¶¶10, 21; Compl. ¶¶59, 60-61, 68-71, 75, Exs. B at 3-5 & Ex. D.

33. Following an 11:00am WebEx hearing on August 8, 2023, Judge Newman issued oral rulings from the bench denying Plaintiff’s July 28, 2023, Motion for Equitable Relief on grounds that Plaintiff lacks statutory standing to proceed with this case pursuant to the South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-40-100(A).

34. Judge Newman’s bench rulings were implicitly incorporated into the Court’s 11:59am Electronic Form 4 Order denying Plaintiff’s July 28, 2023, Motion for Equitable Relief and Scheduling Order. Inconsistently, however, Judge Newman’s August 8, 2023, Form 4 Order places a lower left “check mark” indicating that the Court’s August 8, 2023, Order “does not end the case” on grounds that Plaintiff lacks statutory FOIA standing.

35. Plaintiff’s August 15, 2023, Motion for Reconsideration respectfully requested that Judge Newman clarify and state/explain the grounds for the Court’s August 8, 2023, Order denying Plaintiff’s July 28, 2023, Motion for Equitable Relief.

36. Plaintiff’s August 15, 2023, Motion for Reconsideration explains why the underlying record and the governing law do not support Court’s August 8, 2023, Order denying Plaintiff’s July 28, 2023, Motion, including on grounds that Plaintiff lacks statutory standing to proceed with this case. *Compare* S.C. Code Ann. § 30-40-100(a) (“A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both”) *with* Compl. ¶1

(“Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee”) & Oct. 28, 2024, Decl. of Justin A. Jernigan, *submitted herewith*.

37. The South Carolina Supreme Court has previously addressed the minimal statutory standing requirements for FOIA-plaintiffs as follows:

The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act’s requirements. S.C. Code Ann. § 30-4-100(a). ...

The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims. On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

Freemantle v. Preston, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012) (emphasis added).

38. In reaching its October 17, 2024, decision dismissing this case for lack-of-FOIA-requestor standing, the court misunderstood the arguments before it, failed to consider the South Carolina Supreme Court’s holding in *Freemantle*, and failed to consider the legal ramifications of its decision, which justifies reconsideration.

39. It is also clear, pursuant to *Osmundson*, App. No. 2023-000104 and the plain statutory language, that the court misunderstood the arguments and record before it, and failed to follow the requirements and deadlines explicitly provided by S.C. Code Ann. § 30-4-100(A), which justifies reconsideration of the dismissal for failure to prosecute.

40. From the outset, Plaintiff has diligently petitioned and implored the court to follow the statutory procedural protections and deadlines explicitly provided to all FOIA litigants by S.C. Code Ann. § 30-4-100(A) to resolve this case.

41. On July 28, 2023, Plaintiff filed an expedited Motion requesting equitable relief and seeking for this court afford Plaintiffs the rights and protections that have been granted to all FOIA litigants by Section 30-4-100(A). Under Section 30-4-100(A), this court was required to enter a scheduling order to resolve this case by the 6-month statutory deadline for concluding the proceedings in this case; i.e., no later than January 24, 2024.

42. After Plaintiff's July 28, 2023, Motion for Equitable Relief and Scheduling Order was denied via the August 8, 2024, Form 4 Order, Plaintiff diligently requested reconsideration on August 15, 2023.

43. Plaintiff followed up on the August 15, 2023, Motion for Reconsideration, including via a Cover Letter to CAJ Newman dated September 15, 2024, which is of record in this case.

44. Undersigned counsel subsequently followed up with CAJ Newman's law clerk on October 24, 2023, regarding Plaintiff's August 15, 2023, Motion for Reconsideration. The judge's law clerk responded on October 27, 2023, stating that the Plaintiff "will receive a ruling on your Motion in the near future." *See* Ex. A, hereto. Instead of ruling on Plaintiff's August 15, 2023, Motion for Reconsideration, as a matter of law given that this is a FOIA "paper case" involving no disputed facts, the court set this case on the non-jury roster calendar for the August 27, 2024, term.

45. Undersigned counsel believes setting this case on the non-jury roster calendar for the August 27, 2024, term was an error/oversight, given that case dispositive appealable issues remained outstanding before the court with respect to Plaintiff's August 15, 2023, Motion for Reconsideration, including the FOIA-requestor-standing issues.

46. Undersigned counsel intended to contact the court, and opposing counsel regarding, prior to the August 27, 2024, hearing date to address the above-noted legal inconsistencies, and thereby avoid the burden, travel, and associated expenses of holding an unnecessary in-person hearing. Undersigned counsel's position is consistent with the law clerk's response on October 27, 2023, stating that Plaintiff "will receive a ruling on your Motion in the near future." *See* Ex. A, hereto.

47. Indeed, there was no basis for conducting any "trial" on August 27, 2024, because the court already found lack-of-FOIA-requestor standing under S.C. Code Ann. § 30-4-100(A) as the basis for denying Plaintiff's July 28, 2023, Motion for Equitable Relief and Scheduling Order. This was the explicit basis for the October 17, 2024, Order granting judgment on the pleadings to KCSC.

48. There never were any disputed material facts in this case providing a basis to conduct any non-jury "trial." Plaintiff's July 28, 2023, Motion for Equitable Relief and Scheduling Order was fully briefed, and was unopposed on the merits by KCSC.

49. No discovery has taken place in this case to date, and no witness testimony is relevant or needed to decide this FOIA case seeking disclosure of what are undisputedly public records. This case should have been decided on an expediated basis, like a motion for a temporary injunction, following the 10-day hearing date as was intended and unambiguously mandated by our General Assembly.

50. Due to a docketing error/mistake, undersigned counsel for Plaintiff neglected to contact the court and opposing counsel prior to the scheduled August 27, 2024, hearing. After realizing this mistake, undersigned counsel promptly contacted the court and opposing counsel

regarding the matter on August 30, 2024. Oct. 28, 2024, Decl. of Justin A. Jernigan & Ex. A, *submitted herewith*.

51. Despite undersigned counsel's unfortunate docketing error/mistake, the court's failure to follow the procedures required by Section 30-4-100(A) forced Plaintiff into an untenable situation.

52. The CAJ's law clerk indicated in October 2023 that Plaintiff would receive a ruling "in the near future" regarding the lack-of-FOIA-requestor-standing issue. It was the CAJ's responsibility to ensure that proceedings in this FOIA case were completed no later than 6-months from filing (i.e., by Jan. 24, 2024) pursuant to Section 30-4-100(A), and as strictly interpreted by *Osmundson v. School District 5*, App. No. 2023-000104 (Ct. App., June 26, 2024).

53. A litigant should not be forced to call the courts repeatedly and insist that a resolution be reached in a timely manner as required by statute (i.e., by January 24, 2024).

54. The October 17, 2024, Order suggests that a litigant who honestly expects the court to follow its own "in the near future" statements to its undersigned counsel, and the statutory procedures mandated by Section 30-4-100(A), can be thrown out of court completely for failing to attend an unnecessary non-jury "trial" proceeding that was erroneously set seven months after expiration of the statutory deadline mandated by Section 30-4-100(A).

55. This case was fully briefed and ready for determination on the merits at the time of the August 8, 2023, hearing, and all further delays were ultimately caused by failure of the judicial system to meet its statutory obligations mandated by Section 30-4-100(A).

56. The CAJ is statutorily required to schedule a timely hearing and resolve FOIA claims in a timely manner as mandated by Section 30-4-100(A) in order to ensure FOIA's purpose of public transparency.

57. The October 17, 2024, Order tosses Plaintiff out of court entirely due to tenuous technicalities that have nothing to do with the merits of this case.

58. The October 17, 2024, Order raises as-applied constitutionality concerns to the extent an out-of-state resident member of the South Carolina Bar (undersigned counsel) is not allowed to represent a citizen of this State in the same manner as a in-state member of the South Carolina Bar. *See, e.g., Ballard v. Newberry Cnty.*, 432 S.C. 526, 854 S.E.2d 848 (Ct. App. 2021). Our legislature no longer imposes conditions or governs the practice of law in this State, and FOIA Section 30-4-100(A) should not be construed to impose any such limitation on the practice of law in this State by an attorney who happens to be an out-of-state resident member of the South Carolina Bar (undersigned counsel)

59. The October 17, 2024, four-page Written Order was issued around seven months after the January 24, 2024, statutory deadline mandated by Section 30-4-100(A).

In sum, Plaintiff wishes for the Court to reconsider the October 17, 2024, Order, fully consider all facts before the Court, and the precedent that has been presented. Plaintiff respectfully requests that the Court reconsider its October 17, 2024, Order dismissing this case for failure to prosecute and granting Defendant KCSC judgment on the pleadings due to lack-of-FOIA-requestor standing under Section 30-4-100(A).

[Signature block on following page]

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan (S.C. Bar No. 74954)
Email: justin.a.jernigan@gmail.com
7148 Stirrup Ct.
Weddington, NC 28104
Ph: 864-710-5029

This 28th day of October 2024

ATTORNEY FOR PLAINTIFF CHRISTINE JERNIGAN

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	CASE NO. 2023-CP-28-00538
Christine Jernigan,	)	
	)	
Plaintiff,	)	Affidavit of Justin A. Jernigan
v.	)	October 28, 2024
	)	
Kershaw County, South Carolina	)	
	)	
Defendant.	)	
	)	

Personally appeared before me the undersigned, I, Justin A. Jernigan, being duly sworn and under oath, deposes and states as follows:

1. I am over 18 years of age and otherwise competent to make this Affidavit.
2. I have a residence located in Weddington, North Carolina, County of Union.
3. I am a patent attorney and a member of the South and North Carolina Bars.
4. I am counsel for my mother, Plaintiff Christine Jernigan ("Plaintiff"), in the above-captioned case.
5. Plaintiff has been a life-long citizen and resident of South Carolina, presently residing in Seneca, County of Oconee.
6. This affidavit is submitted with Plaintiff's Motion for Reconsideration in the above-captioned case.
7. This affidavit is based upon personal knowledge, information, and belief.
8. This affidavit is submitted with respect to information and Exhibits of the Motion submitted herewith.
9. I submitted the underlying FOIA requests at issue in this case, as a person under FOIA and as an attorney on behalf of Plaintiff Mrs. Jernigan, to Defendant KCSC.
10. This case is a personal matter, is outside of my typical scope of practice, and I have not had the benefit of paralegal assistance.
11. As reflected by the record/docket of this case, I have diligently prosecuted this case and attempted to obtain the court's compliance with the procedural requirements and deadlines mandated by FOIA at Section 30-4-100(A).

JAS-10/28/24

Motion

12. To supplement the current record/docket in this case, Exhibit A of the ~~Complaint~~ includes certain correspondence, dating from August 2023 to October 30, 2024, by, between, and amongst myself, CAJ Newman's law clerks, and KCSC's counsel of record, David Morrison, Esq.
13. The information I provided to the court in the correspondence of Exhibit A is true and correct.
14. Under penalty of perjury, I certify that the information given by me in this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

Sworn to and Subscribed before me this

28th day of October, 2024

T. Gustafson

Notary Public for South Carolina

Justin A. Jernigan

Signature of Affiant – Justin A. Jernigan

My Commission Expires March 10, 2026

My Commission expires _____

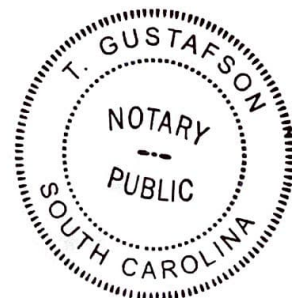


EXHIBIT A



Justin Jernigan <justin.a.jernigan@gmail.com>

Re: 2023CP2800538; Pl.'s Pending 8/15/23 Motion to Clarify/Reconsider

1 message

Justin Jernigan <justin.a.jernigan@gmail.com>

Fri, Aug 30, 2024 at 5:23 PM

To: Jocelyn Law Clerk Newman <jnewmanlc@sccourts.org>

Cc: David Morrison <david@dmorrison-law.com>, Callie Morrison <callie@dmorrison-law.com>, Cheryl Truesdale <cheryl.truesdale@kershaw.sc.gov>

Dear Mr. Mikell,

I am counsel for Plaintiff in the above referenced case. Counsel for Defendant Kershaw County, Mr. David Morrison, Esq., is also copied on this email. Prior email correspondence with Judge Newman's former law clerk (Ms. McDaniel), dating from August to October 2023, is included in the email chain below.

Due to a docketing error/oversight, I failed to make an appearance on behalf of Plaintiff at the Tuesday, August 27, 2024, Roster Meeting. Plaintiff sincerely apologizes for missing the Roster Meeting. If helpful, Plaintiff would respectfully request that the court schedule a brief status conference (via telephone or zoom) in the present case.

As highlighted in the email chain below, Ms. McDaniel indicated on October 27, 2023, that Plaintiff would receive a ruling on the pending August 15, 2023, Motion to Clarify/Reconsider denial of injunctive relief, etc. This Motion, however, is still pending. The Order denying injunctive relief is subject to appeal, and Plaintiff believes that a ruling on the Motion to Clarify/Reconsider is needed to move this case forward.

Thanks,

Justin Jernigan
864-710-5029

On Fri, Nov 3, 2023 at 3:59 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

Ms. McDaniel,

Thanks for the update.

Plaintiff filed the Motion with a request for hearing via the e-file system, but understands that a hearing on the matter is discretionary. Plaintiff believes that a hearing/teleconference ruling on the record for Plaintiff's Motion would also be within the Court's discretion.

Best,

Justin

On Fri, Oct 27, 2023 at 11:13 AM Newman, Jocelyn Law Clerk (Bailey McDaniel)
<jnewmanlc@sccourts.org> wrote:

Mr. Jernigan,

Thank you for your email. You will receive a ruling on your Motion in the near future.

Best,

Bailey S. McDaniel

Law Clerk for Judge Jocelyn Newman

South Carolina Judicial Branch

From: Justin Jernigan <justin.a.jernigan@gmail.com>

Sent: Tuesday, October 24, 2023 1:49 PM

To: Newman, Jocelyn Law Clerk (Bailey McDaniel) <jnewmanlc@sccourts.org>

Cc: David Morrison <david@dmorrison-law.com>; Callie Morrison <callie@dmorrison-law.com>;
Cameron W. DeBoy <cameron@dmorrison-law.com>

Subject: 2023CP2800538; Pl.'s Pending 8/15/23 Motion to Clarify/Reconsider

***** EXTERNAL EMAIL:** This email originated from outside the organization.
Please exercise caution before clicking any links or opening attachments. ***

Dear Ms. McDaniel,

I'm writing to follow up with respect to Plaintiff's pending August 15, 2023, Motion for Clarification/Reconsideration in the above-referenced 538 FOIA case.

Plaintiff's August 15, 2023, Motion for Clarification/Reconsideration has not been scheduled for hearing. Plaintiff would respectfully request that Judge Newman set this Motion for hearing/resolution at the Court's earliest convenience unless the Court intends to decide the matter without oral argument.

thanks,

Justin

864-710-5029

On Fri, Sep 15, 2023 at 12:56 PM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

Dear Ms. McDaniel,

Following up on my below August 16, 2023, email/notice, attached hereto are as-filed/stamped copies of Plaintiff's September 11, 2023, Supp. Memo. for

Clarification/Reconsideration and Exs. J-L. Exhibit J is a copy of the transcript of the August 8, 2023, hearing.

Also attached hereto is a copy of Plaintiff's September 15, 2023, Cover Letter to Judge Newman re: the August 15, 2023, Motion and September 11, 2023, Memo.

Please bring these matters to the Court's attention at your next meeting with the Judge to discuss scheduling/motion related matters.

Best regards,

Justin

On Wed, Aug 16, 2023 at 10:17 AM Justin Jernigan <justin.a.jernigan@gmail.com> wrote:

Dear Ms. McDaniel,

Rule 52(d), 59(g), SCRCP, both indicate that: "A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion."

A copy of Plaintiff's August 15, 2023, Motion for Clarification/Reconsideration to Judge Newman is attached to this email.

If the Rules require and/or the Judge prefers sending a paper/hard-copy please let me know.

Thanks,

Justin A. Jernigan

864-710-5029

justin.a.jernigan@gmail.com

----- Forwarded message -----

From: <efiledonotreply@sccourts.org>

Date: Tue, Aug 15, 2023 at 2:03 PM

Subject: Accepted Notice: Your filing, Re: 2023CP2800538 - (899) Administrative Law/Other - Motion/Reconsider, was accepted
To: <justin.a.jernigan@gmail.com>

To: Justin A. Jernigan justin.a.jernigan@gmail.com

From: efiledonotreply@sccourts.org

Date: 2023-08-15 13:56:15.03

Subject: Your electronic filing, Re: 2023CP2800538 - (899) Administrative Law/Other - Motion/Reconsider, was accepted by CIRCUIT COURT.

Case Number: 2023CP2800538

Case Type: (899) Administrative Law/Other

Document Type: Motion/Reconsider

Reason(s) : (none provided)

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Kershaw  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan  
PLAINTIFF(S)

Kershaw County South Carolina  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider (filed on 10/28/24) is DENIED. The motion was not timely filed and is not meritorious.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/21/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Kershaw Common Pleas

**Case Caption:** Christine Jernigan VS Kershaw County South Carolina

**Case Number:** 2023CP2800538

**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2024-11-21 11:36:44 page 3 of 3

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge  
Civil Action No. 2023-CP-28-00538

---

Christine Jernigan.....Appellant,

v.

Kershaw County  
South Carolina.....Respondent.

---

**NOTICE OF APPEAL**

---

Appellant appeals the lower court's Orders: (1) entered on August 8, 2023, denying Appellant's Motion for Equitable Relief; (2) entered on October 17, 2024, dismissing the action with prejudice, and denying Appellant's Motion to Reconsider (8/8/23 Order); and (3) entered on November 21, 2024, denying Appellant's October 28, 2024, Motion to Reconsider (10/17/24 Order). Copies of these Orders are attached hereto. Appellant timely filed a Rule 59 Motion to Reconsider upon receiving notice of the October 17, 2024, Order, and received notice of the Order denying the Rule 59 Motion on November 21, 2024.

Respectfully submitted,

By: /s/Justin A. Jernigan  
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)  
7148 Stirrup Court, Weddington, NC 28104  
Ph: 864-710-5029  
Email: justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

December 16, 2024

# EXHIBIT A

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Kershaw  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan  
PLAINTIFF(S)

Kershaw County South Carolina  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/08/2023 .

Kershaw County South Carolina

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Kershaw Common Pleas

**Case Caption:** Christine Jernigan VS Kershaw County South Carolina

**Case Number:** 2023CP2800538

**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2023-08-08 11:45:31 page 3 of 3

# EXHIBIT B

|                                |   |                                  |
|--------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA        | ) |                                  |
|                                | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF KERSHAW              | ) |                                  |
| Christine Jernigan,            | ) | C/A #: 23-CP-28-00538            |
|                                | ) |                                  |
| Plaintiff,                     | ) |                                  |
|                                | ) | ORDER GRANTING MOTION TO DISMISS |
| v.                             | ) | FOR FAILURE TO PROSECUTE AND     |
|                                | ) | GRANTING JUDGMENT ON THE         |
| Kershaw County South Carolina, | ) | PLEADINGS AND DISMISSING THIS    |
|                                | ) | CASE WITH PREJUDICE              |
| Defendant.                     | ) |                                  |
| _____                          | ) |                                  |

This matter came before the court on Tuesday, August 27, 2024, for a non-jury trial term of court. Two cases appeared on the roster for trial. All parties were properly notified of the term of court.

Neither Plaintiff, Christine Jernigan, nor her counsel, Justin Jernigan appeared. The Defendant and their witnesses were present and ready to proceed to trial. Plaintiff had not communicated with the Court or with Defendant's counsel and had not requested a continuance.

At the call of the case, counsel for Kershaw County made two motions. Both motions were heard and granted. Counsel moved to dismiss the case for failure to prosecute. The Defendant was present with their witnesses and ready to proceed. Due to the absence of Plaintiff for a properly noticed non-jury trial term of court and the lack of communication from Plaintiff, that motion is granted. *See, McComas v. Ross*, 626 S.E.2d 902, (Ct.App. 2006). Normally, this motion would result in the case being dismissed without prejudice. If this were the only motion pending, that normal result would follow. However, the ruling on the motion for judgment on the pleadings, addressed below, dictates that this case must be dismissed with prejudice.

Kershaw County also moved for judgment on the pleadings. This is a Freedom of Information enforcement action that is highly disputed. Christine Jernigan is the Plaintiff. Justin Jernigan represents her but is not a party to the action.

Plaintiff attached the Freedom of Information Act request to the complaint as Exhibit B. That request was originally served upon the Kershaw County Sheriff's Department. Subsequently, the same FOIA request was served upon Kershaw County by Justin Jernigan. The Court has examined the request. The request clearly indicates that the requestor is Justin Jernigan, not Christine Jernigan. Mr. Jernigan did not indicate that the request was made in a representative capacity.

Kershaw County moved for judgment on the pleadings on these grounds: (1) Christine Jernigan, plaintiff, never made a FOIA request and therefore had no FOIA request to enforce; (2) Justin Jernigan, who made the FOIA request, was not a party to this litigation and therefore could not enforce the FOIA request; (3) Even if he were a party, Justin Jernigan, who resides in North Carolina, cannot bring an enforcement action pursuant to S.C. Code Section 30-4-100. The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.

As to ground (1), the record clearly reflects that Christine Jernigan is the sole plaintiff. However, the record also reflects that the FOIA request she seeks to enforce was made by Justin Jernigan. Christine Jernigan did not make a FOIA request. Therefore, she has no FOIA request to enforce.

As to ground (2), Justin Jernigan is not a plaintiff in this case. Instead, he is counsel of record for Christine Jernigan. Christine Jernigan is the sole plaintiff. However, he is the

requestor on the FOIA request attached to the complaint and served upon Kershaw County. He cannot prosecute this case as a party to the litigation when he is not a party.

As to ground (3), even if Justin Jernigan were a party to this case, he cannot bring a FOIA enforcement action since he is not a citizen of the State of South Carolina. The court's file clearly shows that his address is in Weddington, N.C. The Freedom of Information Act specifically describes who can bring an enforcement action. While the act allows any person to make a FOIA request, enforcement is governed by Section 30-4-100 which states:

(A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter....

A Freedom of Information Act with enforcement limited to state citizens is appropriate and lawful. The United States Supreme Court denied a challenge to Virginia's citizens-only FOIA statute. *See, McBurney v. Young*, 133 S.Ct. 1709, 569 U.S. 221 (2013). The reporter's summary of the opinion states in the syllabus:

Virginia's FOIA exists to provide a mechanism for Virginia citizens to obtain an accounting from their public officials; noncitizens have no comparable need. Moreover, the distinction between citizens and noncitizens recognizes that citizens alone foot the bill for the fixed costs underlying recordkeeping in the Commonwealth.

*McBurney*, 569 S.Ct. 1709, 1711.

The Court has repeatedly stated that the Constitution does not guarantee the existence of FOIA laws.

569 S.Ct. @ 1712.

Insofar as there is a "market" for public documents in Virginia, it is a market for a product that the Commonwealth has created and of which the Commonwealth is the sole manufacturer. A State does not violate the dormant Commerce Clause when, having created the market through a state program, it "limits benefits generated by (that) state program to those who fund the state treasury and whom the State was created to serve.

569 S.Ct. @ 1712-1713.

The United States Supreme Court stated that a citizen-only FOIA enforcement provision “provides a service that is related to state citizenship.” 569 S.Ct. @ 1713. South Carolina’s FOIA does the same thing. Enforcement is limited to citizens of South Carolina. South Carolina citizens foot the bill for the infrastructure for the recordkeeping and are the recipients of state services. Since Justin Jernagin is not a resident of South Carolina, even if he were a plaintiff in this action, he cannot bring an enforcement action.

Consequently, Defendant’s motion for judgment on the pleadings is granted on all grounds asserted. This case is dismissed with prejudice.

AND IT SO ORDERED.

---

Honorable Jocelyn Newman

\_\_\_\_\_, 2024



Kershaw Common Pleas

**Case Caption:** Christine Jernigan VS Kershaw County South Carolina

**Case Number:** 2023CP2800538

**Type:** Order/Dismissal

So Ordered

Jocelyn Newman

Electronically signed on 2024-10-17 15:20:03 page 5 of 5

# EXHIBIT C

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Kershaw  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan  
PLAINTIFF(S)

Kershaw County South Carolina  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider (filed on 10/28/24) is DENIED. The motion was not timely filed and is not meritorious.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/21/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Kershaw Common Pleas

**Case Caption:** Christine Jernigan VS Kershaw County South Carolina

**Case Number:** 2023CP2800538

**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2024-11-21 11:36:44 page 3 of 3

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge  
Civil Action No. 2023-CP-28-00538

---

Christine Jernigan.....Appellant,

v.

Kershaw County  
South Carolina.....Respondent.

---

**PROOF OF SERVICE**

---

I hereby certify that the foregoing Notice of Appeal is being served by email to counsel for the Respondent David Morrison at david@dmorrison-law.com. A copy of the Notice of Electronic Filing for the notice of appeal filed with the clerk of the lower court is attached.

Respectfully submitted,

By: /s/Justin A. Jernigan  
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)  
7148 Stirrup Court, Weddington, NC 28104  
Ph: 864-710-5029  
Email: justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

December 12, 2024



\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

---

**A filing has been submitted to the court RE:** 2023CP2800538

**Official File Stamp:** 12-16-2024 05:07:16 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Kershaw  
**Case Caption:** Christine Jernigan VS Kershaw County South Carolina  
**Document(s) Submitted:** Appeal/Notice of Appeal to Court of Appeals  
- Exhibit/Filing of Exhibits  
- Exhibit/Filing of Exhibits  
- Exhibit/Filing of Exhibits  
**Filed by or on behalf of:** Justin A. Jernigan

This notice was automatically generated by the Court's auto-notification system.

---

**The following people were served electronically:**

David Leon Morrison for Kershaw County South Carolina  
Cameron W. DeBoy for Kershaw County South Carolina  
Justin A. Jernigan for Christine Jernigan

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

RECEIVED

Apr 02 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan.....Appellant,

v.

Kershaw County South Carolina.....Respondent.

INITIAL BRIEF OF APPELLANT

Justin A. Jernigan, Esq. (S.C. Bar No. 74954)  
302 Pine Cliff Dr.  
Seneca, SC 29672  
Ph: 864-710-5029  
Email: justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

April 2, 2025

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
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## **I. STATEMENT OF THE ISSUES ON APPEAL**

### **A. Whether the circuit court erred in denying Appellant's Motion for Equitable Relief**

1. The circuit court erred by finding that Appellant, a life-long resident of South Carolina, lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A)
2. Appellant's Motion for Equitable Relief established a *prima facie* showing of likelihood of success on the merits to the requested relief
  - a. KCSC's August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c)
  - b. The record establishes that KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted

### **B. Whether the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)**

### **C. Whether the circuit court erred in granting Respondent's oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds**

1. The circuit court's application of FOIA, Section 30-4-100(A)'s statutory standing provision leads to a result that is plainly absurd
2. There was no basis for a non-jury trial on August 27, 2024, that could support the circuit court's Dismissal for Failure to Prosecute

## **II. STATEMENT OF THE CASE**

On July 24, 2023, Appellant Christine Jernigan ("Appellant" or "Mrs. Jernigan") initiated this case (the "538 FOIA case") against Respondent Kershaw County South Carolina ("Respondent" or "KCSC") in the Court of Common Pleas for the Fifth Judicial Circuit, Kershaw County. (Compl., R. \_\_\_\_). Count I seeks declaratory and associated injunctive/equitable relief including: (i) a finding that the written determination and disclosure provided by KCSC to Appellant on August 18, 2022, violates the statutory requirements of the Freedom of Information Act ("FOIA"), Section 30-4-30(c); and (ii) an order requiring disclosure of the relevant public

records requested; *e.g.*, KCSC’s June 29, 2022, E-911/Dispatch audio recordings. (Compl., 5-16, Exs. A-C, R. \_\_\_\_). The Complaint also seeks (*iii*) an order awarding Appellant costs/expenses, including reasonable attorney fees, incurred in this action pursuant to FOIA, Section 30-4-100(B). (*Id.* at 14-16, R. \_\_\_\_).

For records of the FOIA Request submitted to KCSC on August 11, 2022, that have been destroyed or otherwise rendered unavailable by KCSC, Count II seeks declaratory/equitable relief pursuant to FOIA and the Public Records Act, S.C. Code Ann. §§ 30-4-10, *et seq.* (Compl. ¶¶89-94, Ex. B at 3-5, R. \_\_\_\_). Most importantly, the long-promised June 29, 2022, E-911/Dispatch recordings – which are indisputably public records that should have been disclosed years ago – have apparently been destroyed or otherwise rendered unavailable by KCSC. As this Court has held, FOIA would be rendered meaningless if public bodies could simply destroy, rather than disclose, requested public records in violation of the legal requirements of FOIA and the Public Records Act. *See Ballard v. Newberry Cnty.*, 432 S.C. 526, 534, 854 S.E.2d 848, 852 (Ct. App. 2021) (holding that “[d]estruction of pertinent documents covered by a then-pending FOIA request could very well present” a cause of action pursuant to FOIA and/or the Public Records Act).

In sum, for Count I, the primary question is whether KCSC’s August 18, 2022, written determination and disclosure of public records violated the statutory requirements of FOIA, Section 30-4-30(c). For Count II, the primary question is whether KCSC’s destruction of requested public records – *e.g.*, KCSC’s apparent destruction of the long-promised June 29, 2022, E-911/Dispatch recordings – violates the legal requirements of FOIA and the Public Records Act. Accordingly, this is a “paper case” involving the application of legal principles to facts of record (*i.e.*, questions of law).

The factual background of the present 538 FOIA case necessarily overlaps with that of an earlier-filed, related case (the “782 FOIA case”) which is also currently on appeal before this Court. *See Jernigan v. Kershaw County Sheriff’s Office*, App. No. 2024-000833 (the “833 appeal”). Both cases address similar issues; *e.g.*, whether the respective written determinations provided by the public bodies violated the statutory requirements of FOIA, Section 30-4-30(c), and whether the circuit court erred by failing to follow the legal requirements of FOIA, Section 30-4-100(A). As a matter of judicial efficiency and consistency, Appellant respectfully submits that this Court should exercise its discretion pursuant to Rule 214, SCACR, by consolidating these two related appeals before the same panel.

On June 28, 2022, undersigned counsel left phone messages with Kershaw County Sheriff’s Office (“KCSO”) officers reporting concerns relating to his grandmother, and Appellant Mrs. Jernigan’s mother, Ann Martin (“Mrs. Martin”), who is a vulnerable adult pursuant to the Omnibus Adult Protection Act (“OAPA”), S.C. Code Ann. §§ 43-35-5, *et seq.* (7.28.23 Mt., 2-3, R. \_\_\_\_). Mrs. Martin served as office manager and chief receptionist for the South Carolina House of Representatives, Solomon Blatt Building, for over three decades until her retirement in 2013 due to age-related cognitive decline. *See* H. 4594, 120th Session (2013-2014); (Ex. G, Aff., R. \_\_\_\_).

On June 29, 2022, at around 9:44am, KCSO Officer #15 Courtney Cochran contacted KCSC Dispatch Operator Tina Hand, via phone, regarding undersigned counsel’s phone messages reporting concerns pursuant to the OAPA. (7.28.23 Mt. at 3, R. \_\_\_\_). KCSC Dispatch Operator Tina Hand dispatched/assigned KCSO Officer #45 Joseph Branham (Primary) who, at around 10:30am on June 29, 2022, spoke with undersigned counsel via phone regarding Mrs. Martin and the OAPA-related concerns. (*Id.* at 3, R. \_\_\_\_).

At around 11:00am on the morning of June 29, 2022, Mrs. Martin chose to exercise her right to travel away from a privately-owned, for-profit assisted living facility located in Kershaw County, known as Pinedale, with her daughter Mrs. Jernigan. (*Id.* at 3, R. \_\_\_\_).<sup>1</sup> After Mrs. Martin chose to travel away from Pinedale with her daughter, KCSO Officers #45 Joseph Branham (Primary), #42 Grant Arledge, and #40 Brian Morris were dispatched/assigned by KCSC to pursue them in police vehicles. (*Id.* at 3, R. \_\_\_\_). The KCSO Officers stopped Appellant Mrs. Jernigan's vehicle after she and Mrs. Martin traveled away from Pinedale. (*Id.* at 3, R. \_\_\_\_).

Undersigned counsel drove to KCSO's primary office in Lugoff, South Carolina, and attempted to intervene on behalf of his mother and grandmother. (*Id.* at 3, R. \_\_\_\_). Despite undersigned counsel's in-person appeals – and KCSO Officer #15 Courtney Cochran's associated communications, via KCSC Dispatch Operator Tina Procter, that undersigned counsel “Justin [Jernigan] is at the Sheriff Dept. and wants to let 42 and 40 know” – KCSO remanded Mrs. Martin to the Pinedale facility. (*Id.* at 3-4, R. \_\_\_\_). KCSO indicated that Appellant Mrs. Jernigan would have to “contact the court” with respect to her mother Mrs. Martin being remanded to the privately-owned, for-profit Pinedale facility. (*Id.* at 4, R. \_\_\_\_).

Appellant's FOIA Request seeks public records relevant to the police-involved events of June 28-29, 2022. (Compl., Ex. B, R. \_\_\_\_). Prior to submitting the FOIA Request to KCSC on August 11, 2022, the Request was first submitted to KCSO on July 22, 2022. (7.28.23 Mt. at 6, R. \_\_\_\_). KCSO's Records Department responded on July 25, 2022, by indicating that KCSO

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<sup>1</sup> See, e.g., Bill of Rights for Residents of Long-Term Care Facilities, S.C. Code Ann. § 44-81-20 (“The General Assembly further finds that it is necessary to preserve the dignity and personal integrity of residents of long-term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident's need for self-determination.”).

would not provide any of the communication/dispatch-related records of the FOIA Request, and that these records must instead be obtained from KCSC.

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

(Compl., Ex. A, R. \_\_).<sup>2</sup>

The records encompassed by the FOIA Request include all records associated with the “Pinedale facility,” and “audio recordings” of any type relating to the employees (*i.e.*, the dispatch operators and officers) who were personally involved with the events of June 28-29, 2022. (9.11.23 Memo at 11, 7.28.23 Mt. at 6-7, R. \_\_). In addition, the FOIA Request seeks personnel/training records for the employees personally involved in the events that occurred on and around June 29, 2022. (*Id.*, Ex. B at 4, R. \_\_).<sup>3</sup>

#### **A. KCSC’s August 18, 2022, FOIA Response and Disclosures**

Pre-suit counsel provided KCSC’s only response to the FOIA Request on August 18, 2022.

I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith all documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* as well as a CD containing

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<sup>2</sup> Appellant respectfully submits that the lack of certainty in and around July/August 2022 as to the E911/Dispatch arrangement between and amongst KCSO and KCSC was reasonable and understandable. Indeed, as of 2019, approximately half of the E-911 Organizations in this State operated under the umbrella of either a chief of police or county sheriff’s department. (9.11.23 Memo. at 11, R. \_\_).

<sup>3</sup> As discussed above at fn. 2, the initial FOIA Request included a few readily apparent, good faith errors by indicating that the “Dispatch Operator[s]” personally involved were believed to be KCSO (*i.e.*, “Department”) employees. ((9.11.23 Memo at 11-12, R. \_\_ (“the Department (Dispatch Operator)”), R. \_\_ (“Department dispatch line”), R. \_\_ (“Department employees”)).

the audio. If you have any other questions or concerns, do not hesitate to contact me.

(Compl., Ex. C at 2, R. \_\_ ).

KCSC's August 18, 2022, FOIA Response attached and disclosed one relevant public document, CFS2022-39001, which states that it was printed on August 18, 2022. (7.28.23 Mt. at 8, R. \_\_). The August 18, 2022, CFS2022-39001 public record, however, omitted the names of the respective KCSC Dispatch Operators who were personally involved with the associated communications documented therein. (7.28.23 Mt. at 8, R. \_\_). These omissions are apparent when the November 17, 2022, CFS2022-39001 document, which was disclosed by KCSO on December 4, 2022, in the related 782 FOIA case, is compared against the August 18, 2022, CFS2022-39001 document disclosed by KCSC. (*Id.*, Ex. E, *compare* R. \_\_ *with* Ex. C, R. \_\_).

The CD optical disc disclosed by KCSC with its August 18, 2022, FOIA Response Letter contained a total of twelve (12) individual audio recording files of phone calls concerning or involving undersigned counsel; *i.e.*, Audio File Nos. 0 to 11. (7.28.23 Mt. at 8, R. \_\_). The first four audio recording files (*i.e.*, Audio File Nos. 0 to 3) are respective portions of the phone call by KCSO Officer #15 Courtney Cochran to KCSC Dispatch Operator Tina Hand beginning around 9:44am on the morning of June 29, 2022, and ending between 9:46am and 9:47am. (*Id.*, Ex. H at 3, R. \_\_). The subject matter of Audio File Nos. 0 to 3 involves undersigned counsel's June 28, 2022, phone messages left with KCSO officers reporting OAPA-related concerns with respect to Mrs. Martin. (*Id.*, R. \_\_).

The end time of Audio File No. 3 (*i.e.*, 9:46:38 start time plus 14 second duration) is 9:46:52. (*Id.*, R. \_\_). Subtracting the 9:46:52 end time of Audio File No. 3 from the 9:44:37 start time of Audio File No. 0 yields a total phone call duration of 135 seconds. Adding up the four respective time durations of Audio File Nos. 0 to 3 (*i.e.*, 26s + 47s + 27s + 14s), however,

yields a total phone call duration of 114 seconds. (*Id.*, R. \_\_\_\_). According to the math, twenty-one (21) seconds of the phone call between KCSO Officer #15 Courtney Cochran and KCSC Dispatch Operator Tina Hand on the morning of June 29, 2022, have been omitted from Audio File Nos. 0 to 3 by KCSC. (*Id.*, R. \_\_\_\_).

The last eight audio files of the CD optical disc disclosed by KCSC with its August 18, 2022, FOIA Response Letter (i.e., Audio Files Nos. 4 to 11) are recordings of undersigned counsel's June 29, 2022, afternoon/evening phone communications with various KCSC Dispatch Operators, and KCSO Officer #32 Dustin Tate, unsuccessfully attempting to obtain a public record documenting the police-involved events of June 28-29, 2022. (7.28.23 Mt. at 8, R. \_\_\_\_). No audio recordings of undersigned counsel's phone communications reporting the OAPA-related concerns to KCSO Officer #45 Joseph Branham (Primary) on the morning of June 29, 2022, were included on the CD optical disc containing the twelve (12) total audio recording files. (*Id.*, R. \_\_\_\_).

Most importantly, however, KCSC's disclosures on August 18, 2022, withheld all records and audio recordings associated with the E-911/Dispatch communications on the morning of June 29, 2022, accusing Appellant and undersigned counsel of improper or unlawful conduct. (9.11.23 Memo at 14, R. \_\_\_\_). As demonstrated by the November 17, 2022, CFS2022-39009 public record – which was produced by KCSO on December 4, 2022, in the related 782 FOIA case – there are E-911/Dispatch communications documented therein for which no audio recordings have ever been disclosed by KCSC. The November 17, 2022, CFS2022-39009 public record, *inter alia*, demonstrates that the Administrator of the Pinedale facility, Phillip Hudson ("Mr. Hudson"), called KCSC E-911/Dispatch on the morning of June 29, 2022, and asserted that Appellant and undersigned counsel had committed improper or unlawful acts. (*Id.*, R. \_\_\_\_).

Mr. Hudson's E-911 call to KCSC on the morning of June 29, 2022, totaled approximately one hour, lasting from 10:55am to 11:53am. (*Id.*, R. \_\_\_\_).

In late August 2022, near the expiration of FOIA, Section 30-4-30(c)'s disclosure deadlines, Appellant believed that KCSC and KCSO would resolve the FOIA matters amicably on reasonable terms; *e.g.*, to avoid wasting taxpayer and judicial resources. On August 23, 2022, Appellant offered, as a mutually beneficial solution, to extend the applicable disclosure deadlines of FOIA, Section 30-4-30(c), if KCSC (or KCSO) would agree to provide the third-party citizen E-911/Dispatch call records and recordings that triggered KCSO's June 29, 2022, police-actions – *i.e.*, Mr. Hudson's approximately one-hour E-911 call – as soon as possible. (9.11.23 Memo at 15, R. \_\_\_\_). Otherwise, undersigned counsel requested that pre-suit counsel for KCSC and KCSO agree to keep Appellant "in the loop" moving forward regarding when the additional records of the FOIA Request – *e.g.*, the requested personnel/training records of the employees personally involved – would thereafter be disclosed. (Compl., Ex. A at 23-24, R. \_\_\_\_).

Pre-suit counsel for KCSC and KCSO rejected the August 23, 2022, settlement proposal that same night at around 9:00pm. (Ex. A at 22-23, R. \_\_\_\_). Thereafter, on August 24, 2022, undersigned counsel offered to personally inspect and make copies of the public records of the FOIA Request. (Ex. A at 21, R. \_\_\_\_). Pre-suit counsel for KCSC and KCSO never responded to undersigned counsel's August 24, 2022, proposal seeking to resolve the FOIA matters amicably by personally inspecting and copying the relevant public records of the FOIA Request.

At the initial hearing before Judge Newman on December 19, 2022, in the related 782 FOIA case, the audio recordings of Mr. Hudson's approximately one-hour long E-911 call on the morning of June 29, 2022, were discussed. (Compl., Ex. F at 7:6-10, R. \_\_\_\_). Specifically, with respect to Mr. Hudson's June 29, 2022, E911 call, litigation counsel for KCSO (and KCSC)

stated that he and his associate were “going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don’t know. But we’re going to Kershaw County Dispatch to get that.” (*Id.*, R. \_\_\_\_). After the December 19, 2022, initial FOIA hearing in the 782 FOIA case, however, the June 29, 2022, E-911 audio recordings were never disclosed to Appellant. (7.28.24 Mt. at 10-11, R. \_\_\_\_).

**B. Appellant’s July 28, 2023, Motion for Equitable Relief**

Appellant’s July 24, 2023, Complaint requests that the circuit court schedule “an initial hearing within ten days of the date of service of this Complaint upon KCSC” pursuant to the legal requirements of FOIA, Section 30-4-100(A). (Compl. 14, 16, R. \_\_\_\_). FOIA, Section 30-4-100(A), states (emphasis added):

Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this [six-month] time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter *must* be considered to be an irreparable injury for which no adequate remedy at law exists.

On July 28, 2023, Appellant’s Summons/Complaint and Exhibits A to F were formally served upon KCSC. (Aff. of Ser., R. \_\_\_\_). This Court recently held that the Chief Administrative Judge (“CAJ”) of the circuit court is responsible for complying with and meeting the legal requirements of FOIA, Section 30-4-100(A), when a FOIA-plaintiff includes a request that the circuit court schedule the initial 10-day hearing in the complaint. *See Osmundson v. School District 5*, 443 S.C. 610, 614-16, 905 S.E.2d 418 (Ct. App. 2024) (interpreting FOIA, Section 30-4-100(A) based on its plain meaning, as a matter of first impression).

Even so, Appellant took further steps in the present 538 FOIA case in an effort to obtain the legal protections enacted by our legislature for the benefit of all FOIA plaintiffs at Section 30-4-100(A). Appellant filed an expedited Motion on July 28, 2023, requesting: (i) the initial ten-day hearing required by Section 30-4-100(A); (ii) injunctive/equitable relief ordering KCSC to fully respond to and disclose the records of the FOIA Request pursuant to the legal requirements of FOIA, Section 30-4-30(c); and (iii) a scheduling order to conclude proceedings in this case within six months of filing (the “Motion for Equitable Relief”). (7.28.23 Mt, 1-2, 11, R. \_\_\_\_). On August 7, 2023, Appellant filed/submitted a follow-up Letter to Judge Newman, CAJ, regarding the required 10-day initial hearing for the July 28, 2023, Motion for Equitable Relief. (8.7.23 Letter, R. \_\_\_\_). Appellant’s August 7, 2023, Letter “respectfully request[s] that your Honor move this FOIA-case forward in a manner consistent with” FOIA, Section 30-4-100(A). (*Id.*, R. \_\_\_\_).

**C. The August 8, 2023, Initial Hearing and Form 4 Order**

Pursuant to FOIA, Section 30-40-100(A), “[a] citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter.” At the initial hearing on August 8, 2023, Judge Newman issued rulings from the bench denying Appellant’s July 28, 2023, Motion for Equitable Relief on grounds that Appellant Mrs. Jernigan, who is a life-long resident of this State (Compl.; 10.28.23 Mt, R. \_\_\_\_), lacks standing to proceed with this case because she was not specifically listed as “requester” on the FOIA Request. (Ex. J, R. \_\_\_\_).<sup>4</sup>

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<sup>4</sup> (Ex. J at 13:24-25, R. \_\_\_\_ (“[T]he requester is [undersigned counsel] Justin Jernigan. Justin Jernigan is a resident of North Carolina”); 14:3-4, R. \_\_\_\_ (same); 16:11-13, R. \_\_\_\_ (same)).

KCSC's case dispositive lack-of-FOIA-requester-standing arguments at the August 8, 2023, hearing were unexpected. (9.11.23 Memo at 2-3, R. \_\_\_\_). Appellant requested leave to brief the case dispositive lack-of-FOIA-requester-standing issue prior to the circuit court issuing a ruling on this matter. (*Id.*, R. \_\_\_\_).<sup>5</sup> Even so, Judge Newman entered a Form 4 Order on August 8, 2023, stating: "Following a hearing on August 8, 2023, Plaintiffs '...Motion for...Equitable Relief...' (filed on 7/28/23) is DENIED." (8.8.23 Order, R. \_\_\_\_).

At the August 8, 2023, initial hearing, the long-promised June 29, 2022, E-911/Dispatch recordings were, once again, discussed by KCSC's counsel. (9.11.23 Memo at 1-2, R. \_\_\_\_).

MR. MORRISON: I'll try to get it done this week and go to Kershaw County and see if there are any audio recordings and if there are I will send them to him. Maybe that will resolve this. I don't know.

(Ex. J at 16:25 to 17:3, R. \_\_\_\_).

THE COURT: Mr. Morrison is going to get you those recordings, those 911 recordings as he said he would.

(*Id.* at 23:21-22, R. \_\_\_\_).

MR. MORRISON: I will go get – I'll report to [undersigned counsel] Justin [Jernigan] by the end of the week as to my progress.

(*Id.* at 24:1-2, R. \_\_\_\_).

The above-quoted "Maybe that will resolve this. I don't know." comments by KCSC's counsel at the August 8, 2023, hearing are noteworthy. As discussed above on page 8, KCSC's pre-suit counsel rejected Appellant's August 23, 2022, proposal to extend the FOIA-disclosure

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<sup>5</sup> Ex. J. at 15:19-20, R. \_\_\_\_ (Mr. Jernigan: "I'm not sure if [KCSC's counsel is] asking [the Court] to dismiss the case"); 19:25, R. \_\_\_\_ ("[I]f this is an issue that the Court wants to rule on, I would like to be able to brief the issue").

deadlines of Section 30-4-30(c) for all other requested records if KCSC would simply provide the June 29, 2022, E-911 audio recording records. (9.11.23 Memo at 15, R. \_\_\_\_).

Following the August 8, 2023, initial FOIA hearing, KCSC's counsel neither disclosed the June 29, 2022, E-911 audio recordings nor followed-up with undersigned counsel as to his progress in obtaining the long-promised E-911 audio recording public records. (9.11.23 Memo at 1-2, R. \_\_\_\_).

**D. Appellant's August 15, 2023, Motion to Clarify/Reconsider**

Our appellate courts, and the appealability statute itself, emphasize that appealability turns on the effect of a particular motion/order rather than the label given. *See* S.C. Code Ann. § 14-3-330(2) (stating that “[a]n order affecting a substantial right” is directly appealable if it “in effect determines the action”); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 477 (Ct. App. 2011) (stating, at n.6, that “[o]ur courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability”). The circuit court's August 8, 2023, Form 4 Order denied Appellant's Motion for Equitable Relief on lack-of-FOIA-requester standing grounds, effectively ending the present case. The August 8, 2023, Form 4 Order is also an appealable order, as a matter of right, pursuant to S.C. Code Ann. § 14-3-330(4) (“An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction.”).

Appellant timely-filed an August 15, 2023, Motion, and September 11, 2023, supporting Memorandum with Exhibits J to L, seeking clarification and reconsideration of the August 8, 2023, Form 4 Order pursuant to Rules 52(a), (b) (“in granting or refusing interlocutory injunctions the court shall ... set forth the findings of fact and conclusions of law which constitute the grounds of its action”), & 59(e), SCRCF (collectively, the “Motion to

Clarify/Reconsider”). (Motion/Memo, R. \_\_\_\_). Appellant followed-up on the Motion to Clarify/Reconsider by submitting a Letter to Judge Newman dated September 15, 2023. (9.15.23 Letter, R. \_\_\_\_).

Appellant subsequently followed-up with Judge Newman’s law clerk on October 24, 2023, regarding the pending Motion to Clarify/Reconsider. Judge Newman’s law clerk responded on October 27, 2023, stating that undersigned counsel for Appellant “will receive a ruling on your Motion in the near future.” (10.28.24 Mt., Ex. A, R. \_\_\_\_).

**E. The August 27, 2024, Hearing and October 17, 2024, Order**

Rather than issuing a ruling on Appellant’s pending Motion to Clarify/Reconsider, however, the present case was instead placed on the circuit court’s non-jury roster calendar for the August 27, 2024, term. Given that the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and no ruling on the pending August 15, 2023, Motion to Clarify/Reconsider had been entered, there was no basis for the circuit court to schedule or conduct a non-jury trial on August 27, 2024. (10.28.24 Mt., Decl., Ex. A, R. \_\_\_\_). Unfortunately, due to a docketing error/mistake, undersigned counsel neglected to contact the circuit court and opposing counsel regarding these matters prior to the scheduled August 27, 2024, term of non-jury court. (10.28.24 Mt, R. \_\_\_\_). After realizing this error/mistake, undersigned counsel promptly contacted the court and opposing counsel on August 30, 2024. (*Id.*, R. \_\_\_\_).

On October 17, 2024, the circuit court entered an Order denying Appellant’s Motion to Clarify/Reconsider, and granting KCSC’s August 27, 2024, oral Motion for Judgment on the Pleadings, on grounds that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A); *i.e.*, lack-of-FOIA-requester standing. (8.27.24 Hr. Tr., 10.17.24 Order, R. \_\_\_\_).

The October 17, 2024, Order states in part: “The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.” (10.17.24 Order at 2, R. \_\_\_\_).

Despite affirming the August 8, 2023, Form 4 Order’s determination that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A), the October 17, 2024, Order also grants KCSC’s August 27, 2024, oral Motion to Dismiss for Failure to Prosecute on grounds that neither Appellant nor undersigned counsel appeared for the scheduled non-jury trial on August 27, 2024. (R. \_\_\_\_).

**F. Appellant’s October 28, 2024, Rule 59(e) Motion to Reconsider**

On October 28, 2024, Appellant timely-filed a Motion to Reconsider the October 17, 2024, Order pursuant to Rule 59(e), SCRPC (the “Rule 59(e) Motion to Reconsider”). (R. \_\_\_\_). The circuit court denied Appellant’s Rule 59(e) Motion to Reconsider via a Form 4 Order entered on November 21, 2024. (11.21.24 Order, R. \_\_\_\_). Appellant timely-filed and served a Notice of Appeal on December 16, 2024. (R. \_\_\_\_). The orders subject to appeal include (i) the August 8, 2023, Form 4 Order; (ii) the October 17, 2024, Order, and (iii) the November 21, 2024, Form 4 Order. (R. \_\_\_\_).

**III. STANDARD OF REVIEW**

The issues on appeal concern the circuit court’s interpretation and application of statutes, rules, and/or precedent to facts of record, which are questions the appellate court is free to decide with no particular deference to the circuit court. *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citations omitted). “Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law *de novo*.” *Catawba*

*Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Although an injunction is equitable in nature, the analysis presents a question of law if the matter can be determined based on interpretation and application of statutory provisions to the facts of record. *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 760 S.E.2d 785, 788 (2014) (citation omitted).

In construing a statute, a court examines and enforces the statutory language as written. *See Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017) (“It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning. ... ‘[T]here is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning’ unless a statutory provision is ambiguous.”) (citations omitted).

#### **IV. ARGUMENT**

##### **A. The circuit court erred in denying Appellant’s Motion for Equitable Relief**

Appellant’s Complaint and Motion for Equitable Relief seek declaratory and associated injunctive/equitable relief ordering KCSC to (i) fully respond to, and (ii) disclose the records of, the FOIA Request submitted to KCSC on August 11, 2022, in compliance with the legal requirements of FOIA, Section 30-4-30(c). (7.28.23 Mt, 1-2, 11, R. \_\_).

First, Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief on grounds that Appellant lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A); *i.e.*, lack-of-FOIA-requester standing. Second, Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief because the Motion established a *prima facie* showing of likelihood of success on the merits to the requested relief. Specifically, the Motion for Equitable Relief established a *prima*

*facie* showing that KCSC’s August 18, 2022, written determination and disclosure of public records violated the statutory requirements of FOIA, Section 30-4-30(c).

For the reasons discussed herein, Appellant respectfully requests that this Court reverse the circuit court’s orders denying the Motion for Equitable Relief, and grant appropriate relief as requested in the Motion.

**1. The circuit court erred by finding that Appellant, a life-long resident of South Carolina, lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A)**

The circuit court’s grounds for denying the Motion for Equitable Relief – lack-of-FOIA-requester standing – are contrary to controlling precedent. The South Carolina Supreme Court has previously addressed the minimal statutory standing requirements for FOIA-plaintiffs as follows:

The traditional concepts of constitutional standing are *inapplicable* when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act’s requirements. S.C. Code Ann. § 30-4-100(a).

...

The legislature has specifically conferred standing upon *any* citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. *Nothing more is required*. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims.

*Freemantle v. Preston*, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012) (emphasis added).  
*see also Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) (“this Court has held that standing under FOIA does not require the information seeker to have a ‘personal stake in the outcome’”) (citation omitted).

Over 40 years ago – when FOIA was originally enacted – the legislature found that its “provisions must be construed so as to make it possible for citizens, or their representatives, to

learn and report fully the activities of their public officials at a minimum cost or delay.” S.C. Code Ann. § 30-4-15. An essential purpose of FOIA “is to protect the public from secret government activity.” *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843, 846 (1994) (citation omitted). Pursuant to FOIA, all “persons” have the statutory “right to inspect, copy, or receive” a “public record of a public body” upon submission of a “written request for records” to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). FOIA’s definition of “person” broadly encompasses any “individual, corporation, partnership, firm, organization or association” without limitation. *Id.*, § 30-4-20(b).

As the South Carolina Supreme Court held in *Freemantle*, a FOIA-plaintiff need only plead: (i) citizenship/residency of the State, and (ii) that FOIA has been violated to establish statutory standing pursuant to S.C. Code Ann. § 30-40-100(A). 398 S.C. at 95, 728 S.E.2d at 45. The *Freemantle* Court explicitly stated that “[n]othing more is required.” *Id.* Appellant, as a lifelong citizen/resident of South Carolina, certainly meets the statutory standing requirements in the present FOIA case. *See* (Compl., ¶¶1, 79-88, R. \_\_) (“Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee”); (10.28.23 Mt, Aff. R. \_\_) (“Plaintiff has been a life-long citizen and resident of South Carolina, presently residing in Seneca, County of Oconee.”).

Appellant respectfully submits that the circuit court erred by finding that Appellant lacked statutory standing pursuant to FOIA, Section 30-40-100(A), and denying Appellant’s Motion for Equitable Relief on these grounds.

**2. Appellant’s Motion for Equitable Relief established a *prima facie* showing of likelihood of success on the merits to the requested relief**

Appellant respectfully submits that the Motion for Equitable Relief established a *prima facie* showing that KCSC’s August 18, 2022, written determination and incomplete/redacted

disclosure of public records violated the statutory requirements of FOIA, Section 30-4-30(c). Accordingly, Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief and refusing to grant the injunctive/equitable relief requested by the Motion.

“An injunction is an equitable remedy that may be used to require a party to perform an action.” *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). To obtain an injunction, a party generally must show “(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” *Scratch Golf v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (citations omitted). Our legislature, however, has mandated that all FOIA violations must be considered “an irreparable injury for which no adequate remedy at law exists.” S.C. Code Ann. § 30-4-100(A). Thus, Appellant need only show a likelihood of success on the merits to obtain the equitable/injunctive relief requested.

The “likelihood of success” element does not require a party to “prove an absolute right,” rather, the party seeking equitable relief “need only present a fair question to raise as to the existence of such a right.” *Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005) (citation omitted). If the party makes a “*prima facie* showing” with respect to the relief requested, the circuit court should issue the injunction. *Id.* FOIA, Section 30-4-100(A) states that the circuit “court may order equitable relief as it considers appropriate.”

**a. KCSC’s August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c))**

Appellant respectfully submits that the Motion for Equitable Relief established a *prima facie* showing with respect to the relief requested because KCSC’s August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c).

FOIA imposes “an affirmative duty on the part of public bodies to disclose information.” *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (emphasis added). Pursuant to FOIA, Section 30-4-30(c), a public body is required – within ten (10) business days for public records less than two years old or within twenty (20) business days for public records greater than two years old – to notify the “person” making the request in writing regarding the public body’s determination, reasoning, and final opinion as to the public availability of each public record requested. If the public body does not provide the required written determination as to the public availability of each public record requested, the FOIA request must be considered approved as to all nonexempt public records/information. *See* S.C. Code Ann. §§ 30-4-30(c); *Sloan v. South Carolina Dep’t of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 688-89 (2014) (holding that the DOR’s “equivocal and evasive” FOIA response was “manifestly at odds with the clarity mandated by” Section 30-4-30(c)).

Pre-suit counsel provided KCSC’s only written response to the FOIA Request on August 18, 2022.

I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith all documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* as well as a CD containing the audio. If you have any other questions or concerns, do not hesitate to contact me.

(Compl., Ex. C at 2, R. \_\_ ).

KCSC’s August 18, 2022, FOIA Response does not address the public availability of, or explain how any FOIA exemptions could potentially apply to, any records of the FOIA Request as required pursuant to FOIA, Section 30-4-30(c). *See* (Exs. B at 3-5 & C at 2, R. \_\_); *Pope v. Wilson*, 431 S.E.2d 442, 448, 427 S.C. 377, 388 (Ct. App. 2019) (holding that a public body “must show the applicability of a specific FOIA exemption to each requested public record”). It

is unclear what records of the FOIA Request were available, not available, and/or withheld as exempt based upon KCSC's bare assertion "[p]lease find enclosed herewith *all* documents not subject to exemption." (Ex. C at 2, R. \_\_) (emphasis added); *see Sloan*, 409 S.C. 551, 762 S.E.2d at 688- 89 (holding that the DOR's equivocal and evasive FOIA responses were efforts designed to delay "final determination as to the public availability of the requested documents," best characterized as "'we will get to it when we get to it,' which is manifestly at odds with the clarity mandated by section 30-4-30(c)").

Appellant respectfully submits that a *prima facie* showing has been established with respect to the injunctive/equitable relief requested by the Motion for Equitable Relief; *i.e.*, an order requiring KCSC to fully respond to and disclose the records of the FOIA Request submitted to KCSC on August 11, 2022, in compliance with the legal requirements of FOIA, Section 30-4-30(c).

**b. The record establishes that KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted**

As discussed in detail at Section II(A) above (pages 6-8), KCSC's August 18, 2022, FOIA Production was incomplete/redacted. This is evident based upon the respective November 17, 2022, CFS2022-39001 and CFS2022-39009 public records that were disclosed by KCSO on December 4, 2022, in the related, earlier-filed 782 FOIA case. Appellant respectfully submits that the Motion for Equitable Relief established a *prima facie* showing with respect to the relief requested because KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted.

The November 17, 2022, CFS2022-39001 public record demonstrates that the CFS2022-39001 public record that was disclosed by KCSC on August 18, 2022, omitted the names of the respective dispatch operators who were personally involved with the associated communications documented therein. (Ex. E, *compare* R. \_\_ *with* Ex. C, R. \_\_). The November 17, 2022,

CFS2022-39009 public record demonstrates that KCSC unlawfully withheld all records and audio recordings associated with the E-911/Dispatch calls on the morning of June 29, 2022, accusing Appellant and undersigned counsel of improper or unlawful conduct. For instance, KCSC's August 18, 2022, FOIA disclosure withheld all records and audio recordings of Mr. Hudson's approximately one-hour E-911 call on the morning of June 29, 2022.

Additionally, according to the math, twenty-one (21) seconds of the phone call between KCSO Officer #15 Courtney Cochran and KCSC Dispatch Operator Tina Hand on the morning of June 29, 2022, were omitted from Audio File Nos. 0 to 3 of the CD optical disc disclosed by KCSC on August 18, 2022. Moreover, no audio recordings of undersigned counsel's phone communications reporting the OAPA-related concerns to KCSO Officer #45 Joseph Branham (Primary) on the morning of June 29, 2022, were included on the CD optical disc disclosed by KCSC on August 18, 2022.

Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief because the Motion established a *prima facie* showing of likelihood of success on the merits to the requested relief. Appellant respectfully requests that this Court reverse the circuit court's orders denying the Motion for Equitable Relief, and grant appropriate relief as requested by ordering KCSC to fully respond to and disclose all records of the FOIA Request submitted to KCSC on August 11, 2022, in compliance with the legal requirements of FOIA, Section 30-4-30(c), including specifically:

Complete, unredacted records and audio recordings of the communications of CFS2022- 39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and KCSO accusing Appellant and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022.

(Compl., 7.28.23 Mt., R. \_\_).

**B. The circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)**

Appellant respectfully submits that the expedited resolution requirements and substantive legal standards of FOIA, Section 30-4-100(A) are “mode of trial” rights imposed using mandatory “must” and “shall” language. Appellant respectfully requests that this Court issue an order specifying that the circuit court is required to resolve FOIA cases like a motion for temporary injunction in compliance with the mandatory legal requirements of FOIA, Section 30-4-100(A), and Rule 52(b), SCRCP.

The prevailing rule of statutory interpretation is that “use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (citation omitted). Moreover, statutory provisions are generally regarded as mandatory when, as in the present case, the power or duty to which it relates is for the security or protection of important rights. *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) (citation omitted).

The original version of FOIA, Section 30-4-100 provided all citizens of the State the right “to apply to the circuit court for injunctive relief to enforce the provisions of [FOIA].” 1978 Act No. 593, Section 11.<sup>6</sup> Effective May 26, 1987, the General Assembly updated Section 30-4-100 to mandate that all FOIA violations “*must* be considered an irreparable injury for which no adequate remedy at law exists.” 1987 Act No. 118, Section 8 (emphasis added). Accordingly, a FOIA plaintiff need only establish a showing of likelihood of success on the merits to obtain the declaratory and equitable/injunctive relief requested. *See Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 907.

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<sup>6</sup> H\*2727 (Rat #0739, Act #0593 of 1978) General Bill.

During the 2017 round of updates, the General Assembly amended FOIA, Section 30-4-100(A) (effective May 19, 2017, emphasis added) to include the below procedural mandates and deadlines that the CAJ's of the circuit courts are required to follow upon the filing of a FOIA case.

Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

The 2017 FOIA amendments impose “time constraints within which *determinative hearings* on the requests for relief must be made.” 2017 Act No. 67 (H. 3352), Section 4, Effect of Amendment (emphasis added). The CAJ of the circuit court was assigned to fulfill the expedited scheduling/time requirements via the last round of amendments to H. 3352. *See* S. Journal (Wed., May 10, 2017), 122d Gen. Ass., 1st Reg. Sess., at 36-39 (S.C.).

On May 2, 2017, when H. 3352 was considered by the Judiciary Committee, Senator Margie Bright Matthews, Esq., of Colleton County, noted that the CAJs were available to decide FOIA matters locally on an expedited basis. Senator Matthews explained that adding the scheduling/time constraints would “create an avenue of filing FOIA requests like a temporary [injunction] motion so that it would have [to be] fast-tracked within ten days.” *See* S. Judiciary Comm. Meeting, 122d Gen. Assemb., 1st Reg. Sess. (S.C. May 2, 2017), available at <https://www.scstatehouse.gov/video/archives.php>, at 01:53:00 to 1:54:50; Rule 65, SCRCF.

In *Osmundson*, this Court found that “the legislative intent behind the ten-day requirement was to benefit FOIA applicants;” “A review of the legislative history indicates the amendments to the FOIA since its enactment have been to expand rights; thus, we find the

purpose of the ten-day requirement was to expedite resolution, not to erect a procedural barrier;” and held that the circuit court erred in dismissing the FOIA action on technical/procedural grounds. 443 S.C. 610, 905 S.E.2d 418. Thus, *Osmundson* held, pursuant to the plain and unambiguous language of Section 30-4-100(A), that the circuit court is responsible for scheduling an initial hearing within ten days of the service on all parties. Based on the plain and unambiguous language of Section 30-4-100(A), if the hearing court is unable to make a final ruling at the initial 10-day hearing, as in the present case, the court must thereafter establish a scheduling order and conclude actions brought pursuant to this chapter within six months of initial filing; *i.e.*, by January 24, 2024, in the present case.

The General Assembly also provided public bodies with a corresponding right to seek declaratory relief via an expedited hearing under Section 30-4-110(A) through the 2017 FOIA amendments. Accordingly, the public body has a duty to file an action seeking relief with respect to (i) alleged “unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests,” or (ii) where the public body “received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.” S.C. Code Ann. § 30-4-110(A). KCSC did not request a hearing or seek declaratory relief pursuant to Section 30-4-110(A) in this case.

“The General Assembly has the power and authority to change the statutes in any manner in which, in its best judgment, it may deem wise.” *Fort Sumter Hotel v. S.C. Tax Comms.*, 201 S.C. 50, 60, 21 S.E. 2d 393, 397 (1942). The circuit court can “now only carry out by its order the plain meaning and intent of the statutes as they appear on the books today. That course alone constitutes the cornerstone of constitutional government.” *Id.* The scheduling/time constraints and substantive legal standards (*i.e.*, “*must* be considered an irreparable injury for which no

adequate remedy at law exists”) of Section 30-4-100(A) created an expediated avenue for filing/resolving FOIA actions like a temporary injunction motion. If final resolution is not reached following the initial 10-day hearing, a scheduling order must be entered to ensure final resolution within six months of filing.

The circuit court’s failure to comply with and follow the mandatory procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A) has effectively denied Appellant the statutory “mode of trial” rights enacted by the legislature for the benefit of FOIA plaintiffs. This places Appellant, and all similarly-situated FOIA-plaintiffs, in an untenable situation. The circuit courts are not carrying out the plain meaning and intent of Section 30-4-100(A) as it appears on the books today in this and other FOIA cases and, as a result, a cornerstone of our constitutional government is breaking down.

Appellant respectfully submits that the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A) to reach a timely final resolution. FOIA plaintiffs should not be required to brow beat court staff in an effort to obtain the procedural and substantive legal protections of FOIA, Section 30-4-100(A). *See Osmundson*, 443 S.C. at 613.

Appellant submits that this case is a “paper case.” The primary declaratory and associated injunctive/equitable relief requested in the Complaint with respect to Count I, and in the Motion for Equitable Relief – (i) a finding that the written determination and disclosure provided by KCSC to Appellant on August 18, 2022, violates the statutory written determination requirements of FOIA, Section 30-4-30(c); and (ii) an order requiring disclosure of the relevant public records requested – should have been settled at an initial hearing held within ten (10) days of service. A scheduling order to conclude this case within six months of initial filing should

have been entered following the initial hearing; *i.e.*, to conclude proceeding in this case by January 24, 2024.

Appellants respectfully submit that the expedited resolution requirements and substantive legal standards of Section 30-4-100(A) are “mode of trial” rights imposed using “must” and “shall” language, that automatically apply to the benefit of all FOIA plaintiffs without requiring resort to formal motion practice. Appellant respectfully requests that this Court enter an order specifying that the circuit court is required to resolve this and all other FOIA cases in compliance with the requirements of FOIA, Section 30-4-100(A), and Rule 52(b), SCRCF. Appellant respectfully requests that this Court reverse the circuit court’s orders denying Appellant’s Motion for Equitable Relief, and grant appropriate relief as requested in the Motion and Court I of the Complaint.

C. **The circuit court erred in granting Respondent’s oral Motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds**

Appellant respectfully submits that the circuit court erred in granting KCSC’s August 27, 2024, oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute because the circuit court’s August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and is otherwise appealable as a matter of right pursuant to S.C. Code Ann. § 14-3-330(4). *See* Section II(D) above (pages 12-13). There was no basis for the circuit court to conduct a non-jury trial on August 27, 2024, or consider further motions, while Appellant’s August 15, 2023, Motion to Clarify/Reconsider the August 8, 2023, Form 4 Order remained pending.

The October 17, 2024, Order denies Appellant’s August 15, 2023, Motion to Clarify/Reconsider as follows: “The grounds for this request have already been presented to and

ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied.” (10.17.24 Order at 2, R. \_\_\_\_).

Given that the circuit court’s August 8, 2023, Form 4 Order had already ruled that Appellant lacked standing statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A), KCSC’s oral Motion for Judgment on the Pleadings on the same grounds was superfluous. Moreover, because the Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, there was no basis for any non-jury trial to occur on August 27, 2024, or other grounds to support the circuit court’s Dismissal for Failure to Prosecute. Appellant respectfully requests that this Court reverse the circuit court’s October 17, 2023, Order.

**1. The circuit court’s interpretation of FOIA, Section 30-4-100(A)’s statutory standing provision leads to a result that is plainly absurd**

As noted above, the circuit court’s grounds for denying Appellant’s July 28, 2023, Motion for Equitable Relief and for granting KCSC’s August 27, 2024, oral Motion for Judgment on the Pleadings – lack-of-FOIA-requester standing under FOIA, Section 30-4-100(A) – are the same. Thus, there was no cause for the circuit court to consider or grant the surplus oral Motion for Judgment on the Pleadings on the same grounds.

In any case, Appellant respectfully incorporates the above arguments from Section IV(A)(1) (pages 16-17) that the circuit court’s grounds for denying Appellant’s Motion for Equitable Relief, and for granting Respondent’s oral Motion for Judgment on the Pleadings – lack-of-FOIA-requester standing under FOIA, Section 30-4-100(A) – are foreclosed by controlling precedent. *See Freemantle*, 398 S.C. at 95, 728 S.E.2d at 45 (“Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required.”).

Moreover, Appellant respectfully submits that the circuit court’s interpretation of FOIA, Section 30-4-100(A), if upheld, “lead[s] to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.” *See Kiriakides v. United Artists Commc’ns, Inc.*, 312 S.C. 271, 440 S.E.2d 364, 366 (1994). When FOIA was originally enacted, the legislature found that its “provisions must be construed so as to make it possible for citizens, *or their representatives*, to learn and report fully the activities of their public officials at a minimum cost or delay.” S.C. Code Ann. § 30-4-15 (emphasis added). The circuit court’s interpretation and application of FOIA, Section 30-4-100(A)’s “citizen of the State” provision defeats this plain legislative intention by determining that all FOIA Requests submitted to public bodies by out-of-state members of the South Carolina Bar representing in-state clients are legally unenforceable in court. This is a plainly absurd result that could not possibly have been intended by the Legislature. *Cf. Ballard*, 432 S.C. 526, 854 S.E.2d 848.

In the *Ballard* case, for example, an in-state member of the South Carolina Bar (“Ms. Ballard”) submitted a FOIA request to the County in connection with her representation of a former part-time chief magistrate in Newberry County. *Id.* Ms. Ballard proceeded *pro se* on appeal in the FOIA case in an effort to recover attorney’s fees that the circuit court had disallowed based on its view that the case had produced a “split” result. *Id.*

The circuit court’s interpretation/application of FOIA, Section 30-4-100(A), raises constitutionality concerns by determining that out-of-state members of the South Carolina Bar cannot submit legally enforceable FOIA Requests to public bodies on behalf of clients. Our legislature no longer imposes conditions or governs the practice of law in this State. As the Note to the 1986 Amendment of Rule 11(a), SCRPC, explains, “[t]he requirement that an attorney of record must be a resident or maintain an office in the State is deleted. The conditions under

which a person may appear of record are more properly within the exclusive power of the Supreme Court to govern the admission to practice, rather than a matter of trial court procedure.”

Appellant respectfully submits that the circuit court erred by finding that Appellant lacked statutory standing to proceed with this case pursuant to FOIA, 30-40-100(A), and requests that this Court reverse the circuit court’s October 17, 2023, Order.

**2. There was no basis for a non-jury trial on August 27, 2024, or other grounds that support the circuit court’s Dismissal for Failure to Prosecute**

As discussed above, this case should not have been set for a non-jury trial on August 27, 2024, because (i) the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and (ii) no ruling on the pending August 15, 2023, Motion to Clarify/Reconsider had been entered. Moreover, as discussed above at Section IV(B) (pages 22-26), a scheduling order to conclude this case within six months of initial filing (*i.e.*, by January 24, 2024), in accord with the mandatory legal requirements of FOIA, Section 30-40-100(A), should have been entered. This case should have been decided on an expediated basis, like a motion for a temporary injunction, as was intended and unambiguously mandated by our General Assembly. Appellant respectfully submits that the circuit court erred by considering/granting KCSC’s August 27, 2024, oral Motion to Dismiss for Failure to Prosecute, and requests that this Court reverse the circuit court’s October 17, 2023, Order.

Undersigned counsel intended to contact the court, and opposing counsel, prior to the August 27, 2024, hearing date to address the above-noted legal inconsistencies, and thereby avoid the burden, travel, and associated expenses of holding an unnecessary in-person hearing. This is consistent with the response by Judge Newman’s law clerk on October 27, 2023, stating that undersigned counsel “will receive a ruling on your Motion in the near future” with respect to the Motion to Clarify/Reconsider denial of the Motion for Equitable Relief on lack-of-FOIA-

requestor-standing grounds. (10.8.24 Mt., Ex. A, R. \_\_\_\_). Unfortunately, due to a docketing error/mistake, undersigned counsel neglected to contact the court and opposing counsel prior to the scheduled August 27, 2024, hearing. After realizing this mistake, undersigned counsel promptly contacted the court and opposing counsel regarding the matter on August 30, 2024. (Oct. 28, 2024, Decl., R. \_\_\_\_).

From the outset, Appellant has diligently petitioned and implored the circuit court to follow the statutory procedural protections and deadlines explicitly provided to all FOIA litigants by FOIA, Section 30-4-100(A) to resolve this case. This case was fully briefed and ready for determination on the merits of Count I at the time of the August 8, 2023, initial hearing, and all further delays were ultimately caused by failure of the judicial system to meet the statutory obligations mandated by FOIA, Section 30-4-100(A).

Appellant respectfully submits that the circuit court erred by considering/granting KCSC's oral Motion to Dismiss for Failure to Prosecute, and requests that this Court reverse the circuit court's October 17, 2023, Order.

#### **V. CONCLUSION**

For the reasons set forth herein, the appealed orders of the circuit court should be reversed and appropriate relief entered on Appellant's Motion for Equitable Relief.

*[Signature block on following page]*

Respectfully submitted,

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ATTORNEY FOR APPELLANT

April 2, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan.....Appellant,

v.

Kershaw County South Carolina.....Respondent.

PROOF OF SERVICE

I hereby certify that the foregoing Initial Brief of Appellant is being served by email to  
counsel for Respondent, David Morrison, Esq., at david@dmorrison-law.com.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

April 2, 2025

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM KERSHAW COUNTY  
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Appellate Case No. 2024-002127

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Christine Jernigan.....Appellant,

v.

Kershaw County South Carolina.....Respondent.

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PROOF OF SERVICE

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I hereby certify that the foregoing Return in Opposition and Appendix of Exhibits to Respondent's Motion to Dismiss Appeal are being served by email to Respondent's counsel as follows: David Morrison, Esq., at david@gslawsc.com, and Andrew Lindemann, Esq., at andrew@ldlawsc.com.

Respectfully submitted,

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June 12, 2025